

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

IN THE MATTER OF A SUSPENDED  
MEMBER OF THE STATE BAR OF  
ARIZONA,

**NICOLE MARIE ABARCA,**  
**Bar No. 030662**

Respondent.

**PDJ-2018-9028**

**FINAL JUDGMENT AND ORDER**

[State Bar No. 17-2719]

**FILED JULY 25, 2018**

On July 3, 2018, the Hearing Panel issued its decision and order suspending Respondent Nicole Marie Abarca for six (6) months and one (1) day effective immediately. The time for appeal having passed and no appeal having been filed,

Accordingly:

**IT IS ORDERED** Respondent, **NICOLE MARIE ABARCA, Bar No. 030662**, is suspended from the practice of law for six (6) months and one (1) day effective July 3, 2018, the date of the Hearing Panel's Decision and Order Imposing Sanctions.

**IT IS FURTHER ORDERED** pursuant to Rule 72, Ariz. R. Sup. Ct., Ms. Abarca shall immediately comply with the requirements relating to notification of clients and others.

**IT IS FURTHER ORDERED** no objection having been filed, Ms. Abarca shall pay the costs and expenses of the State Bar of Arizona in the amount of \$2,000, together with interest at the legal rate from the date of this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

**DATED** this 25<sup>th</sup> day of July, 2018.

*William J. O'Neil*  

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**William J. O'Neil, Presiding Disciplinary Judge**

COPY of the foregoing e-mailed on July 25, 2018, and mailed July 26, 2018, to:

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Bar Counsel  
State Bar of Arizona  
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Respondent

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Nicole Marie Abarca  
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by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

IN THE MATTER OF A SUSPENDED  
MEMBER OF THE STATE BAR OF  
ARIZONA,

**NICOLE MARIE ABARCA,**  
**Bar No. 030662**

Respondent.

**PDJ 2018-9028**

**DECISION AND ORDER  
IMPOSING SANCTIONS**

[State Bar No. 17-2719]

**FILED JULY 3, 2018**

**PROCEDURAL HISTORY**

The State Bar of Arizona (“SBA”) filed its Complaint on April 16, 2018. On April 17, 2018, the Complaint was served on Ms. Abarca by certified, delivery restricted mail, and by regular first-class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge (“PDJ”) was assigned to the matter. A notice of default was properly issued on May 15, 2018, given Ms. Abarca’s failure to file an answer or otherwise defend.

A respondent against whom a default has been entered may no longer litigate the merits of the factual allegations but retains the right to appear and participate in the hearing that will determine the sanctions. Included with that right to appear is the right to testify and the right to cross-examine witnesses, in each instance only to

establish facts related to aggravation and mitigation. Ms. Abarca appeared telephonically and participated in the hearing.

Ms. Abarca filed no answer or otherwise defended against the Complainant's allegations and default was effective on June 5, 2018. A notice setting the aggravation and mitigation hearing was sent to all parties. The aggravation mitigating hearing was scheduled for and heard on July 3, 2018, at 1:00 p.m. The Hearing Panel, comprised of James M. Marovich, volunteer attorney member, Nance A. Daley, volunteer public member, and the Presiding Disciplinary Judge William J. O'Neil, ("PDJ") heard the proceeding. Bar Counsel Bradley F. Perry appeared on behalf of the State Bar of Arizona. Ms. Abarca appeared by telephone. Exhibits 1-13 were admitted. The State Bar and Ms. Abarca agreed a suspension of six (6) months and one (1) day was appropriate.

### **FINDINGS OF FACT**

The facts listed below are those set forth in the SBA's complaint and were deemed admitted by Ms. Abarca's default.

1. Ms. Abarca was a lawyer licensed to practice law in Arizona having been first admitted to practice in Arizona on October 29, 2013.

2. On April 3, 2017, Ms. Abarca was ordered by the Attorney Discipline Probable Cause Committee to participate in diversion for her conduct in State Bar of Arizona (SBA) File No. 16-1899. [Exhibit 1.]

3. Ms. Abarca's conduct in SBA File No. 16-1899 was being convicted of misdemeanor DUI. [Exhibit 2.]

4. The terms of Ms. Abarca's diversion included participation in the Member Assistance Program (MAP). [Exhibit 1.]

5. Participation in MAP includes scheduling and undergoing an evaluation conducted by Dr. Phillip Lett. It was Ms. Abarca's responsibility to schedule the evaluation. [Exhibit 13.]

6. In May 2017, Ms. Abarca communicated with Yvette Penar, the SBA Compliance Monitor, about scheduling an evaluation. On May 12, 2017, Ms. Penar left Ms. Abarca a voicemail with Dr. Lett's contact information so Ms. Abarca could schedule the evaluation. [Exhibit 13.]

7. Ms. Abarca failed to schedule the evaluation and failed to keep the Bar updated regarding her progress. [Exhibit 13.]

8. On June 30, 2017, Ms. Penar sent Ms. Abarca an email regarding her failure to communicate with the Bar and her failure to schedule the initial MAP evaluation. Ms. Abarca did not respond to the email. [Exhibit 3.]

9. On August 2, 2017, Ms. Penar sent Ms. Abarca an email stating the Bar would file a notice of non-compliance if Ms. Abarca did not contact Ms. Penar by August 31, 2017. [Exhibit 4.]

10. On August 28, 2017, Ms. Penar called Ms. Abarca to remind her of the August 31, 2017, deadline. The telephone number used by Ms. Penar was previously provided to the Bar by Ms. Abarca. Ms. Penar was unable to speak to Ms. Abarca because the telephone number was out of service. [Exhibit 13.]

11. On August 31, 2017, Ms. Penar emailed Ms. Abarca regarding scheduling of the initial MAP evaluation. [Exhibit 13.]

12. The email was returned as undeliverable. [Exhibit 5.]

13. Ms. Abarca has not contacted the Bar since May 2017 and has not scheduled her initial MAP evaluation as ordered in SBA File No. 16-1899. [Exhibit 13.]

14. On September 7, 2017, the State Bar sent Ms. Abarca a screening letter asking her to explain why she failed to participate in diversion. The letter was returned as undeliverable. [Exhibit 6.]

15. On January 17, 2018, the State Bar sent Ms. Abarca a copy of the report of investigation recommending probable cause. [Exhibit 7.]

16. A State Bar investigator obtained additional possible addresses for Ms. Abarca. On March 26, 2018, the State Bar sent Ms. Abarca letters to three possible addresses notifying Ms. Abarca that the Attorney Discipline Probable Cause Committee found probable cause to file a formal complaint. Ms. Abarca did not respond. [Exhibits 10, 11, 12.]

17. Ms. Abarca acknowledged that her failure to adhere to the terms of the diversion were her fault. She has maintained her email account but did not check it. She testified that she was required to contact the MAP coordinator, but she failed to do so. She testified that she will need at least a suspension of six months and a day before she will be in any position to be reinstated. She was candid in acknowledging that it may take much longer than that.

18. Ms. Abarca's conduct in failing to respond to the State Bar violates Rule 42, Ariz. R. Sup. Ct. ER 8.1(b) and Rules 54(d) and violated her diversion terms under 54(e), Ariz. R. Sup. Ct.

### **CONCLUSIONS OF LAW**

Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Ms. Abarca violated: Rule 42, Ariz. R. Sup. Ct., specifically ERs 8.1(b) and Rules 54(d) and (e), Ariz. R. Sup. Ct.

### **ABA STANDARDS ANALYSIS**

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should consider: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0*.

**Duties violated:**

Ms. Abarca violated her duty owed as a professional by violating ERs 8.1(b) and Rules 54(d) and (e), Ariz. R. Sup. Ct.

**Mental State:**

Ms. Abarca knowingly violated her duty owed as a professional when she failed to participate in diversion and failed to respond to lawful requests for information by the State Bar.

**Injury:**

Ms. Abarca caused potential injury to the public and the legal system.

**Standard:**

*Standard 7.2* – Suspension is generally appropriate when a lawyer engages in conduct that violates a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

**AGGRAVATING AND MITIGATING FACTORS**

The Hearing Panel finds the following aggravating factor:

- *Standard 9.22(e)*: Bad faith obstruction of the disciplinary process by failing to comply with rules or orders of the disciplinary agency.
- The Hearing Panel declines to find *Standard 9.22(c)*: A pattern of misconduct as requested by the State Bar. *See In re Levine*, 847 P.2d 1093 (Ariz. 1993). No “pattern” as contemplated by Standard 9.22(c) exists when a lawyer had

no prior disciplinary record. The Court declined to find the existence of multiple counts of misconduct necessarily constituted a “pattern.” The multiple occasions of failing to respond to the State Bar do not equate with a “pattern” under the *Standards*.

The Hearing Panel finds the following mitigating factor:

- *Standard 9.32(a)* absence of prior disciplinary record.

### **CONCLUSION**

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.’” *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). The goal of lawyer regulation is to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994). The purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993).

The Hearing Panel has determined the sanction based on the record, the *Standards*, and the goals of the attorney discipline system.

### **IT IS ORDERED,**

1. Ms. Abarca shall be suspended from the practice of law for six (6) months and one (1) day effective immediately.

2. Ms. Abarca shall pay all costs and expenses incurred by the SBA. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

A final judgment and order shall follow.

**DATED** this 3rd day of July 2018.

*William J. O'Neil*  
**William J. O'Neil, Presiding Disciplinary Judge**

*Nance A. Daley*  
**Nance A. Daley, Volunteer Public Member**

*James M. Marovich*  
**James M. Marovich, Volunteer Attorney Member**

Copy of the foregoing e-mailed this 3rd day of July, 2018, and mailed July 5, 2018, to:

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Email: [nabarca.esq@gmail.com](mailto:nabarca.esq@gmail.com)  
Respondent

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by: AMcQueen

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OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

APR 16 2018

FILED  
BY 

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

**IN THE MATTER OF A  
SUSPENDED MEMBER OF  
THE STATE BAR OF ARIZONA,**

**NICOLE MARIE ABARCA,  
Bar No. 030662,**

**Respondent.**

PDJ 2018- 9028

**COMPLAINT**

[State Bar No. 17-2719]

Complaint is made against Respondent as follows:

**GENERAL ALLEGATIONS**

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 29, 2013.

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**COUNT ONE (File No. 17-2719/Arizona)**

On April 3, 2017, Respondent was ordered by the Attorney Discipline Probable Cause Committee to participate in diversion for her conduct in State Bar of Arizona (SBA) File No. 16-1899.

2. The terms of Respondent's diversion included participation in the Member Assistance Program (MAP). Participation in MAP includes scheduling and undergoing an evaluation conducted by Dr. Phillip Lett. It was Respondent's responsibility to schedule the evaluation.

3. In May 2017, Respondent communicated with Yvette Penar, the SBA Compliance Monitor, about scheduling an evaluation. On May 12, 2017, Ms. Penar left Respondent a voicemail with Dr. Lett's contact information so Respondent could schedule the evaluation.

4. Respondent failed to schedule the evaluation and failed to keep the Bar updated regarding her progress.

5. On June 30, 2017, Ms. Penar sent Respondent an email regarding her failure to communicate with the Bar and her failure to schedule the initial MAP evaluation. Respondent did not respond to the email.

6. On August 2, 2017, Ms. Penar sent Respondent an email stating the Bar would file a notice of non-compliance if Respondent did not contact Ms. Penar by August 31, 2017.

7. On August 28, 2017, Ms. Penar called Respondent to remind her of the August 31, 2017, deadline. The telephone number used by Ms. Penar was previously provided to the Bar by Respondent. Ms. Penar was unable to speak to Respondent because the telephone number was out of service.

8. On August 31, 2017, Ms. Penar emailed Respondent regarding scheduling of the initial MAP evaluation. Respondent did not respond to the email.

9. On September 6, 2017, the Bar sent Respondent a screening letter in SBA File No. 17-2719 which alleged non-compliance with the Diversion Order in SBA File No. 16-1899. The letter was returned as undeliverable.

10. Respondent has not contacted the Bar since May 2017 and has not scheduled her initial MAP evaluation as ordered in SBA File No. 16-1899.

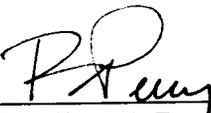
11. Respondent's conduct in this matter violates Rule 42, Ariz. R. Sup. Ct. ER 8.1(b) and Rules 54(d) and (e), Ariz. R. Sup. Ct.

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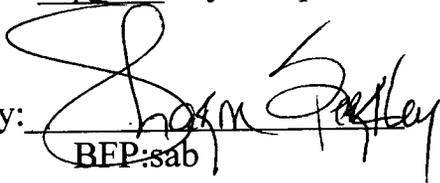
///

DATED this 16<sup>th</sup> day of April, 2018.

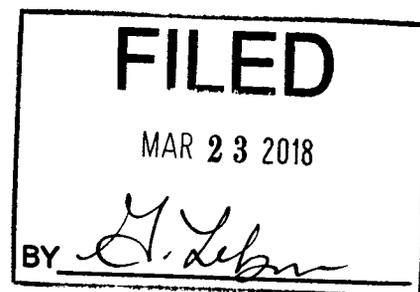
**STATE BAR OF ARIZONA**

  
\_\_\_\_\_  
Bradley F. Perry  
Staff Bar Counsel

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 16<sup>th</sup> day of April, 2018.

by:   
BFP:sab

BEFORE THE ATTORNEY DISCIPLINE  
PROBABLE CAUSE COMMITTEE  
OF THE SUPREME COURT OF ARIZONA



IN THE MATTER OF A SUSPENDED  
MEMBER OF THE STATE BAR OF  
ARIZONA,

No. 17-2719

NICOLE MARIE ABARCA,  
Bar No. 030662,

PROBABLE CAUSE ORDER

Respondent.

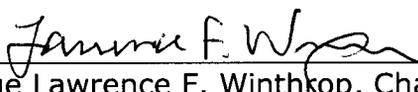
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on March 9, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 17-2719.

**IT IS THEREFORE ORDERED** pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

**DATED** this 23 day of March, 2018.

  
\_\_\_\_\_  
Judge Lawrence F. Winthrop, Chair  
Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona

<sup>1</sup> Committee member Ben Harrison did not participate in this matter.

Original filed this 23<sup>rd</sup> day  
of March, 2018, with:

Lawyer Regulation Records Manager  
State Bar of Arizona  
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Respondent

Copy emailed this 26<sup>th</sup> day  
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by: 