

SUPREME COURT OF ARIZONA

In the Matter of a Member of the ) Arizona Supreme Court  
State Bar of Arizona ) No. SB-17-0079-AP  
)  
RACHEL L. YOSHA, ) Office of the Presiding  
Attorney No. 11780 ) Disciplinary Judge  
) No. PDJ20179071  
Respondent. )  
\_\_\_\_\_ ) **FILED 05/09/2018**

**DECISION ORDER**

Respondent Rachel L. Yosha appeals the Hearing Panel's October 23, 2017 *Amended Decision and Order Imposing Sanctions*. The Hearing Panel found violations of Rule 42, Ariz. R. Sup. Ct. ER 1.6 and ER 4.4. Respondent timely requested a stay pending appeal under Ariz. R. Sup. Ct. 59(c) which was granted and subsequently terminated when Respondent did not agree to the State Bar's proposed *Terms of Supervision (MAP)*.

The State Bar's Amended Complaint claimed Respondent violated ER 1.6 (Confidentiality of Information, alleging, "Respondent revealed confidential information learned during the representation without the informed consent of the client"), ER 1.9(c)(1)(Duties to Former Clients, alleging, "Respondent used information relating to the representation to the disadvantage of a former client"), and ER 4.4 (Respect for the Rights of Others, alleging, "Respondent used means that have no substantial purpose other than to embarrass, delay, or burden any other person.").

The record establishes that Respondent agreed to represent a

client on a limited-scope basis at a hearing involving temporary custody orders. In addition to the child custody dispute, the client, had several pending legal difficulties including a domestic assault charge, a criminal probation order and a deportation order. Respondent worked with her client and the client's husband to prepare for the temporary custody order and appeared at the hearing. After the hearing, Respondent made repeated efforts to collect her fees and ultimately obtained a default judgment against the client and her husband (now judgment debtors), which they unsuccessfully attempted to set aside. Respondent promulgated discovery in support of her collection efforts and ultimately determined that the judgment debtors were residing in the Flagstaff area. Respondent advises that after she sent notice of a pending inspection in an attempt to execute on the judgment, the judgment debtors left the state. Respondent had previously warned her client about the need to keep various authorities apprised of a current address in order to avoid violating court orders.

On September 16, 2016, Respondent sent the judgment debtors an e-mail threatening to initiate criminal proceedings under A.R.S. § 13-2205, which provides "A person commits defrauding judgment creditors if such person secretes, assigns, conveys or otherwise disposes of his property with the intent to defraud a judgment creditor or to prevent that property from being subjected to payment of a judgment," and is a class 6 felony. The e-mail specifically

stated, "due to your conduct in completely ignoring your debt to ... this law firm ..., you are hereby notified that if I do not receive a payment ... by September 30, 2016, I will be filing felony criminal charges against you under the attached statute and reporting [client's] numerous violation[s] of the conditions of her probation to the probation department. ICE and Vegas law enforcement will be notified."

The Panel found that the e-mail was "more than a threat, it was a promise to use the information she had gained from her representation to damage her client ... if she did not receive payments." *Decision* at 5. The Panel concluded that Respondent had violated ER 1.6 and ER 4.4. The Panel also found that Respondent testified that she sends such letters "all the time" *Id.* at 12. The Panel found three aggravating factors (1) prior disciplinary offenses pertaining to a 2012 reprimand with probation for violating ERs 3.3, 8.4(c) and 8.4(d); (2) selfish motive; threatening a client to obtain unpaid fees; and (3) substantial experience in the practice of law, specifically 30 years. The Panel found one mitigating factor, which was full and free disclosure or cooperative attitude toward the proceedings. It ordered a 90-day suspension, a 2-year probation effective the date of the reinstatement order; six hours of CLE above the annual requirement, a Member Assistance Program (MAP) assessment, and costs associated with the assessment and the costs and expenses incurred by the SBA.

Respondent argues that there was no disclosure of confidential information and therefore no violation of ER 1.6. Also, she claims the threat to file a criminal complaint did not violate Arizona's extortion statute, A.R.S. § 13-1804. She maintains that a lawyer is not prohibited from "using the possibility of presenting criminal charges against the opposing party in a civil matter to gain relief for her client, provided that the criminal matter is related to the civil claim, the lawyer has a well-founded belief that both the civil claim and the criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influence over the criminal process." ABA Formal Op. 92-363. She also argues that Arizona Ethics Opinion 93-11 prohibits an attorney from filing criminal charges against a client (there, where the client tendered payment with an NSF check) when the attorney has taken no effort to initiate a civil suit. ("[W]e believe that filing a criminal complaint against a client is rarely, if ever, ["]reasonably necessary" to collect a fee, when a civil action is available." Ethics Opinion 93-11.

Respondent maintains that earlier correspondence to her client had warned that failing to keep authorities apprised of a current address would have adverse consequences, and that the September 19, 2016 e-mail was a similar warning to the effect that if Respondent filed the felony charges, ICE would be notified. She conceded that threatening to contact the probation officer was an improper threat

because it was not a legal consequence of the client's failure to pay her obligation to Respondent. She indicates that she took no action to file any criminal charges following an inquiry to the State Bar which advised her that doing so could constitute an ethics violation.

Respondent also argues that the Panel misinterpreted her testimony, and that although she testified that she sends pre-litigation demand letters "all the time," this was an isolated incident involving a client that had stopped making payments and moved out of state to evade collection of a judgment.

Respondent also argues that the Panel gave undue weight to the prior disciplinary matter, which, she claims, was unrelated to the conduct in this matter, and erroneously concluded that efforts to collect unpaid fees constituted a selfish motive. Respondent has also objected to the Panel's decision to lift the stay pending appeal, arguing that the Panel imposed terms of supervision that were unduly intrusive and unsupported by any evidence in this proceeding. Respondent sought no relief from the interim order of suspension in this Court.

**A. ER 1.6**

The Court agrees with Respondent that a threat to disclose confidential information is not an actual disclosure and therefore is not a violation of ER 1.6. Because there was no showing of any disclosure of confidential information, the finding of this violation is not supported by the record. The Court therefore finds no

violation of ER 1.6.

**B. ER 4.4**

The Court also notes that Respondent obtained a judgment, the client unsuccessfully attempted to set it aside, and the judgment debtors evidently left the state after receiving notice that Respondent had initiated collection proceedings. It is not clear if the judgment debtors actually had property that was subject to execution.

Whether a threat to refer a judgment debtor for criminal prosecution is a threat or "merely some free educational, legal advice" may depend "upon both the intent of the sender and the perception of the recipient." Arizona Ethics Op. 91-07 (in the context of collecting child support on behalf of a government agency). However, here Respondent not only threatened to file criminal charges for the alleged efforts to secrete assets, she threatened to contact her client's probation officer and advised that there would be consequences for her client's immigration proceedings.

Ethics Opinion 91-07 notes, "There is still some debate over whether the use of a threat of criminal prosecution to gain advantage in a civil matter is banned by ER 8.4(d)," and points out that only prohibiting conduct that falls afoul of a jurisdiction's criminal law definition of extortion implicates "so unappealing a tactic in general that it would better have been prohibited outright in the Model Rules." Ethics Op. 91-07. The Ethics Opinion concluded it

could not judge whether the proposed conduct would constitute an impermissible threat, but that the better practice would be to omit references to the criminal statute.

**i. Duty violated:** Respondent acknowledges that the threat to contact the probation officer was improper and the Court likewise finds that the reference to "Vegas law enforcement" and ICE constituted an impermissible threat. The Court agrees with the Panel that ER 4.4 applies in this case where Respondent was representing herself as a judgment creditor, and further finds that the fact that Respondent was due the funds did not constitute a "substantial purpose" excusing the conduct. Although the subjective purpose of collecting a judgment for fees is not forbidden, threats to jeopardize a judgment debtor's unrelated immigration and criminal proceedings based on information obtained during the scope of representation are impermissible. This Court therefore agrees with the panel that threat to contact probation and ICE authorities in the September 19, 2016 e-mail was sent without substantial purpose other than to "embarrass, delay or burden" the judgment debtors, violating ER 4.4.

In imposing sanctions, the Court is to consider (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. See *In re Alexander*, 232 Ariz. 13 ¶ 49; see also ABA Standard 3.0. The applicable standard is ABA

Standard 6.2 (Abuse of Legal Process). See, ABA Standard 6.0 (Violations of Duties owed to the Legal System) (Introduction).

**ii. Mental State:** Having found the ER 4.4 violation, the Court looks to Respondent's mental state. Respondent claims that any misconduct was at most negligent and not knowing. State of mind is a fact question. *In re Non-Member of State Bar of Arizona, Van Dox*, 214 Ariz. 300, 304 ¶¶ 14-15 (2007) ("The 'clear error' standard requires that the Commission give "great deference" to a hearing officer's factual findings.")

The Panel found that Respondent "knowingly violated ER 4.4(a) when she communicated to [client] that she would be 'reporting' information to authorities. The sole purpose of the threat was to induce fear and incentivize [client] to pay her attorney's fees." *Decision* at 10. In a similar case involving an attorney's letter threatening to press criminal charges if the client did not dismiss a bankruptcy proceeding, "the best evidence of his intent is the ... letter itself. In the letter, the accused expressed a definite intent to press criminal charges." *In re Conduct of Huffman*, 983 P.2d 534, 541 (Or. 1999). Reviewing the September 19, 2016 e-mail and the Panel's finding under a "clearly erroneous" standard, the Court finds that the violation was knowing. Ariz. R. Sup. Ct. 59(j).

**iii. Injury:** Looking to the injury, in *State ex rel. Counsel for Discipline of Nebraska Supreme Court v. Wilson*, 634 N.W.2d 467, 474 (Neb. 2001), the Nebraska Supreme Court examined threats to reveal

confidential information—in that case, a former client’s loss of employment which, if reported to the Immigration and Naturalization Service, would “destroy” the client’s INS case. *Wilson*, 634 N.W.2d at 471. That Court noted, “a disciplinary rule prohibiting disclosure of client confidences except in certain limited circumstances, including when an attorney reasonably believes disclosure is necessary for resolution of a fee dispute, does not permit an attorney to **threaten** a former client with disclosure of client confidences in order to resolve a fee dispute.” *Wilson*, 634 N.W.2d at 474, citing *Discipline of Boelter*, 985 P.2d 328 (Wash. 1999)(emphasis added). The *Wilson* court noted the importance of a client’s ability to be able to fully confide in his or her attorney, that such threats “undermine the confidential and fiduciary nature of the attorney-client relationship and lessen the public’s confidence in the legal profession.” *Wilson*, 634 N.W.2d at 475. *Boelter* involved a lawyer’s payment demand where the attorney indicated that if the client did not pay his bill, he would be “forced to reveal” that the client had lied on statements to the IRS and his bank as to his financial condition. *Boelter*, 985 P.2d at 334. Like Respondent, *Boelter* argued that he should have been able to reveal client confidence or secrets in litigation to recover fees if he reasonably believed that disclosure was necessary. *Id.* Like the Respondent, *Boelter* characterized his demand letter as being the product of concern for his client (or a “warning”), and not any desire to scare him into

making payment. *Id.* at 335. (*Boelter* also involved significant overbilling, which is not alleged here.)

This Court is likewise concerned that vague references to report a client's legal violations in an effort to extract payment threatens the fundamental protection of the attorney-client privilege. Threats of criminal prosecution to collect fees "tends to pollute the administration of justice and bring the legal profession into disrepute." *See generally, Matter of Yarborough*, 488 S.E.2d 871, 875 (S.C. 1997).

**iv. Aggravating and Mitigating Factors:** The Panel examined ABA Standard 9.22(a) and determined that Respondent's prior disciplinary history was an aggravating factor under ABA Standard 9.22(a). Although Respondent objects to the consideration of the prior disciplinary matters because the underlying facts were not presented during the hearing, nothing precludes the Panel or this Court from considering the prior disciplinary proceedings. In PDJ-2012-9086, the State Bar charged Respondent with taking unsubstantiated positions to family court judges on two separate occasions, and Respondent conditionally admitted that her conduct violated ERs 3.1, 3.2 and 8.4(d). In an *Agreement for Discipline by Consent*, the State Bar dismissed two allegations, Respondent admitted that her conduct violated ERs 3.1, 3.2 and 8.4(d); the parties agreed that the Respondent negligently committed the violations and that there was little, if any, actual harm to her client, the legal system and

public; Respondent accepted a censure and was placed on probation for two years with terms including LOMAP, MAP and CLE requirements. The Court agrees with the Panel that the prior disciplinary order is a pertinent aggravating factor. Decision at 12.

The Panel's second aggravating factor, however, was not supported by the record. Seeking unpaid fees that have been determined due does not, without more, constitute a "selfish or dishonest motive" *In re Van Dox*, 214 Ariz. 300 (2007) ("Standing alone, however, the receipt of a fee does not mandate a finding of a dishonest or selfish motive.") In *Boelter*, using a threat to notify authorities of tax and bank fraud in support of an inflated fee supported a finding that the conduct was motivated by self-interest. See *Boelter*, 985 P.2d at 334, 339. Because there was no showing that the fees were not earned or were excessive, the Panel erred in finding a selfish or dishonest motive.

As to the third aggravating factor, the Panel correctly found that Respondent has substantial experience in the practice of law. Likewise, the Panel correctly found that Respondent's full and free disclosure was a mitigating factor.

**v. Sanction:** A Under ABA Standard 6.22, a knowing violation warrants a suspension. An attorney may ethically undertake actions to enforce collection of fees due. However, she must exercise care when making demand that she does not imply that she will undertake any action based on confidential information that would jeopardize

the former client's existing or potential proceedings unrelated to the collection of the fees. In determining an appropriate sanction, the Court may "look to other, similar cases in determining whether the sanction imposed is proportionate to the misconduct charged." *In re Abrams*, 227 Ariz. 248, 251 ¶ 17 (2011).

Respondent argues that cases involving an attorney's threat of criminal prosecution in furtherance of a civil claim warrants only a reprimand, see *Robertson's Case*, 626 A.2d 397, 400-01 (N.H. 1993) as modified on reconsideration (July 7, 1993) (involving threats the attorney made to further his client's claims against city attorneys), *Disciplinary Counsel v. King*, 617 N.E.2d 676, 677 (Ohio 1993) (involving an attorney's threats to report that the adverse party had committed the felony offenses of conversion, fraud and theft against his client) and *Matter of Walter*, 466 N.E.2d 35, 35 (Ind. 1984) (involving a threat to report an adverse party for paying rent to his client with an NSF check). However, although making an impermissible threat on behalf of a client may warrant a reprimand, making a threat to one's own client can implicate other ethical rules including ER 1.9(c) (not found here) which prohibits a lawyer who has formerly represented a client in a matter from using information relating to the representation to the disadvantage of the former client and ER 8.4(d) (not charged here) which prohibits engaging on conduct that is prejudicial to the administration of justice.

The seriousness of such threats is evident in the case involving Mr. Huffman, who had detailed information about his client's allegedly fraudulent activities, and received a 2-year suspension for threatening to disclose this information, see *Huffman*, 983 P.2d at 548 ("This case warrants a more severe sanction than that in *Lewelling*, in which the party whom the accused lawyer had threatened with criminal charges was not his client"). Likewise, Mr. Wilson received a 2-year suspension for threatening to notify INS. see also *Wilson*, 634 N.W.2d at 475 ("Respondent's threats in this case undermine the confidential and fiduciary nature of the attorney-client relationship and lessen the public's confidence in the legal profession"); Similarly, Mr. Boelter received a 6-month suspension for advising that he would be "forced" to reveal that his client lied on his statements to IRS and his bank" if the client did not pay. See *Boelter*, 985 P.2d at 334. Mr. Yarborough received a 6-month suspension for advising his client that he had filed criminal charges against her and would dismiss them if she paid sums he claimed due for costs incurred in his representation of her. See *Yarborough*, 488 S.E.2d 871.

The Court therefore concludes that a short-term suspension is appropriate based on the charges and findings in this case and affirms the Panel's decision. Therefore,

**IT IS ORDERED** denying the appeal and affirming the 90-day suspension effective March 14, 2018, a 2-year probation effective on

the date of a reinstatement order, and the additional 6-hour CLE requirement above the annual requirement.

**IT IS FURTHER ORDERED** that Respondent pay costs and expenses incurred by the State Bar.

**IT IS FURTHER ORDERED** overruling Respondent's *Objection to Consideration of Amended Record in Determining the Appeal*.

DATED this 9<sup>th</sup> day of May, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
SCOTT BALES  
Chief Justice

TO:

Rachel L Yosha  
Craig D Henley  
Amanda McQueen  
Sandra Montoya  
Maret Vessella  
Beth Stephenson  
Mary Pieper  
Lexis Nexis  
Don Lewis  
Raziel Atienza

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**RACHEL L. YOSHA,**  
**Bar No. 011780**

Respondent.

**No. PDJ-2017-9071**

**FINAL JUDGMENT AND  
ORDER OF SUSPENSION**

[State Bar No. 16-3125]

**FILED APRIL 10, 2018**

The amended decision of the hearing panel ordering a ninety (90) day suspension of Ms. Yosha was filed with the disciplinary clerk on October 23, 2017. Ms. Yosha timely filed a notice of appeal and moved to stay the suspension. The hearing panel granted a stay subject to terms of supervision. Ms. Yosha refused the terms of supervision. The stay of suspension was lifted and the suspension ordered by the hearing panel was effective on March 14, 2018.

Now Therefore pursuant to Rule 60(a)(2),

**IT IS ORDERED** Respondent, **Rachel L. Yosha, Bar No. 011780**, is suspended from the practice of law for ninety (90) days effective March 14, 2018.

**IT IS FURTHER ORDERED** Rachel L. Yosha shall immediately, if not already done, comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

**IT IS FURTHER ORDERED** costs shall abide the final determination of the appeal pursuant to Rule 60(b)(2)(B), Ariz. R. Sup. Ct.

**DATED** this 10<sup>th</sup> day of April, 2018.

*William J. O'Neil*  

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

COPY of the foregoing e-mailed this 10<sup>th</sup> day of April, 2018,  
And mailed April 11, 2018, to:

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Respondent

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**RACHEL L. YOSHA,**  
**Bar No. 011780**

Respondent.

**PDJ 2017-9071**

**AMENDED  
DECISION AND ORDER  
IMPOSING SANCTIONS**

[State Bar File No. 16-3125]

**FILED OCTOBER 23, 2017**

On September 19, 2017, the Hearing Panel, composed of Richard A. Cruz, volunteer attorney member, Mel O'Donnell, volunteer public member, and the Presiding Disciplinary Judge ("PDJ") William J. O'Neil, held a hearing pursuant to Rule 58(j), Ariz. R. Sup. Ct.<sup>1</sup> Craig D. Henley appeared on behalf of the State Bar of Arizona. Rachel L. Yosha appeared representing herself. Exhibits 1-11, 32, 47, and 48 were stipulated to and admitted. At the conclusion of the hearing, the State Bar requested a two (2) year suspension and nine (9) hours of Continuing Legal Education ("CLE") regarding fees and respecting the rights of others.

**I. SANCTION IMPOSED**

**NINETY (90) DAYS SUSPENSION AND TWO (2) YEARS OF  
PROBATION**

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<sup>1</sup> Unless otherwise stated all Rule references are to the Ariz. R. Sup. Ct.

## **II. PROCEDURAL HISTORY**

The State Bar of Arizona (“SBA”), filed its complaint on June 1, 2017. On June 5, 2017, the complaint was served on Ms. Yosha 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 PDJ was assigned to the matter on June 7, 2017. On June 20, 2017, Ms. Yosha filed her Answer.

On August 1, 2017, the State Bar moved to amend the complaint pursuant to Rule 47(b) and 47(j), Ariz. R. Sup. Ct. Ms. Yosha did not timely respond. The motion sought to add two sentences identified in the proposed amended complaint numbered as paragraphs 14 and 15. A conclusory paragraph 19(b), identifying that the allegations constitute an alleged violation of ER 1.9(c)(1), was also sought to be added to the complaint.

Ms. Yosha belatedly filed a seventeen (17) page response. The first seven pages were single spaced and utilized varying font size, in violation of Civil Rule 5.2(b)(1)(F), applicable to these proceedings under Rule 48(b). Page 3 of the response contained thirty-eight lines and employed two font sizes. There were two separate pages fourteen and two separate pages fifteen. These two sets certified two filing and service dates. One set was signed on August 4, 2017, and certified that it was filed on August 5, 2017. Both sets were filed on August 23, 2017. The other was dated August 23, 2017, but certifies that a copy of that pleading was emailed to this

judge on August 4, 2017, twenty-two days before it was signed. Ms. Yosha attached one hundred and eighty-one (181) pages of exhibits with little reference to their meaning or why they related to her response or motions. The motion to amend was granted on August 25, 2017, and denials entered.

On August 29, 2017, SBA and Ms. Yosha filed a Joint Pre-Hearing Statement (“JPS”). On September 12, 2017, the SBA and Ms. Yosha each filed Individual Pre-Hearing Memoranda.

### **III. FINDINGS OF FACT**

At all times relevant, Ms. Yosha was licensed to practice law in Arizona, having been admitted to the State Bar of Arizona on October 24, 1987. [JPS at 2.] On or about September 13, 2015, Ms. Yosha agreed to a limited-scope representation of Olga Cernavska (“Cernavska”) in Coconino County Superior Court case of *Romanek v. Cernavska*, DO2015-00397. [Id.]

That case involved Cernavska trying to get custody of her daughter as she had been taken from her care by the child’s father, Brandon Romanek over a year earlier. [Ex. 4, p. 2, para. 7.] Following the conclusion of the representation, Ms. Yosha alleged that Cernavska ceased making payments after December 7, 2015. [Ex. 4 at Bates SBA000010.]

Paragraph 3 of the complaint alleged, “While Cernavska authorized Respondent to discuss the case with Joshua Halford, Halford was not a party to the

lawsuit or Respondent's client." In her answer, Ms. Yosha admitted, that Cernavska authorized such communications. She also admitted "that Halford was not a party to the Family Law Case or Respondent's client." [Answer p. 2, paragraph 3.] According to the admitted exhibits, the family law matter involved custody issues and visitation issues Cernavska was having regarding a child from a prior relationship, not involving Halford.

On March 24, 2016, Ms. Yosha initiated the Maricopa County Superior Court case of *Law Office of Rachel L. Yosha, P.C. v. Cernavska and Halford*, CV2016-004839 alleging, among other things, claims of Breach for Contract and Unjust Enrichment totaling \$19,084.57 in damages. On July 13, 2016, the Court awarded judgment in favor of Ms. Yosha's law firm and against Cernavska and Halford for \$20,166.43. [Ex. 5.] Judgement was apparently entered by default against Halford as the complaint written by Ms. Yosha argued it was a community debt. There was no evidence presented that Mr. Halford signed any fee agreement. [Ex. 4.] Ms. Yosha acknowledged in her response to the State Bar that there was never a written fee agreement signed by either Halford or Cernavska. [Ex. 9, Bates SBA000041.] There were no allegations in the complaint that Ms. Yosha was not entitled to judicially seek her unpaid attorney fees.

On September 19, 2016, Ms. Yosha emailed Cernavska and Halford stating:

"Due to your conduct in completely ignoring your debt to, promises to, and communications from this law firm for 10 months, you are hereby

notified that if I do not receive a payment from you by Friday, September 30, 2016, I will be filing felony criminal charges against you under the attached statute and reporting Olga's numerous violation (sic) of the conditions of her probation to the probation department. ICE and Vegas law enforcement will be notified." [Ex. 6]

Ms. Yosha's e-mail to Cernavska attached the criminal Arizona Revised Statutes § 13-2205 [Defrauding judgment creditors; classification] and § 13-2929 [Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens; vehicle impoundment; exceptions and classification]. [Id.]

In the evidentiary hearing, Ms. Yosha testified that she did not intend to threaten Cernavska. We find the letter was more than a threat, it was a promise to use the information she had gained from her representation to damage her client and Mr. Halford if she did not receive payments.

Ms. Yosha argued that the purpose of her September 19, 2016 email was twofold: to rekindle communication between Ms. Yosha and Cernavska, and to inform Cernavska that if she did not respond to attempted communications, Ms. Yosha would be required to make disclosures of Cernavska's criminal conduct in suing for fees. The letter unequivocally stated, "I will be filing felony criminal charges against you," and then would notify "ICE and Vegas law enforcement" of those charges. [Id. and Yosha Testimony ("YT") at 9:51:27 a.m.]

While Ms. Yosha further testified that she had never intended to report Cernavska to immigration, her letter is clear and speaks for itself. [YT at 12:37:26

p.m.] Ms. Yosha acknowledged that she knew of the probation order (through her representation of Cernavska) requiring Cernavska to report any changes of address. [Id.] Ms. Yosha stated that her complaint against Cernavska would allege Cernavska's failure to report a change in address creating "possible legal consequences" for Cernavska. [Id.] Ms. Yosha claimed that this is the only reason immigration was raised in her September 19, 2016 email, and that she was not threatening to report any information to any authority. [Id. at 12:37:45 p.m.] We find her testimony not credible. Her statement was she would report her to ICE.

In one of her responses to the State Bar, Ms. Yosha emailed the State Bar on September 27, 2016, stating, "Once law enforcement gets involved there will be other negative consequences to them as a result which I cautioned them to consider- why is that wrong?" [Ex. 8, SBA000033. The State Bar responded the same day, warning Ms. Yosha, "I do believe that an email such as that and comments such as that implicate several rules including 1.6 and 1.9 and 8.4(d)." [Id. at Bates SBA000034.]

Ms. Yosha replied, "The irony is that going further on this new issue (the State Bar investigation) will inherently require me to disclose more details of their criminal conduct- the very thing which my email was intended to avoid." [Id. SBA000032.] When Ms. Yosha disclosed those "details of their criminal conduct" to the State Bar on October 28, 2016, [Ex. 9, Bates SBA000038.] it appears to have

been duplicated from her complaint which she filed on March 24, 2016, in the Superior Court of Arizona. [Ex. 4, Bates SBA000008-9.]

#### **IV. CONCLUSIONS OF LAW**

The Hearing Panel finds by clear and convincing evidence that Ms. Yosha violated: Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.6 (confidentiality of information) and 4.4(a) (respect for rights of others).

#### **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 be considered: (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. Yosha breached her duty to her client by violating ER 1.6. Ms. Yosha breached her duty to the legal system by violating ER 4.4(a).

#### **Mental State and Injury:**

Ms. Yosha knowingly violated ER 1.6, implicating *Standard 4.22, Failure to Preserve the Client's Confidences* which states:

Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise

lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

ER 1.6 prohibits an attorney from revealing information related to the representation of her client, unless a client provides informed consent, if disclosure is impliedly authorized, or if the ethical rules permit disclosure. For instance, Ms. Yosha may disclose some confidential information related to her representation of Cernavska if she needed to reveal Cernavska's intention to commit a crime, to prevent financial or substantial bodily injury, to detect or resolve a conflict of interest, or to establish a claim or defense. None of the exceptions to the prohibition on disclosure of confidential information in ER 1.6(b)-(d), apply to Ms. Yosha's case.

Rule 1.6 contains no exception permitting disclosure of information previously disclosed or publicly available. *See, e.g., In re Anonymous*, 932 N.E.2d 671 (Ind. 2010). A client's prior disclosure of information relating to her custody representation to friends nor availability of information in police reports and other public records does not absolve a lawyer of a violation of Rule 1.6

Ms. Yosha threatened to reveal confidential information to obtain her attorney fees from Cernavska. The potential injury is clear: the threat to "report Olga's numerous violations" to authorities would have severe legal ramifications for Cernavska. As no exception is allowed for the disclosure of confidential information related to the representation of Cernavska, Ms. Yosha knowingly violated ER 1.6.

Ms. Yosha also violated ER 4.4(a), which implicates *Standard 6.2, Abuse of the Legal Process*. Specifically, 6.22 provides:

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or interference or potential interference with a legal proceeding.

ER 4.4(a) proscribes attorneys from using means that have no substantial purpose other than to embarrass, delay, or burden anyone, or to use methods of obtaining evidence that violate the legal rights of a person. Rule 4.4(a) prohibits conduct that has no *substantial* purpose other than to embarrass, delay, or burden a third person. The wording replaces that of the predecessor Model Code provision, DR 7-102(A)(1), which forbade the lawyer from taking action that would serve *merely* to harass or maliciously injure another.

Threatening either criminal or immigration proceedings to gain leverage for to collect money violates Rule 4.4 if the threat is made with “no substantial purpose other than to embarrass, delay, or burden a third person” or is used as a method, “that violate[s] the legal rights of such a person.” *See Robertson’s Case*, 626 A.2d 397 (N.H. 1993), in which plaintiff’s civil rights lawyer threatened city lawyers with serious criminal charges. The Washington Rules of Professional Conduct added comment 4.4 prohibiting mentioning a person’s immigration status as an intimidation tactic. We find the Rule needs no comment to preclude such a tactic as used by Ms. Yosha.

Ms. Yosha knowingly violated ER 4.4(a) when she communicated to Cernavska that she would be “reporting” information to authorities. The sole purpose of the threat was to induce fear and incentivize Cernavska to pay her attorney’s fees.

The Panel finds unpersuasive Ms. Yosha’s testimony that the September 19, 2016 email was meant to simply inform Cernavska of potential legal ramifications for avoiding service. Rather, the Panel finds Ms. Yosha to have violated the legal rights of Cernavska by threatening to disclose information that would cause injury, thus violating ER 4.4(a). That the injury did not occur, because the client began paying does not shield her. The rule focuses on the purpose, rather than the effect, *In re Campbell* 199 P3d 775 (Kan. 2009).

Further, ER 4.4 applies to the lawyer acting as a lawyer for herself. Rule 4.4, like Rules 4.1, 4.2, and 4.3, is explicitly directed at a lawyer’s conduct in representing a client. But like the other rules, it has also been applied to lawyers representing themselves; the rule’s “intent and purpose” require that a lawyer who represents himself be deemed to be representing a client, according to *Att’y Grievance Comm’n v. Alison*, 565 A.2d 660 (Md. 1989). *See, e.g., In re Rozbicki*, No. CV116004519S, 2013 WL 1277298 (Conn. Super. Ct. Mar. 8), and *In re Richardson*, 792 N.E.2d 871 (Ind. 2003).

Threatening either criminal or civil proceedings to gain leverage for a client in a civil matter violates Rule 4.4 if the threat is made with “no substantial purpose

other than to embarrass, delay, or burden a third person” or is used as a method of “obtaining evidence that violate[s] the legal rights of such a person.” *See Robertson’s Case*, 626 A.2d 397 (N.H. 1993). ER 4.4(a), precludes such “unwarranted intrusions into the privileged relationships, such as the client-lawyer relationship.” *See* Comment to ER 4.4. Ms. Yosha violated the legal rights of her client in her threats of disclosing client privileged information to law enforcement, probation and immigration authorities.

### **AGGRAVATING AND MITIGATING FACTORS**

The Hearing Panel finds the following aggravating factors are present in this matter:

#### *Standard 9.22*

- (a) prior disciplinary offenses; Ms. Yosha was reprimanded with probation for violating Rule 42, Ariz. R. Sup. Ct., ERs 3.3, 8.4(c), and 8.4(d).
- (b) selfish motive; threatening a client to obtain unpaid fees; and
- (i) substantial experience in the practice of law; Ms. Yosha has been a practicing attorney in Arizona for 30 years.

The Hearing Panel finds the following mitigating factors apply:

#### *Standard 9.32*

- (d) full and free disclosure to disciplinary board or cooperative attitude toward proceedings

We considered *Standard 9.32 (c)*, but gave it little weight. Ms. Yosha in her testimony stated her threatening letter was a litigation demand letter, (Ex. 6). Apparently upon realizing the implications, she returned to her position that it was only a deadline to arrange for payments. We find it was the former. She testified she sends such letters all the time. While she acknowledged her threats served no substantial purpose, she continues to claim she does not understand why such threats are improper.

Exhibits 47 and 48 were admitted. The State Bar sought to use them in aggravation but for Ms. Yosha they were mitigating that Ms. Yosha does not “understand” what she did wrong in her prior discipline. “I do not believe I did anything wrong.” The judgment of her prior consensual reprimand was an admitted exhibit. [Ex. 10.] The sanctions in her prior discipline arose out of her demands that the opposing party sign a quit claim deed, when an order from the Court of Appeals was final holding that party owned the property outright. Ms. Yosha knew of the Court of Appeals ruling when she demanded the quit claim deed. She was also sanctioned for admittedly overstepping the bounds of professionalism but argued zealousness as an excuse. That Ms. Yosha, then, as now, cannot understand that her actions are violations is troubling.

The Hearing Panel finds that suspension is the presumptive sanction for Ms. Yosha’s misconduct and that suspension and probation are appropriate sanctions.

## V. 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.’” *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It has also concluded that the purpose of lawyer discipline is to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). A 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 Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the sanction using the facts, application of the *Standards*, including the aggravating and mitigating factors, and the goals of the attorney discipline system. The Hearing Panel orders:

1. Ms. Yosha is suspended for ninety (90) days effective thirty (30) days from the date of this order.
2. Ms. Yosha shall be placed on two (2) years of probation **effective the date of a reinstatement order**. Ms. Yosha shall obtain six (6) hours of Continuing Legal Education concerning the collection of fees and the treatment of others. This is in addition to her annual requirement.

3. Ms. Yosha shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from this order, to schedule a Member Assistance Program (MAP) assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Ms. Yosha shall be responsible for any costs associated with MAP.
4. Ms. Yosha 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 with these disciplinary proceedings.

A final judgment and order will follow.

**DATED** this 23rd day of October 2017.

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

*Mel O'Donnell*  
\_\_\_\_\_  
**Mel O'Donnell, Volunteer Public Member**

*Richard Cruz*  
\_\_\_\_\_  
**Richard Cruz, Volunteer Attorney Member**

Copy of the foregoing e-mailed  
this 23<sup>rd</sup> day of October, 2017, and  
mailed October 24, 2017, to:

Rachel L. Yosha  
8045 E. Windsor Ave.  
Scottsdale, AZ 85257  
Email: [yosharachel@aol.com](mailto:yosharachel@aol.com)  
Respondent

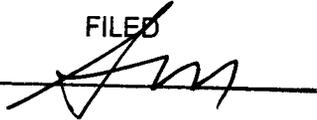
Craig D. Henley  
Senior Bar Counsel  
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4201 N. 24<sup>th</sup> St., Suite 100  
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by: AMcQueen

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OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

JUN 1 2017

FILED  
BY 

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**RACHEL L. YOSHA,  
Bar No. 011780,**

Respondent.

PDJ 2017-9071

**COMPLAINT**

[State Bar No. 16-3125]

Complaint is made against Respondent as follows:

**GENERAL ALLEGATIONS**

1. At all times relevant, Respondent was a duly licensed lawyer in the State of Arizona having been admitted to practice on October 24, 1987.

**COUNT ONE (File No. 16-3125/Halford)**

2. On or about September 5, 2015, Respondent was provided \$500.00 and an electronic drop box of certain documents in order to determine if she would

accept the representation of Olga Cernavska (hereinafter referred to as “Cernavska”) in the Coconino County Superior Court case of *Romanek v. Cernavska*, DO2015-00397.

3. While Cernavska authorized Respondent to discuss the case with Joshua Halford (hereinafter referred to as “Halford”), Halford was not a party to the lawsuit or Respondent’s client.

4. On or before September 11, 2015, Respondent engaged in e-mailed conversations with Cernavska and Halford regarding the terms of representation.

5. Respondent claimed 15 hours of outstanding legal services at \$200.00.

6. When the e-mail conversations are read as a whole, the parties agreed that Cernavska and Halford would pay an additional \$500.00 towards outstanding fees of approximately \$3000.00 with payments of \$500.00 every other week.

7. On September 14, 2015, Respondent filed a Notice of Limited Scope Representation in the case limiting the scope of the representation to the hearing on Petitioner’s Motion for Temporary Orders.

8. While Respondent's representation was limited in scope, the case was extraordinarily contentious and involved a number of other lawsuits in other states.

9. At the conclusion of the representation in December 2015, Respondent provided Cernavska and Halford a final bill for legal services rendered.

10. Over the course of the next two months, Cernavska and Halford repeatedly provided Respondent with written assurances that they would pay the outstanding legal fees.

11. On March 2, 2016, Respondent mailed Cernavska and Halford a notice of her intent to sue for the outstanding legal fees. The letter stated, in pertinent part, "[s]uch lawsuit will be of public record, and may have legal consequences for you in respect to your criminal, immigration, or custody legal cases; [t]o the extent necessary to prosecute the action and defend against any allegations made by you in response, the attorney-client privilege between us does not apply."

12. On March 24, 2016, Respondent initiated the Maricopa County Superior Court case of *Law Office of Rachel L. Yosha, P.C. v. Cernavska and*

*Halford*, CV2016-004839 alleging, among other things, claims of Breach of Contract and Unjust Enrichment totaling \$19,084.57 in damages.

13. On July 13, 2016, the Court filed a judgment in favor of Respondent's law firm and against Cernavska and Halford in the amount of \$20,166.43.

14. On September 30, 2016, Cernavska and Halford filed a Motion to Set Aside the Default Judgment alleging a number of facts and circumstances including, but not limited to, improper service of lawsuit, various breaches of confidentiality following the representation and threats against Cernavska after the judgment was obtained.

15. In support of the motion, Cernavska and Halford referred to an e-mail dated September 19, 2016 from Respondent stating, in pertinent part:

“Due to your conduct in completely ignoring your debt to, promises to, and communications from this law firm for 10 months, you are hereby notified that if I do not receive a payment from you by Friday, September 30, 2016, I will be filing felony criminal charges against you under the attached statute and reporting Olga's numerous violation (sic) of the conditions of her probation to the probation department. ICE and Vegas law enforcement will be notified.”

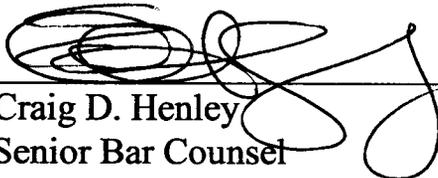
16. The e-mail attached the criminal Arizona Revised Statutes §13-2205 [Defrauding judgment creditors; classification] and §13-2929 [Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens; vehicle impoundment; exceptions and classification].

17. By engaging in the above-referenced misconduct, Respondent violated the following ethical rules:

- a. Rule 42, Ariz. R. Sup. Ct., ER 1.6 – Respondent revealed confidential information learned during the representation without the informed consent of the client; and
- b. Rule 42, Ariz. R. Sup. Ct., ER 4.4 – Respondent used means that have no substantial purpose other than to embarrass, delay, or burden any other person.

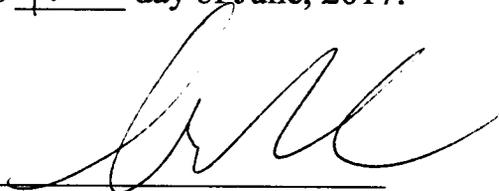
DATED this 18<sup>th</sup> day of June, 2017.

**STATE BAR OF ARIZONA**

  
\_\_\_\_\_  
Craig D. Henley  
Senior Bar Counsel

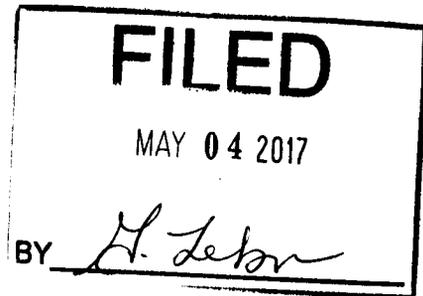
Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 1st day of June, 2017.

by:

A handwritten signature in black ink, appearing to be 'CDH:nr', written over a horizontal line.

CDH:nr

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



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

No. 16-3125

RACHEL L. YOSHA  
Bar No. 011780

PROBABLE CAUSE ORDER

Respondent.

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 7, 2017, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-3125.

**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 3<sup>rd</sup> day of May 2017.

A handwritten signature in cursive script that reads "Lawrence F. Winthrop".

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

Original filed this 4<sup>th</sup> day  
of May, 2017 with:

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

Copy mailed this 5<sup>th</sup> day  
of May, 2017, to:

Rachel L. Yosha  
Law Office of Rachel L. Yosha PC  
8045 East Windsor Ave  
Scottsdale, AZ 85257-1742  
Respondent

Copy emailed this 5<sup>th</sup> day  
of May, 2017, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
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by: 