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 2019-9021** **FINAL JUDGMENT AND ORDER** [State Bar File No. 18-3154] **FILED JULY 23, 2019**

This matter came for hearing before the hearing panel which rendered its Decision and Order Imposing Sanctions (Decision) on July 3, 2019, ordering suspension and costs. The Decision of the hearing panel is final under Rule 58(k), Ariz. R. Sup. Ct. No appeal has been filed pursuant to Rule 59(a), Ariz. R. Sup. Ct., and the time to appeal having expired,

IT IS ORDERED Respondent, **NICOLE MARIE ABARCA, Bar No. 030662**, is suspended from the practice of law for two (2) years for her conduct in violation of the Arizona Rules of Professional Conduct effective July 3, 2019, the date of the Decision.

IT IS FURTHER ORDERED Ms. Abarca shall immediately 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 Ms. Abarca shall pay all costs and expenses of the State Bar of Arizona in the amount of $2,000.00 pursuant to Rule 60(b), Ariz. R. Sup. Ct. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 23rd day of July 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
July 23, 2019, to:

Bradley F. Perry
Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Nicole Marie Abarca
13820 S. 44th Street, Unit 1124
Phoenix, AZ 850044-4857
Email: nabarca.esq@gmail.com
Respondent

And alternative address:
1543 W. Renee Drive
Phoenix, AZ 85027

by: MSmith

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 2019-9021** **DECISION AND ORDER IMPOSING SANCTIONS** State Bar No. 18-3154 **FILED JULY 3, 2019**

SUMMARY

On July 25, 2018, a judgment was entered suspending Nicole Marie Abarca from the practice of law for six months and one day in PDJ 2018-9028. [Exhibit 16, SBA 000066.] On March 2, 2018, Nicole Marie Abarca was convicted of shoplifting in two separate criminal proceedings. She was again convicted of shoplifting on July 27, 2018. On October 15, 2018, she was convicted of two undesignated felonies and placed on probation. On March 15, 2019, Respondent was convicted of Shoplifting, a Class 1 Misdemeanor and Trespass in the Third Degree, a Class 1 Misdemeanor. After an aggravation-mitigation hearing, the hearing panel imposed a two-year suspension for her violation of Rule 42, Ariz. R. Sup. Ct., ERs 8.4(b), and Rule 54(g). It is effective immediately.

ATTEMPTS TO CONTACT RESPONDENT

On October 26, 2018, the Bar sent Nicole Marie Abarca. ("Respondent") an initial screening letter via US mail and email. Both the mailing address and email address are the addresses Respondent placed on file with the State Bar. [Exhibit 4, SBA 000016-0000017.] The letter sent via US mail was returned. [Exhibit 4, SBA 000021.] The letter sent via email was successfully delivered. [Exhibit 5, SBA 000023.] Respondent failed to respond to the initial screening letter.

On November 26, 2018, the Bar sent Respondent a second screening letter via US mail and email. [Exhibits 6 & 7, SBA 000024-000025.] The letter sent via email was successfully delivered. [Exhibit 7, SBA 000026.] Respondent failed to respond to the November 26, 2018, letter and email.

On February 27, 2019, the State Bar sent Respondent a copy of the Report of Investigation via US mail and email. [Exhibit 8, SBA 000027-000029.] The letter sent via US mail was returned. [Exhibit 8, SBA 000030.] The letter sent via email was successfully delivered. [Exhibit 9, SBA 000032.]

April 17, 2019, the State Bar sent a copy of the Complaint by certified, delivery restricted mail, and by regular first-class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct., to the address Respondent has registered with the State Bar. [Exhibit 10, 000041-000042.]

On June 24, 2019, the State Bar learned of another possible address for Respondent. The State Bar sent Respondent a letter regarding the upcoming default hearing to the new address on June 24, 2019. [Exhibit 12, SBA 000044-000051.]

On June 25, 2019, the State Bar contacted Respondent's probation officer and learned that Respondent had an upcoming appointment with the probation officer. [Exhibit 14, SBA 000060.] The State Bar then provided Respondent's probation officer with copies of the Report of Investigation, Entry of Default, Complaint, and Probable Cause Order to provide to Respondent. [Exhibits 13 & 14, SBA 000052-000061.]

Respondent's probation officer provided the State Bar with a new phone number for Respondent. [Exhibit 14, SBA 000060.]. The State Bar called Respondent's new number on June 28, 2019, and provided the date, time, and location of the upcoming hearing and requested a return call.

PROCEDURAL HISTORY

On April 16, 2019, the Attorney Discipline Probable Cause Committee issued an order of probable cause. The State Bar sent Respondent a copy of the Probable Cause Order the same day. [Exhibit 10, 000033.] The complaint was filed on April 16, 2019 and served on her. Respondent filed no answer. Default was entered and became effective on June 6, 2019.

Upon entry of effective default "the allegations in the complaint shall be deemed admitted."[1] On April 17, 2019, the State Bar sent a copy of the Complaint by certified, delivery restricted mail, and by regular first-class mail to the address Respondent has registered with the State Bar.[2]

A copy of the Complaint was also sent via email to the email address Respondent has registered with the State Bar. The email was successfully delivered, but the certified mailing was returned as undeliverable on May 14, 2019. A lawyer is required to "provide to the state bar office a current street address, e-mail address, telephone number, any other post office address the member may use…"[3]

On June 6, 2019, the disciplinary clerk sent Ms. Abarca notice of the time and place set for the aggravation/mitigation hearing. On March 28, 2018, this matter proceeded to hearing before the Hearing Panel (Panel), comprised of Judge Patricia Norris (ret.), volunteer attorney member, Carole Kemps, volunteer public member, and Presiding Disciplinary Judge William J. O'Neil. Bradley F. Perry appeared on behalf of the State Bar of Arizona.

A respondent against whom a default is effective 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. Upon the effective entry of default, "the

---

[1] Rule 58(d), Ariz. R. Sup. Ct.
[2] Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct.
[3] Rule 32(c)(3), Ariz. R. Sup. Ct.

allegations within the complaint shall be deemed admitted."[4] Ms. Abarca did not appear. Exhibits 1-17 were admitted. At the end of the hearing, the State Bar requested a two-year suspension and costs.

FINDINGS OF FACT

The following are facts deemed admitted by the effective default entered against Ms. Abarca.

1. Respondent was a lawyer licensed to practice law in Arizona having been first admitted to practice in Arizona on October 29, 2013. On July 25, 2018, a Final Judgment and Order issued in PDJ 2018-9028 suspending Respondent from the practice of law for six months and one day, effective July 3, 2018. [Exhibit 16, SBA 000066.]

COUNT ONE (File No. 18-3154/SBA)

2. On or about March 2, 2018, Respondent was convicted of Shoplifting, a Class 1 Misdemeanor. [Exhibit 2, SBA 000003.]

3. On or about March 2, 2018, Respondent was convicted of Shoplifting, a Class 1 Misdemeanor. [Exhibit 2, SBA 000004.]

4. On or about July 27, 2018, Respondent was convicted of Shoplifting, a Class 1 Misdemeanor. [Exhibit 2, SBA 000005.]

---

[4] Rule 58(d), Ariz. R. Sup. Ct.

5. On August 15, 2018, Respondent was arrested after attempting to shoplift clothing from a Target store in Tempe. [Exhibit 17, SBA 000073.]

6. Respondent was found to have possession of heroin and foil used to smoke heroin. [Exhibit 17, SBA 000073.]

7. Respondent admitted to the shoplifting and admitted to using heroin earlier in the day. [Exhibit 17, SBA 000073.]

8. Respondent admitted to using heroin multiple times a day. [Exhibit 17, SBA 000073.]

9. Respondent admitted to using heroin for approximately 2.5 years. [Exhibit 17, SBA 000073.]

10. On or about October 15, 2018, Respondent was convicted of Facilitation to Commit Shoplifting, a Class 6 Undesignated Felony and Possession of Drug Paraphernalia, a Class 6 Undesignated Felony in Maricopa County Superior Court case CR2018-140417. [Exhibit 1, SBA 000001.]

11. On or about October 15, 2018, Respondent was placed on supervised probation for two years in Maricopa County Superior Court case CR2018-140417. [Exhibit 3, SBA 000011-000012.]

12. On or about March 15, 2019, Respondent was convicted of Shoplifting, a Class 1 Misdemeanor and Trespass in the Third Degree, a Class 1 Misdemeanor. [Exhibit 2, SBA 000007.]

13. On or about March 15, 2019, Respondent was convicted of Shoplifting, a Class 1 Misdemeanor. [Exhibit 2, SBA 000008.]

CONCLUSIONS OF LAW

Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Respondent violated: Rule 42, Ariz. R. Sup. Ct., ER 8.4(b) and Rule 54(g), 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 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.

Duty violated:

Respondent violated her duty owed to the public by violating E.R. 8.4(b) and Rule 54(g).

Mental State:

Respondent knowingly committed the crimes of Facilitation to Commit Shoplifting, a Class 6 Undesignated Felony, and Possession of Drug Paraphernalia,

a Class 6 Undesignated Felony. Respondent intentionally committed multiple crimes of shoplifting.[5]

Injury:

Respondent caused potential harm to the shoplifting victim.

ABA Standard:

Respondent violated her duty to the public implicating *Standard* 5.1. *Standard* 5.11 states: "Disbarment is generally appropriate when: a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft…"[6]

AGGRAVATING AND MITIGATING FACTORS

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

- *Standard* 9.22(a) – Prior disciplinary offenses.

---

[5] "The standards do not account for multiple charges of misconduct." The ultimate sanction imposed should be consistent with the most serious act of misconduct. *Standards*, II. Theoretical Framework.

[6] The crime of shoplifting involves moral turpitude and the crime bears a close relationship to a common-law crime, i.e., larceny. *State v. Superior Court, In and For Pima County* (App. Div.2 1978) 121 Ariz. 174.

- *Standard* 9.22(c) – A pattern of misconduct. Besides her conviction for Facilitation to Commit Shoplifting, a Class 6 Undesignated Felony, Respondent has been convicted of misdemeanor shoplifting 6 times since March 2018.

The Hearing Panel finds the following mitigating factor applies:

- *Standard* 9.32(c) – Personal or emotional problems. Respondent is a heroin addict. Respondent admitted, after receiving *Miranda* warnings, that she had used heroin for approximately 2.5 years. Respondent admitted to using heroin multiple times a day and admitted to using heroin the morning of her arrest.

The Hearing Panel finds the mitigating factor outweighs the aggravating factors. A suspension of two years is appropriate.

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 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294 (1966). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182 (1993)). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20 (1994).

The Hearing Panel orders:

1. Respondent shall be suspended from the practice of law for two years effective immediately.
2. Respondent shall pay the costs and expenses incurred by the SBA. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in this proceeding.

A final judgment and order will follow.

DATED this 2nd day of July 2019.

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

Carole Kemps
Carole Kemps, Volunteer Public Member

Judge Patricia Norris (ret.)
Patricia Norris, Volunteer Attorney Member

Copy of the foregoing emailed
this 3rd day of July 2019, to:

Bradley F. Perry, Bar No. 025682
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7247
Email: LRO@staff.azbar.org

Nicole Marie Abarca
13820 S. 44th Street, Unit 1124
Phoenix, Arizona 85044-4857
Respondent

Alternative address:

Nicole Marie Abarca
1543 W. Renee Drive
Phoenix, Arizona 85027
Email: nabarca.esq@gmail.com
Respondent

by: MSmith

Bradley F. Perry, Bar No. 025682
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7247
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
APR 16 2019
FILED
BY

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA,	**PDJ 2019-9021**
NICOLE MARIE ABARCA, Bar No. 030662,	**COMPLAINT**
Respondent.	[State Bar No. 18-3154]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. Respondent is a lawyer, originally licensed to practice law in the state of Arizona on October 29, 2013.

2. On July 25, 2018, the Presiding Disciplinary Judge issued a Final Judgment and Order in PDJ 2018-9028 (SBA No. 17-2719) suspending Respondent from the practice of law for six months and one day, effective July 3, 2018.

3. Respondent has not initiated reinstatement proceedings as of the date of this Complaint.

COUNT ONE (File No. 18-3154/Judicial Referral)

2. On or about March 2, 2018, Respondent was convicted of Shoplifting, a Class 1 Misdemeanor in Phoenix Municipal Court case M-0741-5219346.

3. On or about March 2, 2018, Respondent was convicted of Shoplifting, a Class 1 Misdemeanor in Phoenix Municipal Court case M-0741-5277290.

4. On or about July 27, 2018, Respondent was convicted of Shoplifting, a Class 1 Misdemeanor in Phoenix Municipal Court case M-0741-5307751.

5. On or about October 15, 2018, Respondent was convicted of Facilitation to Commit Shoplifting, a Class 6 Undesignated Felony and Possession of Drug Paraphernalia, a Class 6 Undesignated Felony in Maricopa County Superior Court case CR2018-140417.

6. On November 15, 2018, the Bar sent Respondent an initial screening letter via US mail and email to the addresses Respondent placed on file with the State Bar. The letter sent via US mail was returned. Respondent did not respond to the letter sent via email.

7. On November 26, 2018, the Bar sent Respondent a second screening letter via email. Respondent failed to respond.

8. Respondent was previously instructed by the Court in PDJ 2018-9028 (SBA No. 17-2719) to keep her contact information updated with the Bar.

9. Respondent failed to keep her contact information updated and failed to Respondent to the Bar's screening letters in this matter.

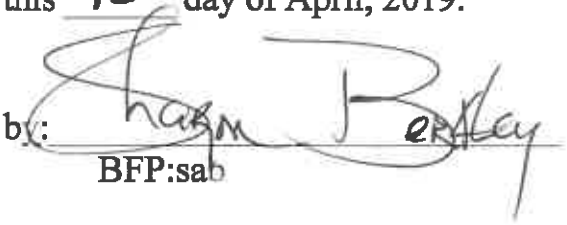
10. Respondent's conduct violates Rule 42, Ariz. R. Sup. Ct., 8.4(b) and Rule 54(g), Ariz. R. Sup. Ct.

DATED this 16th day of April, 2019.

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 16th day of April, 2019.

by: 
BFP:sab

FILED
APR 16 2019
BY Karen E. Calleyo

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, **NICOLE MARIE ABARCA, Bar No. 030662,** Respondent.	No. 18-3154 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 12, 2019, 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 7-0-2[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-3154.

IT IS THEREFORE ORDERED pursuant to Rule 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 16 day of April, 2019.

Daisy Flores, Vice Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

[1] Committee members Judge Lawrence F. Winthrop and Genene Dyer did not participate in this matter.

Original filed this 16th day
of April, 2019, with:

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

Copy mailed this 16th day
of April, 2019, to:

Nicole Marie Abarca
13820 S. 44th Street, Unit 1124
Phoenix, Arizona 85044-4857
Respondent

Copy mailed this 16th day
of April, 2019, 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

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

By: _____
BFP:sab