BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **DON W. CARTIER,** **Bar No. 033047** Respondent.	**PDJ-2018-9092** **FINAL JUDGMENT AND ORDER OF SUSPENSION** [State Bar No. 18-1967] **FILED SEPTEMBER 23, 2019**

On August 16, 2019, the Supreme Court of Arizona dismissed the appeal of Mr. Cartier from the May 7, 2019 Decision and Order of the Hearing Panel. That order directed the suspension of Mr. Cartier for three (3) years. If reinstated his suspension shall be followed by two years of probation under the State Bar Law Office Management Assistance Program (LOMAP) and Member Assistance Program (MAP). No objection was filed to the State Bar statement of costs.

IT IS ORDERED suspending **DON W. CARTIER, Bar No. 033047** from the practice of law for three years (3) effective immediately for his conduct in violation of the Arizona Rules of Professional Conduct.

IT IS FURTHER ORDERED upon reinstatement, Mr. Cartier shall be placed on two (2) years of probation (LOMAP and MAP) with specific terms and conditions to be determined through the formal reinstatement proceedings.

IT IS FURTHER ORDERED Mr. Cartier shall 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 Mr. Cartier shall pay the costs and expenses of the State Bar of Arizona totaling $6,000.00 pursuant to Rule 60(b), Ariz. R. Sup. Ct. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

DATED this 23rd day of September 2019.

Maurice Portley

Judge Maurice Portley (Retired)
Acting Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 23rd day of September 2019 to:

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

Mark F. Willimann
The Law Office of Mark F. Willimann
PO Box 40355
Tucson, AZ 85717-0355
Email: mfwillimann@mfwlawoffice.com
Respondent's Counsel

by: MSmith

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **DON W. CARTIER,** **Bar No. 033047** Respondent.	**PDJ-2018-9092** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar No. 18-1967] **FILED MAY 7, 2019**

I. SUMMARY

Don W. Cartier was admitted to practice law in the State of Arizona on June 28, 2016. (Ex. 14 at Bates SBA000071). He was admitted to practice law in the State of Missouri on August 6, 2015. (Id.). In May 2018, he was involved in a formal Arizona disciplinary proceeding[1] involving multiple allegations of professional misconduct, which resulted in a six-month and one-day suspension. Mr. Cartier appealed the decision, and an Order Granting Stay with Conditions of Supervision (Order Granting Stay) was granted by the Presiding Disciplinary Judge (PDJ).

During the time of his stayed suspension, he was representing Courtney Chettle (Ms. Chettle) in a child custody matter. He needed to file a "First Amended Petition to Establish Legal Decision Making and Parenting Time" (Amended

[1] *See* PDJ-2017-9126.

Petition), told her and she asked to first read it before it was filed. Instead of following through and having her first read the Amended Petition before having her sign it and then filing it, Mr. Cartier signed Ms. Chettle's name "under penalty of perjury" and then filed it with the court on her behalf. Additionally, Mr. Cartier specifically failed to notify Ms. Chettle of the Order Granting Stay of his suspension, despite the requirement in the Order.

Mr. Cartier violated the following Arizona Rules of Professional Conduct[2]: ERs: 1.2 (scope of representation), 1.4 (communication), 3.3 (candor toward the tribunal), 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), 8.1(b) (knowingly make a false statement of material fact), 8.4(b) (committing a criminal act that reflects adversely on honesty, trustworthiness or fitness as a lawyer in other respects), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct that is prejudicial to the administration of justice). He is ordered suspended from practicing law in the State of Arizona for a period of three (3) years and costs imposed.

II. PROCEDURAL HISTORY

This matter proceeded to a contested hearing before the assigned hearing panel. On March 1, 2019, the Presiding Disciplinary Judge (PDJ) William J. O'Neil

[2] All references of "ER" are to Rule 42, Ariz. R. Sup. Ct., the Arizona Rules of Professional Conduct.

gave notice of his recusal in this proceeding. Acting Presiding Disciplinary Judge ("APDJ") Maurice Portley (retired) was joined by volunteer attorney member Kenneth Mann, and volunteer public member Carole Kemps. Senior Bar Counsel Hunter F. Perlmeter represented the State Bar. Mark F. Willimann represented Mr. Cartier. Multiple exhibits were admitted.[3] The State Bar filed a prehearing memorandum.

III. ESTABLISHED FACTS AND RULE VIOLATIONS

STIPULATED FACTS DEEMED MATERIAL[4]

1. Respondent Don Cartier was admitted to practice law in Arizona on June 28, 2016.

2. On May 25, 2018, the hearing panel in PDJ 2017-9126 issued an order suspending Mr. Cartier for six months and one day effective 30 days from the date of the order.

3. On June 4, 2018, Mr. Cartier appealed the order and requested a stay pursuant to Rule 59(c), Ariz. R. Sup. Ct.

4. On June 7, 2018, the stay was granted subject to conditions of supervision.

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[3] The following exhibits were admitted during the hearing: 1, 2, 4, 6, 7, 11, 14, and 15.
[4] The Stipulated Facts Deemed Material were listed in the Joint Prehearing Statement by the parties and adopted by the Hearing Panel.

5. He was hired by Courtney Chettle to represent her to establish legal decision-making and parenting time during the pendency of PDJ 2017-9126.

6. On May 10, 2018, in Maricopa County case no. FC2018-001222, Mr. Cartier filed a First Amended Petition to Establish Legal Decision Making and Parenting Time (Amended Petition) on behalf of his client, Courtney Chettle.

7. Ms. Chettle responded via email, "Don't I need to sign?" Mr. Cartier replied: "Your initials were placed on the amended motion to get things moving."

8. Upon independently securing a copy of the Amended Petition, Ms. Chettle discovered that it "did not contain my signature or my initials as Don [Mr. Cartier] had stated, but rather a signature that was not mine at all, or even close to mine. Additionally, none of the changes that were requested to be made were made . . . . "

9 Shortly thereafter, Cartier was suspended in PDJ 2017-9126 for six months and one day effective July 1, 2018 for conduct involving multiple dishonest statements on his law firm website.

10. As detailed in paragraph 3 of this Complaint, Mr. Cartier filed a

Notice of Appeal and Request for Stay. The PDJ granted the stay with conditions of supervision to include that Mr. Cartier "immediately notify his current clients of the Order Granting Stay with Conditions of Supervision and file an affidavit of compliance with the disciplinary clerk . . . . "

11. Mr. Cartier filed a document with the Disciplinary Clerk indicating that he had notified his current clients of the order. Ms. Chettle was then a current client of Mr. Cartier's, but he had not provided her with any information concerning his suspension in PDJ 2017-9126, or the stay order.

12. In addressing his failure to provide such notice to Ms. Chettle, Mr. Cartier indicated to the State Bar that he notified Ms. Chettle of the stay order via regular mail.

13. When the State Bar requested a copy of the letter Mr. Cartier purportedly provided to Ms. Chettle, he sent the State Bar an undated letter that did not contain Ms. Chettle's mailing address or any address block at all.

FINDINGS OF FACT[5]

A. Mr. Cartier's Failure to Communicate with his Client Before the Filing of the Amended Petition.

[5] The facts come from the testimony, and the weight given to it by the panel, as well as the exhibits admitted during the disciplinary hearing.

On May 10, 2018, Mr. Cartier filed the Amended Petition on behalf of Ms. Chettle. (Ex. 2 at Bates SBA000035-38). He did not submit it to Ms. Chettle and failed to review it with her before filing it, despite her request that he do so. (Chettle Test. 9:23:23-24:11 & 9:31:31-32:13. Mar. 28, 2019). The Amended Petition also provided a verification for Ms. Chettle to sign with the following language: "I declare under penalty of perjury that I have read the above petition and that all the statements therein are true to the best of my knowledge." (Ex. 2 at Bates SBA000038). Without Ms. Chettle's knowledge or consent, Mr. Cartier signed her name on the Amended Petition. (Ex. 2 at Bates SBA000035-38 & Testimony; Chettle Test. 9:32:15-41, Mar. 28, 2019).

Later that day, Mr. Cartier emailed Ms. Chettle, notifying her "[t]he documents for temporary orders have been filed . . . All documents are in transit to be served." (Ex. 6 at Bates SBA000047). In response, Ms. Chettle wrote, "[d]on't I need to sign?" (Id.) Mr. Cartier replied, "[y]our initials were placed on the amended motion to get things moving." (Ex. 6 at Bates SBA000047; Chettle Test. 9:27:44-53, Mar. 28, 2019). However, his email response was false and misleading; he did not place her initials on the Amended Petition but had signed her name to the pleading. (Cartier Test. 9:56:24-50, Mar. 28, 2019; Ex. 2 at Bates SBA000035-38).

In his Answer to the Complaint, Mr. Cartier asserted that at the time in question he was representing two clients in an unrelated matter for which "he worked

to quash an order of protection." (Answer, 2 ¶¶ 9-10). He created an internal exhibit list for the unrelated matter and ". . . placed the initials on the exhibits to delineate between which parties." (Id.) Mr. Cartier tried to clarify the statement by testifying that he never corrected himself regarding his use of the word "initials" in his email exchange with Ms. Chettle because he was mixing up a few documents in his head at the time. (Cartier Test. 9:56:24-57:08, Mar. 28, 2019). He did not, however, provide the documents on which he alleged to have placed the initials for the panel's review. Moreover, he did not clarify any confusion he may have had to Ms. Chettle with other documents; but was clear when he wrote to Ms. Chettle that her initials were placed on the [*A]mended [Petition]* (emphasis added). (Ex. 6 at Bates SBA000047).

When Ms. Chettle requested a copy of the filed Amended Petition, Mr. Cartier failed to provide it, prompting Ms. Chettle to obtain her own copy after creating an online account enabling her access to court records. (Chettle Test. 9:24:11-38, Mar. 28, 2019; Ex. 4 at Bates SBA000041). After retrieving a copy of the Amended Petition, Ms. Chettle noticed her name written in the form of a cursive-style signature which was not her signature or even close to it. (Chettle Test. 9:24:38-50, 9:25:11-57, 9:29:10-36, Mar. 28, 2019; Ex. 2 at Bates SBA000038; Ex. 6 at Bates SBA000045 & 48-50; Ex. 4 at Bates SBA000041).

Ms. Chettle testified that the Amended Petition generally contained the changes she requested, but not necessarily in the way she wanted. (Chettle Test. 9:40:35-42:40 & 9:44:26-45:28, Mar. 28, 2019). Mr. Cartier, on the other hand, argued in his portion of the Joint Pretrial Statement (JPS) that "[t]he [Amended Petition] was the same pleading [Ms. Chettle] saw which was originally filed;" though the original Petition was not admitted into evidence in the disciplinary proceedings. (JPS, 5-6 ¶ III). Finally, Ms. Chettle testified that she ultimately achieved the goal which she had Mr. Cartier to accomplish even though he was not representing her when it was accomplished.

In response to the bar charge, Mr. Cartier wrote, "[i]n the original petition, Ms. Chettle's name was left blank . . . It was place (sic) only to only to clarify she was the petitioner." (Ex. 7 at Bates SBA000058). When asked by State Bar Counsel whether the word, "signature," was used anywhere in his response to the bar charge, Mr. Cartier admitted it was not, but asserted that when he used the word "it," he was referring to the signature. (Cartier Test. 9:53:26-55:02, Mar. 28, 2019; Ex. 7 at Bates SBA000058).

Mr. Cartier testified his addition to Ms. Chettle's name in a signature-form was not meant to be a signature on behalf of Ms. Chettle, but simply a placement to clarify she was the petitioner. (Cartier Test. 10:17:09-19:13 &, 10:15:00-48, Mar. 28, 2019). However, the top of the Amended Petition listed Ms. Chettle as the

Petitioner. (Ex. 7 at Bates SBA000035). When questioned as to why he did not simply add Ms. Chettle's name to the body of the Amended Petition, Mr. Cartier said that the fact that he was taking medication and the stress of his earlier disciplinary proceedings resulted in a "brain fog" during which his mind would blank. (Cartier Test. 10:24:59-27:17, Mar. 28, 2019).

He testified he understood the verification was under penalty of perjury but was under the impression if a client was represented by counsel, "the [client's] attorney signs the name." (Id. at 10:17:09-19:13). When questioned as to why he wrote Ms. Chettle's name in a cursive-style signature if it was not intended to be a signature, Mr. Cartier claimed that things had been hazy. (Id. at 10:23:59-24:50). He testified he had been suffering from medical issues[6] resulting in lack of focus and blurry vision. (Id. at 10:15:00-48 & 10:19:22-20:10). However, he had not disclosed nor presented exhibits to identify his medical issues or the medication he was taking for those medical issues. As a result, the panel could not fully understand and appreciate the severity of any medical problem, any diagnosis, or whether his medical problem interfered with his ability to handle the day-to-day activities as a lawyer.

[6] Cartier Sealed Test. 10:02:04-04:45, Mar. 28, 2019.

CONCLUSIONS OF LAW

Mr. Cartier had a duty to reasonably communicate with his client. We find he failed to do so, in violation of ER 1.4, when he knowingly failed to provide Ms. Chettle with the drafted Amended Petition or discuss it with her before filing it with the court. Moreover, because Ms. Chettle never authorized Mr. Cartier to sign the Amended Petition on her behalf and he knowingly signed her name without her consent, we find Mr. Cartier violated ER 1.2 by exceeding the scope of his authority in representing Ms. Chettle.

We further find that because Mr. Cartier knowingly signed his client's name without her consent and under the penalty of perjury while he was litigating a finding that he had been dishonest was being appealed in the earlier disciplinary matter, and failing to take any steps to inform the superior court of his actions, we find that Mr. Cartier violated ERs 3.3, 3.4(c), 8.1(b), 8.4(b), 8.4(c), and 8.4(d).

B. Mr. Cartier Failed to Notify his Client of His Suspension Per the Conditions of Stay.

Shortly after Mr. Cartier signed Ms. Chettle's name on the Amended Petition, an order was issued suspending him from the practice of law. (Ex. 14 at Bates SBA000103-105). He filed a Notice of Appeal and Request for Stay. (Ex. 14 at Bates SBA000106). The stay was granted with conditions of supervision, including that Mr. Cartier "immediately notify his current clients of the Order Granting Stay with

Conditions of Supervision (Order Granting Stay) and file an affidavit of compliance with the disciplinary clerk . . . ." (Ex. 14 at Bates SBA000106-108).

Mr. Cartier claimed he notified Ms. Chettle of the Order Granting Stay by mailing her a letter. He testified that she was the first client whom he notified, and the rest were notified through electronic mail. (Cartier Test. 9:57:14-58:25, Mar. 28, 2019). When the State Bar requested a copy of the letter Mr. Cartier sent to Ms. Chettle, Mr. Cartier provided the State Bar with an undated letter that did not include Ms. Chettle's mailing address or any address block at all. (Cartier Test. 9:58:57-59:36, Mar. 28, 2019; Ex. 15 at Bates SBA000123-124). Moreover, Mr. Cartier did not provide any evidence to the Hearing Panel with the address he allegedly sent the letter to Ms. Chettle; nor did he provide any evidence that he actually mailed the letter. (Cartier Test. 10:00:00-01:06 & 10:39:40-43:27, Mar. 28, 2019).

Mr. Cartier testified he took the allegations against him seriously and that he wrote the letter in order to attempt to comply with the Order Granting Stay. Mr. Cartier testified the letter was a template used for all his clients, all of whom, except for Ms. Chettle, he notified through electronic mail. (Cartier Test.10:04:43-05:46 & 10:06:46-08:05, Mar. 28, 2019). Ms. Chettle, however, testified that Mr. Cartier never provided her with any information regarding the Order Granting Stay. (Chettle Test. 9:29:46-31:08, Mar. 28, 2019) She discovered his disciplinary history while discussing her family law case with a friend, who discovered the matter on the State

Bar's website and informed her. Ms. Chettle then telephoned Mr. Cartier and asked about his disciplinary proceedings, at which point Mr. Cartier claimed he sent her a letter, which she never received. (Id.) Given the testimony and evidence, the panel finds that Mr. Cartier did not send the letter notifying her of the disciplinary action in order to comply with the Order Granting Stay.

C. Mr. Cartier's State of Mind.

Mr. Cartier knew he was involved in an ongoing disciplinary proceeding. He admitted he failed to provide Ms. Chettle with a copy of the Amended Petition as requested. He knew he signed her name on a court document under penalty of perjury and later falsely told her that he placed her initials on the Amended Petition. He also knew he was required to notify his clients of the disciplinary proceedings pursuant to the Order Granting Stay but failed to notify Ms. Chettle. We find he acted knowingly.

D. Potential Harm to Client, Public and Profession.

We find Mr. Cartier knowingly caused potential harm to his client, the public and the profession. If Ms. Chettle had not independently secured a copy of the Amended Petition and continue to prosecute her family law action, she could have been harmed by Mr. Cartier's actions and failing to provide her with a copy of the Amended Petition. Specifically, the case could have been dismissed for lack of

prosecution and she would have to expend time and resources to correct any such dismissal.

IV. ANALYSIS

Although Ms. Chettle may have ultimately received a favorable result by the court, "[a]n attorney is not . . . a general agent for a client and there are limitations on his or her power to act on behalf of a client." (*Garn v. Garn*, 745 P.2d 602 (Ariz. 1987). Generally, "an attorney is not authorized merely by virtue of his or her retention in litigation to impair client's substantial rights or cause of action itself without client's consent." *Id.* (finding the record contained no evidence that client expressly or implicitly authorized attorney to sign an arbitration agreement, which would have been outside the scope of attorney's established authority).

The State Bar argued that Mr. Cartier engaged in forgery. Mr. Cartier argued he lacked the necessary elements to have committed criminal forgery. We find that Mr. Cartier did not engage in criminal forgery. Instead, he committed what a layman would consider a forgery; he added Ms. Chettle's signature to the Amended Petition without her knowledge, authorization, or consent and then misrepresented his actions to her. The *Standards* do not require that the action at issue be considered criminal in order to find a violation of ER 8.4(b) (commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); rather the act need only reflect adversely on the lawyer's fitness to

practice. *Standard* 5.12 provides that suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard* 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.[7]

IV. SANCTIONS

The American Bar Association Standards for Imposing Lawyer Sanctions ("*Standards*") and Arizona Supreme Court case law guide the imposition of sanctions for lawyer misconduct. "The purpose of professional discipline is twofold: (1) to protect the public, the legal profession, and the justice system, and (2) to deter others from engaging in misconduct."[8]

Upholding the integrity of the legal system, assuring the fair administration of justice, protecting the public and deterring other lawyers from similar conduct are the primary purposes of lawyer discipline. When imposing a sanction after a finding of lawyer misconduct, the Court must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the misconduct. These three

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[7] *Standard* 5.12 states that: "Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation."

[8] *In re Abrams, citations omitted*; *see also* Annot. to (A) (1.1), ABA Annotated *Standards for Imposing Lawyer Sanctions* (2015);

variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

The State Bar recommended that Mr. Cartier be disbarred, or, if the Hearing Panel deems a suspension will sufficiently protect the public, it recommended that Mr. Cartier be suspended from the practice of law for four (4) years.

Standard 3.0 – Duty, Mental State, and Injury

Duty: Mr. Cartier violated his duties to his client, the public, the legal profession, and the legal system.

Mental State: The *Standards* state the following definitions. "'Intent' is the conscious objective or purpose to accomplish a particular result." "'Knowledge' is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." Mr. Cartier acted knowingly when he committed the violations.

Injury: There was potential harm to both the client, the public, and the profession. The most important ethical duty is owed to the client.[9] Lawyers, as officers of the court, owe a duty to the legal system not to engage in conduct prejudicial to the administration of justice or conduct that involves dishonesty, fraud, deceit, or misrepresentation to a court.[10]

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[9] *Standards*, Theoretical Framework, (4), p. 5.
[10] *In re Peasley*, 90 P.3d 764, 773 (Ariz. 2004).

Standards 4.0-8.0 – Presumptive Sanction

As the theoretical framework of the *Standards* notes, "[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct." The record is replete with knowing ethical transgressions by Mr. Cartier. The Hearing Panel determined the presumptive sanction is between disbarment and suspension.

Standard 4.62, Lack of Candor, applies to Mr. Cartier's violation of ER 8.4(c) and provides that suspension is generally appropriate when a lawyer knowingly deceives a client, causes injury or potential injury to the client.

Mr. Cartier knowingly signed Ms. Chettle's name under penalty of perjury on a pleading that was filed with the court without her knowledge or consent and subsequently misrepresented to her that he placed only her initials on the document. He caused potential injury to Ms. Chettle when, without her knowledge, he filed a document which could materially affect the outcome of her case.

Standard 5.12, *Failure to Maintain Personal Integrity*, applies to Mr. Cartier's violations of ERs 8.4(b), and 8.4(c). It provides that suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard 5.11* and that seriously adversely reflects on the lawyer's fitness to practice. Mr. Cartier knowingly filed a document with the

court which contained a false signature that his client had not signed and then made misrepresentations to the State Bar regarding his conduct.

Standard 6.12, *False Statements, Fraud, Misrepresentation*, applies to Mr. Cartier's violations of ERs 3.3 and 8.4(d). It provides that suspension is generally appropriate when: a lawyer knows that false information is submitted to the court or that material information is improperly being withheld, takes no remedial action, and causes injury or potential injury to a party to the legal proceeding or causes an adverse or potentially adverse effect on the legal proceeding.

Mr. Cartier took no remedial action to correct his filing of the Amended Petition on Ms. Chettle's behalf. The document could have materially affected the outcome of Ms. Chettle's case.

Standard 6.22, *Abuse of the Legal Process*, applies to Mr. Cartier's violation of 3.4(c) and provides that suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. Mr. Cartier failed to notify Ms. Chettle of his Order Granting Stay of his six month and one day suspension in PDJ 2017-9126, despite the Order's requirement that he notify all his clients.

Standard 8.1, *Prior Discipline Orders*, applies to Mr. Cartier's violation of 8.4(c) and provides that disbarment is generally appropriate when a lawyer: (a)

intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

The Order Granting Stay of suspension arose out of a prior disciplinary proceeding which involved, in part, dishonest conduct. Mr. Cartier failed to comply with the Order when he failed to notify Ms. Chettle of it. On February 4, 2019, the Arizona Supreme Court affirmed Mr. Cartier's suspension of May 25, 2018 in the prior disciplinary proceeding and the Hearing Panel's findings that Mr. Cartier engaged in dishonest conduct in violation of 8.4(c). The Panel, consequently, determined a long-term suspension is the appropriate sanction for the misconduct engaged in by Mr. Cartier in the instant matter.

***Standard 9.0* – Aggravating and Mitigating Factors**

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the presumptive sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.[11] Mitigation includes any considerations or factors that may justify a reduction in the degree of discipline to be imposed. While there were no exhibits offered and no

[11] *Standard* 9.21 & 9.31.

disclosure provided regarding mitigation factors, we nonetheless considered and gave due weight to any mitigation factors.

The Panel determined the following aggravating factors are present here:

Standard 9.22(a), *prior disciplinary offenses.* Mr. Cartier was suspended for six months and one day in PDJ-2017-9126 effective February 5, 2019.

Standard 9.22 (c), *pattern of misconduct.* Mr. Cartier previously engaged in dishonest conduct, which led, in part, to his previous disciplinary proceeding.

Standard 9.22(d), *multiple offenses.* Mr. Cartier engaged in multiple ethical violations in this disciplinary matter.

Standard 9.22(e), *bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.* Mr. Cartier failed to provide the address to which he claims to have sent the letter, despite the State Bar's request that he do so, and failed to provide Ms. Chettle with a copy of the Order of Stay of his suspension.

Standard 9.22(g), *refusal to acknowledge wrongful nature of conduct.* Mr. Cartier failed to apologize to Ms. Chettle for signing her name without her knowledge or consent. (Chettle Test. 9:31:15-26, Mar. 28, 2019). He maintains he did not engage in dishonest conduct or fail to comply with a court order.

Standard 9.22(k), *illegal conduct.* Mr. Cartier signed Ms. Chettle's name without her knowledge or consent under penalty of perjury and filed the pleading with the court.

The Panel considered the following mitigating factors and weighed accordingly:

Standard 9.32(c) *personal or emotional problems.* Mr. Cartier testified how the stress from his prior disciplinary proceeding affected his actions in this disciplinary matter. His testimony in this case is not enough to prove personal or emotional problems sufficient to constitute a defense to the allegations contained in the formal complaint.[12] We have evaluated the truthfulness of his testimony and found it to be lacking.

Standard 9.32(h), *physical or mental disability or impairment.* Mr. Cartier testified how certain medical conditions and medications he was taking affected his actions regarding the misconduct allegations against him. His testimony in this regard is not enough to prove physical or mental disability or impairment sufficient to constitute a defense to the allegations contained in the formal complaint. No nexus was established between the misconduct and the alleged disability, nor did Mr. Cartier produce any records (*e.g.*, physician affidavits, medical records, pharmacy

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[12] *Matter of Augenstein,* 871 P.2d 254 (1994).

prescription records, etc.) or testify as to any efforts to seek help from LOMAP or MAP) in corroboration of his alleged disability.

Standard 9.32(f), *Inexperience in the practice of law.* Mr. Cartier was an inexperienced lawyer when his misconduct occurred. He had been licensed in the State of Arizona for approximately two years.

V. CONCLUSION

The Hearing Panel knows of the Arizona Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors. It has considered that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[13] Though prior cases are helpful by way of analogy, the hearing panel is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

The State Bar must prove, by clear and convincing evidence, that Mr. Cartier's actions constitute professional misconduct. Rule 48(d), Ariz. R. Sup. Ct. The State Bar met its burden. After reviewing the State Bar's recommendation and considering the misconduct and the presence of aggravating and mitigating factors, we find the evidence and testimony warrants the imposition of a three (3) year suspension and upon reinstatement, two (2) years of probation with the State Bar's Law Office

[13] *In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012).

Management Assistance Program (LOMAP) and Member Assistance Program (MAP), and the payment of the State Bar's costs.

DATED this 7th day of May 2019.

Maurice Portley
Judge Maurice Portley (Retired)
Acting Presiding Disciplinary Judge

Signature on File
Kenneth Mann, Volunteer Attorney Member

Signature on File
Carole Kemps, Volunteer Public Member

Copy of the foregoing e-mailed/mailed
This 7th day of May 2019, to:

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

Counsel for Respondent
Mark F. Willimann
The Law Office of Mark F. Willimann LLC
P.O. Box 40355
Tucson, AZ 85717-0355
Email: mfwillimann@mfwlawoffice.com

by: MSmith

Hunter F. Perlmeter, Bar No. 024755
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7278
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

NOV 1 2018

FILED

BY

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DON W. CARTIER, Bar No. 033047,** Respondent.	**PDJ 2018-9092** **COMPLAINT** State Bar No. 18-1967

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. Respondent Don Cartier was admitted to practice law in Arizona on June 28, 2016.

2. On May 25, 2018, the hearing panel in PDJ 2017-9126 issued an order suspending Cartier for six months and one day effective 30 days from the date of the order.

3. On June 4, 2018, Cartier appealed the order and requested a stay pursuant to Rule 59(c), Ariz. R. Sup. Ct.

4. On June 7, 2018, the stay was granted subject to conditions of supervision.

COUNT ONE (File no. 18-1967/Chettle)

5. On May 10, 2018, in Maricopa County case no. FC2018-001222, Cartier filed a First Amended Petition to Establish Legal Decision Making and Parenting Time (Amended Petition) on behalf of his client, Courtney Chettle.

6. Cartier failed to provide the Amended Petition to Chettle for review before filing despite Chettle's request that he do so.

7. Instead, with his filing Cartier attached a verification for Chettle that contained the following language: "I declare under penalty of perjury that I have read the above petition and that all the statements therein are true to the best of my knowledge. Cartier then forged Chettle's signature by writing in cursive: "Courtney Chettle."

8. He did not immediately notify Chettle of the forgery or that he had filed the document.

9. As a result, on the afternoon of May 10, 2018, Chettle emailed Cartier and asked about the status of the pleading. Cartier responded via email: "The documents for temporary orders have been filed… All documents are in transit to be served."

10. Chettle responded via email, "Don't I need to sign?" Cartier replied: "Your initials were placed on the amended motion to get things moving."

11. Chettle asked Cartier for a copy of the filing, but Cartier did not respond to her requests.

12. As a result, Chettle was forced to obtain her own copy of the document by creating an online account enabling her access to court records.

13. Upon retrieving a copy of the Amended Petition, Chettle discovered that it "did not contain my signature or my initials as Don [Cartier] had stated, but rather a signature that was not mine at all, or even close to mine. Additionally, none of the changes that were requested to be made were made …. ."

14. Chettle was particularly concerned because she observed that the forgery of her name was done under penalty of perjury.

15. In his initial response to the bar charge Respondent falsely stated: "Ms. Chettle's signature was never forged."

16. Shortly thereafter, Cartier was suspended in PDJ 2017-9126 for six months and one day effective July 1, 2018 for conduct involving multiple dishonest statements on his law firm website.

17. As detailed in paragraph 3 of this Complaint, Cartier filed a Notice of Appeal and Request for Stay. The PDJ granted the stay with conditions of supervision to include that Cartier "immediately notify his current clients of the Order Granting Stay with Conditions of Supervision and file an affidavit of compliance with the disciplinary clerk .... ."

18. Cartier filed a document with the Clerk indicating that he had notified his current clients of the order. At the time, however, Chettle was a current client of Cartier's and Cartier had not provided her with any information concerning his suspension in PDJ 2017-9126, or the stay order.

19. In addressing his failure to provide such notice to Chettle, Respondent indicated to the State Bar that he notified Chettle of the stay order via regular mail.

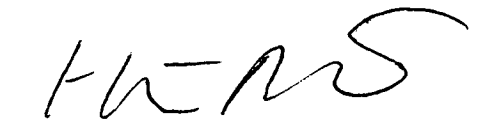
20. When the State Bar requested a copy of the letter Cartier purportedly provided to Chettle, Cartier sent the State Bar an undated letter that did not contain Chettle's mailing address or any address block at all.

21. The State Bar asked Cartier whether he possessed proof of mailing the letter, but Cartier failed to timely respond.

22. In engaging in the above conduct, Cartier violated ERs 1.2, 1.4, 3.3, 3.4(c), 8.1(b), 8.4(b), 8.4(c), and 8.4(d).

DATED this 1st day of November, 2018.

STATE BAR OF ARIZONA



Hunter F. Perlmeter
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 November, 2018.

by: Margarita Goode
HFP:mg

FILED

OCT 31 2018

BY G. Lebar

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, **DON W. CARTIER** **Bar No. 033047** Respondent.	No. 18-1967 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 12, 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 6-0-3[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-1967.

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 30 day of October, 2018.

Lawrence F. Winthrop

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

[1] Committee members Ben Harrison, Charles Muchmore and Walt Davis did not participate in this matter.

Original filed this 31st day
of October, 2018 with:

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

Copy mailed this 31st day
of October, 2018, to:

Mark F. Willimann, Esq
The Law Office of Mark F. Willimann LLC
PO Box 40355
Tucson, Arizona 85717-0355
Respondent's Counsel

Copy emailed this 31st day
of October, 2018, 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 St., Suite 100
Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

by: Marguita Goode
HFP/mg