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 2017-9126** **FINAL JUDGMENT AND ORDER OF SUSPENSION AND PROBATION** [State Bar Nos. 17-0156, 17-1209 & 17-1729] **FILED FEBRUARY 6, 2019**

On February 5, 2019, the Supreme Court of Arizona affirmed the Decision and Order of the Hearing Panel suspending Mr. Cartier for six months and one day followed by two years of probation upon reinstatement. The Court affirmed the Hearing Panel's finding that Mr. Cartier violated ERs 1.6(a) and (e), ER 7.1, ER 8.4(c), Rule 43, and that he failed to timely respond to the State Bar's investigation. The Court rejected the Hearing Panel's finding that Mr. Cartier violated ER 5.3 and Rule 32(c)(3). Costs, if any, will be awarded by separate order which shall be incorporated by this reference.

Now Therefore,

IT IS ORDERED Respondent, **DON W. CARTIER, Bar No. 033047**, is suspended from the practice of law for six (6) months and one (1) day effective thirty (30) days from the date of this order for his conduct in violation of the Arizona Rules of Professional Conduct.

IT IS FURTHER ORDERED Mr. Cartier 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 on the date of his reinstatement, Mr. Cartier shall be placed on probation for a two (2) years with the State Bar's Law Office Management Assistance Program (LOMAP) and Member Assistance Program (MAP).

IT IS FURTHER ORDERED within thirty (30) days of reinstatement, Mr. Cartier shall contact the State Bar Compliance Monitor to enter into a Law Office Management Assistance Program ("LOMAP") and MAP contract. Mr. Cartier shall comply with all the terms of the LOMAP and MAP contract, which shall be incorporated herein by reference. Mr. Cartier shall be responsible for any costs associated with LOMAP or MAP.

NON-COMPLIANCE LANGUAGE

If Mr. Cartier fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, issue an appropriate sanction. If there is an allegation that Mr. Cartier failed to

comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED Mr. Cartier shall pay within thirty (30) days of final assessment any costs ordered 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 with these disciplinary proceedings.

DATED this 6th day of February 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 6th day of February 2019 to:

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by: AMcQueen

SUPREME COURT OF ARIZONA

In the Matter of a Member of the State Bar of Arizona	)	Arizona Supreme Court No. SB-18-0036-AP
DON W. CARTIER, Attorney No. 33047	)	Office of the Presiding Disciplinary Judge No. PDJ20179126
	)	**FILED 02/05/2019**

DECISION ORDER

Respondent Don W. Cartier appealed the Hearing Panel's May 25, 2018 Decision and Order Imposing Sanctions.

A. **ER 5.3**

In Count 1, the State Bar claimed that Respondent's paralegal conducted an initial consultation without Respondent being present and Respondent did not provide Client R. with a firm engagement letter or fee agreement. Also, it claimed that Respondent forwarded to Client R. an internal email that mentioned the name of Respondent's Client M.

A review of the evidence indicates that the paralegal worked for Respondent as an independent contractor and also maintained her own "doc prep" business; she sent Client R. an important email from the doc prep email address while still working for Respondent. The professional association between Respondent and the paralegal was brief and there were indications they had differing views of her role in his practice. There was no charge or finding that Respondent failed to provide the terms of representation in writing in violation

of ER 1.5. In light of these circumstances, the Court rejects the finding that Respondent violated ER 5.3.

B. ER 1.6

Respondent improvidently forwarded an email to Client R. that included his task list for Client M. This action implicated ER 1.6(e) which requires a lawyer to make reasonable efforts to prevent inadvertent or unauthorized disclosure of client information. Comment 4 notes:

> Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person.

The Court concludes that Respondent violated ER 1.6(a) and (e).

C. Rule 32(c)(3)

In Count 2, the State Bar claimed that Respondent failed to keep his address current with the State Bar. The State Bar investigation involved letters to Respondent in February, April and May 2017 to the address on record with the State Bar which is Respondent's residential address. The Panel found that Respondent failed to keep his address current. We reject this finding although we affirm the finding that he failed to timely respond to the State Bar's investigation.

D. Rule 43

The Court affirms the Panel's finding that Respondent failed to exercise due professional care with regards to his trust account as

required under Rule 43(b)(1). He failed to maintain accurate ledgers records under Rule 43(b)(2)(B) and did not perform three-way reconciliations under Rule 43(b)(2)(C). He withdrew fees from uncollected funds in violation of Rule 43(b)(4), resulting in an IOLTA overdraft notification and charged Client S. a $50 fee which Respondent was unable to establish was an actual bank charge above the $27 assessed against the client's funds or was otherwise agreed to by the client. He disbursed trust account funds by cashier's check in violation of Rule 43(b)(5). He paid himself fees from Client R.'s retainer the day before all his fees were earned. The day after refunding Client R.'s unused retainer, he filed his Certificate of Compliance with the State Bar in which he represented that he was not required to maintain a trust account--notwithstanding the fact that he had an IOLTA account--in violation of Rule 43(d). He did not provide documents to support trust account withdrawals and did not record trust account transactions between January and April of 2017. The Court affirms the Panel's findings that Respondent knowingly violated Rule 43.

E. ERs 7.1 and 8.4(c)

In Count 3, the State Bar claimed that Respondent, who was admitted to the Missouri Bar in 2015 and the Arizona Bar in 2016, misrepresented his credentials on his website, including two claims that he had 25 years of experience, that he was a "seasoned" litigator, and that he had successfully participated in three

significant legal proceedings. Respondent claimed the website developer had inserted the "25-year" language in a template and Respondent was unaware of this statement. He also claimed that in this context, he was using the word "seasoned" to describe "the variety of areas of practice he will engage." He claimed to have co-chaired two litigation matters before he was admitted to the Arizona State Bar, and he negotiated the third matter on behalf of a family member before he was admitted to practice.

The Court affirms the Panel's findings that these representations violated ER 7.1 which prohibits false or misleading statements about a lawyer or the lawyer's services. The Court also affirms the Panel's finding that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of ER 8.4(C).

The Court agrees with Respondent that any consideration of documents outside the record should not be the basis for any finding of a violation or of an aggravating factor in support of a sanction. The Court therefore rejects any finding that Respondent mischaracterized his actions in the Client R. matter based on the Panel's consideration of documents outside the record.

F. Aggravation and Mitigation

The Court affirms the following aggravating factors: (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; and (g) refusal to acknowledge wrongful nature

of conduct.

The Court rejects the following aggravating factors: (e) bad faith obstruction of the disciplinary process and (f) submission of false evidence, false statements or other deceptive practices during the disciplinary process. Respondent is correct that, in this case, his declining to finalize a settlement after filing a notice of settlement should not be considered an aggravating factor. Likewise, Respondent's presentation of his own version of events does not in this case warrant findings of bad faith obstruction or submission of false information.

The Court affirms the mitigating factors of (a) absence of a prior disciplinary record and (f) inexperience in the practice of law.

G. Sanction

Although inexperience in the practice of law may explain certain lapses in judgment and negligent errors, Respondent not only violated multiple rules pertaining to his trust account, he also affirmatively certified in his 2017 annual fee statement that he was not required to maintain a trust account, although he had an IOLTA account open at the time. Likewise, the Court agrees that it was fraudulent for a two-year lawyer to publicly represent himself as a seasoned litigator with 25 years of experience.

"The purpose of lawyer discipline is not to punish the offender, but to protect the public, the profession, and the administration of

justice." *Matter of Carrasco*, 176 Ariz. 459, 462 (1993)

The Panel concluded Respondent's mental state was knowing if not intentional. 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 Court affirms the finding that Respondent's violations of Rule 42 and ERs 1.7 and 8.4 were knowing.

Looking to injury or potential injury, Respondent was unable to support account charges he collected from Client S.'s retainer, created an overdraft by withdrawing trust funds in violation of Rule 43(b)(4), and paid himself for fees before they were earned, establishing injury to his clients. Posting patently false representations concerning a lawyer's experience on a public website likewise carries an inherent risk of harm to the public. Filing a false Trust Account and IOLTA Compliance certification evidences a distressing disregard for the State Bar's public-protection function, again endangering the public.

The Court affirms the imposition of a suspension for six months and one day and probation for two years upon reinstatement to include participation in the State Bar's Membership Assistance Program and Law Office Management Assistance Program.

IT IS ORDERED affirming the decision and sanction of the hearing panel as set forth in this order.

DATED this 5th day of February, 2019.

/s/
SCOTT BALES
Chief Justice

TO:
Don W Cartier
Amanda McQueen
Mark A Wilson
Carol Mitchell
Diane Sapp
Jennifer Davy
Sandra Montoya
Perry Thompson
Don Lewis
Beth Stephenson
Mary Pieper
Raziel Atienza
Lexis Nexis
Maret Vessella
Sarah Corpening
Patricia Seguin
Mark F Willimann
Hunter F Perlmeter

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 2017-9126** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar Nos. 17-0156, 17-1209 & 17-1729] **FILED MAY 25, 2018**

On April 12, 2018, the Hearing Panel ("Panel"), comprised of Paul D. Friedman, attorney member, Michael Snitz, public member, and the Presiding Disciplinary Judge, ("PDJ"), William J. O'Neil, held an evidentiary hearing. Hunter F. Perlmeter appeared on behalf of the State Bar of Arizona (State Bar). Don Cartier ("Mr. Cartier") appeared with counsel, Mark F. Willimann.

The complaint was filed on December 6, 2017. Allegation 13 was later withdrawn by the State Bar. On December 26, 2017, Mr. Cartier filed his answer denying all allegations, including denying that he was first admitted to practice in Arizona on June 28, 2016. The parties later stipulated that Mr. Cartier was licensed to practice law in Missouri on August 6, 2015. Under Rule 58(e), Mr. Cartier was required to serve upon the State Bar, not later than January 26, 2018, a compliant disclosure statement. He never did.

The hearing was delayed when the parties filed a notice of settlement on February 5, 2018. On February 28, 2018, Mr. Cartier's counsel notified the State Bar that Mr. Cartier experienced a change of heart and no longer wished to abide by the agreed upon settlement terms. The parties submitted a Joint Prehearing Statement ("JPS") on March 19, 2018.

At the hearing, Exhibits 1-64 were admitted. Exhibit 17, Bates 076, was sealed but is found throughout the exhibits.[1] The Panel considered the testimony of Mr. Cartier, Manual Espinoza and Jim Rauch. At the conclusion of the hearing, the State Bar requested a 60 day suspension and two years of probation.

SANCTION IMPOSED

Six (6) months and one (1) day suspension and upon reinstatement (two) years of probation (MAP and LOMAP) for violating ERs 1.15, 1.6, 5.3, 7.1, 8.4(c) and Rules 32(c)(3); 43(a), 43(f)(1), 43(b)(1)(A), 43(b)(1)(C), 43(b)(2)(A-D), and 43(b)(4) and (5).

FINDINGS OF FACT

At all times relevant, Mr. Cartier was a lawyer licensed to practice law in Arizona having been first admitted to practice in Arizona on June 28, 2016. [JPS 1.]

[1] See also Exhibit 3 Bates 003, Exhibit 7, Bates 011, Exhibit 8, Bates 015 and Exhibit 9, Bates 018.

Mr. Cartier denied in his answer that he was first admitted to practice in Arizona on June 28, 2016.

COUNT ONE (File no. 17-0156/Rothlisberger)

In mid-December 2016, William Rothlisberger hired Mr. Cartier for assistance in a child custody matter. Rothlisberger paid Mr. Cartier $5,000 at the start of the representation. On January 16, 2017, Rothlisberger terminated the representation by email. [JPS 2.] Mr. Cartier denied this allegation in his answer. The representation was verified by an email sent by Mr. Cartier to his client. [Ex. 8, Bates SBA014, .]

Mr. Cartier's paralegal conducted an initial consultation without Mr. Cartier being present and did not provide Rothlisberger with a firm engagement letter or fee agreement. [Ex. 7, Bates SBA012.]

During the representation, Mr. Cartier forwarded to Rothlisberger an internal email that he wrote to his paralegal on January 2, 2017. The email included information concerning two other clients, including the clients' names. [Sealed Exhibit 17, Bates SBA076.]

Mr. Cartier insisted no privileged information was contained in the email. He stated it is merely information he sent to his paralegal that was instructional and task oriented. He asserted that procedures exist to destroy confidential information if you were not the intended recipient. He testified privileged information is information

that is received in the course of representation of a client from the initial consultation until death. [Cartier Hearing Testimony at 11:29 a.m.]

The parties confirmed that there was no waiver from client Magana and sealed the Exhibit. Mr. Cartier confuses confidential information with attorney client privileged information and he fails to understand the gravity of revealing this information to a third-party.

Mr. Cartier swore that on November 23, 2016 he hired an independent contractor, Favi Tinsdale (Tinsdale), who assisted him with legal work including the Rothlisberger matter. Cartier appeared to excuse his conduct by testifying the Rothlisbergers were not original clients of his. He testified that Ms. Tinsdale brought the Rothlisbergers to him and he provided Tindale with a template for a letter of engagement. But Tinsdale met with the Rothlisbergers and obtained at Cartier's direction a $5,000 check from them, which he deposited. He did not meet or speak with them until the day of their scheduled hearing. [Ex. 17, Bates SBA040; Cartier Hearing Testimony.]

The testimony of Mr. Cartier was rarely credible. He was repeatedly evasive, ignored questions, and frequently attempted to interject testimony that was not responsive to the question. In his testimony, he often exaggerated the truth. Mr. Cartier testified he "saved the case from being dismissed to Utah so he was successful" and that is what Rothlisberger paid him $5,000 to do. [Cartier Hearing

Testimony at 1:03 p.m.] In light of his non-disclosure and his conduct during his testimony, the volunteer attorney member gave notice to Mr. Cartier that the Panel intended to take judicial notice of the Pinal County action to verify his testimony. He was not opposed to that review.

A review of the record in Pinal County Superior Court file S1100DO201600788 (the minute entries are made part of the record) reflects that on August 25, 2016, the Court found it did not have jurisdiction because Rothlisberger (*pro se*) had not registered the Utah orders in Arizona. He was ordered to register the Utah orders in Arizona within 60 days or the case would be dismissed. Mr. Rothlisberger (*pro per*) filed an extension of time to file the affidavit to register those Orders, which was granted on October 26, 2017. The matter was scheduled for inactive dismissal on November 23, 2016.

On November 23, 2016, the matter was heard. The Court's Minute Entry stated that Respondent William Rothlisberger did not appear in person nor by counsel and mistakenly dismissed the matter in its entirety without prejudice because the file had no evidence that Rotlisberger had failed to register the orders. The Court later reconvened and corrected the record to reflect that the Clerk was slow in filing that proof and that he had timely filed the Orders on November 18, 2016. The Court set the matter for a status review on December 21, 2016. Mr. Cartier was still not counsel of record.

On December 21, 2016, Mr. Cartier appeared with Mr. Rothlisberger for the first time. A telephonic review status was set for January 18, 2017. The minute entry also stated that the minor child has been in Arizona for over one year. There was no other action taken by the Court.

On January 17, 2017, a Notice of Substitution of Counsel with Consent was filed by Suzette-Lorrey-Wiggs, Esq. substituting herself for Mr. Cartier.

On August 1, 2017, the parties filed a Stipulated Motion to Dismiss Father's July 7, 2016 Petition for Modification and Request to Vacate the September 8, 2017 Status Conference. The Stipulation stated that a hearing was held in Utah that resolved all of the issues in the July 7, 2016 Petition. Mr. Cartier did not "save" this case; he did little as attorney or record. He was not credible as a witness.

COUNT TWO (File no. 17-1209/SBA Trust Account)[2]

On April 10, 2017, Mr. Cartier experienced an overdraft in his client trust account. A $5,000 deposited item was returned unpaid when the balance was $4,691.60. A return item fee of $12.00 and $15.00 overdraft fee was charged resulting in a negative balance of <$323.40>.

Trust Account Examiner, Manuel Espinoza (Mr. Espinoza), sent Mr. Cartier a copy of the overdraft notice and requested an explanation and records, including

[2] Unless otherwise indicated, the facts in this Count are supported by Mr. Espinoza's comprehensive trust account summary, Exhibit 44 and his hearing testimony beginning at hearing audio CD, time 9:35:54-10:33:07.

records covering the period of December 2016 to April 2017. The examiner requested a response by May 10, 2017. [Ex. 34, Bates SBA 174.] Mr. Cartier failed to timely comply. On May 19, 2017, the Examiner sent Mr. Cartier a non-response notice again demanding a response within ten days. Mr. Cartier failed to respond. [Ex. 35, Bates SBA175]

Mr. Espinoza called Mr. Cartier and left a voice mail. Mr. Cartier failed to return the call. On May 31, 2017, Espinoza called and again left a voicemail for Mr. Cartier requesting an immediate response. Mr. Cartier returned the call and attributed the delay to the death of a friend. Mr. Cartier later impeached himself by attributing the delay to the State Bar's correspondence being sent to his mother's home rather than his office. The excuse was impeached when it was pointed out that the State Bar correspondence had been sent to Mr. Cartier's address of record. Mr. Cartier indicated that his address was not up to date with the State Bar. [Exhibit 44 & Espinoza Hearing Testimony at 9:45-9:46 a.m.][3]

When Mr. Cartier responded in writing to the State Bar Lawyer Regulation Department on June 12, 2017, he knowingly and substantively failed failed to respond to all of Espinoza's concerns. [Ex. 36; Espinoza Hearing Testimony at 9: 46:40 a.m.]

[3] Denotes time on audio recording.

Regarding the circumstances surrounding the overdraft, Mr. Cartier stated that he deposited a $5,000.00 advance payment that the bank reported as having cleared two days later.. Mr. Cartier then disbursed $350.00, resulting in an overdraft when the deposited item was returned unpaid. [Ex. 36, Bates SBA176.] He knew this was untrue.

Mr. Cartier's narrative was impeached. The trust account examination revealed that the deposit was submitted to the bank on April 6, 2017, and Mr. Cartier drafted check number 1002 payable to himself that *same day*. The disbursement cleared the next day, on April 7, 2017. Mr. Cartier disbursed the same day in reliance on uncollected funds that were not from a limited-risk deposit. [Espinoza Hearing Testimony.]

On June 23, 2017, the Examiner sent Mr. Cartier one request for additional information and gave a new compliance date of July 7, 2017. Mr. Cartier failed to provide responses or supporting documentation responsive to Mr. Espinoza's inquiries. [Ex. 38, Bates SBA184, 186; Espinoza Hearing Testimony at 9:47:50.]

On July 8, 2017, Mr. Cartier emailed Mr. Espinoza with attached reconciliation documents and ledgers. [Exhibit 41; Espinoza Hearing testimony at 9:49:04 a.m.] Mr. Cartier stated in a separate July 8, 2017 email that the reason for his delay in responding to Espinoza's inquires is that he had taken a brief sabbatical. [Ex. 42.]

On December 19, 2016, Mr. Cartier received an advanced fee payment for $5,000.00 from client Rothlisberger. Mr. Cartier refunded $2,000.00 of the advanced fee after Rothlisberger terminated the representation. [Ex. 37, Bates SBA178, 183.] In his correspondence to Rothlisberger, Mr. Cartier indicated that he held Rothlisberger's funds on deposit through January 2017. A review of Mr. Cartier's bank records, however, revealed that this representation was false. [Espinoza Hearing Testimony.]

Mr. Cartier provided a general ledger purporting to cover the period of January 2017 to April 2017. The first entry consisted of a purported $53.60 in administrative funds deposited on January 2, 2017. No further activity was recorded until April 2017. The ledgers were not chronological and no such administrative funds deposit occurred. Mr. Cartier's administrative funds ledger reflects no activity between December 6, 2016 and January 6, 2017. [Ex. 41, Bates SBA204-205; Espinoza Hearing Testimony at 9:50 a.m.] Seven transactions occurred during the month of January, none of which are reflected on the general ledger provided and the general ledger makes no reference to client Rothlisberger.

Two alternative copies of general ledgers were later obtained by the State Bar and these too failed to reflect an accurate record of the activity in the IOLTA. The refund issued to client Rothlisberger was disbursed on January 18, 2017, by way of

a cashier's check, rather than preprinted pre-numbered check or electronic transfer from the IOLTA. [Espinoza Hearing Testimony.]

The first disbursement Mr. Cartier paid to himself consisted of check number 110, written on December 20, 2017, for earned fees for $2,300.00. The check cleared the same day. However, Mr. Cartier's "real-time" billings reflect that the firm had only earned $1,080.00 in combined billings as of that date.

The bank assessed $27.00 in fees associated with a returned deposited item from client Shaughnessy. These were subsequently offset by the client's additional advance fee deposit. On April 21, 2017, Mr. Cartier disbursed check number 1005 to himself for $50.00, described as an "Overdraft Penalty" and charged the client an additional $50.00 for the returned deposited incident.

Mr. Cartier's IOLTA bank statements, however, reflect no fees beyond the aforementioned $27.00 offset by the client's funds. The operating account ledger indicates that the operating account was also overdrawn on April 10, 2017, resulting in a negative <$297.44> balance.

The general ledger reflects that by April 18, 2017 the deficit increased to negative <$1,038.94>. The deficit is reflected as being offset the following day on April 19, 2017, by way of a $4,425.00 deposit. The examination revealed that these funds originated from cash withdrawals made from the IOLTA on behalf of client Shaughnessy.

Mr. Cartier disbursed the same day, in reliance on the funds which were not from a limited-risk item. The preliminary records obtained from Mr. Cartier revealed that on April 19, 2017 two cash withdrawals were made from the IOLTA. The first was for $750.00. Mr. Cartier's records associate the disbursement with a "Private Investigation Fee" payable to the firm. The second, for $3,675.00, is described as attorney's fees earned on or about April 17, 2017.

Mr. Espinoza advised Mr. Cartier that if the disbursements in question were transacted according to the rules, he would need to provide copies of documentation to support his response. Mr. Cartier provided no supporting documentation. Bank records reveal four additional instances of cash withdrawal transactions during the period of review. These totaled $2,340.00.

Mr. Cartier failed to maintain an accurate and complete general ledger. He provided a handwritten ledger, a ledger maintained on Excel, and one maintained on QuickBooks. None were maintained according to the minimum standards. They reflect no chronological record of activity transacted in the IOLTA.

The QuickBooks version reflects the returned deposited item on April 4, 2017, and the correcting deposit on April 6, 2017. The actual dates were the 10th and 17th of April, respectively. The QuickBooks version inexplicably begins on January 1, 2017, with a negative <.12¢> balance.

Also, all three reflect entries that do not record the actual name of the payor for funds deposited or payee of funds disbursed. In addition, the Excel version erroneously reflects the $12.00 and $15.00 bank fees resulting from the returned deposited item as a "Filing fee" and "Expert fee."

Mr. Cartier failed to maintain accurate and complete individual client ledgers for all clients who held funds on deposit in the IOLTA. The client ledger provided for the Rothlisberger matter ends on December 21, 2016, with a $2,600.00 balance. Yet, the matter has since been concluded and all funds disbursed from the IOLTA.

The client ledger provided for the Shaughnessy matter is not chronological and does not reflect the returned deposited item and subsequent replacement payment. Instead, the ledger reflects a single $5,000.00 deposited dated "4/5/2017-4/17/2017."

Mr. Cartier failed to maintain an accurate administrative funds ledger accounting for all activity transacted on behalf of the firm. The ledger provided misleadingly reflects a $59.91 deposit dated January 6, 2017, for a checkbook order charge that occurred the same day. No such deposit is reflected on the general ledger nor on the bank statements.

Mr. Cartier failed to perform proper monthly three-way reconciliations. The reconciliation for the month of December 2016 reflects a three-way reconciliation of $2,660.12. [Ex. 30, Bates SBA164.] However, the ledgers submitted indicate

$2,600.00 was held on deposit for the Rothlisberger matter while the administrative ledger reflects a balance of $60.09, a total of $2,660.09, and a difference of .03¢. Because Mr. Cartier's trust account ledgers are not maintained according to the minimum standards, a proper three-way reconciliation could not have been performed. [Espinoza Hearing Testimony.]

Mr. Cartier failed to maintain copies of the backs of cancelled checks. Mr. Cartier's duplicate deposit records do not record the name of the client on whose behalf funds were deposited.

Despite establishing and maintaining an IOLTA in December 2016, Mr. Cartier reported on his 2017 dues statement, filed electronically on January 19, 2017, that he was not required to maintain an IOLTA. [Ex. 31, Bates SBA165-166.] Considering his testimony, we find this was not inadvertent or negligently done, but knowingly.

Mr. Cartier attempted to submit mitigation when he testified that he was licensed to practice law for approximately six months when he opened his client trust account based on receipt of the Rothlisberger check for $5,000.00. He swore he had only had two clients in his trust account since its inception. [Cartier Hearing Testimony at 12:47 p.m.] He argues any discrepancies or errors in the trust account ledgers he argues have been resolved by improvements made to his procedures in handling his trust account. He swore he hired a CPA to assist with the management

of his trust account and now uses QuickBooks. He also swore he has taken additional continuing legal education in trust account management. [Id. at 12:58 p.m.]

Despite the objective documents that detail his failings, we note the denial of every allegation by Cartier in his answer.

COUNT THREE (File no. 17-1729/State Bar)

While looking for current contact information for Mr. Cartier, Mr. Espinoza learned of misleading information on Mr. Cartier's websites. The website was at *Cartierdivorcelawphoenix.com* and *Cartierlaw.com* that appeared to be inaccurate. The website Cartierlaw.com included the following language at the start of the Bar's investigation:

a. "In 2015, Cartier Law successfully represented and obtained a settlement for the family of Captain Marc G. Hansen after his life was taken away from him in a tragic helicopter crash near Benson, Arizona." [Exhibit 50, Bates SBA268.]

b. "In 2014, Don Cartier served as co-chair to attorney Alexander Kolodin in a successful Special Action against Santa Cruz County." [Id. at Bates 269.]

c. In 2015, Cartier Law co-chaired writ of mandamus action with attorney Alexander Kolodin in order to re-instate an illegally cancelled recall election." [Id. at Bates 270.]

Mr. Cartier denied these allegation in his answer to the complaint, but knew that it was true that the statements were listed on his webpages.

a. Cartier Law successfully obtaining a settlement

Mr. Cartier testified he was not a licensed attorney in 2015 in Arizona when he included the information regarding settling the Hansen settlement (which was not identified there as his mother's claim) on his website.[4] He knowingly exagerrated this information anyway because he wanted to sell an image and misinform the public of a claimed specific skill set and listed what he claimed he did in the case. [Ex. 50, Bates SBA 268; Cartier Hearing Testimony at 11:12 a.m.]

Mr. Cartier testified he negotiated with the insurance company on behalf of his mother which resulted in a favorable settlement. Mr. Cartier was not a licensed attorney in Arizona in 2015 but swears he was licensed in Missouri. [Cartier Hearing Testimony at 11:15:10 a.m. & 11:43:45 a.m.] Mr. Cartier was rarely credible in his testimony. He offered nothing to objectively demonstrate that "Cartier Law" was ever existent or that he personally "successfully represented and obtained a settlement" for his his mother and apparently himself as a step-son.

His testimony that the opposing insurance company knew that he was not a licensed attorney appears to contradict his licensure in Missouri. His statement that there was no objection to him negotiating on his Mother's behalf is hearsay and unreliable, especially in light of his multiple misrepresentations in this proceeding.

[4] Mr. Cartier's Hearing Testimony is found at audio 11:10:15 a.m.- 2:03:21 p.m.]

Apparently as mitigation, he testified that he now understands that only a licensed attorney can negotiate on behalf of a client in Arizona. But he swore only that his actions could be the unauthorized practice of law. [Cartier Hearing Testimony at 1:22 p.m.]

While we question the accuracy of his statements, we decline to find this portion of the website was true or false, but rather that the complaint allegation that there was a misrepresentation regarding this statement was not proven by clear and convincing evidence.

b. Cartier Law as a co-chair in litigation

Regarding the 2014 co-chair reference in the Special Action against Santa Cruz County, Mr. Cartier admits he was not a licensed attorney in Arizona, but seemingly argued that his studying to take the bar examination somehow qualified him. [Ex. 50, Bates SBA269] He emphasized in his testimony that his official title during the trial was "Civil Litigation Coordinator." It appeared Cartier was more than implying that Alexander Kolidon, Esq. hired "Cartier Law" but knowing he was not an attorney billed the case stating that Cartier was his co-chair anyway.

Mr. Cartier swore the Court ordered that his fees be paid by the opposite party, but he offered no order supporting that testimony. We note again that while he denied it in his answer, it is stipulated he was not admitted to practice law in Arizona until June 28, 2016.

Cartier soon admitted he submitted a request for payment through the Kolidon firm. If he submitted an affidavit, as he swears he did, there was no exhibit verifying that. He swore that he billed the firm for the hours he worked on the matter, but finally admitted he was not the co-chair with Alexander Kolidon Esq. He swore the Court was aware he was not an attorney. [Cartier Hearing Testimony at 1:24 p.m.]

c. Cartier Law as a co-chair in Mandamus action

Mr. Cartier testified that he was licensed in Missouri in August 2015 and was awarded attorney fees in the 2015 mandamus action that took place in Arizona. He stated he assisted his colleague, Mr. Kolodin, and therefore was "Of Counsel." He testified that he never said a word at trial and advised the court before trial began that he was not an attorney licensed in Arizona. [Id. at Bates SBA270; Cartier Hearing Testimony at 11:12 a.m. & 1:28 p.m.] Cartier ultimately stated he was hired by Kolodin as an independent contractor and that Cartier Law was a sole proprietorship. He swore Kolodin paid Mr. Cartier legal fees [Cartier Hearing Testimony at 1:33 p.m.]

Mr. Cartier stated that his definition of "co-chair" is "to assist" with a case at a higher degree than a paralegal and a "seasoned litigator" is someone who has a variety of experiences or is hardened by experiences. Because of his disability, he swore he discounts his legal fees. He asserted that on his website, he was not trying

to convey that he was a lawyer, just that he was more than a paralegal. [Cartier Hearing Testimony at 1:09 a.m.] His testimony was not credible.

The claimed 25 years of experience and staff

"Cartierdivorcelawphoenix.com" included the following claim,

> At Cartier Law, you have the benefit of working with 25-year family law lawyer attorney Don Cartier and his staff of paralegals and assistants rather than relying on the experience and services of a single attorney.

Mr. Cartier did not have 25 years of experience as a family law attorney or any other kind of lawyer. He also falsely advertised that he had handled a whole range of complicated guardianship matters by February 1, 2017. He had not. [Exhibit 49, Bates SBA 265-266; Cartier Hearing Testimony at 1:44 p.m.] He was not licensed in Arizona in 2014 or 2015. These statements predated his admission to the Arizona bar and were obvious misrepresentations.

Mr. Cartier had no paralegal employees or apparently permanent "staff." He maintained that his three paralegals were his "staff." He admitted they were all independent contractors. [Cartier Hearing Testimony at 1:46 p.m.] Throughout the hearing Mr. Cartier made exagerrations. He testified that he would never make such an exaggeration which was so clearly untrue. We are troubled he consistently exaggerated claims and testimony. It find his statements were without regard for

their truthfulness because it suited his goal to attract clients. We are troubled that it may be because he is incapable of not making such exagerrations.

Mr. Cartier concedes only that he was inarticulate and could have done a better job conveying his legal skills and who he is. He has little to no remorse as he maintains his actions were not intentional misrepresentations.

The website also also included the following information,

> Don Cartier is a rising star in the Arizona legal community. He is a seasoned litigator, having tried cases from multi-million dollar lawsuits and civil rights cases to simple motions on the family law calendar and more complex divorce proceedings.

Mr. Cartier swore he did not write the website statement and never discussed the content. He blamed the webcreator, LeadQ staff, for including that language; regardless, he approved it. He never asked LeadQ staff to remove the erroneous information when he met with them in March 2017 because he swears he never saw the false information on the website. [Id. at 1:56 p.m.] We find his testimony not credible.

Mr. Cartier wrote this language which has multiple false statements. His statement was on the website when it launched on February 1, 2017. He knew what the word meant, admitted that he had never "tried" a case, but used it anyway. [Id. & Cartier Hearing Testimony at 1:13 p.m.] In the JPS he stated he used the word

"seasoned" for a specific purpose. He was "using it to describe the variety of areas of practice he will engage." [JPS, p.14, 2.]

On September 19, 2017, the State Bar contacted LeadQ, the company hosting Mr. Cartier's website. LeadQ confirmed that Mr. Cartier never contacted the company and asked that the site be removed or information corrected. Mr. Cartier failed to take action despite being notified by June 13, 2017 screening letter from the State Bar, regarding his advertised misrepresentation of "25 years" of experience. The language remained on the website for about another 9 months.

At hearing, the owner of LeadQ, Jim Raush, testified that the 25-year reference was written by a website developer and was an example template for Mr. Cartier to review and modify. The testimony of Mr. Cartier was substantively impeached when LeadQ provided a form signed January 30, 2017 by Mr. Cartier approving the website language. The launch generation site was blank when received by Mr. Cartier and it was Mr. Cartier who filled in the blanks. Mr. Cartier acknowledged that it is his handwriting that appears on the Campaign Launch Approval form. [Ex. 59, Bates SBA310 & SBA312; Cartier Hearing Testimony at 1:34:22 p.m.; and Rauch Hearing Testimony at 10:49:44 – 11:10:15.]

The Panel notes that a violation of ER 5.5 (unauthorized practice of law) has not been alleged in the complaint and, while we note it because it further demonstrates his troubling exagerrations, it is otherwise not given weight.

Apparently for mitigation, Mr. Cartier stated that he has a disability[5] which he claims is established because he took the bar examination three times. He requested special accommodations and permission to sit a fourth time and was denied. Ultimately, he was granted special accommodations to take the Arizona bar examination a fourth time. To do so, he stated,

> I had to file a complaint against the Supreme Court because they would not grant me accommodations so that I could represent myself and I had to just basically take on the Arizona Attorney General for the first time, in order for my accommodations to be granted.

There was no exhibit offered of the lawsuit that he claims he filed. When asked by his counsel if he was successful, Mr. Cartier stated, "I am the first person to do so." [Cartier Hearing Testimony at 1:05.] There was nothing objective offered to establish how or whether he was successful against the Supreme Court or if it is another exagerration and he is referring to some settlement obtained.

Mr. Cartier claims what he went through in his complaint against the Supreme Court gives credence to his reference that he is a "seasoned" litigator and someone with varied experience. The Panel finds this as another example of Mr. Cartier's hubris and expansive rendition of facts and his repeated misuse of legal terminology.

Mr. Cartier stated he no longer utilizes the websites. But his reason is not because of their untruthfulness but rather because they failed to generate a sufficient

[5] Testimony related to Mr. Cartier's disability is sealed.

client base or inquiries. Yet, he argued he takes full responsibility for not timely correcting the erroneous information only regarding his claimed 25 years of experience. He claims he did not intentionally misinform the public at large and place the public in danger. He maintains he has a remarkable skill set. Mr. Cartier however, did not reveal to the Panel what makes up his particular skill set. He stated he has "tried" approximately 30 cases between July 2015-February 1, 2017; nine cases were tried as of February 1, 2017 before a judge; there were no jury trials, and one worker's compensation case tried before a hearing officer. While it seems he can define the term, he seems incapable of using the term in conjunction with its definition. It was not clear to the Panel if Mr. Cartier can restrain himself from overexagerrations. He at one point shifted to state that "tried" to him means that "you participated in a case." [Ex. 49, Bates SBA266 & Id. at 1:18 p.m.]

CONCLUSIONS OF LAW

The Panel determined that Mr. Cartier violated the following ethical rules by clean and convincing evidence:

Count One.

Mr. Cartier violated ERs 1.6, Confidentiality, and 5.3, Responsibilities Regarding Nonlawyer Assistants. Comment 2 to ER 1.6 is clear. "A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the

representation. Informed consent is defined in Rule 1.10(e). There was no effort by Mr. Cartier to communicate with the client regarding this disclosure, explain why it was being disclosed or for what purpose, nor any effort to obtain any agreement for that disclosure.

This ethical duty is equally clear from the Restatements of Agency and Law Governing Lawyers. Restatement (Third) of Agency § 8.05 (2006) states that an agent may not disclose or use "confidential information" of principal for agent's own purposes or those of third party. Cartier specially used the information to blameshift his own failings to his paralegal. Restatement (Third) of the Law Governing Lawyers §§ 59–67, 68–86 (2000) clarifies that these confidentiality rules are derived from agency law and professional regulations. The rationalization by Mr. Cartier for this ethical failing call into question whether he has the competence to understand and adhere to these requirements.

E.R. 5.3 mandates that a "nonlawyer, employed, or retained by or associated with a lawyer…" Mr. Cartier advertises his "staff" of paralegals, which he admits are all "independent contractors." In this count he seeks to insulate himself from his "staff" by claiming the paralegal had been hired by the client, prior to his hiring. But he acknowled that same paralegal had been hired by him, apparently as "staff" and gathered his fee well before he even met the client.

None of this is a defense to E.R. 5.3. Regardless whether the paralegal was retained by him or associated with him, he ratifies the actions when he accepted and deposited the fees. Rule 5.3 is concerned with the conduct not only of nonlawyers whom the lawyer employs, but also of nonlawyers "retained by or associated with a lawyer." *See In re Flack*, 33 P.3d 1281 (Kan. 2001).

Count Two.

Mr. Cartier violated ERs 1.15, Safekeeping property and 8.4(c), Misconduct. He also committed multiple trust account record violations under Rules 43(a), 43(f)(1), 43(b)(1)(A), 43(b)(1)(C), 43(b)(2)(A-D), and 43(b)(4) and (5). He also violated Rule 32(c)(3), by failing to keep his address current which delayed these proceedings.

E.R. 1.15 mandated that Mr. Cartier hold the property of clients "separate from the lawyer's own property." His multiple trust account violations were so broad reaching that they were not negligent actions. He knew he was not following those rules, but withdrew monies to benefit himself. The requirement for "complete records" of his account funds was repeatedly violated by his practiced failings.

The first comment to E.R. 1.15 sets the high standard required for every lawyer. "A lawyer should hold property of others with the care required of a professional fiduciary." It specifically references Supreme Court Rules 43 and 44.

E.R. 1.15 is thus supplemented by Rules 43 and 44 but reinforced as well. These rules were repeatedly violated by him.

ER 8.4(c) prohibits a lawyer from engaging in conduct that involves deceit and misrepresentation. Mr. Cartier reported the IOLTA requirements did not apply to him. They did. This reporting by him compounds his multiple trust account violations. His testimony establishes his actions were knowingly if not intentionally done. He swore that he had relied on a notification from the bank that informed him that his client's check had cleared. The evidence was clear, he withdrew his fee the same day as the deposit.

The prohibition of ER 8.4(c) is expansive. While "fraud" is defined in ER 1.0, neither "deceit" or "misrepresentation" are not. Many jurisdictions have determined that a violation of 8.4(c) may be established by negligent conduct. *See Att'y Grievance Comm'n v. Dore*, 73 A.3d 161 (Md. 2013). Somes jurisdictions have found that misrepresentation includes "statements made with reckless disregard for the truth." *See In re Surrick*, 338 F.3d 224 (3d Cir. 2003).

Arizona has determined that a "lawyer cannot violate ER 8.4(c) by acting negligently; a violation of ER 8.4(c) must rest upon behavior that is knowing or intentional and purposefuly deceives or involves dishonesty or fraud." *In re Clark*, 207 Ariz. 414 (Ariz. 2004). Mr. Cartier acted knowingly if not intentionally.

Mr. Cartier was required to keep his address current with the State Bar. He either negligently failed to report an address change or knowingly failed to adhere to his duty. No intent is required for a violation of Rule 32(c)(3). We find his listing on his 2017 dues statement that he was not required to maintain an IOLTA account was knowingly done.

Count Three.

Mr. Cartier violated ERs 7.1, Communications concerning a lawyer's services and 8.4(c), Misconduct. There are two aspects to E.R. 7.1. A lawyer shall not make a, 1) "false communication" or 2) a "misleading communication." Mr. Cartier did both and knew he was when he was making them. The Rule also requires that he not "omit a fact necessary to make the statement considered as a whole not materially misleading." Mr. Cartier knowingly made misrepresentations and false statements regarding his legal experience to enhance his credentials to obtain clients.

The comments again clarify this ethical requirement. Comment two states, "A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation."

Comment three explains, "An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same

results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case."

ER 8.4(c) has long encompassed failures to disclose facts necessary to make statements made not misleading where there is an obligation to disclose. While involving entirely different and not applicable facts to the case sub judice, that principal has been held to apply in Arizona. *See Matter of Fee*, 182 Ariz. 597, (1995).

ABA *STANDARDS* ANALYSIS

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

Count One.

Mr. Cartier knowingly sent one client an email that he had written to his paralegal that contained other client confidential information causing potential injury. He also knowingly failed to supervise his non-lawyer employees. His paralegal conducted an initial consultation with a client without Mr. Cartier being

present. Mr. Cartier further failed to execute an engagement letter or fee agreement regarding the representation which caused actual damage to the client.

Standard 4.2, *Failure to Preserve the Client's Confidences* applies to Mr. Cartier's violation of ER 1.6 and provides that 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.

Standard 7.0 *Violations of Other Duties Owed as a Professional* applies to Mr. Cartier's violation of ERs 5.3. *Standard* 7.2 provides that suspension is generally appropriate when a lawyer knowingly engages in conduct that violates a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."

Count Two.

Mr. Cartier knowingly failed to maintain complete and accurate general ledgers regarding his trust account activity. He failed to keep his address current with the State Bar. He knowingly falsely reported that the IOLTA account requirements were not required of him.

Standard 4.1, *Failure to Preserve the Client's Property* applies to Mr. Cartier's violation of ER 1.15 and provides that suspension is generally appropriate

when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

Standard 5.1, *Failure to Maintain Personal Integrity*, applies to Mr. Cartier's violation of ER 8.4(c) and provides reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

Standard 7.0 *Violations of Other Duties Owed as a Professional* applies to Mr. Cartier's violation of Rule 43. *Standard* 7.2 provides that suspension is generally appropriate when a lawyer knowingly engages in conduct that violates a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."

Count Three.

Mr. Cartier knowingly, if not intentionally, made false or misleading communication about his experience and legal services on his website. Despite being notified by the State Bar of his websites false and misleading statements, Mr. Cartier continued to falsely advertise himself by his disinclination to correct the information.

Standard 7.0 *Violations of Other Duties Owed as a Professional* applies to Mr. Cartier's violation of ER 7.1. *Standard* 7.2 provides that suspension is generally

appropriate when a lawyer knowingly engages in conduct that violates a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."

Standard 5.1, *Failure to Maintain Personal Integrity*, applies to Mr. Cartier's violation of ER 8.4(c) and provides reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

AGGRAVATING AND MITIGATING FACTORS

We again note that Mr. Cartier failed to file his mandated Rule 58(e) disclosure statement. As a result there was no disclosure by him of mitigation or exhibits. In the Joint Prehearing Statement, he stated he had no witnesses, or exhibits and listed no mitigation.

Aggravating Factors

The Panel finds the following aggravating factors are present in this matter: 9.22(b) selfish or dishonest motive, 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceedings, 9.22(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process and 9.22(g) refusal to acknowledge wrongful nature of conduct.

9.22(b) Selfish or dishonest motive and (c) Pattern of Misconduct. In multiple instances Mr. Cartier made false representations on multiple websites regarding his experience in the practice of law to promote himself. These were done selfishly. False statements to a potential client or other individuals can cause a finding of dishonest or selfish motive. *See, e.g., In re Arrick,* 180 Ariz. 136, (Ariz. 1994).

That he continued to maintain one of those sites months after recognizing it contained false and misleading statements, is further evidence of this pattern. There is an unknown number of separate individuals that were potential victims of his false advertising. A pattern of misconduct is demonstrated by a lawyer's "consistent pattern of disregard for obligations under the Rules of Professional Conduct." *In re Gines,* 869 So. 2d 778, 782 (La. 2004)

9.22(d). Multiple offenses commited in the context of one disciplinary proceeding may be an aggravating factor. A court may apply both the aggravating factors of pattern of misconduct and multiple offenses. *In re Moak*, 205 Ariz. 351, (Ariz. 2003)

9.22(e). Bad Faith Obstruction of the Disciplinary Process. Mr. Cartier failed to serve the mandated disclosure statement. While the parties initially settled through a settlement conference, that conference before George Reimer occurred after the disclosure statement had to be served. The settlement officer on February 2, 2018, directed that a settlement agreement be filed based on the parties agreement. A notice

filed on February 5, 2018. It was not disputed that "On the evening of February 28, 2018, Respondent's counsel emailed bar counsel to inform him that Respondent had had a change of heart, and no longer wishes to enter into the settlement terms previously agreed to." Settlements may be reached in which the parties cannot agree to the drafting of a Rule 57 agreement. That would not implicate the finding of this aggravating factor. Here, the settlement terms would be agreed to and Respondent simply no longer wishes to enter into those terms. The combination of failure to disclose and disregarding an "agreed to" settlement warrants this aggravating factor. Failing to cooperate to engaging in delay tactics qualifies as an aggravating factor. *See, e.g., People v. McNamara*, 275 P.3d 792 (Colo. O.P.D.J. 2011).

9.22 (f). Submission of False Statements. During the hearing, the testimony of Mr. Cartier was repeatedly impeached and his testimony was often misleading. A lawyer's "multiple and misleading statements to the court" support a finding of dishonest or selfish motive as an aggravating factor. *See In re Disciplinary Proceeding Against Ferguson*, 246 P.3d 1236, 1239 (Wash. 2011).

9.22(g) Refusal to acknowledge wrongful nature of conduct. In light of the clear evidence of misconduct, Mr. Cartier appeared to maintain he did nothing wrong and rationalized his misconduct. A lawyer who maintains he did nothing wrong in the light of clear evidence that establishes repeated knowing or intentional

misconduct warrants this aggravating factor. *See In re Stein*, 177 P.3d 513, 529 (N.M. 2008)

Mitigation

Mr. Cartier disclosed no mitigation. He testified regarding a health issue but offered no exhibits or corroborating evidence of any medical condition. Maybe he has some personal or emotional problem. It is apparent to the Panel that he is young, inexperienced, naïve and with some issues that are not clear. There was no testimony of any of this; instead Mr. Cartier argues the opposite. We find little to mitigate beyond that some disability at the time of these events *may* shed light on Respondent's misconduct. Because of the paucity of evidence we cannot find mitigating factors 9.32(c), and 9.32 (h). Nonetheless we apply them with 9.32(a) absence of prior sanctions and 9.32(f) inexperience in the practice of law.

The aggravating factors far outweight the mitigating factors.

CONCLUSION

The Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and

instill public confidence in the integrity of individual members of the State Bar. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Panel is deeply concerned over the conduct of Mr. Cartier during the hearing. His conduct was often inexplicable. His attorney struggled to get Mr. Cartier to answer the questions even he posed. As a result, we believe upon reinstatement, a MAP evaluation is essential.

The Panel has determined the sanction using the facts, application of the *Standards*, the aggravating factors and mitigating factors, and the goals of the attorney discipline system. The Panel orders:

IT IS ORDERED Mr. Cartier shall be suspended from the practice of law for six (6) months and one (1) day effective thirty (30) days from this Decision and Order.

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 upon reinstatement, Mr. Cartier shall be placed on probation for two (2) years to include participation in the State Bar's Membership Assistance Program (MAP) and Law Office Management Assistance Program (LOMAP).

IT IS FURTHER ORDERED Mr. Cartier shall pay all costs and expenses incurred by the State Bar. 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 shall follow.

DATED this 25th day of May, 2018.

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

Michael Snitz
Michael Snitz, Volunteer Public Member

Paul D. Friedman
Paul D. Friedman, Volunteer Attorney Member

Copy of the foregoing emailed
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and mailed May 29, 2018, to:

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,	**PDJ 2017-9176**
DON W. CARTIER, Bar No. 033047,	**COMPLAINT**
Respondent.	[State Bar No. 17-0156, 17-1209, and 17-1729]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on June 28, 2016.

COUNT ONE (File No. 17-0156/Rothlisberger)

2. In mid-December 2016, William Rothlisberger hired Respondent for assistance in a child custody matter. Rothlisberger paid Respondent $5,000 at the start of the representation.

3. Respondent's paralegal conducted an initial consultation without Respondent being present and did not provide Rothlisberger with a firm engagement letter or fee agreement.

4. During the representation, Respondent forwarded to Rothlisberger an internal email that he wrote to his paralegal on January 2, 2017. The email included information concerning two other clients, including the clients' names.

5. On January 16, 2017, Rothlisberger terminated the representation by email.

6. In engaging in the above conduct, Respondent violated ERs 1.6 and 5.3.

COUNT TWO (File No. 17-1209/SBA Trust Account)

7. On April 10, 2017, a deposited item in Respondent's trust account in the amount of $5,000.00 was returned unpaid when the balance was $4,691.60. The bank charged a $12.00 returned item fee the same day and charged a $15.00

overdraft fee on the following day, leaving the account with a negative balance of <$323.40>.

8. The Examiner sent Respondent a copy of the overdraft notice and requested an explanation and records, including records covering the period of December 2016 to April 2017. The Examiner requested a response by May 10, 2017. Respondent failed to timely comply.

9. On May 19, 2017, the Examiner sent Respondent a non-response notice requesting a response within ten days. Respondent failed to respond.

10. On May 31, 2017, the Examiner left a voicemail for Respondent requesting an immediate response. Respondent returned the call and attributed the delay to the death of a friend. Later, Respondent attributed the delay to the State Bar's (SBA's) correspondence being sent to his mother's home rather than his office. When the examiner pointed out that correspondence had been sent to Respondent's address of record, Respondent indicated that his address was not up to date with the SBA.

11. Regarding the circumstances surrounding the overdraft, Respondent stated that he deposited a $5,000.00 advance payment that was reported by the bank as clearing two days later. Respondent then disbursed $350.00, resulting in an

overdraft when the deposited item was returned unpaid. Respondent's narrative was factually incorrect, however, in that the examination revealed that the deposit was submitted to the bank on April 6, 2017, and Respondent drafted check number 1002 payable to himself that same day in the amount of $350.00. The disbursement cleared the next day, on April 7, 2017. Respondent thereby disbursed the same day in reliance on uncollected funds that were not from a limited-risk deposit.

12. The Examiner sent Respondent one request for additional information. Respondent complied late, and failed to provide responses or supporting documentation responsive to the Examiner's inquiries.

13. On December 19, 2016, Respondent received an advanced fee payment in the amount of $5,000.00 from client Rothlisberger. Respondent refunded $2,000.00 of the advanced fee after Rothlisberger terminated the representation. In his correspondence to Rothlisberger, Respondent indicated that he held Rothlisberger's funds on deposit through January 2017. A review of Respondent's bank records, however, revealed that this representation was false.

14. During the trust account examination, Respondent provided a general ledger purporting to cover the period of January 2017 to April 2017. The first entry consisted of a purported $53.60 in administrative funds deposited on January 2,

2017. No further activity was recorded until April 2017. Such records were, inaccurate.

15. First, no such administrative funds deposit occurred. In fact, Respondent's administrative funds ledger reflects no activity between December 6, 2016 and January 6, 2017.

16. Second, a total of seven transactions occurred during the month of January, none of which are reflected on the general ledger provided.

17. Third, the general ledger makes no reference to client Rothlisberger at all.

18. Two alternative copies of general ledgers were later obtained by the SBA and these too failed to reflect an accurate record of the activity in the IOLTA.

19. The refund issued to Rothlisberger was disbursed on January 18, 2017, by way of a cashier's check, rather than preprinted pre-numbered check or electronic transfer from the IOLTA.

20. The first disbursement issued on behalf of the client consisted of check number 110 written on December 20, 2017, for earned fees in the amount of $2,300.00. The check cleared the same day. However, Respondent's "real-time"

billings reflect that the firm had only incurred a total of $1,080.00 in combined billings as of that date.

21. The bank assessed a total of $27.00 in fees associated with a returned deposited item from client Shaugnessy. These were subsequently offset by the client's additional advance fee deposit. Despite this, on April 21, 2017, Respondent disbursed check number 1005 to himself in the amount of $50.00, described as an "Overdraft Penalty" and thereby charged the client an additional $50.00 for the returned deposit incident.

22. Respondent's IOLTA bank statements, however, do not reflect any fees beyond the aforementioned $27.00 which was offset by the client's funds. The operating account ledger indicates that the operating account was also overdrawn on April 10, 2017, resulting in a negative <$297.44> balance.

23. The general ledger reflects that by April 18, 2017, the deficit increased to negative <$1,038.94>. The deficit is reflected as being offset the following day on April 19, 2017, by way of a $4,425.00 deposit. The examination revealed that these funds originated from cash withdrawals made from the IOLTA on behalf of client Shaugnessy.

24. Respondent disbursed the same day, in reliance on the funds which were not from a limited-risk item. The preliminary records obtained from Respondent revealed that on April 19, 2017, two cash withdrawals were made from the IOLTA. The first was in the amount of $750.00. Respondent's records associate the disbursement with a "Private Investigation Fee" payable to the firm. The second, in the amount of $3,675.00, is described as attorney's fees earned on or about April 17, 2017.

25. The Examiner advised Respondent that he would need to provide copies of documentation to support his records. Respondent failed to provide any supporting documentation. Bank records reveal four additional instances of cash withdrawals transacted during the period of review. These totaled $2,340.00.

26. Respondent failed to maintain an accurate and complete general ledger. Respondent provided a handwritten ledger, a ledger maintained on Excel, and one maintained on QuickBooks. None were maintained according to the minimum standards. They do not reflect a chronological record of activity transacted in the IOLTA.

27. The QuickBooks version reflects the returned deposited item on April 4, 2017, and the correcting deposit on April 6, 2017. The actual dates were the 10th

and 17th of April, respectively. Furthermore, the QuickBooks version inexplicably begins on January 1, 2017, with a negative <.12¢> balance.

28. Also, all three reflect entries that do not record the actual name of the payor for funds deposited or payee of funds disbursed. In addition, the Excel version erroneously reflects the $12.00 and $15.00 bank fees resulting from the returned deposited item as a "Filing fee" and "Expert fee."

29. Respondent failed to maintain accurate and complete individual client ledgers for all clients who held funds on deposit in the IOLTA. Respondent's client ledger provided for the Rothlisberger matter ends in December of 2016, with a $2,600.00 balance. Bank records reveal that in January of 2017 these remaining funds were fully disbursed. Yet, Respondent's trust records for January do not reflect such disbursements.

30. The client ledger provided for the Shaugnessy matter is not chronological and does not reflect the returned deposited item and subsequent replacement payment. Instead, the ledger reflects a single $5,000.00 deposit dated "4/5/2017--4/17/2017."

31. Respondent failed to maintain an accurate administrative funds ledger accounting for all activity transacted on behalf of the firm. The ledger misleadingly

reflects a $59.91 deposit dated January 6, 2017, for the purpose of a checkbook order charge that occurred the same day. No such deposit is reflected on the general ledger or on the bank statements.

32. Respondent failed to perform proper monthly three-way reconciliations. The reconciliation for the month of December 2016 reflects a three-way reconciliation of $2,660.12. Yet, the ledgers submitted indicate $2,600.00 was held on deposit for the Rothlisberger matter while the administrative ledger reflects a balance of $60.09, a total of $2,660.09, and a difference of .03¢. Because Respondent's trust account ledgers are not maintained according to the minimum standards, a proper three-way reconciliation could not have been properly performed.

33. Respondent failed to maintain copies of the backs of cancelled checks.

34. Respondent's duplicate deposit records do not record the name of the client on whose behalf funds were deposited.

35. Despite establishing and maintaining an IOLTA in December 2016, Respondent reported on his 2017 dues statement, filed electronically on January 19, 2017, that he was not required to maintain an IOLTA.

36. In Engaging in the above conduct, Respondent violated Rule 32(c)(3); Rule 42, ERs 1.15 and 8.4(c); Rule 43(a); Rule 43(f)(1); Rule 43(b)(1)(A); Rule 43(b)(1)(C); Rule 43(b)(2)(A-D); and Rule 43(b)(4) and (5).

COUNT THREE (File No. 17-1729/SBA)

37. During the Bar's investigation in file no. 17-0156, the Trust Account Examiner noticed information on Respondent's website(s) that appeared to be inaccurate.

38. Respondent's website: "Cartierdivorcelawphoenix.com" included the following claim, "At Cartier Law, you have the benefit of working with 25-year family law lawyer attorney Don Cartier and his staff of paralegals and assistants rather than relying on the experience and services of a single attorney."

39. This representation was false; Cartier was admitted to practice in 2016.

40. The website also included the following information, "Don Cartier is a rising star in the Arizona legal community. He is a seasoned litigator, having tried cases from multi-million dollar lawsuits and civil rights cases to simple motions on the family law calendar and more complex divorce proceedings." The quoted language contains false statements.

41. On September 19, 2017, the State Bar contacted LeadQ, the company hosting Respondent's website. LeadQ confirmed that Respondent had never contacted the company and asked that the site be removed. Respondent failed to take action despite being notified by June 13, 2017, screening letter from the State Bar, of the "25 years" of experience misrepresentation.

42. LeadQ provided a form signed by Respondent approving the website language on January 30, 2017.

43. The website Cartierlaw.com, which also belongs to Respondent, included the following language at the start of the Bar's investigation:

a. "In 2015, Cartier Law successfully represented and obtained a settlement for the family of Captain Marc G. Hansen after his life was taken away from him in a tragic helicopter crash near Benson, Arizona."

b. "In 2014, Don Cartier served as co-chair to attorney Alexander Kolodin in a successful Special Action against Santa Cruz County."

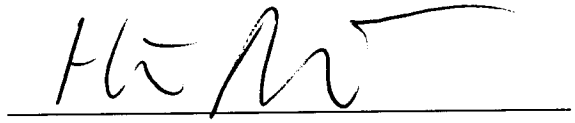
c. In 2015, Cartier Law co-chaired writ of mandamus action with attorney Alexander Kolodin in order to re-instate an illegally cancelled recall election."

44. Respondent was not a licensed attorney in 2014 or 2015 and such statements were misrepresentations.

45. In engaging in the above conduct, Respondent violated ERs 7.1 and 8.4(c).

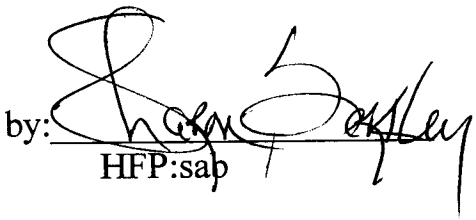
DATED this 6th day of December, 2017.

STATE BAR OF ARIZONA



Hunter F. Perlmeter
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 6th day of December, 2017.



by: _____
HFP:sap

FILED

NOV 13 2017

BY G. Lebon

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. 17-0156 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on November 3, 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 7-0-2[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 17-0156.

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 13 day of November, 2017.

Lawrence F. Winthrop

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

[1] Committee members Donald G. Manring and Jeffrey B. Messing did not participate in this matter.

Original filed this 13th day
of November, 2017, with:

Lawyer Regulation Records Manager
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4201 N. 24th Street, Suite 100
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Copy mailed this 14th day
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Don W. Cartier
7816 W. Marlette Avenue
Glendale, Arizona 85303-4215
Respondent

Copy emailed this 14th day
of November, 2017, to:

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by: Susan Pickley

FILED

NOV 13 2017

BY G. Lebon

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. 17-1209 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on November 3, 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 7-0-2[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 17-1209.

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 13 day of November, 2017.

Lawrence F. Winthrop

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

[1] Committee members Donald G. Manring and Jeffrey B. Messing did not participate in this matter.

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Respondent

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E-mail: LRO@staff.azbar.org

by: Shawn Bertley

FILED

NOV 13 2017

BY E. Lebn

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. 17-1729 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on November 3, 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 7-0-2[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 17-1729.

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 13 day of November, 2017.

Lawrence F. Winthrop

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

[1] Committee members Donald G. Manring and Jeffrey B. Messing did not participate in this matter.

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by: Lacey Peeples