

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

JOHN P. FLYNN,
Bar No. 015065

Respondent.

PDJ-2018-9136

**FINAL JUDGMENT AND
ORDER OF SUSPENSION**

[State Bar No. 18-0411]

FILED JULY 31, 2019

This matter came for hearing before the hearing panel (Panel) which rendered its decision on July 15, 2019 imposing a six month and one day suspension and requiring a Member Assistance Program (MAP) assessment as a prerequisite to filing for reinstatement. The decision of the Panel is final under Rule 58(k), Ariz. R. Sup. Ct. No request for stay or notice of appeal was filed under Rule 59, Ariz. R. Sup. Ct., and the time now having expired,

IT IS ORDERED Respondent, **JOHN P. FLYNN, Bar No. 015065**, is suspended from the practice of law for six (6) months and one (1) day retroactive to January 18, 2019, the effective date of his administrative suspension for his failure to comply with mandatory continuing legal education requirements.

IT IS FURTHER ORDERED as a prerequisite to reinstatement, Mr. Flynn shall undergo a full MAP evaluation by Dr. Lett and adhere to his recommendations.

IT IS FURTHER ORDERED Mr. Flynn 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. Flynn shall pay the costs and expenses of the State Bar of Arizona totaling \$4,175.00 pursuant to Rule 60(b), Ariz. R. Sup. Ct. There are no costs or expenses incurred by the Presiding Disciplinary Judge's Office in these disciplinary proceedings.

DATED this 31st day of July 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 31st day of July 2019 to:

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A
SUSPENDED¹ MEMBER OF THE
STATE BAR OF ARIZONA,

JOHN P. FLYNN,
Bar No. 015065

Respondent.

PDJ-2018-9136

**DECISION AND ORDER
IMPOSING SANCTIONS**

[PUBLIC]

[State Bar No. 18-0411]

FILED JULY 15 , 2019

SUMMARY

In 2015, Mr. Flynn was stopped by a police officer for failing to yield to oncoming traffic. On December 15, 2015, he pleaded guilty to extreme DUI, a class 1 misdemeanor.

In 2017, Mr. Flynn was hired by a client (“Mrs. Stren”) who was the executrix of her late husband’s estate. Mr. Flynn was hired to defend a business-related law suit filed against the estate, and to represent Mrs. Stren individually. During this representation, Mr. Flynn assured his client and his law firm partners that settlement in Mrs. Stren’s matter was close and that the case was under control. He assured his partners he had been communicating with Mrs. Stren. This was untrue. He had

¹ Mr. Flynn was summarily suspended for failure to comply with the State Bar’s mandatory continuing legal education requirements

abandoned that client and failed to communicate with her, assuring judgment and additional sanctions were entered against her.

The parties stipulate that his conduct violated the following Arizona Rules of Professional Conduct (ERs):

- 1.2(a): Consultation with the client regarding representation objectives
- 1.3: Diligence
- 1.4(a) and (b): Communication
- 1.15(d): Prompt notification to client regarding receipt of funds
- 1.16(a) and (d): Proper withdrawal from representation
- 3.4(c): Obedience to rules of a tribunal
- 8.4(b): Criminal act
- 8.4(d): Conduct prejudicial to the administration of justice
- Rule 54(c): Knowingly violate any rule or order of the Court

He is ordered suspended from the practice of law for six (6) months and one (1) day to protect the public and the profession through formal reinstatement proceedings.

PROCEDURAL HISTORY

All of the factual allegations in the complaint were admitted. This matter proceeded as an aggravation/mitigation hearing. The assigned hearing panel comprised Presiding Disciplinary Judge (“PDJ”) William J. O’Neil who was joined

by volunteer attorney member Stanley R. Lerner, and volunteer public member Melvin O'Donnel ("Hearing Panel"). Senior Bar Counsel James D. Lee represented the State Bar. James E. Padish represented Mr. Flynn.

Exhibits 1-37 were admitted during the hearing and exhibits 33-37 were sealed at the parties' request. The Hearing Panel heard and considered adverse testimony from Mrs. Stren, who testified telephonically. The Hearing Panel also heard and considered testimony from Stephanie Bert, MSAC, LASC; Michelle Carasco, COO, Arizona Rehab Companies ("ARC"); Mike Zipprich, CEO, ARC; Franklyn D. Jeans; and Mr. Flynn. Testimony from Stephanie Bert, Michelle Carasco, Mike Zipprich, and Franklyn D. Jeans was sealed at the parties' request. Parts of Mr. Flynn's testimony was also sealed at the parties' request.

ESTABLISHED FACTS BY ADMISSION AND RULE VIOLATIONS²

1. At all times relevant, Mr. Flynn was a lawyer licensed to practice law in Arizona, having been first admitted to practice in Arizona on October 23, 1993. Aside from the misconduct described in the State Bar's complaint filed December 28, 2018, Mr. Flynn has no prior disciplinary history.

Count I: DUI Charge

2. Mr. Flynn was stopped by a Scottsdale Police officer at approximately 12:30 a.m. on March 15, 2015, for failing to yield to oncoming traffic (the officer's

² These admitted and stipulated facts were undergirded by Exhibits 1-32.

patrol vehicle) while making a left turn. The officer was able to avoid a collision. Mr. Flynn was arrested for driving under the influence of alcohol (DUI). He was charged with DUI while impaired to the slightest degree, DUI with BAC³ of 0.08% or more, extreme DUI (BAC of 0.15% or over), and failure to yield when exiting from a private road or drive (State v. Flynn, Scottsdale City Court No. TR2015-007153),

3. On December 15, 2015, Mr. Flynn pleaded guilty to extreme DUI, a class 1 misdemeanor (stipulated to a BAC of 0.171%). All other charges were dismissed. Mr. Flynn was ordered to serve 30 days in jail, with 21 days suspended, submit to alcohol screening, complete 36 hours of alcohol education/treatment at Alternative Education Solutions, use an ignition interlock device, and pay \$3,251.13 in fines and fees. Mr. Flynn completed all terms of the sentence.

4. By engaging in the conduct set forth above, Mr. Flynn violated ER 8.4(b),

Count II: Representation of Ms. Stren

5. Steven Stren ("S. Stren") was a manager of a limited liability company that served as the general partner of the Williamsfield/Higley Limited Partnership. Steven Stren died in December 2012. He was survived by his wife, Mrs. Stren.

³ Blood Alcohol Content.

6. On April 22, 2016, Williamsfield/Higley Limited Partnership (“Plaintiff”) sued S. Stren’s estate (Williamsfield/Higley Limited Partnership v. Estate of Steven Stren, Maricopa County Superior Court No. CV2016-052096). The lawsuit alleged breach of contract and the obligation of good faith and fair dealing, and failure to repay loans. The plaintiff requested approximately \$700,000 in damages, plus interest.

7. Mrs. Stren, as executrix of S. Stren’s estate, hired Mr. Flynn to represent her and the estate. Mr. Flynn filed an answer on behalf of the estate on January 27, 2017.

8. On April 23, 2017, Plaintiff moved to amend the complaint. Mr. Flynn filed no response. This led to Plaintiff moving for summary ruling on the motion to amend. On May 1, 2017, the assigned Superior Court Judge (“Judge”) granted the motion to amend. The first amended complaint was filed on May 2, 2017.

9. Mr. Flynn submitted a Mediation Memorandum before the scheduled settlement conference, and appeared at the settlement conference on May 24, 2017.

10. Mr. Flynn initially filed no answer to the First Amended Complaint. Plaintiff applied for entry of default on July 12, 2017. Mr. Flynn then filed an answer to the First Amended Complaint on July 26, 2017.

11. On August 18, 2017, the Superior Court Judge (“Judge”) ordered the parties to submit a Joint Pretrial Statement (JPS) that complied with Civil Rule 16(d)

by 5:00 p.m., November 9, 2017. The parties were also ordered to have all trial exhibits for marking by no later than November 17, 2017. The estate was ordered to provide copies of any exhibits to Plaintiff's counsel by November 2, 2017, and proposed jury instructions and time estimates for trial to the Judge by November 9, 2017. The Judge's minute entry cautioned that, "No information disclosed after the dates contained in the order may be used at the trial absent Court order on motion and affidavit."

12. During the pendency of the Williamsfield/Higley Limited Partnership case, Mr. Flynn failed to submit:

- (a) a disclosure statement to Plaintiff's counsel;
- (b) any information to Plaintiff's counsel for the preparation and filing of a JPS by November 9, 2017, as ordered by the Judge;
- (c) copies of any exhibits to Plaintiff's counsel as ordered by the Judge;
- (d) any jury instructions or time estimates to the Judge as ordered.

13. Because of these failures to comply with the Judge's orders, Plaintiff moved for sanctions (to strike the estate's answer, enter default, and award attorney's fees and expenses).

14. On November 13, 2017, the Judge entered a minute entry stating that the estate's "failure to timely file anything or cooperate with Plaintiff in filing what was previously Superior Court ordered is unacceptable." The Judge reset the

deadline for filing/submitting everything that was previously ordered to be filed/submitted to 5:00 p.m., November 16, 2017. The Judge further ordered that a hard copy of all filed documents had to be hand-delivered to the Judge by no later than 5:00 p.m., November 16, 2017. The Judge reset the final trial management conference from November 17 to November 20, 2017.

15. On November 16, 2017, Plaintiff filed an Emergency Motion of Plaintiff to Submit Its Part of the Pretrial Filings and to Grant Sanctions. It asserted that the estate had failed to cooperate with Plaintiff's counsel and had been unresponsive. Plaintiff re-urged its November 13, 2017 motion for sanctions.

16. On November 17, 2017, Mr. Flynn moved for an Extension of Time to File Final Pretrial Statement, asserting he was delayed on complying with the Court-ordered deadline of November 16 due to the death of his uncle. On that same date, Mr. Flynn filed and submitted the required documents.

17. On November 20, 2017, the Judge heard oral argument on Plaintiff's motion for sanctions. The Judge denied Mr. Flynn's Motion for Extension of Time to File Final Pretrial Statement as untimely, and granted Plaintiff's motion for sanctions. The Judge ordered:

- (a) precluding Mr. Flynn from offering any exhibits at trial;
- (b) admitting all of Plaintiff's exhibits into evidence;

(c) precluding Mr. Flynn from submitting any proposed jury instructions; and

(d) precluding Mr. Flynn from conducting any voir dire of the jury.

Following that ruling from the bench, the parties stipulated to a one-day trial to the Superior Court on December 4, 2017.

18. On December 1, 2017, Mr. Flynn filed an Emergency Motion to Continue the Trial. It explained that Mrs. Stren fell and injured her ankle the day before and had been advised by a physician that she was not fit to fly to Arizona for the trial. Mr. Flynn attached to the motion a letter from Mrs. Stren's physician.

19. Mr. Flynn appeared in Court on December 4, 2017, but Mrs. Stren was not present because she was cautioned against traveling due to her severe injury. One or more witnesses were present on Plaintiff's behalf. On December 4, the Judge took the Emergency Motion to Continue the Trial under advisement.

20. Prior to trial beginning on December 4, 2017, Mr. Flynn and Plaintiff's counsel informed the Judge that they had reached an agreement ("the December 4 agreement"). Mr. Flynn failed to discuss the agreement with his client prior to entering it. Both counsel agreed that in exchange for Plaintiff withdrawing its objection to continue, the case would settle by January 15, 2018, or Mrs. Stren would pay for Plaintiff's witnesses' airline tickets, hotel expenses and meals for two days, and "reasonable compensation for [one witness's] time" in cash. Both counsel also

agreed that if a settlement were not reached by January 15, 2018, that a judgment would be entered in Plaintiff's favor and against the estate in the amount sought and as set forth in first amended complaint and pretrial statement. Mr. Flynn entered into that agreement. He did not communicate anything regarding this to Mrs. Stren.

21. Mr. Flynn also agreed, without consulting with Mrs. Stren or obtaining her consent, that she had no defense to a claim regarding a line of credit for \$97,000.

The minute entry for December 4, 2017, stated in part:

Further, the Defendant Cynthia Stren has no defense to the amounts as stated as claiming to be owed to Plaintiff George Eisenberg by Defendant Cynthia Stren that is sought in the pretrial statement, as a line of credit totaling \$97,000.

....

The Court accepts the verbal agreement made on the record by the parties to try and resolve this matter no later than January 15, 2018; if the matter is not resolved, the Defendant has agreed to reimburse the expenses and other terms as set forth on the record.

22. In spite of the terms of the agreement he entered into without his client's knowledge, Mr. Flynn failed to communicate with Plaintiff's counsel about settlement or anything else between December 5, 2017, and January 15, 2018. Plaintiff's counsel sent several email reminder messages to Mr. Flynn. Plaintiff's counsel provided him with a transcript of the December 4, 2017 hearing. [Exs. 10-14.] He provided Mr. Flynn with copies of receipts and records for \$9,905.86 in expenses incurred and compensation for Plaintiff's representative to appear for the

December 4, 2017 trial. Plaintiff's counsel reminded Mr. Flynn or his assistant three times by email of the deadline for settling the matter. Mr. Flynn never responded to him. He would never hear from Mr. Flynn.

23. On January 18, 2018, Plaintiff filed a Notice of Submission of Judgment pursuant to Stipulation of December 4, 2017, [Ex. 15.]

24. Mr. Flynn falsely assured the senior attorneys of his law firm ("Firm") that: (a) he had been in communication with Mrs. Stren or her representative; (b) settlement was close; and (c) the matter was under control. Intent under the ABA Standards for Imposing Lawyer Sanctions at 17 (1991 ed.), is "the conscious objective or purpose to accomplish a particular result." Mr. Flynn intended to mislead his partners by covering up his conduct. He intended to do the same to his client. Based on the information provided by Mr. Flynn, the Firm conveyed the false information it was provided by Mr. Flynn to Mrs. Stren. She was informed that Mr. Flynn had been spoken with and that Mr. Flynn indicated that the matter was under control.

25. During the time leading up to the January 29, 2018 trial, Mr. Flynn was rarely, if ever, in the Firm office.

26. On January 29, 2018, the Judge entered judgment in Plaintiff's favor against Mrs. Stren, totaling approximately \$700,000, plus ongoing interest.

27. Someone at the Firm informed Mr. Flynn about Mrs. Stren's concerns. It was not negligence that led Mr. Flynn to again be deceitful. Mr. Flynn was intentionally untruthful in informing the Firm's managing partner and its' general counsel, that he had communicated with Stren or her representative and that the matter was under control.

28. During the time that Mr. Flynn represented Mrs. Stren, she asked him frequently over a several-month period to file a new statutory agent appointment with the Arizona Corporation Commission to prevent an administrative dissolution of Williamsfield Management, LLC ("WML"), a limited liability company in which her deceased husband had an interest, but Mr. Flynn failed to do so even though he claimed he had.

29. Mrs. Stren informed Mr. Flynn that reinstatement of WML was important to the defense of the estate because WML - and not the estate - should have been the defendant in the case.

30. Mr. Flynn failed to adequately communicate with Mrs. Stren during the time he represented her. At times, Mr. Flynn was unresponsive to her and failed to call her as promised.

31. While being represented by Mr. Flynn, Mrs. Stren provided Mr. Flynn with possible witnesses to interview, but he failed to do so.

32. After Mr. Flynn's representation of Mrs. Stren concluded, he failed to provide Mrs. Stren or the Firm with the file he maintained on her and the estate's behalf.

33. On February 9, 2018, Plaintiff filed an affidavit in support of attorney's fees, a Statement of Costs and Notice of Taxation, and a Judgment Creditor's Motion for Charging Order against Judgment Debtor's Interest in Limited Partnership.

34. On February 13, 2018, general counsel for the Firm filed a notice of appearance on Mrs. Stren's behalf and a Rule 59 Motion for New Trial and Rule 60 Motion for Relief from Judgment. The motion raised no substantive defenses to the allegations in the complaint, but instead raised possible concerns about Mr. Flynn's representation of Mrs. Stren. Mr. Flynn failed to provide the file he maintained regarding the Stren matter to Mrs. Stren, or to Mr. Flynn's partners at the firm.

35. On March 14, 2018, general counsel for the Firm moved to withdraw as Stren's counsel because of the possible conflict created by Mrs. Stren's potential malpractice claim against the Firm.

36. On March 20, 2018, the Judge entered an order granting Plaintiff reasonable attorney's fees and costs in the amounts of \$28,945 and \$951.10, respectively. On that same date, the Judge denied the Firm's Rule 59 and 60 motions, finding that an attorney's malpractice in litigation entitles no client to Rule 59 or

Rule 60 relief. The Judge also affirmed the January 29, 2018 judgment and granted the firm's motion to withdraw.

37. On March 27, 2018, the Judge granted Plaintiff's motion for charging order, which allowed Plaintiff to take possession of the interest of the S. Stren estate in the partnership to satisfy the January 29, 2018 judgment.

38. On April 20, 2018, the Judge entered an order formally denying the estate's Rule 59 motion for new trial and Rule 60 motion for relief from judgment. Mrs. Stren obtained new counsel for the estate, who filed a notice of appeal and a motion to set aside judgment.

39. On September 10, 2018, the Arizona Court of Appeals stayed the appeal and revested jurisdiction with the Superior Court to allow it to rule on the motion to set aside judgment. As of November 28, 2018, the Superior Court had not ruled on the estate's motion to set aside judgment.

40. By engaging in the conduct set forth above, Mr. Flynn violated ER 1.2(a), ER 1.3, ER 1.4(a) and (b), ER 1.16(a) and (d), ER 3.4(c), ER 8.4(c) and (d), and Rule 54(c), Ariz. R. Sup. Ct.

41. We note that the State Bar did not present demonstrative evidence to support a violation of ER 1.15(d). However, Mr. Flynn admitted that this allegation was true. The parties stipulated that all the facts admitted to in the complaint were

true. Such a stipulation as to the facts by the parties is conclusive.⁴ We thereby find a violation of ER 1.15(d).

ANALYSIS UNDER THE ABA STANDARDS

“Sanctions imposed shall be determined in accordance with the American Bar Association Standards for Imposing Lawyer Sanctions...”⁵ Those “Standards” and Arizona Supreme Court case law guide the imposition of sanctions for lawyer misconduct.

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.⁶

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.⁷ 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.⁸ These variables yield a presumptive sanction that may be overcome based on aggravating and mitigating factors.⁹

⁴ *Higgins v. Guerin*, 74 Ariz. 197, 190 (1952).

⁵ Rule 58(k), Ariz. R. Sup. Ct.

⁶ Standards, Section III (A)(1.1).

⁷ *In re Abrams*, 227 Ariz. 248, 250-51 (2011).

⁸ *In re Van Dox*, 214 Ariz. 300, 303 (2007) (citing Standard 3.0).

⁹ *Id.* at 306.

If multiple ethical violations are at issue, “[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.”¹⁰ The Standards define “Knowledge” as the “conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.”¹¹ Mr. Flynn knowingly violated nearly a dozen ethical rules. We find he was intentionally dishonest about his inaction in the Stren matter. The Hearing Panel determined a suspension is the presumptive sanction for Mr. Flynn’s misconduct.

1. Standard 4.12 – Failure to Preserve Client’s Property

This standard applies to Mr. Flynn’s violation of ER.1.15(d). It states, “Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person.” The Standard 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. Mr. Flynn admitted to this violation.

¹⁰ Standards, Section II, Theoretical Framework, p. 7.

¹¹ Standards, Section III, Definitions.

2. Standard 4.42 – Lack of Diligence

This standard applies to Mr. Flynn's violation of ERs 1.2(a), 1.3, 1.4(a) and (b). It provides that "[s]uspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."

Mr. Flynn knowingly, if not intentionally, entered into the December 4 agreement without Mrs. Stren's consent. Mr. Flynn unilaterally agreed that if the case failed to settle by the deadline, that Mrs. Stren would pay for Plaintiff's witnesses' airline tickets, hotel expenses and meals for two days, and "reasonable compensation for [one witness's] time," in cash. He also agreed with opposing counsel that if a settlement were not reached by January 15, 2018, that a judgment would be entered in Plaintiff's favor and against the estate in the amount sought. These were not negligent acts. He knowingly ignored multiple efforts by opposing counsel to reach settlement in accord with the agreement.

Mr. Flynn failed to timely submit, to the Court or to opposing counsel, disclosure statements, relevant materials for a JPS, copies of exhibits, proposed jury instructions, or time estimates. He repeatedly failed to communicate with opposing counsel and failed to file a new statutory agent appointment with the Arizona Corporation Commission. Mrs. Stren provided Mr. Flynn with a list of possible

witnesses to interview, but he conducted no interviews. Mr. Flynn's inaction and lack of diligence in Mrs. Stren's defense assured judgment would be entered against her.

We make no effort to determine what the outcome would have been if Mrs. Stren had received adequate representation. Mr. Flynn is an experienced lawyer. He knew that his misconduct posed serious consequences for his client, but he not only did nothing to investigate her defenses, he actively covered up his misconduct at her expense. There was no evidence that in any other case which he handled during this pertinent time that his practice of law was impacted by his stated alcoholism.

His conduct was grossly below what is expected of an attorney. His inactions doomed any potential for defense and his actions assured actual harm to her. We do not ignore the findings of the Court that the judgment was not based on the complete merits but limited to the plaintiff's evidence because of his legal malpractice. His unilateral settlement and dishonesty regarding it led to sanctions against the unaware Mrs. Stren and an uncontested default judgment in the Plaintiff's favor.

Regardless of the merits of her defense in the case, she was actually harmed by the sanctions imposed against her for his unilateral entering into a settlement. This was coupled with his complete failure to give notice of the agreement or to take steps to achieve settlement and his ignoring of the plaintiff's active attempts to force him to act towards that settlement by repeatedly communicating with him.

3. Standard 5.12 – Failure to Maintain Personal Integrity

This standard applies to Mr. Flynn’s violation of ERs 8.4(b), and provides that “[s]uspension is generally appropriate when a lawyer knowingly engages in criminal conduct . . . that seriously adversely reflects on the lawyer’s fitness to practice.”

Mr. Flynn pleaded guilty to extreme DUI in March of 2015. Though a misdemeanor charge, a DUI is an offense of moral turpitude that shows an indifference to the welfare of others.

4. Standard 6.22 – Abuse of the Legal Process

This standard applies to Mr. Flynn’s violation of ER 3.4(c) and provides that “[s]uspension 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 to a legal proceeding.”

Mr. Flynn knowingly, if not intentionally, failed to timely file documents, comply with discovery orders, cooperate with opposing counsel, or provide time estimates to the superior court. These failures in the Stren matter caused unnecessary delay and expense for opposing counsel, the court, his client, and for his own law partners.

5. Standard 7.3 - Violations of Duties Owed to the Profession

This standard applies to Mr. Flynn’s violation of ERs 1.16(a) and (d), 8.4(d), and Ariz. R. Sup. Ct. 54(c), and provides that “[s]uspension is generally appropriate

when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system.”

Mr. Flynn took no “reasonably practicable” steps to protect Mrs. Stren’s interests. Mr. Flynn failed to provide the file he maintained regarding the Stren matter to Mrs. Stren, or to Mr. Flynn’s partners at the firm. He was dishonest with his partners and his client. Mr. Flynn had a duty to protect Mrs. Stren and her late husband’s estate, but by lying to his partners, failing to interview witnesses, failing to consult with Mrs. Stren and by failing to at least transfer the file to another attorney in his firm he exposed her and the estate to more harm.

Mr. Flynn failed to cooperate with opposing counsel, to cooperate with Court orders, and to meet Court-imposed deadlines. These failures caused injury to the client, eroded trust between law partners, and weakened Mrs. Stren’s confidence in the legal system.

Mrs. Stren testified that it was appalling to her that in the American legal system, “the fact that a lawyer could so severely ignore his duties and responsibilities to the client and to the Court and have the brunt of those shortcomings fall upon the client is unconscionable.” Testimony of Cynthia Stren 6/18/19, 9:59:56 a.m. – 10:02:53 a.m. While we do not consider any recommendation a complainant makes

for a sanction as a mitigating or aggravating factor, we do consider the impact the misconduct has had on her personally and her view of the profession in general.

Aggravating/Mitigating Factors

Aggravating factors are any that “may justify an increase in the degree of discipline to be imposed.”¹² Conversely, mitigating factors justify a more lenient level of discipline.¹³

In Mr. Flynn’s case, the State Bar alleged a multitude of factors in aggravation and mitigation for the Hearing Panel to consider. Mr. Flynn, accepted and agreed with these factors as presented by the State Bar at the close of the aggravation/mitigation hearing.¹⁴ The weight of each factor is determined in light of the circumstances that resulted in the misconduct. The factors, as presented by the State Bar and found by the Hearing Panel, are:

In aggravation:

1. 9.22(b) – Dishonest or Selfish Motive

A dishonest or selfish motive is an aggravating factor when an attorney makes misrepresentations to hide negligence.¹⁵ False statements to a client,

¹² Standard 9.21, ABA Standards.

¹³ Standard 9.31, ABA Standards.

¹⁴ State Bar Closing Statement 6/18/19, 1:24:39 p.m. – 1:25:22 p.m; Respondent Closing Statement 6/18/19, 1:22:05 p.m. – 1:22:21 p.m.

¹⁵ In re Peasley, 208 Ariz. 27, 37 (2004).

opposing counsel or other individuals can result in a finding of dishonest or selfish motive under Standard 9.22(b).¹⁶

The evidence clearly shows Mr. Flynn actively deceived Mrs. Stren, his law partners, and others to hide his own misconduct regarding the Stren matter. Mr. Flynn assured Mrs. Stren, either directly or through others, that her case was under control. It was not. Mr. Flynn told Mrs. Stren that he had filed a new statutory agent appointment for WML with the Arizona Corporation Commission. He had not. Mr. Flynn entered into a pre-settlement agreement on Mrs. Stren's behalf, though he had not consulted with her regarding its terms. The Hearing Panel finds Mr. Flynn's motives were dishonest, misleading, fraudulent, deceitful, and selfish, all in aggravation of his disciplinary sanction.

2. 9.22(c) - Pattern of Misconduct

The State Bar asserts Mr. Flynn failed to properly represent Mrs. Stren in "numerous instances" throughout the representation, and this amounts to a pattern of misconduct¹⁷. The Hearing Panel disagrees. This aggravator "applies to lawyers who repeatedly engage in ethical misconduct in different contexts."¹⁸

Aside from Mr. Flynn's DUI conviction, his misconduct arose from his actions in a single matter: his representation of Mrs. Stren. He also has no

¹⁶ In re Arrick, 180 Ariz. 136 (1994).

¹⁷ State Bar Closing Statement 6/18/19, 1:19:16 p.m. – 1:19:36 p.m

¹⁸ In re Alexander, 232 Ariz. 1, 15 (2013). Also In re Levine, 174 Ariz. 146 (1993).

disciplinary history. The misrepresentation lasted more than a year, and the evidence indicates that Mr. Flynn committed multiple offenses during that representation. However, “[c]ommission of multiple offenses does not necessarily equate to a ‘pattern of misconduct.’”¹⁹ The Hearing Panel does not find Mr. Flynn’s misconduct constitutes an aggravating pattern.

3. 9.22(d) – Multiple Offenses

The aggravating factor of multiple offenses may be applied when misconduct involves multiple clients or multiple matters.²⁰ The Hearing Panel finds Mr. Flynn’s misconduct regarding his representation of Mrs. Stren and his personal DUI conviction satisfy the requirements for this factor’s application.

4. 9.22(h) – Vulnerability of Victim

A victim’s vulnerability turns upon the circumstances, not upon the victim’s education or professional background.²¹ Mrs. Stren was seeking Mr. Flynn’s help in resolving a dispute regarding her late husband’s estate. Besides the inherently personal and emotional nature of the case, given the recent death of her husband, the amount in controversy was substantial. If mishandled, Mrs. Stren could be, and was, exposed to personal liability.

¹⁹ *In re Alexander*, 232 Ariz. 1, 15 (2013).

²⁰ *In Re Peasley*, 208 Ariz. 27 at 37 (2004).

²¹ *Matter of Shannon*, 179 Ariz. 52, at 69 (1994).

Mr. Flynn failed to communicate with Mrs. Stren, failed to comply with Court orders, and failed to file various documents on behalf of Mrs. Stren, all while assuring others that he was working on her case. While already a potentially vulnerable client, these assurances left Mrs. Stren exposed and more vulnerable than she would have otherwise been. The Hearing Panel agrees with the State Bar that vulnerability of the victim is an aggravating factor here.

5. 9.22(i) - Substantial Experience in the Practice of Law

When taken together, aggravating factors may be offset by mitigating factors. For example, where an attorney's substantial experience in the practice of law portends to aggravate his/her disciplinary sanction, this factor may sometimes be offset if the attorney can also show an absence of prior disciplinary history.²² However, an attorney's substantial experience "deserves closer examination and should not simply be 'offset' by a supposedly unblemished record."²³

As a veteran lawyer, Mr. Flynn was entrusted with increasingly complex cases that also carried an increasing potential for harm if mishandled. The harm to Mrs. Stren that resulted from Mr. Flynn's misconduct was severe. Mr. Flynn's failure to adequately comply with Court orders prior to the December 4, 2017 trial date doomed any defense by precluding Mrs. Stren from offering exhibits, submitting

²² In Re Shannon, 179 Ariz. 52 at 68 (1994).

²³ In Re Peasley, supra at 36 (2004).

jury instructions, or conducting voir dire. His repeated assurances that he had Mrs. Stren's case under control precluded any potential for mitigating the harm he was causing to his client by her seeking replacement counsel.

A twenty-five year career without formal discipline is commendable. However, every admitted lawyer is expected to practice ethically and without requiring discipline. Mr. Flynn's experience and station surely contributed to others' reliance on his repeated assurances that he had Mrs. Stren's case under control. Statements from a less experienced lawyer would not have been relied upon in the same way. The Hearing Panel finds the aggravating factor of Mr. Flynn's substantial experience as a lawyer is not offset by his lack of a disciplinary record.

6. 9.22(k) – Illegal Conduct

The State Bar alleged that Mr. Flynn's DUI conviction should be considered as an aggravating factor as illegal conduct. The Hearing Panel disagrees. Mr. Flynn pled guilty to extreme DUI, a class 1 misdemeanor. However, this conduct is incorporated in the charged violation of ER 8.4(b). The Hearing Panel finds that Mr. Flynn's illegal conduct stemming from his DUI conviction is not an aggravating factor for discipline.

In mitigation:

1. 9.32(a) – Absence of Prior Discipline

The absence of prior discipline may sometimes offset the aggravation from an attorney's substantial experience in the practice of law. For the reasons already set forth, the Hearing Panel does not find such an offset to be appropriate.²⁴

2. 9.32(c) – Personal/Emotional Problems

Mr. Flynn claims he suffers from chronic pain, specifically back pain, and had often self-medicated with alcohol.²⁵ He swore that increased stress from personal business and back tax owed of \$1,500,000 pushed him into "full-tilt alcoholism."²⁶

However, Mr. Flynn swore that even in his last month of employment with the Firm at the claimed peak of his alcoholism, he could still moderate his drinking to accommodate Court hearings and other responsibilities.²⁷

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁸ We address her testimony further

²⁴ See analysis of 9.22(i) - Substantial Experience in the Practice of Law above.
²⁵ Testimony of John P. Flynn 6/18/19, 12:24:13 p.m. – 12:29:00 p.m.
²⁶ Id. at 12:29:00 p.m. – 12:35:23 p.m.
²⁷ See Id.
²⁸ Sealed Testimony of Stephanie Bert 6/18/19, 10:47:17 a.m. – 10:56:26 a.m.

under Character and Reputation below but we find Ms. Bert's opinion to be unpersuasive.

"Issues of physical and mental disability or chemical dependency offered as mitigating factors in disciplinary proceedings require careful analysis."²⁹ While we do not discount the potential impact and misery of alcoholism, little was offered regarding such an impact. Little was offered to establish a direct causation between Mr. Flynn's alcoholism and his misconduct. Notwithstanding, we give this mitigating factor the weight it deserves.³⁰

3. 9.32(e) - Full and Free Disclosure, Cooperative Attitude

Mr. Flynn admitted all allegations of misconduct in the State Bar's complaint.³¹ At the hearing, the State Bar attested to Mr. Flynn's full and free disclosure and cooperative attitude toward the proceedings.³² Without this, we would have imposed a far more serious sanction. The Hearing Panel finds Mr. Flynn's full and free disclosure to the State Bar and his cooperative attitude during the proceedings to be a significant mitigating factor.

Supreme Court Rule 58(k) directs that the hearing panel "shall" determine any sanction in accordance with the Standards. That Rule also directs that, "if

²⁹ Standards 9.0 Aggravation and Mitigation Commentary, p. 52.

³⁰ *In re Abrams*, 227 Ariz. 248, 253 (2011); *Matter of Bowen*, 178 Ariz. 283, 287 (1994); see *In re Scholl*, 200 Ariz. 222, 226 (2001); and *In re Augenstein*, 178 Ariz. 133, 137-38 (1994).

³¹ Respondent's Answer Filed January 31, 2019.

³² State Bar's Closing Statement 6/18/19, 1:20:19 p.m. – 1:20:27 p.m.

appropriate, a proportionality analysis” also be done. We note in multiple cases³³ prolonged suspension have been imposed for ethical violations committed during a period of alcoholism.

4. 9.32(g) – Character or Reputation

Mr. Flynn is part of the executive management team at American’s Rehab companies. The Hearing Panel considered both oral and written testimony from current employers, associates, and a counselor of that entity. Each of these individuals testified to Mr. Flynn’s moral character and work ethic. They each valued his professional contributions and trusted him wholeheartedly. All of the individuals who testified (and wrote letters)³⁴ on behalf of Mr. Flynn have been or are employees of Arizona Rehab Companies. Mr. Franklin Jeans was the only licensed attorney who testified on Mr. Flynn’s behalf.

Stephanie Bert, a therapist, worked on the Arizona Rehabilitation Campus in Tucson.³⁵ [REDACTED]

[REDACTED]

[REDACTED]³⁶ [REDACTED]

³³ In re Loftus, 171 Ariz. 672 (1992); and In re Nicolini, 168 Ariz. 448 (1991) (two year suspensions were imposed); In re Arrick, supra (four year suspension was imposed).

³⁴ Mr. Wagenhals did not testify but wrote a letter. He is the CEO of Ammo Inc., an ammunitions manufacturer. He believes Mr. Flynn to be an “integral part” of his company. He also stated the work Mr. Flynn has done for his own rehabilitation and for others. Sealed Ex. 36.

³⁵ See also Sealed Ex.33.

³⁶ Sealed Testimony of Stephanie Bert 6/18/19, 10:18:59 a.m. – 10:19:26 a.m.

[REDACTED]³⁷ Her opinions lacked foundation and were not credible.

Michelle Carasco is the chief operating office for Arizona Rehab companies at their Tucson office.³⁸ [REDACTED]

[REDACTED]

Michael Zipprich is the CEO of Arizona Rehab companies and works in their Scottsdale office.³⁹ [REDACTED]

[REDACTED]

Franklin D. Jeans is an attorney who has been licensed in Arizona as a lawyer since 1976.⁴⁰ He is presently the senior advisor to Arizona Rehab Companies and to Michael Zipprich. [REDACTED]

[REDACTED]

³⁷ Id. at 10:47:16 a.m. – 10:56:27 a.m.
³⁸ See also Sealed Ex. 34.
³⁹ See also Sealed Ex.35.
⁴⁰ See Sealed Ex. 37.

[REDACTED]

[REDACTED]

The evidence suggests that Mr. Flynn's positive character and reputation should apply as a mitigating factor.⁴¹

5. 9.32(1) – Remorse

Remorse is “a strong feeling of sincere regret and sadness over one’s having behaved badly or done harm”⁴² Mr. Flynn’s admission to all allegations of misconduct as put forth in the State Bar’s complaint is evidence of his cooperation and to some degree his remorse.

When asked why his DUI was not a wake-up call, Mr. Flynn testified it initially was. He also pointed to another stressor: he owes \$1.5 million dollars in taxes apparently from a horse business of some kind. When asked what effect not having his law license was having on him, he referred to his need to address his IRS debt.

Seeking professional help for alcoholism is important and evidences a “sincere regret” for “having . . . behaved badly or done harm.” However, Mr. Flynn has not tried to apologize for his misconduct to Mrs. Stren.⁴³ Mr. Flynn’s mishandling of Mrs. Stren’s case is the primary reason for these proceedings, and it

⁴¹ Matter of Brown, 175 Ariz. 134, 138 (1993).

⁴² REMORSE, Black’s Law Dictionary (11th ed. 2019).

⁴³ Testimony of John P. Flynn 6/18/19, 1:07:51 p.m. – 1:07:57 p.m.

is his remorse in this regard that would carry the most weight in mitigation. This element is lacking. The Hearing Panel finds that Mr. Flynn's remorse for his misconduct is a mitigating factor, but without the weight such a factor would carry if he had tried to apologize to Mrs. Stren.

STATE BAR'S PROPOSED SANCTION

The State Bar recommends a six (6) month suspension retroactive to January 18, 2019, the date Mr. Flynn was summarily suspended. Besides the 6-month suspension, the State Bar recommends two years of probation, including specified strict terms of probation which include a Member Assistance Program component, counseling, random drug/alcohol testing, an apology to Mrs. Stren, and malpractice insurance. Alternatively, the State Bar does not object to a long-term suspension of six (6) months and one (1) day.

CONCLUSION

The Arizona Supreme Court has directed that a hearing panel exercise discretion in imposing sanctions and to carefully apply aggravating and mitigating factors. We have has considered that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."⁴⁴ Though prior cases are helpful by way of analogy, the panel is

⁴⁴ In re Attorney F., 285 P.3d 322, 327 (Colo. 2012).

charged with determining the sanction for a lawyer's misconduct on a case-by-case basis.

Mr. Flynn admitted the allegations within the complaint and his actions constitute professional misconduct. The presumptive sanction for Mr. Flynn's misconduct is a suspension. The question is whether the misconduct warrants a long-term suspension, requiring formal reinstatement proceedings. Reinstatement proceedings would give this Court an opportunity to evaluate Mr. Flynn's rehabilitation and restitution efforts through further evidence.

The Supreme Court has directed that we "deal very sternly with any lawyer who neglects his clients while abusing [substances]."⁴⁵ Yet at the same time we are directed to also "seek to create an incentive to attorneys who reform and rehabilitate themselves."⁴⁶

The Hearing Panel finds the aggravating factors in this case outweigh the mitigating factors, and a suspension of six (6) months and one (1) day, which will require formal reinstatement proceedings, is appropriate. His cooperation and rehabilitative efforts are important. At the same time, we also note what is not in the record. It is common knowledge that a full year of sobriety is the beginning of true

⁴⁵ In re Rivkind, 164 Ariz. 154, 158 (1990).

⁴⁶ Id. at 160.

recovery. There is no independent alcohol or drug screenings to verify that Mr. Flynn, after his claimed extreme alcoholism, has been alcohol free.

There was no attempt to address the extreme IRS debt or why it accumulated. We emphasize that the discipline imposed here would have been far more severe had there not been evidence of Mr. Flynn's full cooperation. This evidence includes his admissions coupled with his sincere and apparently fruitful efforts at rehabilitation. The State Bar urges we make the suspension retroactive as Mr. Flynn has already been out of the practice of law through an administrative suspension. We note that these facts warrant a long-term suspension.

In summary, when asked why he wanted to be a lawyer, Mr. Flynn testified he would make more money. He acknowledge his arrogance contributed to his misconduct. Yet he struggled with whether he remained arrogant. He claimed remorse and that he was true to the 12 step program of AA. Yet he ignored some of those steps. He refused to attempt to make amends or even to apologize to Mrs. Stren. It caused us to question whether he recognizes a power greater than himself as required under the 12 steps.

Notwithstanding our multiple concerns regarding an instant application for reinstatement, we order that the suspension be effective retroactive to January 18, 2019, the date of Mr. Flynn's summary suspension for failure to comply with MCLE requirements.

Now therefore,

IT IS ORDERED John P. Flynn, Bar No. 015065 is suspended from the practice of law for six (6) months and one (1) day effective immediately with credit for his suspension retroactive to January 18, 2019. If reinstated, he shall serve two (2) years of probation under specified terms of probation pursuant to the Member Assistance Program (“MAP”).

IT IS FURTHER ORDERED as a prerequisite to reinstatement, Mr. Flynn shall undergo a full MAP evaluation by Dr. Lett and adhere to his recommendations.

DATED this 15th day of July 2019.

Signature on File

William J. O’Neil, Presiding Disciplinary Judge

Signature on File

Melvin O’Donnel, Volunteer Public Member

Signature on File

Stanley R. Lerner, Volunteer Attorney Member

COPY of the foregoing e-mailed/mailed
this 15th day of July 2019, to:

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

DEC 28 2018

FILED
BY 

BEFORE THE PRESIDING DISCIPLINARY JUDGE

In the Matter of a Member of
the State Bar of Arizona,

JOHN P. FLYNN,
Bar No. 015065,

Respondent.

PDJ-2018- 9136

COMPLAINT

[State Bar No. 18-0411]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on October 23, 1993.

COUNT ONE (File No. 18-0411/State Bar)

DUI Charge

2. Respondent was stopped by a Scottsdale Police officer at approximately 12:30 a.m. on March 15, 2015, for failing to yield to oncoming traffic (the officer's patrol vehicle) while making a left turn. The officer was able to avoid a collision. Respondent was arrested at that time for driving under the influence of alcohol (DUI). He was charged with DUI while impaired to the slightest degree, DUI with BAC¹ of 0.08% or more, extreme DUI (BAC of 0.15% or over), and failure to yield when exiting from a private road or drive (*State v. Flynn*, Scottsdale City Court No. TR2015-007153).

3. On December 15, 2015, Respondent pled guilty to extreme DUI, a class 1 misdemeanor (stipulated to a BAC of 0.171%). All other charges were dismissed. Respondent was ordered to serve 30 days in jail, with 21 days suspended, alcohol screening, 36 hours of alcohol education/treatment at Alternative Education Solutions, the use of an ignition interlock device, and \$3,251.13 in fines and fees. Respondent completed all terms of the sentence.

4. By engaging in the conduct set forth above, Respondent violated ER 8.4(b).

¹ Blood alcohol content.

Representation of Cynthia Stren

5. Steven Stren (“S. Stren”) was a manager of a limited liability company that served as the general partner of the Williamsfield/Higley Limited Partnership. Steven Stren died in December 2012. He was survived by his wife, Cynthia Stren (“C. Stren”).

6. On April 22, 2016, Williamsfield/Higley Limited Partnership (“Plaintiff”) filed a lawsuit against Steven Stren’s estate (*Williamsfield/Higley Limited Partnership v. Estate of Steven Stren*, Maricopa County Superior Court No. CV2016-052096). The lawsuit alleged breach of contract and the obligation of good faith and fair dealing, and failure to repay loans. The prayer for relief requested approximately \$700,000 in damages, plus interest.

7. C. Stren, the executrix of Steven Stren’s estate (“the estate”), hired Respondent to represent her on behalf of the estate.

8. On January 17, 2017, Respondent filed an answer on the estate’s behalf in the *Williamsfield/Higley Limited Partnership* case.

9. On April 23, 2017, Plaintiff filed a motion to amend the complaint. Respondent did not file a response, so Plaintiff filed a motion for summary ruling on the motion to amend. On May 1, 2017, the court granted the motion to amend. On May 2, 2017, Plaintiff filed a *First Amended Complaint*.

10. Respondent submitted a “Mediation Memorandum” in advance of a scheduled settlement conference, and personally appeared at the settlement conference on May 24, 2017.

11. Respondent did not file an answer to the *First Amended Complaint*, so Plaintiff filed an application for entry of default on July 12, 2017. Respondent filed an answer to the *First Amended Complaint* on July 26, 2017.

12. On August 18, 2017, Maricopa County Superior Court Judge Aimee Anderson (“the Court”) ordered the parties to submit a Joint Pretrial Statement (JPS) that complied with Civil Rule 16(d) by 5:00 p.m., November 9, 2017, and all trial exhibits for marking by no later than November 17, 2017. The Court also ordered the estate to provide copies of any exhibits to Plaintiff’s counsel by November 2, 2017, and proposed jury instructions and time estimates for trial to the Court by November 9, 2017. The Court’s minute entry stated, “No information disclosed after the dates contained in the order may be used at the trial absent court order on motion and affidavit.”

13. During the pendency of the *Williamsfield/Higley Limited Partnership* case, Respondent failed to submit (a) a disclosure statement to Plaintiff’s counsel, as required by the Rules of Civil Procedure; (b) any information to Plaintiff’s counsel for the preparation and filing of a JPS by November 9, 2017, as ordered by

the Court (other than an email request the afternoon of November 9, 2017, requesting an extension from Plaintiff's attorney); (c) copies of any exhibits to Plaintiff's counsel by November 2, 2017, as ordered by the Court; or (d) any jury instructions or time estimates to the Court by November 9, 2017, as ordered by the Court.

14. On November 13, 2017, Plaintiff filed a motion for sanctions (to strike the estate's answer, enter default, and award attorney's fees and expenses) because Respondent failed to provide (a) a disclosure statement to Plaintiff's counsel; (b) any information to Plaintiff's counsel for the JPS that was due on November 9, 2017 (other than an email request the afternoon of November 9, 2017, requesting an extension from Plaintiff's attorney); (c) any exhibits to Plaintiff's counsel by November 2, 2017; or (d) any proposed jury instructions or time estimates to the Court, which were due November 9, 2017.

15. On November 13, 2017, the Court entered a minute entry which stated that the estate's "failure to timely file anything or cooperate with Plaintiff in filing what was previously Court ordered is unacceptable." The Court reset the deadline for filing/submitting everything that was previously ordered to be filed/submitted to 5:00 p.m., November 16, 2017. The Court further ordered that a hard copy of all filed documents had to be hand-delivered to the Court by no later than 5:00 p.m.,

November 16, 2017. The Court reset the final trial management conference from November 17 to November 20, 2017.

16. On November 16, 2017, Plaintiff filed an *Emergency Motion of Plaintiff to Submit Its Part of the Pretrial Filings and to Grant Sanctions*. That motion asserted that the estate had failed to cooperate with Plaintiff's counsel and been unresponsive. Plaintiff re-urged its November 13, 2017 motion for sanctions.

17. On November 17, 2017, Respondent filed a *Motion for Extension of Time to File Final Pretrial Statement*, asserting he was delayed on complying with the court-ordered deadline of November 16 due to the death of his uncle. On that same date, Respondent filed and submitted the required documents.

18. On November 20, 2017, the Court heard oral argument on Plaintiff's motion for sanctions. The Court denied Respondent's *Motion for Extension of Time to File Final Pretrial Statement* as untimely, and granted Plaintiff's motion for sanctions. The Court entered an order (a) precluding Respondent from offering any exhibits at trial; (b) admitting all of Plaintiff's exhibits into evidence; (c) precluding Respondent from submitting any proposed jury instructions; and (d) precluding Respondent from conducting any *voir dire* of the jury. Following that ruling from the bench, the parties stipulated to a one-day trial to the court on December 4, 2017.

19. On December 1, 2017, Respondent filed a *Defendant's Emergency Motion to Continue the Trial* in which he explained that C. Stren fell and injured her ankle the day before and had been advised by a physician that she was not fit to fly to Arizona for the trial. Respondent attached to the motion a letter from C. Stren's physician.

20. Respondent appeared in court on December 4, 2017, but C. Stren was not present because she was cautioned against traveling with her injured ankle. One or more witnesses were present on Plaintiff's behalf. On December 4, the Court took Respondent's *Emergency Motion to Continue the Trial* under advisement.

21. Prior to trial beginning on December 4, 2017, Respondent and Plaintiff's counsel informed the court that they had reached an agreement ("the December 4 agreement"). Both counsel agreed that in exchange for Plaintiff withdrawing its objection to continue, the case would settle by January 15, 2018, or C. Stren would pay for Plaintiff's witnesses' airline tickets, hotel expenses and meals for two days, and "reasonable compensation for [one witness's] time," in cash. Both counsel also agreed that if a settlement were not reached by January 15, 2018, that a judgment would be entered in Plaintiff's favor and against the estate in the amount sought and as set forth in first amended complaint and pretrial

statement. Respondent entered into that agreement, however, without communicating about its terms with C. Stren because she was not present in court and Respondent was unable to speak with her by telephone during a recess.

22. Respondent also agreed, without consulting with C. Stren or obtaining her consent, that she had no defense to a claim regarding a line of credit in the amount of \$97,000. The minute entry for December 4, 2017, stated in part:

Further, the Defendant Cynthia Stren has no defense to the amounts as stated as claiming to be owed to Plaintiff George Eisenberg by Defendant Cynthia Stren that is sought in the pretrial statement, as a line of credit totaling \$97,000.

• • • • •

The Court accepts the verbal agreement made on the record by the parties to try and resolve this matter no later than January 15, 2018; if the matter is not resolved, the Defendant has agreed to reimburse the expenses and other terms as set forth on the record.

23. The December 4, 2017 agreement was completely one sided and gave no incentive to Plaintiff to settle because Plaintiff's claims and prayers for relief would be granted in a judgment in its favor if the parties were unable to settle the matter.

24. Respondent failed to communicate with Plaintiff's counsel between December 5, 2017, and January 15, 2018, regarding possible settlement of the case, even though Plaintiff's counsel had sent a number of email messages to him,

provided him with a transcript of the December 4, 2017 hearing, and provided him with copies of receipts and records for \$9,905.86 in expenses incurred and compensation for Plaintiff's representative to appear for the December 4, 2017 trial. Plaintiff reminded Respondent or his assistant three times by email of the deadline for settling the matter, but never heard from Respondent.

25. On January 18, 2018, Plaintiff filed a *Notice of Submission of Judgment pursuant to Stipulation of December 4, 2017*.

26. C. Stren continued to contact G&K as the previously-scheduled January 29, 2018 trial approached. Respondent falsely assured attorneys Short and Kennedy that (a) he had been in communication with C. Stren or her representative; (b) settlement was close; and (c) the matter was under control. Based on the information provided by Respondent, attorney Short informed C. Stren that he had spoken with Respondent and that Respondent indicated that the matter was under control.

27. During the time leading up to the January 29, 2018 trial, Respondent was rarely, if ever, in his law firm office.

28. On January 29, 2018, the Court entered judgment in Plaintiff's favor and against C. Stren, totaling approximately \$700,000, plus ongoing interest.

29. During or about early February 2018, C. Stren contacted Respondent's law firm, Gallagher & Kennedy (G&K), to complain about a lack of communication from Respondent and to confirm that Respondent was appropriately representing her. Someone at G&K informed Respondent about C. Stren's concerns. Respondent then informed Dean Short, G&K's managing partner, and Michael Kennedy, G&K's general counsel, that he had communicated with Stren or her representative and that the matter was under control.

30. During the period of time that Respondent represented C. Stren, she asked him on a number of occasions over a several-month period to file a new statutory agent appointment with the Arizona Corporation Commission to prevent an administrative dissolution of Williamsfield Management, LLC, a limited liability company in which her deceased husband had an interest, but he failed to do so even though he claimed he had.

31. C. Stren informed Respondent that reinstatement of WML was important to the defense of the estate because WML—and not the estate—should have been a defendant in the case.

32. Respondent failed to adequately communicate with C. Stren during the period of time he represented her. At times, Respondent was unresponsive to her

and failed to call her as promised. Due to a lack of communication, C. Stren believes she was not always informed about the status of her case.

33. While being represented by Respondent, C. Stren provided Respondent with possible witnesses to interview, but he failed to do so.

34. After Respondent's representation of C. Stren concluded, he failed to provide C. Stren or G&K with the file he maintained on her and the estate's behalf.

35. On February 9, 2018, Plaintiff filed an affidavit in support of attorney's fees, a *Statement of Costs and Notice of Taxation*, and a *Judgment Creditor's Motion for Charging Order against Judgment Debtor's Interest in Limited Partnership*. On that same date, C. Stren directed G&K to file a Rule 59 motion on the estate's behalf.

36. On February 13, 2018, attorney Kennedy filed a notice of appearance on C. Stren's behalf and a *Defendant's Rule 59 Motion for New Trial and Rule 60 Motion for Relief from Judgment*. The motion did not raise any substantive defenses to the allegations in the complaint, but instead raised possible concerns about Respondent's representation of C. Stren.

37. On March 14, 2018, attorney Kennedy filed a motion to withdraw as Stren's counsel because of the possible conflict created by C. Stren's potential

malpractice claim against G&K.

38. On March 20, 2018, the Court entered an order granting Plaintiff reasonable attorney's fees and costs in the amounts of \$28,945 and \$951.10, respectively. On that same date, the Court denied attorney Kennedy's Rule 59 and 60 motions, finding that an attorney's malpractice in litigation does not entitle a client to Rule 59 or Rule 60 relief. The Court also affirmed the January 29, 2018 judgment and granted Kennedy's motion to withdraw.

39. On March 27, 2018, the Court granted Plaintiff's motion for charging order, which allowed Plaintiff to take possession of S. Stren's interest in the partnership to the extent necessary to satisfy the January 29, 2018 judgment.

40. On April 20, 2018, the Court entered an order formally denying the estate's Rule 59 motion for new trial and Rule 60 motion for relief from judgment. C. Stren obtained new counsel for the estate, who filed a notice of appeal and a motion to set aside judgment.

41. On September 10, 2018, the Arizona Court of Appeals stayed the appeal and revested jurisdiction with the superior court to allow it to rule on the motion to set aside judgment. As of November 28, 2018, the superior court had not ruled on the estate's motion to set aside judgment.

42. By engaging in the conduct set forth above, Respondent violated ER 1.2(a), ER 1.3, ER 1.4(a) and (b), ER 1.15(d), ER 1.16(a) and (d), ER 3.4(c), ER 8.4(c) and (d), and Rule 54(c), Ariz. R. Sup. Ct.

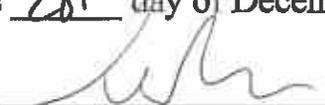
DATED this 28th day of December, 2018.

STATE BAR OF ARIZONA



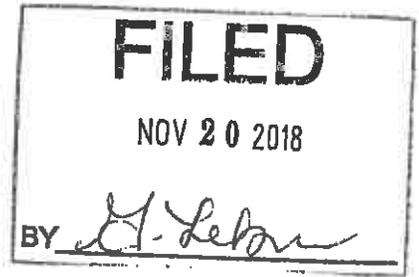
James D. Lee
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 28th day of December, 2018.

by: 

JDL:nr

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



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

No. 18-0411

**JOHN P. FLYNN
Bar No. 015065**

PROBABLE CAUSE ORDER

Respondent.

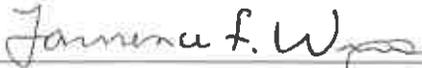
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on November 9, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-0411.

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

Parties may not file motions for reconsideration of this Order.

DATED this 20 day of November, 2018.



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

Original filed this 20th day
of November, 2018, with:

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