

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

SCOTT K. HENDERSON,
Bar No. 010002

Respondent.

PDJ-2018-9119

**FINAL JUDGMENT AND
ORDER OF DISBARMENT**

[State Bar No. 18-2377]

FILED MARCH 26, 2019

This matter came for hearing before the hearing panel (Panel) which rendered its decision on March 5, 2019 and ordered the immediate disbarment of Scott K. Henderson. The decision of the hearing 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, **SCOTT K. HENDERSON, Bar No. 010002**, is disbarred from the State Bar of Arizona and his name is stricken from the roll of lawyers, effective March 5, 2019, as set forth in the Panel's Decision and Order Imposing Sanctions. Mr. Henderson is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court.

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

DATED this 26th day of March 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 26th day of March 2019 to:

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Respondent

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

SCOTT K. HENDERSON,
Bar No. 010002

Respondent.

PDJ 2018-9119

**DECISION AND ORDER
IMPOSING SANCTIONS**

State Bar No. 18-2377

FILED MARCH 5, 2019

This matter proceeded to Rule 58(d)¹ aggravation/mitigation hearing on February 7, 2019, before the Hearing Panel (Panel), composed of volunteer attorney member, Stanley R. Lerner, volunteer public member, Betty Jane Davies and the Presiding Disciplinary Judge (“PDJ”) William J. O’Neil. The State Bar was represented by Senior Bar Counsel Hunter F. Perlmeter. Mr. Henderson, who was not represented, failed to appear. Exhibits 1-9 were admitted.

SUMMARY

In PDJ 2016-9089, the hearing panel found that during the time his law license was suspended in PDJ2014-9019 Mr. Henderson engaged in the unauthorized practice of law and ordered his reprimand. The State Bar appealed that ruling. Mr. Henderson cross-appealed. The Supreme Court affirmed the hearing panel’s finding

¹ Unless otherwise stated, all rule references are to the Ariz. R. Sup. Ct.

the Mr. Henderson engaged in the unauthorized practice of law which included his corresponding on letterhead that stated “*NewLAWU.S.* ATTORNEYS AT LAW,” in his improper attempts to negotiate a dispute for the client while suspended. The Court, on May 11, 2018, ordered his license suspended for six (6) months in PDJ2016-9089 effective June 11, 2018. On July 2, 2018, while serving that suspension, Mr. Henderson drafted a second demand letter on his law firm’s letterhead to negotiate a dispute for his clients. He also failed to cooperate with the State Bar inquiries. The Panel finds Mr. Henderson engaged in the unauthorized practice of law while suspended and failed to cooperate with the State Bar’s investigation. He is ordered disbarred.

PROCEDURAL HISTORY

The State Bar of Arizona (“SBA”) filed its complaint on December 3, 2018. On December 4, 2018, the complaint was served on Mr. Henderson by certified, delivery restricted mail, and by regular first-class mail, pursuant to Rules 47(c) and 58(a)(2). A notice of default properly issued on January 2, 2019. That default was effective on January 23, 2019, at which time a notice of aggravation and mitigation hearing was sent to all parties notifying them of the scheduled aggravation/mitigation hearing.

FINDINGS OF FACT

By the effective default of Mr. Henderson, the allegations in the complaint are deemed admitted. Those allegations are adopted by the Panel. The exhibits support those allegations and the State Bar made an offer of proof that it had witnesses available to testify telephonically consistent with those allegations. Mr. Henderson did not appear.

1. Mr. Henderson was first licensed to practice law in Arizona on May 18, 1985.
2. On February 6, 2016, Mr. Henderson served a suspension from the practice of law for ninety (90) days for ethical violations related to a felony conviction (PDJ2014-9019). After serving that suspension Mr. Henderson was reinstated. During his suspension, Mr. Henderson engaged in the unauthorized practice of law.
3. On September 12, 2016 the State Bar in PDJ 2016-9089 filed a complaint which among other allegations asserted he violated ER 5.5 by engaging in the unauthorized practice of law during his suspension. After a hearing on the merits, the hearing panel concluded Mr. Henderson negligently violated ER 5.5 and ordered him reprimanded.
4. The Decision Order of the Supreme Court noted that Mr. Henderson had met with a client alone and unsupervised. He was the only lawyer who worked

on the client's case for the firm, sending emails and other correspondence on the firm's letterhead to multiple persons to negotiate a property dispute for the client. The Court noted Mr. Henderson "had testified at the hearing that his law firm, of which he is founder and managing attorney, has no employees in the traditional sense, and he continued to manage the firm during his suspension, which resulted in assigning the client's legal matter to himself."

5. The Court, among other findings concluded,

The record does not support the Hearing Panel's finding that Respondent (Henderson), while suspended from practice, was merely negligent in practicing law by negotiating a legal dispute for a client and failing to follow trust account rules. We find that Respondent's conduct was knowing. *See In re Non-Member of the State Bar of Arizona, Van Dox*,² (knowledge is "the conscious awareness of the nature or attendant circumstances of the conduct," such as when a lawyer was aware of his suspension and know he should not be practicing law, within the meaning of Supreme Court Rule 31)"

² Citations omitted.

6. Having found his misconduct was knowing, the Court found disbarment was the presumptive discipline under *ABA Standards* 8.1(a) and 7.2. It accepted the hearing panel mitigating findings and reduced the presumptive sanction of disbarment to suspension. The Court Order of May 11, 2018, suspended Mr. Henderson for six months effective June 11, 2018. The judgment of the Court was entered on June 6, 2018.

COUNT ONE (File no. 18-2377)

7. Under Rule 72(d), Mr. Henderson was not to engage in the practice of law, except that during the period between the entry and the effective date of the suspension order, he could complete on behalf of any client all matters that were pending on the entry date. On June 1, 2018 Mr. Henderson, prior to serving the suspension in PDJ2016-9089, began representation of a new client and drafted a demand letter on the identical law firm letterhead for which he had been suspended previously, to a landlord on behalf of the tenant-clients (“clients”). To negotiate a dispute for the clients he said, “Demand is hereby made that you immediately pay the amount totaled on Schedule A.” The amount was \$94,373. In the letter, Mr. Henderson identified himself as the founder of the law firm, “*NewLAWU.S. ATTORNEYS AT LAW*,” just as he did in engaging in the unauthorized practice of law during his original suspension. [Ex. 2, Bates SBA000007-09.]

8. On July 2, 2018, while serving the suspension in PDJ2016-9089, Mr. Henderson wrote and sent another demand letter on his law firm letterhead to the landlord on behalf of his tenant-clients (“named clients”). [Ex. 1, Bates SBA0000002-03.]

9. This second letter again identified Mr. Henderson as the founder of the law firm, “*NewLAWU.S. ATTORNEYS AT LAW*,” just as he did in engaging in the unauthorized practice of law during his original suspension.

10. The first paragraph of his July 2, 2018 letter reads: “As you are aware, *this law firm* has been retained to represent (named clients) in the prosecution of their rights as tenants of the Premises pursuant to the above referenced lease” (Emphasis added.) [Id.] E.R. 1.1(c) defines “law firm” as “a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other associations; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.” Mr. Henderson’s use of the term “law firm” is intentionally misleading, violative of the rules, and intended to mislead the public.

11. Mr. Henderson intentionally uses the plural that “we” have been contacted and they have contacted “us”. The letter discusses potential “claims” of Mr. Henderson’s named clients and indicates that the conditions of the property being leased by his purported clients are “in violation of applicable laws.” (Id.)

12. The letter further states that Mr. Henderson’s named clients, “... will not wait much longer ... but will move forward with litigation against you....” The letter also states, “absent some meaningful discussion and payment in the interim, please anticipate litigation to be commenced immediately after July 15, 2018.” (Id.) Mr. Henderson directs the landlords to “ask your attorney to contact me” so he might negotiate their rights.

13. We find the intent of Mr. Henderson was to knowingly mislead the recipients into concluding he was a licensed lawyer. He was not. The letterhead includes the website of *NewLAWU.S.* The website advertises that *NewLAWU.S.* provides “high quality legal services....” The number 1 reason listed for “Why *NewLAWU.S.* is “Attorneys educated at finest law schools and experienced at finest law firms....”

14. The letter is signed by Mr. Henderson under the signature heading *NewLAWU.S.* The letterhead identifies that entity as being “ATTORNEYS AT LAW.” The letter was not reviewed or authorized by a licensed attorney. (Id.)

15. Mr. Henderson attempted to negotiate the rights or responsibilities for the tenants with opposing counsel for the landlords. That licensed attorney refused. Mr. Henderson admonished him that such an attitude was nonsensical in his experience and that in his 34 years of experience as a licensed lawyer that one should negotiate such rights with anyone that might further their client’s interests. We find

that correspondence makes clear there were no licensed attorneys in *NewLAWU.S.* but that Mr. Henderson would instead, “put you (opposing counsel) in with someone duly licensed to engage in such activities on behalf of our law firm clients.” [Ex. 2, Bates SBA000015.]

16. The State Bar wrote multiple letters pursuant to Rule 55(b) requesting he respond to its investigation. He was cautioned that ER 8.1(d) and Rule 54(d) required his cooperation. [Ex 3-4.] He was again cautioned by a letter dated September 6, 2018, that followed those earlier letters. He was given twenty additional days to respond. [Ex. 5.]

17. Exhibit 6 is a September 12, 2018 letter from Mr. Henderson to the State Bar. He acknowledges three separate letters from the State Bar. He wrote “I will consult with counsel on these and respond in very short order.” His letter is on the letterhead of *NewLAWU.S.* Therein, Mr. Henderson is identifying himself as the founder lists his address, phone number, email, the website of *NewLAWU.S.* and then in bold capitalized and underscores words it states, “NOT ADMITTED IN ARIZONA.”

18. On September 19, 2018 Mr. Henderson was informed the investigation was completed and would be submitted to the Attorney Discipline Probable Cause Committee. He was informed he could submit a written statement to that Committee. [Ex. 7.]

19. Exhibit 8 is a September 25, 2018 letter written by Mr. Henderson to the State Bar. It also is on the *NewLAWU.S.* letterhead and states “NOT ADMITTED IN ARIZONA.” He wrote he was no longer subject to the Bar’s disciplinary procedures because he had resigned from the State Bar on June 8, 2018. He stated that his position was that while he wrote the multiple demand letters that “my actions clearly were those done by non-lawyers every day and do not constitute even a scintilla of an intent to practice law, much less instances of actually practicing law...”

20. We find the actions of Mr. Henderson are not the actions “done by non-lawyers every day.” Non-lawyers do not write letters on letterhead that identify themselves as “Attorneys at law.” They do not claim themselves to be “founders of a law firm.” They do not claim “this law firm has been retained” by third parties whose rights they seek to negotiate. Non-lawyers do not identify themselves as part of such a law firm. Nor do they claim they “represent” an unrelated third party as Mr. Henderson did in his letter. We find Mr. Henderson intentionally engaged in the unauthorized practice of law.

21. Mr. Henderson was informed of the probable cause finding by the Attorney Discipline Probable Cause Committee by letter dated November 21, 2018. (Ex. 9.)

22. In engaging in the above conduct, Mr. Henderson violated ER 5.5 and Rule 54(d).

CONCLUSIONS OF LAW

The allegations within the complaint are admitted by the default. Notwithstanding there has also been an independent determination by the Panel that the State Bar has proven by clear and convincing evidence that Mr. Henderson violated the ethical rules alleged. Mr. Henderson failed to file an answer. If he had an affirmative defense, he waived it by failing to answer the complaint. This does not apply to the defense of subject matter jurisdiction. We find we have subject matter jurisdiction.

Jurisdiction

The power to regulate the practice of law generally rests with the states. *United Mine Workers of Am. v. Ill. State Bar Ass'n*, 389 U.S. 217 (1967). Under article III of the Arizona Constitution, “the practice of law is a matter exclusively within the authority of the Judiciary.” *In re Creasy*, 198 Ariz. 539, 541 (2000). Any lawyer admitted to practice in Arizona is subject to the disciplinary jurisdiction of the Arizona Supreme Court. *See* Rule 46(a). A non-member engaged in the practice of law in the State of Arizona submits himself to the disciplinary jurisdiction of our Supreme Court. *See* Rule 46(b). The Supreme Court jurisdiction over the practice of law is stated in Rule 31(a). “Any person or entity engaged in the practice of law or

unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction."

A "Respondent" is defined under Rule 32(b)(7) and means *any* person subject to the jurisdiction of the court against whom a charge is received for violation of these rules. Mr. Henderson is a suspended member of the State Bar of Arizona. "Suspended members shall remain suspended until an order is entered by the presiding disciplinary judge or the court reinstating the member to the active practice of law." Mr. Henderson has not been reinstated. He remains a suspended member. Even if he had never been a member he would still be subject to the jurisdiction of the Supreme Court for his unauthorized practice of law.

The Practice of Law

Under Article III of the Arizona Constitution, our Supreme Court has the ability and exercised its' authority by defining the practice of law. *See State Bar of Ariz. v. Ariz. Land Title & Tr. Co.*, 90 Ariz. 76, 87 (1961). Rule 31(a)(2)(A) defines the practice of law by stating multiple examples of conduct that constitute the unauthorized practice of law when performed by an unauthorized individual like Mr. Henderson.

At least two of the listed acts were done by Mr. Henderson. These include, "providing legal advice or service to or for another by: (1) preparing any document in any medium intended to affect or secure legal rights for a specific person or

entity.” It also includes, “(5) negotiating legal rights or responsibilities for specific person or entity.”

Mr. Henderson knows these rules. For substantially identical conduct he was previously suspended. His violations are intentional. He is still preparing documents intended to affect or secure legal rights for a specific person. He is intentionally negotiating the legal rights of these individuals. He intentionally represents himself as the founder of a “law firm,” lists his letterhead with “Attorneys at Law” and intentionally represents himself as an attorney by his use of the terms “we” and “us.” He is intentionally engaged in the unauthorized practice of law.

Providing legal advice to a client or preparing documents for a client violates the suspension order against him even though the client is told by the lawyer that he is not a lawyer. *People v. Manson* 212 P.3d 141 (Colo. O.P.D.J. 2009).

The Correspondences of Mr. Henderson

The first correspondence. The first correspondence is a demand letter from Mr. Henderson dated June 1, 2018. [Ex. 2, Bates SBA000007.] It is on the *NewLAWU.S.* letterhead. The bold “NOT ADMITTED IN ARIZONA” listed on the letterhead he sent to the State Bar is not present. He knew as of May 11, 2018 that he was to be imminently suspended. We assume this bold phraseology on this one letter was not present because he was not suspended until June 11, 2018.

Mr. Henderson informed the landlords on behalf of his clients that they had violated the Arizona Landlord-Tenant Act and other “codes and ordinances and federal and state environmental laws, codes and regulations.” He expressed his legal opinion that their conduct gave “rise to several causes of action....” He demanded the recipients pay \$94,373 immediately in “hard costs” and that his clients had instructed “this office to immediately commence legal action against you for all damages....” Mr. Henderson was negotiating the rights of his clients as an attorney.

The second correspondence. The second correspondence is a demand letter dated July 2, 2018 from Mr. Henderson. [Ex. 2, Bates SBA00010.] It is also on the *NewLAWU.S.* letterhead. He expresses his legal conclusion that the claims he is making are “in the prosecution” of the rights of his clients. He opined that those rights “are not dependent upon any insurance coverage.” He intentionally did not disclose that he was suspended or that he had purportedly resigned. We find Mr. Henderson intended to convey to the landlords that he was still a licensed attorney. We further find he was representing his clients and negotiating their legal rights while suspended.

Mr. Henderson told the landlords to either contact his clients directly “or ask your attorney to contact me and I will put him/her in touch with out litigation lawyer who will be handling this matter from here on out.” We conclude from this, that as with his last case, there still was no other attorney in his law firm. This is confirmed

in a later email to an attorney representing the landlords. He then tells the landlords that if they don't do as he says that litigation will be "commenced immediately."

If Mr. Henderson had resigned in compliance with the rules, he intentionally did not inform the landlords of his resignation in furtherance of a subterfuge. It is apparent he knew he was suspended by that date and intentionally did not inform the landlords of his suspension. The bold "NOT ADMITTED IN ARIZONA" is not listed on the letterhead. We weigh that disparity unfavorably.

The third correspondence. The third correspondence is a letter dated July 24, 2018 from Mr. Henderson. [Ex. 2, Bates SBA000013.] It is also on the *NewLAWU.S.* letterhead. The bold "NOT ADMITTED IN ARIZONA" is not listed on the letterhead.

The landlord did as Mr. Henderson directed and had their attorneys contact him personally. In response, Mr. Henderson informed opposing counsel that "we" will be meeting with his clients later that week. Mr. Henderson then identified the fly in the ointment of his discontent. He wrote he was not a licensed attorney but that only he would determine when any matter would benefit "from licensed lawyers" and that he would remain in charge of the case to "administer and coordinate this matter. Accordingly, until advised otherwise, please direct communications to me." We conclude there still were no licensed attorneys handling any aspect of the matter.

The fourth correspondence. The fourth demand is an email from Mr. Henderson dated July 27, 2018. When his opposing counsel refused to negotiate the legal right of the tenants with Mr. Henderson, he wrote them directly and properly so. Mr. Henderson made explicit his intention to disregard the rules and continue to represent the tenants. He wrote, “You are aware they are represented by a law firm. Contacting them directly is clearly and wholly improper.” The email in the footnote states that Mr. Henderson has determined that nothing in his emails “constitutes the provisions of advice and counsel of, or communications from a licensed attorney. Mr. Henderson founded, represents, and manages *NewLAWU.S.*”

The fifth correspondence. The fifth correspondence is an email from Mr. Henderson dated August 1, 2018. It is in response to the email from opposing counsel. His opposing attorney wrote, “Scott, Rule 31 of the Ariz. R. Sup. Ct. define the practice of law as, among other things, “negotiating rights or responsibilities for a specific person of entity.” As discussed on the phone today, I will not engage in settlement negotiations with you....” He then stated, “If there is an attorney in your office that is licensed to practice law in the State of Arizona, I will engage in settlement negotiations with them.” He clarified that until a licensed attorney entered the negotiations, he would communicate with the tenants as unrepresented individuals.

Consistent with his declarations of what constitutes the practice of law, Mr. Henderson argued “I wasn’t calling to negotiate legal rights or responsibilities.” He claimed he was only calling to see if there was any likely avenue for communication and that if there was a negotiation *we* can put you in touch with someone duly licensed to engage in such activities on behalf of *our* law firm.” Again, by declaration, Mr. Henderson explains that only his view of what the rules should be applies. “It might merit noting that my compliance or non-compliance with ethical rules is not your concern....” Mr. Henderson expressed his belief that that the matters of his demand of \$94,373 and imminent litigation was “benign, non-legal matters.”

Unauthorized Practice of Law

The unauthorized practice of law “includes but is not limited to” those actions stated in Rule 31(a)(2)(B)(1) and (2). These are known to and intentionally violated by Mr. Henderson. In the first subsection it includes “engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraph (b)....”

Mr. Henderson is not authorized to practice law under paragraph (b). He asserted to the State Bar that the rule does not apply to him because he has resigned his membership from the State Bar on June 8, 2018. [Ex. 8.] We have no credible evidence he ever resigned under the Supreme Court Rules.

Paragraph (b) states, “no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active

member of the state bar.” He claims he is no longer a member of the state bar of Arizona because he has resigned. Under his own claim he is engaged in the unauthorized practice of law.

Under Rule 31(a)(2)(B)(2) the unauthorized practice of law includes but is not limited to “using the designations ‘lawyer,’ ‘attorney at law,’ ‘counselor at law,’ ‘law,’ ‘law office,’ ‘J.D.,’ ‘Esq.,’ or other equivalent words by any person or entity who is not authorized to practice law in this state....” Mr. Henderson knows this, disagrees with it, and following his own inner counsel intentionally engages in the unauthorized practice of law.

Resignation

There are five classes of membership in the State Bar. *See* Rule 32(c)(1). Mr. Henderson is a suspended member of the State Bar. Only members in good standing may resign from membership. A suspended member is not in good standing. Resignation of a member in good standing becomes effective when filed in the office of the state bar and accepted by the Board, and the Supreme Court. Rule 32(c)(11).

Protection of the Public

“Public policy is derived from the collective rules, principles, or approaches to problems that affect the commonwealth or promote the general good; specifically, principles and standards regarded by the legislature or by the courts as being of

fundamental concern to the state and the whole of society.” *Levine v. Haralson, Miller, Pitt, Feldman & McAnally, P.L.C.*, 244 Ariz. 234, 237, ¶ 10 (App. 2018).

Mr. Henderson in arguing that the Court has no authority over him intentionally ignored an opportunity to present whatever legal position he chose. He intentionally refused to cooperative with the State Bar. He failed to file an answer. We are left with his singular argument that “my actions clearly were those done by non-lawyers every day and do not constitute even a scintilla of an intent to practice law, much less instances of actually practicing law....”

The “actions” of Mr. Henderson were “providing legal advice of services to or for another.” See Rule 31(a)(2). He errors in his unsubstantiated claim that when non-lawyers provide such legal advice to or for others that it does not “constitute even a scintilla of an intent to practice law, much less instances of actually practicing law....” Arizona allows pro se litigants to represent their *own* claims, they may not prosecute the claims of *others*. See *Byers-Watts v. Parker*, 199 Ariz. 466, 470, ¶ 19 (App. 2001) (rule recognizing a parent's right to sue on behalf of a child does not entitle the parent to provide legal representation for the child).

Suspended Member

Mr. Henderson is restricted from practicing law in Arizona. Rule 31(c) is clarion. “No member who is currently suspended or on disability inactive status and

no former member who has been disbarred shall practice law in this state or represent in any way that he or she may practice law in this state.”

Mr. Henderson intentionally used the terms “attorneys at law” and “law firm”. Mr. Henderson is suspended. Rule 31(c) states, “No member who is currently suspended...shall practice law in this state or represent *in any way* that he or she may practice law in this state.” (Emphasis added.) The comment to ER 5.5 (engage in the unauthorized practice of law) states that ER 5.5 “applies to the unauthorized practice of law by a lawyer, whether through the lawyer’s direct action or by the lawyer assisting another person.”

Multiple concerns resulted in the unauthorized-practice exclusions, but the purpose is the same, to protect the public. The proscriptions are also aimed at facilitating the regulation of the legal profession and protecting the integrity of the judicial system. *See Fla. Bar v. Schramek*, 616 So. 2d 979 (Fla. 1993). Lawyers who are suspended may not practice law or hold themselves out as eligible to practice. *See In re Baars*, 683 N.E.2d 555 (Ind. 1997).

Mr. Henderson did not appear and was defaulted. However, his view is that as the founder of his *NewLAWU.S.* entity that he can hire independent lawyers to do the legal work for the cases he seeks to negotiate. In *In re Miller*, 238 P.3d 227 (Kan. 2010), the Court ruled a suspended practitioner cannot maintain financial control over professional corporation and “hire an independent contractor to do the

legal work which the suspended attorney is precluded from doing.” A lawyer engages in the unauthorized practice of law by analyzing the value of a client’s personal injury claims, negotiating with insurers regarding such claims and giving advice. *See In re Boyer*, 988 P.2d 625 (Colo. 1999).

The Panel finds by clear and convincing evidence Mr. Henderson violated: Rule 42, Ariz. R. Sup. Ct., specifically ER 5.5 and Rule 54(d).

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).

Duties violated:

Mr. Henderson violated ER 5.5 by engaging in the unauthorized practice of law during a prior disciplinary suspension. Mr. Henderson also violated Rule 54(d) by failing to respond to the State Bar’s investigation.

Standard 8.1(a) and 6.21 are the relevant *Standards*.

Standard 8.1(a) states:

Disbarment is generally appropriate when a lawyer intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession.

Standard 6.21 states:

Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious interference with a legal proceeding.

AGGRAVATING AND MITIGATING FACTORS

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

- *Standard 9.22(a)*: prior disciplinary offenses [two prior suspensions]
- *Standard 9.22(b)*: dishonest or selfish motive [purporting to be a licensed lawyer]
- *Standard 9.22(c)*: a pattern of misconduct [engaging in the same unauthorized practice of law (UPL) that resulted in his prior suspension]
- *Standard 9.22(d)*: multiple offenses [UPL and failure to cooperate with the State Bar's investigation]
- *Standard 9.22(e)*: bad faith obstruction of the disciplinary process [failure to cooperate with State Bar's investigation]
- *Standard 9.22(i)*: substantial experience in the practice of law [Licensed in AZ since 1985]

The Panel finds no mitigating factors are present in the record.

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 SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Panel has made the above findings of fact and conclusions of law and has determined the appropriate sanction using the facts deemed admitted and an independent review, application of the *Standards*, including the aggravating factors, the absence of any mitigating factors, and the goals of the attorney discipline system. The Panel orders:

1. Scott K. Henderson, Bar No. 010002 shall be disbarred from the practice of law effective immediately.
2. Mr. Henderson shall pay all costs and expenses incurred by the SBA and the Office of the Presiding Disciplinary Judge in this proceeding. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge’s Office in these disciplinary proceedings.

A final judgment and order shall follow.

DATED this 5th day of March 2019.

Signature on File
William J. O'Neil, Presiding Disciplinary Judge

Signature on File
Betty Jane Davies, Volunteer Attorney Member

Signature on File
Stanley R. Lerner, Volunteer Public Member

Copy of the foregoing emailed
this 5th day of March, 2019, and
mailed March 6, 2019, to:

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

DEC 3 2018

FILED

BY



BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**SCOTT K. HENDERSON,
Bar No. 010002,**

Respondent.

PDJ 2018-9119

COMPLAINT

[State Bar No. 18-2377]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. Respondent was first licensed to practice law in the state of Arizona on May 18, 1985.
2. On February 6, 2015, Respondent began serving a ninety (90) day suspension from the practice of law for ethical violations related to a felony conviction (PDJ2014-9019).

3. Respondent engaged in the unauthorized practice of law during that suspension.

4. Respondent was reinstated to practice law on April 29, 2015.

5. On June 10, 2018, Respondent began serving a six-month suspension effective June 11, 2018, in PDJ2016-9089 for engaging in the unauthorized practice of law during his suspension in PDJ2014-9019 by, among other things, drafting a series of demand letters on behalf of clients.

COUNT ONE (File no. 18-2377/Schube)

6. On July 2, 2018, while serving the suspension in PDJ2016-9089, Respondent again drafted a demand letter on behalf of clients.

7. In the letter, Respondent identified himself as the founder of NewLawU.S, just as he did in engaging in the unauthorized practice of law during the 2015 suspension.

8. The first paragraph of the July 2, 2018 letter reads: “As you are aware, this law firm has been retained to represent Holli and Niels in the prosecution of their rights as tenants of the Premises pursuant to the above referenced lease”

9. The letter discusses potential “claims” of Respondent’s purported clients and indicates that the conditions of a particular property are “in violation of applicable laws.”

10. The letter further states that Respondent’s purported clients, “... will not wait much longer ... but will move forward with litigation against you... .” The letter also states, “absent some meaningful discussion and payment in the interim, please anticipate litigation to be commenced immediately after July 15, 2018.”

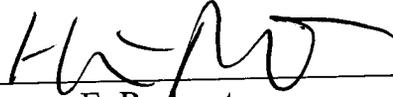
11. The letter is signed by Respondent and was not reviewed or authorized by a licensed attorney.

12. Respondent failed to submit a response to the allegations in the bar charge during the State Bar’s investigation.

13. In engaging in the above conduct, Respondent violated ER 5.5 and Rule 54(d).

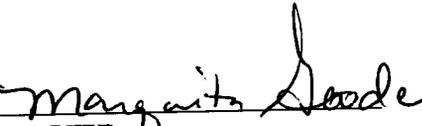
DATED this 3rd day of December, 2018.

STATE BAR OF ARIZONA



Hunter F. Perimeter
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 3rd day of December, 2018.

by: 
HFP:rog

FILED

NOV 20 2018

BY 

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

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

**SCOTT K. HENDERSON
Bar No. 010002**

Respondent.

No. 18-2377

PROBABLE CAUSE ORDER

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 and Respondent's Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-2377.

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 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:

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

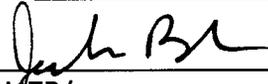
Copy mailed this 21st day
of November, 2018, to:

Scott K. Henderson
NewLAWus
60 E. Rio Salado Pkwy., Ste. 900
Tempe, Arizona 85281-9126
Respondent

Copy emailed this 21st day
of November, 2018, to:

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by: 
HFP/mg