BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **SCOTT A. MACLEOD,** **Bar No. 028130** Respondent.	**PDJ 2018-9096** **JUDGMENT OF DISBARMENT** [State Bar File Nos. 17-3776, 18-0006, 18-0778 & 18-1306] **FILED FEBRUARY 21, 2019**

This matter came for hearing before the hearing panel which rendered its Decision and Order Imposing Sanctions (Decision) on January 29, 2019, ordering disbarment, restitution, and costs. The Decision of the hearing panel is final under Rule 58(k), Ariz. R. Sup. Ct. No appeal has been filed pursuant to Rule 59(a), Ariz. R. Sup. Ct., and the time to appeal having expired,

IT IS ORDERED Respondent, **SCOTT A. MACLEOD, Bar No. 028130,** is disbarred from the State Bar of Arizona and his name is stricken from the roll of lawyers, effective February 28, 2019, as set forth in the Decision. Mr. MacLeod 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. MacLeod 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. MacLeod shall pay restitution to the following persons in the following amounts:

Higuchi-Mason: $5,700.00

Ross: $2,600.00

Hanson: $8,290.00

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

DATED this 21st day of February 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
February 21, 2019, to:

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Respondent

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **SCOTT A. MACLEOD,** **Bar No. 028130** Respondent.	**PDJ 2018-9096** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar No. 17-3776, 18-0006, 18-0778 & 18-1306] **FILED JANUARY 29, 2019**

This matter proceeded to an aggravation/mitigation hearing on January 8, 2019, before a hearing panel, composed of volunteer attorney member George A. Riemer, volunteer public member Mel O'Donnell, and Presiding Disciplinary Judge (PDJ) William J. O'Neil. At the end of the hearing the State Bar requested disbarment for Mr. Macleod's abandonment of clients and his knowing conversion of client funds for his own benefit. Exhibit 1-45 were admitted. Mr. Macleod did not appear.

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on November 7, 2018. On November 8, 2018, the complaint was served on Mr. MacLeod by certified, delivery restricted mail, and by regular first-class mail, pursuant to Rules 47(c) and

58(a) (2), Ariz. R. Sup. Ct.[1] The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. A notice of default was properly issued on December 4, 2018. That default was effective on December 26, 2018. A notice of aggravation and mitigation hearing was sent to all parties notifying them of the date and time of the hearing. On January 8, 2019, the Hearing Panel, duly empaneled, heard argument and considered evidence.

FINDINGS OF FACT

The facts listed below are those set forth in the SBA's complaint. By the effective default of Mr. Macleod, the allegations in the complaint are deemed admitted and adopted by the Hearing Panel.[2] The exhibits support those allegations and the State Bar made an offer of proof and had witnesses available to testify telephonically. Mr. MacLeod did not appear.

1. Mr. MacLeod was a lawyer licensed to practice law in Arizona having been first admitted to practice in Arizona on November 19, 2010.

COUNT ONE (File no. 17-3776/Higuchi-Mason)

2. On or about September 8, 2016, Kyoko Higuchi-Mason retained Mr. MacLeod to represent her in a dissolution action and a simultaneous order of protection proceeding against her husband. (Exhibit 2, SBA000008-12; Exhibit 46, SBA000164-172.)

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[1] All Rule references are to the Ariz. R. Sup. Ct. Copies of the Notice of Service and Complaint were also emailed to Respondent on November 8, 2018.
[2] See Rule 58(d).

3. Mr. MacLeod filed the initial petition for dissolution on October 26, 2016. The client's husband appeared pro per and filed an answer. A Resolution Management Conference (RMC) was set for March 6, 2017. Mr. MacLeod filed a Resolution Management Statement on March 3, 2017.

4. On March 6, 2017, the Court on its own reset the RMC for April 10, 2017.

5. Mr. MacLeod appeared with Higuchi-Mason at the RMC on April 10, 2017. After the hearing, the Court ordered the parties to attend a parenting conference and scheduled an evidentiary hearing on all issues for May 1, 2017.

6. On April 27, 2017, Mr. MacLeod moved to continue for reasons personal to Mr. MacLeod and his family. (Exhibit 1, SBA000001-7.)

7. The Court reset the hearing for May 18, 2017.

8. On May 17, 2017, Mr. MacLeod filed another motion to continue, for reasons personal to Mr. MacLeod and his family.

9. The Court reset the hearing for June 14, 2017.

10. On June 13, 2017, Mr. MacLeod filed a notice of settlement, asking the Court to vacate the evidentiary hearing and give the parties thirty days to submit appropriate documents. The Court vacated the hearing set for June 14, 2017.

11. On August 15, 2017, Mr. MacLeod appeared telephonically with Higuchi-Mason at a status hearing, after which the Court reset the evidentiary hearing for October 9, 2017.

12. Mr. MacLeod performed no further work on the matter after August 15, 2017 and failed to respond to or communicate with Higuchi-Mason. (Exhibit 2, SBA000008-12.)

13. On September 27, 2017, successor counsel made a limited scope appearance for Higuchi-Mason to file a consent decree and other final documents, and the Court entered them on October 4, 2017.

14. Higuchi-Mason paid Mr. MacLeod $900 for the petition for dissolution, $1,900 for the RMC Statement and Conference, and $2,900 for the evidentiary hearing that did not occur, for a total of $5,700. (Exhibit 46, SBA000164-172; Exhibit 47, SBA000173.)

15. Mr. MacLeod failed to communicate with Higuchi-Mason, scheduled and failed to show at multiple meetings, and would text her the day of a meeting to say he needed to cancel. Higuchi-Mason says that Mr. MacLeod would only initiate contact to ask her for more money, even though he had not performed the services for which she had already paid him. (Exhibit 2, SBA000008-12.)

16. Mr. MacLeod unilaterally rescheduled court dates and appointments due to his stated personal emergencies, without informing Higuchi-Mason. (Exhibit 1, SBA000001-7; Exhibit 2, SBA000008-12.)

17. Mr. MacLeod submitted filings that were inaccurate, which complicated the settlement negotiations between Higuchi-Mason and her husband. (Exhibit 2, SBA000008-12.)

18. Mr. MacLeod did not answer Higuchi-Mason's calls or emails and she could not get answers about her case, and Mr. MacLeod failed to provide her with copies of documents from her case. (Exhibit 2, SBA000008-12.)

19. Higuchi-Mason had to hire successor counsel to prepare accurate documents to reflect the agreements she reached with her husband. (Exhibit 2, SBA000008-12.)

20. Bar Counsel mailed a screening letter to Mr. MacLeod on May 8, 2018, at Mr. MacLeod's address of record. The screening letter was returned to the State Bar marked "Return to Sender, attempted not known – unable to forward." (Exhibit 3, SBA000013-14.)

21. On May 22, 2018, the screening letter was emailed to Mr. MacLeod at his email address in the State Bar directory. He provided no response. (Exhibit 4, SBA000015.)

22. Mr. MacLeod had four open matters with the SBA (Counts One through Four). Because he failed to respond to all of them, Bar Counsel requested an investigation to locate and communicate with him.

23. A Staff Investigator, Rose Ackerman, attempted to locate him and reached him by phone on July 18, 2018.

24. Mr. MacLeod confirmed that he had moved from his address of record at 4700 S. Mill Ave., where the original screening letter was mailed, and stated that in June he contacted Member Services and had updated his address to 10018 W.

Kingswood Cir., Sun City, AZ 85351. Mr. MacLeod confirmed that his email address of southchandlerlegal@gmail.com is a valid address he checks regularly.

25. Mr. MacLeod asked the Bar to mail and email all the screening letters again. Bar Counsel did so on July 19, 2018, both by regular mail to Mr. MacLeod's new address of record, and by email to the address Mr. MacLeod confirmed: southchandlerlegal@gmail.com. (Exhibit 5, SBA000016; Exhibit 6, SBA000017.)

26. Mr. MacLeod promised to respond to all open matters by August 1 or 2, 2018. He did not do so.

27. Mr. MacLeod has provided no response to this charge.

28. By engaging in the misconduct described above, Mr. MacLeod violated several ethical rules including, but not limited to: ERs 1.1, 1.3, 1.4, 1.5, 1.16, 3.2, 8.4(d) and Rule 54(d).

COUNT TWO (File no. 18-0006/Ross)

29. On January 15, 2017, Michael Ross and Mr. MacLeod had an initial consultation at a library during which Ross provided Mr. MacLeod copies of pleadings filed by his wife, including a notice of a temporary orders hearing scheduled on January 24, 2017. (Exhibit 15, SBA000110-112.)

30. Mr. MacLeod required a payment of $2,390 to commence representation, which would cover both the filing fee and a retainer. Ross's father called Mr. MacLeod and provided authorization to charge his credit card for that

amount, which Mr. MacLeod did. (Exhibit 11, SBA000037.) Mr. MacLeod failed to provide Ross with a written fee agreement. (Exhibit 14, SBA000041-109 at 106.)

31. On January 23, 2017, Mr. MacLeod emailed Ross to say, "it appears your filing fee with the Court was never paid. The Clerk of the Court will accept no documents without the fee being paid. Do you have a card we could debit for the $269 fee? And then the firm will pay the fee." (Exhibit 14, SBA000092-93.) Ross thought the filing fees were already included in the $2,390 payment, but he gave Mr. MacLeod his debit card information to make the payment. (Exhibit 12, SBA000038.)

32. Mr. MacLeod filed the pleadings on January 23, 2017 and also filed a "Notice of Limited Scope Appearance." It stated his role was limited to the temporary orders hearing on January 24, 2017. (Exhibit 10, SBA000023-36.) Mr. MacLeod provided no copy of this limited scope appearance to Ross. Ross did not understand that Mr. MacLeod asserted his representation was limited.

33. Shortly after the hearing on January 24, 2017, Mr. MacLeod emailed Ross that he required $5,000 in the next sixty days and prior to any further work being performed. He stated they would have to enter into a new fee agreement. Ross challenged this because he had never seen a fee agreement and asked for a copy of the fee agreement that covered the existing relationship, but Mr. MacLeod never provided it. (Exhibit 14, SBA0000102-106.)

34. Ross called and emailed Mr. MacLeod numerous times. Mr. MacLeod occasionally responded with non-responsive emails and claimed to have called Ross but could not reach him.

35. On February 7, 2017, Ross retained new counsel who substituted for Mr. MacLeod. Successor counsel had to amend Mr. MacLeod's prior filings to fix deficiencies, at additional costs to Ross. (Exhibit 13, SBA000039-40; Exhibit 14, SBA000043.)

36. Bar Counsel sent a screening letter to Mr. MacLeod on February 26, 2018 at Mr. MacLeod's address of record. (Exhibit 16, SBA000113-114.)

37. On March 27, 2018, Mr. MacLeod called Bar Counsel to request an extension to time to respond and said that he did not have access to the client file.

38. On April 9, 2018 Mr. MacLeod called Bar Counsel to report that he and his client had resolved the dispute. Bar Counsel directed Mr. MacLeod to submit a writing that confirmed the resolution. Bar Counsel cautioned that a resolution with the client would not necessarily resolve the bar charge, but it would be considered.

39. On May 1, 2018, Ross informed Bar Counsel that Mr. MacLeod had promised to meet him to give him a refund on four occasions but did not show up. (Exhibit 18, SBA000116.)

40. On May 2, 2018, Bar Counsel emailed Mr. McLeod and asked for a formal response to the screening letter by May 9, 2018. (Exhibit 20, SBA000120.) Mr. MacLeod did not respond.

41. On May 16, 2018, Bar Counsel mailed a 10-day reminder letter to Mr. MacLeod's address of record, but it was returned as undeliverable. (Exhibit 23, SBA000125.)

42. On May 22, 2018, a second copy of the screening letter was emailed to Mr. MacLeod's email address. (Exhibit 24, SBA000126.) Mr. MacLeod did not respond.

44. By engaging in the misconduct described above, Mr. MacLeod violated several ethical rules including, but not limited to: ERs 1.2, 1.3, 1.4, 1.5, 1.16, 3.2, 8.4(c), 8.4(d), and Rules 41(g) and 54(d).

COUNT THREE (File no. 18-0779/Judicial Referral)

45. James Hanson retained Mr. MacLeod to represent him in a dissolution matter. The matter was assigned to Judge Geoffrey Fish. (Exhibit 32, SBA000139-141.)

46. Trial was scheduled for March 1, 2018. Mr. MacLeod and his client failed to show for trial. Mr. MacLeod had also failed to file a Pre-Trial Statement or submit any exhibits on behalf of the client. (Exhibit 32, SBA000139-141.)

47. On March 12, 2018, Judge Fish held an Order to Show Cause hearing after which he held Mr. MacLeod in contempt for his failure to file a Pre-Trial Statement. Judge Fish detailed Mr. MacLeod's actions throughout the proceedings, which included but were not limited to: Mr. MacLeod's repeated failures to respond to discovery requests despite repeated promises that they were forthcoming; Mr.

MacLeod's representation that he could not appear at a telephonic conference because he had no working office phone and had no cell phone; Mr. MacLeod's failure to contact the Court to address his failure to appear at trial; and Mr. MacLeod's instruction to his client to not appear at trial, despite not having asked for or received a continuance. Judge Fish ordered Mr. MacLeod to pay $300 to the Client Protection Fund and referred the matter to the State Bar. (Exhibit 32, SBA000139-141.)

48. On March 22, 2018, Bar Counsel sent a screening letter to Mr. MacLeod at his address of record. It was returned as undeliverable. (Exhibit 33, SBA000142-143.)

49. On April 17, 2018, Bar Counsel was contacted by Ralph Adams, who indicated that Mr. MacLeod was consulting him and would like an extension of time to answer. An extension was granted until May 1, 2018.

50. On May 2, 2018, Mr. MacLeod phoned the State Bar and made a $300 payment to the Client Protection Fund.

51. On May 8, 2018, a ten-day reminder letter was sent to Mr. MacLeod at his current email address, but he did not respond. (Exhibit 35, SBA000146; Exhibit 34, SBA000144-145.)

53. By engaging in the misconduct described above, Mr. MacLeod violated several ethical rules including, but not limited to: ERs 1.3, 3.3, 3.4, 8.4(c), 8.4(d) and Rules 41(g) and 54(d).

COUNT FOUR (File no. 18-1306/Hanson)

54. James Hanson is the client for which Judge Fish made the judicial referral addressed in Count Three.

55. Hanson says he paid $8,290 to Mr. MacLeod to represent him in his dissolution action. (Exhibit 39, SBA000152-155; Exhibit 45, SBA000174-176.)

56. Hanson says that Mr. MacLeod called him the day before trial and instructed him not to go to court because Mr. MacLeod was sick. (Exhibit 39, SBA000152-155.)

57. Mr. MacLeod never communicated with Hanson again, and Hanson was unaware that no exhibits had been submitted on his behalf and a default had been entered against him. (Exhibit 39, SBA000152-155.)

58. The Court entered a decree by default and awarded Hanson's wife $13,152 in attorneys' fees and costs.

59. Hanson retained new counsel who moved to set aside the default decree and for other relief. Hanson's new counsel negotiated a settlement and consent documents were filed on August 29, 2018.

60. On June 6, 2018, Bar Counsel sent Mr. MacLeod a screening letter to 10018 W. Kingswood Cir., Sun City, AZ 85351, which was Mr. MacLeod's address of record. It was returned on June 27, 2018, as undeliverable. (Exhibit 40, SBA000156-157.)

66. On June 27, 2018, prior to receiving the returned letter, a ten-day reminder letter was sent to Mr. MacLeod's address of record. It was not returned. Mr. MacLeod did not respond. (Exhibit 41, SBA000158.)

67. On July 19, 2018, duplicates of the screening and ten-day reminder letters were emailed to Mr. MacLeod at his current email address. (Exhibit 6, SBA000017; Exhibit 42, SBA000159.) Mr. MacLeod has not responded.

69. By engaging in the misconduct described above, Mr. MacLeod violated several ethical rules including, but not limited to: ERs 1.2, 1.3, 1.4, 1.5, 3.3, 3.4, 8.4(c), and Rules 41(g) and 54(d).

CONCLUSIONS OF LAW

Based upon the facts deemed admitted and the evidence presented at the aggravation/mitigation hearing, the Hearing Panel finds by clear and convincing evidence that Mr. MacLeod violated the following ethical rules:

Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 3.3(a), 3.4(c), 4.1, 8.1(b), 8.4(c), 8.4(d), and Rule 54(c), (d)(1) and (2).

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions ("Standards")* are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should be considered: (1) the duty violated; (2) the lawyer's

mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard* 3.0.

Duties violated:

Mr. MacLeod violated his duty to his clients by violating ERs 1.2, 1.3, 1.4, 1.5 and 1.16. Mr. MacLeod violated his duty to the legal system by violating ERs 3.1, 3.2, 3.3(a), 3.4(c), and 4.1. Mr. MacLeod also violated his duty owed as a professional by violating ERs 8.1(b) and 8.4(c) and (d), and Rule 54(c), (d)(1) and (2).

Mental State and Injury:

Mr. MacLeod knowingly violated his duty to clients, implicating *Standards* 4.1 and 4.4.

Standard 4.11 provides that disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury to the client. In receiving advance fees from clients that were to be used to prepare and file documents, and pay a filing fee, and perform other services, and in failing to perform the agreed-upon services and failing to refund unused fees, Mr. MacLeod converted those funds for his own use.

Standard 4.41 states:

Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client;

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Standard 4.42 states:

Suspension 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. MacLeod abandoned his practice, knowingly failed to perform services for clients and engaged in a pattern of knowingly abandoning client matters, all of which caused serious or potentially serious injury to clients. In Mr. Hanson's case, Mr. MacLeod failed to show for trial, resulting in a default against his client and a contempt proceeding against Mr. MacLeod. In the Higuchi-Mason and Ross matters, Mr. MacLeod abandoned the clients, forcing them to retain successor counsel to address Mr. MacLeod's failings. *Standard 4.41* applies.

Mr. MacLeod also violated his duty to maintain personal integrity, implicating *Standard* 5.11. Mr. MacLeod's violation of ERs 8.4(c) includes dishonesty in converting client funds. *Standard* 5.11 provides that disbarment is generally appropriate when (a) a lawyer engages in, e.g., misappropriation or theft, or (b) conduct involving, e.g., dishonesty, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. In receiving funds to perform services and pay filing fees, and in failing to provide the agreed-upon services and

then failing to refund unearned fees, Mr. MacLeod misappropriated client funds, which was dishonest. Such conduct adversely reflects on the Mr. MacLeod's fitness to practice.

Mr. MacLeod also violated his duty owed as a professional, which implicates *Standard* 7.0. *Standard* 7.1 states, "Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system." *Standard* 7.2 states, "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."

Mr. MacLeod failed to substantively respond to the SBA's investigation or participate in these proceedings. Mr. MacLeod's failure to appear at trial resulted in contempt proceedings, after which Judge Fish found Mr. MacLeod in contempt and fined him. Mr. MacLeod's actions in accepting and keeping money when the agreed-upon services were not performed were done intending to obtain a personal benefit. *Standard* 7.1 applies.

AGGRAVATING AND MITIGATING FACTORS

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

- *Standard* 9.22(b): selfish or dishonest motive: Mr. MacLeod converted client funds for his own use;
- *Standard* 9.22(c): pattern of misconduct: Mr. MacLeod abandoned multiple clients;
- *Standard* 9.22(d): Mr. MacLeod violated multiple ERs;
- *Standard* 9.22(i); substantial experience in the practice of law: Mr. MacLeod was admitted in 2010;
- *Standard* 9.22(j): indifference to making restitution: Respondent converted client funds for personal use and has failed to respond on this issue; and
- *Standard* 9.22(k) illegal conduct: Respondent converted client money for his own use.

The Hearing Panel finds the following mitigating factor applies:

- *Standard* 9.32(a): absence of prior disciplinary record.

The Hearing Panel finds the sole mitigating factor does not outweigh the aggravating factors, therefore, disbarment is appropriate.

PROPORTIONALITY

In the past, the Supreme Court has consulted similar cases to assess the proportionality of the sanction recommended. *See In re Struthers*, 179 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept or proportionality review is "an imperfect process." *In re Owens*, 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases "are ever alike." *Id.*

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *See In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case**,** as neither perfection nor absolute uniformity can be achieved. *Id*. at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In *In Re Steimel*, (SB16-2038, 16-2311), Steimel consented to disbarment based on a complaint filed by the State Bar that alleged Steimel neglected clients and their cases, and did not provide refunds for unearned fees, thereby converting client funds for his own use, among other misconduct. Steimel violated ERs 1.2, 1.3, 1.4, 1.15 and 8.4.

In *In Re Anderson*, (SB15-2866, et al), Anderson was disbarred for conduct that included abandoning clients without notice, failure to communicate, failure to have fee agreements, and other misconduct. Anderson violated ERs 1.2, 1.3, 1.4, 1.5, 1.8, 1.15, 1.16, 3.2, 3.4, 8.1, 8.4, and Rule 54(c) and (d), Ariz. R. Sup. Ct. Aggravating factors included prior discipline, dishonest or selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of disciplinary proceedings, refusal to acknowledge the wrongful nature of his conduct, and substantial experience in the practice of law. There were no mitigating factors.

In *In Re Drake*, (SB16-2232, 16-2682, 16-2683, 16-2726), Drake was disbarred for conduct including taking money from clients and failing to provide agreed-upon services. Drake also failed and refused to participate in the discipline proceedings. Drake violated ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.3, 8.1, 8.4, and Rule 54, Ariz. R. Sup. Ct. Aggravating factors included prior discipline, dishonest of selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of disciplinary proceedings, refusal to acknowledge the wrongful nature of his conduct, and substantial experience in the practice of law. One mitigating factor of personal or emotional problems was given little weight.

In *In Re Rush*, (SB15-2534, et al), Rush was disbarred for conduct that included accepting fees and failing to perform work, refusing to refund unearned fees, and abandoning clients, among other misconduct. Rush also failed to participate in the State Bar's investigation and discipline proceedings. Rush violated ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.4, 8.1, 8.4, and Rule 54, Ariz. R. Sup. Ct. Aggravating factors included: dishonest of selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of disciplinary proceedings, refusal to acknowledge the wrongful nature of his conduct, vulnerability of victims, and substantial experience in the practice of law. The sole mitigating factor was the absence of prior discipline.

This case is similar to the others mentioned above because they all involve abandonment of clients, accepting money and failing to perform agreed-upon

services, failure to provide a refund of unearned fees, and failure to cooperate with the State Bar investigation and disciplinary proceedings.

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 Hearing Panel orders:

1. Scott A. MacLeod is disbarred from the practice of law effective thirty (30) days from the date of this order.

2. Mr. MacLeod 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.

3. Mr. MacLeod shall pay all costs and expenses incurred by the SBA as ordered by the Presiding Disciplinary Judge in this proceeding.

4. Mr. MacLeod shall pay the following in restitution:

a. Higuchi-Mason: $5,700.00

b. Ross: $2,600.00

c. Hanson: $8,290.00

A final judgment and order shall follow.

DATED this 29th day of January 2019.

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

Signature on File
George A. Riemer, Volunteer Attorney Member

Signature on File
Mel O'Donnell, Volunteer Public Member

Copy of the foregoing emailed/mailed
this 29th day of January 2019, to:

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

NOV 7 2018

FILED

BY

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **SCOTT A. MACLEOD JD, Bar No. 028130,** Respondent.	**PDJ 2018-9096** **COMPLAINT** [State Bar Nos. 17-3776, 18-0006, 18-0778, 18-1306]

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 November 19, 2010.

COUNT ONE (File no. 17-3776/Higuchi-Mason)

2. On or about September 8, 2016, Kyoko Higuchi-Mason retained Respondent to represent her in a dissolution action and a simultaneous order of protection proceeding against her husband.

3. Respondent filed the initial petition for dissolution on October 26, 2016. The client's husband appeared pro per and filed an answer. A Resolution Management Conference (RMC) was set for March 6, 2017. Respondent filed a Resolution Management Statement on March 3, 2017.

4. On March 6, the Court on its own reset the RMC for April 10, 2017.

5. Respondent appeared with Higuchi-Mason at the RMC on April 10, 2017. After the hearing, the Court ordered the parties to attend a parenting conference, and scheduled an evidentiary hearing on all issues for May 1, 2017.

6. On April 27, 2017, Respondent filed a motion to continue, for reasons personal to Respondent and his family.

7. The Court reset the hearing for May 18, 2017.

8. On May 17, 2017, Respondent filed another motion to continue, for reasons personal to Respondent and his family.

9. The Court reset the hearing for June 14, 2017.

10. On June 13, 2017, Respondent filed a notice of settlement, asking the Court to vacate the evidentiary hearing and give the parties thirty days to submit appropriate documents. The Court vacated the hearing set for June 14, 2017.

11. On August 15, 2017, Respondent appeared telephonically with Higuchi-Mason at a status hearing, after which the Court reset the evidentiary hearing for October 9, 2017.

12. Respondent performed no further work on the matter after August 15, 2017, and failed to respond to or communicate with Higuchi-Mason.

13. On September 27, 2017, successor counsel made a limited scope appearance for Higuchi-Mason to file a consent decree and other final documents, and the Court entered them on October 4, 2017.

14. Higuchi-Mason paid Respondent $900 for the petition for dissolution, $1,900 for the RMC Statement and Conference, and $2,900 for the evidentiary hearing that did not occur, for a total of $5,700.

15. Respondent failed to communicate with Higuchi-Mason, scheduled and failed to show at multiple meetings, and would text her the day of a meeting to say he needed to cancel. Higuchi-Mason says that Respondent would only initiate

contact to ask her for more money, even though he had not performed the services for which she had already paid him.

16. Respondent unilaterally rescheduled court dates and appointments due to Respondent's personal emergencies, without informing Higuchi-Mason.

17. Respondent submitted filings that were inaccurate, which caused problems with the final settlement Higuchi-Mason reached with her husband.

18. Respondent did not answer Higuchi-Mason's calls or emails and she was unable to get answers about her case, and Respondent failed to provide her with copies of documents from her case.

19. Higuchi-Mason had to hire successor counsel to prepare accurate documents to reflect the agreements she reached with her husband.

20. Undersigned Bar Counsel mailed a screening letter to Respondent on May 8, 2018, at Respondent's address of record. The screening letter was returned to the State Bar marked "Return to Sender, attempted not known – unable to forward."

21. On May 22, 2018, the screening letter was emailed to Respondent at his email address in the State Bar directory. Respondent provided no response.

22. Respondent had four open matters (addressed in Counts One through Four herein) and had failed to respond to all of them, so Bar Counsel requested an investigation to attempt to locate and communicate with Respondent.

23. A Staff Investigator, Rose Ackerman, attempted to locate Respondent, and was able to reach him by phone on July 18, 2018.

24. Respondent confirmed that he had moved from his address of record at 4700 S. Mill Ave., where the original screening letter was mailed, and stated that in June he contacted Member Services and had updated his address to 10018 W. Kingswood Cir., Sun City, AZ 85351. Respondent confirmed that his email address of southchandlerlegal@gmail.com is a valid address that he checks on a regular basis.

25. Respondent asked the Bar to mail and email all of the screening letters again. Bar Counsel did so on July 19, 2018, both by regular mail to Respondent's new address of record, and by email to the address Respondent confirmed: southchandlerlegal@gmail.com.

26. Respondent promised to provide a response to all open matters by August 1 or 2, 2018. He did not do so.

27. As of the date of this complaint, Respondent has provided no response to this charge.

28. Respondent violated Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.5, 1.16, 3.2, 8.4(d), and Rule 54(d), Ariz. R. Sup. Ct.

COUNT TWO (File no. 18-0006 /Ross)

29. On January 15, 2017, Michael Ross and Respondent had an initial consultation at a library during which Ross provided Respondent copies of pleadings filed by his wife, including a notice of a temporary orders hearing scheduled on January 24, 2017.

30. Respondent required a payment of $2,390 to commence representation, which would cover both the filing fee and a retainer. Ross's father called Respondent and provided authorization to charge his credit card for the full amount, which Respondent did. Respondent failed to provide Ross with a written fee agreement.

31. On January 23, 2017, Respondent emailed Ross to say, "it appears your filing fee with the Court was never paid. The Clerk of the Court will not accept any documents without the fee being paid. Do you have a card we could debit for the $269 fee? And then the firm will pay the fee." Ross thought the filing

fees were already included in the $2,390 payment, but he nevertheless gave Respondent his debit card information to make the payment.

32. Respondent filed the pleadings on January 23, 2017, and also filed a "Notice of Limited Scope Appearance" that stated his role was limited to the temporary orders hearing on January 24, 2017. Respondent did not provide a copy of this limited scope appearance to Ross, and Ross had no idea that Respondent asserted his representation was limited.

33. Shortly after the hearing on January 24, 2017, Respondent emailed Ross that he would require $5,000 in the next sixty days and prior to any further work being performed, and that they would have to enter into a new fee agreement. Ross challenged this because he had never seen a fee agreement, and asked for a copy of the fee agreement that covered the existing relationship, but Respondent did not provide this.

34. Ross called and emailed numerous times, and Respondent occasionally responded with non-responsive emails and claimed to have called Ross but was unable to reach him.

35. On February 7, 2017, Ross retained new counsel who substituted in for Respondent. Successor counsel had to amend Respondent's prior filings to fix deficiencies, at additional costs to Ross.

36. Undersigned Bar Counsel sent a screening letter to Respondent on February 26, 2018 at Respondent's address of record.

37. On March 27, 2018, Respondent called undersigned Bar Counsel to request an extension to time to respond, and said that he did not have access to the client file.

38. On April 9, 2018 Respondent called Bar Counsel to report that he and his client had resolved the dispute. Bar Counsel directed Respondent to submit a writing that confirmed the resolution. Bar Counsel cautioned that a resolution with the client would not necessarily resolve the bar charge, but it would be taken into consideration.

39. On May 1, 2018, Ross informed Bar Counsel that Respondent had promised to meet him to give him a refund on four different occasions, but did not show up.

40. On May 2, 2018, Bar Counsel emailed Respondent and asked for a formal response to the screening letter by May 9, 2018. Respondent did not respond.

41. On May 16, 2018, Bar Counsel mailed a 10 day reminder letter to Respondent's address of record, but it was returned as undeliverable.

42. On May 22, 2018, a second copy of the screening letter was emailed to Respondent's email address. Respondent did not respond.

43. The State Bar re-alleges and incorporates the allegations set forth in paragraphs 22 through 27 above, as if fully set forth herein in Count Two.

44. Respondent violated Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.5, 1.16, 3.2, 8.4(c), 8.4(d), Rule 41(g), Ariz. R. Sup. Ct., Rule 54(d), Ariz. R. Sup. Ct.

COUNT THREE (File no. 18-0778/Judicial Referral)

45. James Hanson retained Respondent to represent him in a dissolution matter. The matter was assigned to Judge Geoffrey Fish.

46. Trial was scheduled in the matter for March 1, 2018. Respondent and his client failed to show for trial. Respondent had also failed to file a Pre-Trial Statement or submit any exhibits on behalf of the client.

47. On March 12, 2018, Judge Fish held an Order to Show Cause hearing after which he held Respondent in contempt for his failure to file a Pre-Trial Statement. Judge Fish detailed Respondent's actions throughout the proceedings which included but were not limited to: Respondent's repeated failures to respond to discovery requests despite repeated promises that they were forthcoming; Respondent's representation that he could not appear at a telephonic conference because he had no working office phone and did not have a cell phone; Respondent's failure to contact the Court to address his failure to appear at trial; and Respondent's instruction to his client to not appear at trial, despite not having asked for or received a continuance. Judge Fish ordered Respondent to pay $300 to the Client Protection Fund, and referred the matter to the State Bar.

48. On March 22, 2018, undersigned Bar Counsel sent a screening letter to Respondent at his address of record. It was returned as undeliverable.

49. On April 17, 2018, undersigned Bar Counsel was contacted by Ralph Adams, who indicated that Respondent was consulting him and would like an extension of time to answer. An extension was granted until May 1, 2018.

50. On May 2, 2018, Respondent phoned the State Bar and made a $300 payment to the Client Protection Fund.

51. On May 8, 2018, a ten day reminder letter was sent to Respondent at his current email address.

52. The State Bar re-alleges and incorporates paragraphs 22 through 27 above, as if fully set forth herein in Count Three.

53. Respondent violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 3.3, 3.4, 8.4(c), 8.4(d), Rule 41(g), Ariz. R. Sup. Ct, and Rule 54(d), Ariz. R. Sup. Ct.

COUNT FOUR (File no. 18-1306/Hanson)

54. James Hanson is the client in the matter for which Judge Fish made the judicial referral addressed in Count Three.

55. Hanson says he paid $10,000 to Respondent to represent him in his dissolution action.

56. Hanson says that Respondent called him the day before trial and instructed him not to go to court because Respondent was sick.

57. Respondent never communicated with Hanson again, and Hanson was unaware that no exhibits had been submitted on his behalf and a default had been entered against him.

58. The Court entered a decree by default and awarded Hanson's wife $13,152 in attorneys' fees and costs.

59. Hanson retained new counsel who filed a motion to set aside the default decree and for other relief. Hanson's new counsel negotiated a settlement and consent documents were filed on August 29, 2018.

60. On June 6, 2018, undersigned Bar Counsel sent Respondent a screening letter to 10018 W. Kingswood Cir., Sun City, AZ 85351, which was Respondent's address of record at that time. It was returned on June 27, 2018, as undeliverable.

66. On June 27, 2018, prior to receiving the returned letter, a ten day reminder letter was sent to Respondent's address of record. It was not returned. Respondent did not respond.

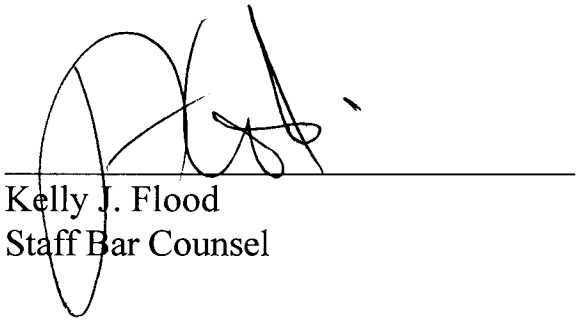
67. On July 19, 2018, duplicates of the screening and ten day reminder letters were emailed to Respondent at his current email address.

68. As of the date of this complaint, Respondent has not responded.

69. Respondent violated Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.5, 3.3, 3.4, 8.4(c), 8.4(d), Rule 41(g), Ariz. R. Sup. Ct, and Rule 54(d), Ariz. R. Sup. Ct.

DATED this 7th day of November, 2018.

STATE BAR OF ARIZONA



Kelly J. Flood
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 7th day of November, 2018.

by: Karen E. Calcagno
KJF:kec

FILED

OCT 12 2018

BY

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, **SCOTT A. MACLEOD** **Bar No. 028130** Respondent.	No. 17-3776 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 12, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 6-0-3[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 17-3776.

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 12 day of October, 2018.

Lawrence F. Winthrop

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

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

Original filed this 12th day
of October, 2018 with:

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

Copy mailed this 15th day
of October, 2018, to:

Scott A. Macleod, JD
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10018 W. Kingswood Cir.
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Email: southchandlerlegal@gmail.com
Respondent

Copy emailed this 15th day
Of October, 2018, to:

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Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

by: Marguita Goode
KJF/mg

FILED

OCT 12 2018

BY

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, **SCOTT A. MACLEOD** **Bar No. 028130** Respondent.	No. 18-0006 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 12, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 6-0-3[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-0006.

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 12 day of October, 2018.

Lawrence F. Winthrop

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

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

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Phoenix, Arizona 85016-6266

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MacLeod Law LLC
10018 W. Kingswood Cir.
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Email: southchandlerlegal@gmail.com
Respondent

Copy emailed this 15th day
of October, 2018, to:

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E-mail: LRO@staff.azbar.org

by: Marguita Goode
KJF/mg

FILED

OCT 12 2018

BY D. Lebon

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

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **SCOTT A. MACLEOD** **Bar No. 028130** Respondent.	No. 18-0778 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 12, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 6-0-3[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-0778.

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 12 day of October, 2018.

Lawrence F. Winthrop

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

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

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Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

by: Margarita Poole
KJF/mg

FILED

OCT 12 2018

BY H. Lebon

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

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **SCOTT A. MACLEOD** **Bar No. 028130** Respondent.	No. 18-1306 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 12, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 6-0-3[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-1306.

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 12 day of October, 2018.

Lawrence F. Winthrop

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

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

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by: Marguita Goodu
KJF/mg