

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

JEFFREY D. MOFFATT,
Bar No. 021642

Respondent.

PDJ-2015-9115

**FINAL JUDGMENT AND ORDER
OF DISBARMENT**

[State Bar File No. 15-1449]

FILED APRIL 19, 2016

This matter came for hearing before the Hearing Panel, which rendered its decision on March 7, 2016. An appeal was filed, but no stay under Supreme Court Rule 59(c) was requested nor issued.

Now Therefore,

IT IS ORDERED Respondent, **JEFFREY D. MOFFATT, Bar No. 021642**, is disbarred from the State Bar of Arizona and his name is hereby stricken from the roll of lawyers effective April 6, 2016, as set forth in the Decision and Order Imposing Sanctions filed on March 7, 2016. Mr. Moffatt 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. Moffatt 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.

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IT IS FURTHER ORDERED, under Supreme Court Rule 60(2)(B), the issue of costs shall abide the final order of the Supreme Court.

DATED this 19th day of April 2016.

William J. O'Neil

William J. O'Neil
Presiding Disciplinary Judge

Copies of the foregoing e-mailed this 19th day of April 2016, and mailed April 20, 2016, to:

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**BEFORE THE PRESIDING DISCIPLINARY
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**IN THE MATTER OF A MEMBER OF
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**JEFFREY D. MOFFATT,
Bar No. 021642,**

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PDJ 2015-9115

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar No. 15-1449]

FILED MARCH 7, 2016

PROCEDURAL HISTORY

On October 16, 2015, the Attorney Discipline Probable Cause Committee issued its probable cause order. The State Bar of Arizona (State Bar) filed its single count complaint on November 3, 2015. Notice of service of the Complaint was filed on November 9, 2015. The complaint was served on Respondent by certified, delivery restricted, mail, and by regular first class mail, under Rules 47(c) and 58(a)(2)¹. The Disciplinary Clerk assigned the Presiding Disciplinary Judge ("PDJ") on November 12, 2015.

Disregarding the Supreme Court Rules, Mr. Moffatt filed his "answer" dated November 23, 2015, with the United States District Court for the District of Arizona, asserting that court had jurisdiction. He sent a copy of that pleading to the Disciplinary Clerk, which was received on November 25, 2015. A Notice of Initial Case Management Conference setting that conference for December 1, 2015 was sent to the parties on November 25, 2015. On November 30, 2015, Mr. Moffatt filed

¹ Unless otherwise cited, all references to rules are to the Arizona Rules of the Supreme Court.

his answer to the State Bar complaint with the Disciplinary Clerk by copying his answer filed with the United States District Court. He inserted the discipline cause number above the District Court cause number. In that answer, Mr. Moffatt made a general denial to "each and every allegation, statement matter and/or thing set forth and alleged" within the complaint.

The answer of Mr. Moffatt listed thirty-eight (38) affirmative defenses. Included within those affirmative defenses were: 1) "Government employees as well as supervisors can be held liable for criminal actions, based on the brand new U.S. Supreme Court case (Government Immunity just disappeared for criminal actions by government employees)"; 2) "Porn gate is being handled amazingly different than this case, possible because a State Supreme Court Justice is involved" (Pennsylvania); 3) "if Lisa Childers, Complainant suffered any damages, which is denied, Lisa Childers has failed to mitigate such damages."; 4) "Lisa Childers Complainant [has] failed to do equity"; 5) "Lisa Childers-Complainant did not exercise care, caution or prudence in avoiding the happening of the alleged Count One"; 6) "Lisa Childers-Complainant is estopped in seeking the relief herein due to her own acts" and; 7) the action is barred "because Lisa Childers-Complainant, has engaged in acts and courses of conduct which render her in *pari delicto*." Mr. Moffatt never offered any support for any of his stated affirmative defenses. On page 29 of that answer Mr. Moffatt certified "that the foregoing NOTICE of Removal, with exhibits" was sent to the State Bar of Arizona. There was no document entitled notice of removal filed with the disciplinary clerk. However, a copy of that notice was admitted as Exhibit 10 in the aggravation/mitigation hearing.

On December 1, 2015, the mandatory telephonic initial case management conference was held under Rule 58(c). Nicole S. Kasetta appeared on behalf of the State Bar of Arizona. Mr. Moffatt appeared *pro per*. Standard scheduling orders were signed and issued that same date, controlling the subsequent course of the action under Civil Rule 16(i) applicable to disciplinary proceedings by Rule 48(b).

On December 7, 2015, a formal notice of the mandated settlement conference was filed stating the settlement conference had been scheduled before a named settlement officer for January 19, 2016. On December 16, 2015, the U.S. District Court denied the request of Mr. Moffatt to have this action heard in the federal district court and remanded the case.

Ignoring the limitation on requests for admission in Civil Rule 36(b), applicable to discipline proceedings by Rule 48(b), Mr. Moffatt served one hundred and six (106) requests for admission on the State Bar. On December 29, 2015, a motion to strike those requests was filed by the State Bar. The following day, the State Bar moved for sanctions, alleging Mr. Moffatt had failed and refused to file an initial disclosure statement. On that same day, Mr. Moffatt moved for stay of the proceedings certifying there was an unspecified "pending matter" before the PDJ, the Arizona Supreme Court, and the Ninth Circuit Court of Appeals. Mr. Moffatt also filed, on December 30, 2015, an unsigned Motion for Expanded Request for Admissions, which attached his December 28, 2015 request for admissions objected to by the State Bar. [Ex. 18.]

Those requests widely varied, had little relevance and included such requests as: "11. Admit Nudity is legal in Arizona."; "12. Admit Playboy magazines are legally sold to adults in Arizona."; "21. Admit No Arizona Judge has ever been disbarred for

the sole act of being criminally charged and prosecuted for requesting an adult nude.”; “30. Admit Arizona Judges, Arizona District Attorneys, Arizona Public Defenders have had members of their respective organizations enter bars outside of Arizona.”; “41. Admit Computer technician, are aware of Adult Nude pictures, on the computers of state employees.”; “84. Admit A tactic that the District Attorney uses for criminal prosecution, is to overcharge an accused.”; “92. Admit if a police officer arrests an individual for an item that is not in fact illegal, that police officer has committed a crime himself.” and; “94. Admit it is now legal in at least one European Country to barter sex for driving instructions, assuming it was the driving instructor that suggested the barter.” On January 4, 2016, Mr. Moffatt requested a hearing regarding his simultaneously filed motion for expanded request for admissions and on the motion to strike filed by the State Bar.

In addition to the foregoing, Mr. Moffatt moved for Recusal and in the Alternative a Request for Recusal of the PDJ on January 4, 2016, certifying “he represented at least one individual as an attorney that either has William O’ Neil listed as a Defendant, or an adverse witness...” He later stated “Justice William O’Neil is in fact a named party or an adversarial witness in at least one case that Jeffrey Moffatt is appointed as the attorney.” Under Supreme Court Rule 51, a volunteer attorney panel member was appointed to decide that motion. That hearing officer found the motion “fatally defective” and denied the motion on January 22, 2016. In the interim, Mr. Moffatt moved to strike the State Bar request for admissions and its request for production of documents. Mr. Moffatt separately moved to quash a subpoena for his deposition, to recommend an investigation to the Arizona Inspector General for prosecutor misconduct and to continue the settlement conference.

After being reassigned to the case on January 22, 2016, the PDJ issued separate orders denying Mr. Moffatt's motion to strike the State Bar request for admissions, motion to strike the State Bar request for production of documents, and denying Mr. Moffatt's motion for stay. Although the request to quash the subpoena was denied, Mr. Moffatt's request to alternatively continue the deposition was granted. The deposition was set for January 26, 2016 at 9:30 a.m.

When Mr. Moffatt's answer was compared with his later certifications in other pleadings, significant conflicts were noted. . In his answer, he denied all allegations, *including the allegation that he was an attorney*. He also denied having any contact with the complainant. In his later pleadings he certified under Civil Rule 11, applicable to disciplinary proceedings by Rule 48(b), that he was an attorney and that his contact with the complainant was protected free speech. In light of such seemingly inconsistent factual assertions and multiple others, a hearing was set for 3:00 p.m. on January 26, 2016, to determine if sanctions were appropriate. Mr. Moffatt and Bar Counsel were ordered to appear. The parties were cautioned "failure to appear shall result in sanctions." In that order the PDJ reminded the parties,

Mr. Moffatt is presumed innocent, despite his contrary pleadings, he is encouraged to consider that the burden of proof upon the State Bar is by clear and convincing evidence. If there are valid defenses, this action will be resolved in his favor. However, his inconsistent factual positions can work to his detriment, affecting his credibility as a witness. Every unrepresented respondent is informed of his ability to hire counsel. Mr. Moffatt is reminded he was informed of that ability in the initial case management conference and during that conference. He is reminded of that again.

Mr. Moffatt did not respond to the State Bar's motion for sanctions. Civil Rule 7(b) applies to disciplinary proceedings under Rule 48(b). The absence of a response was deemed a consent to granting the motion. The PDJ issued an order setting a Rule

58(f)(3) hearing for 3:00 p.m. on January 26, 2016. The request of Mr. Moffatt for a hearing regarding his request for admissions was granted. Oral argument was set for 3:00 p.m. on January 26, 2016. Mr. Moffatt and Bar Counsel were ordered to appear.

On January 26, 2016, Bar Counsel Nicole S. Kasetta appeared for the scheduled hearing. Mr. Moffatt failed to appear. It was verified with the disciplinary clerk, Mr. Moffatt made no phone calls or sent emails or other written correspondence prior to or during the hearing to explain, continue, delay or request his absence. No notice of any kind was given by Mr. Moffatt that he would not appear. Without notice or explanation, Mr. Moffatt also failed to appear for his noticed deposition. [Ex. 23.]

Procedurally, because disciplinary proceedings are "quasi-criminal in nature...the requirements of procedural due process must be met." *In re Brady*, 186 Ariz. 370, 373, 923 P.2d 836, 839 (1996). Mr. Moffatt was afforded due process as he was given fair notice of the charges and a meaningful opportunity to defense against them. *In re Aubuchon*, 233 Ariz. 62, 309 P.3d 886, (2013).

On January 28, 2016, for reasons stated within an order issued that date, the PDJ issued sanctions, including striking his answer and entering an effective default against him. On the same day, the disciplinary clerk sent a notice of aggravation and mitigation hearing to all parties notifying them the aggravation mitigating hearing was scheduled for February 18, 2016 at 1:30 p.m., at the State Courts Building, 1501 West Washington, Room 109, Phoenix, Arizona 85007-3231.

On February 18, 2016, the Hearing Panel, comprised of Jan S. Enderle, public member, and Lorie B. Patrick, attorney member, heard argument. Mr. Moffatt again failed to appear. From January 12, 2016 through February 18, 2016, Mr. Moffatt

filed no pleadings or notices with the disciplinary clerk. Mr. Moffatt did send to the disciplinary clerk a copy of a Motion to Stay which he had filed with the United States District Court, asking that court to stay the ruling of the Arizona Supreme Court and this action. That copy was received but not filed. Mr. Moffatt moved for Judicial Notice on February 22, 2016. Regardless of the ruling on that motion, it would not affect our decision.

FINDINGS OF FACT

The facts listed below are those set forth in the State Bar's complaint and were deemed admitted under Rule 58(d), by the January 28, 2016, Order Issuing Sanctions and Setting Aggravation/Mitigation Hearing.

1. Respondent, Mr. Moffatt, is a lawyer licensed to practice law in Arizona, having been first admitted to practice in Arizona on July 9, 2002. In addition, Mr. Moffatt wrote to the State Bar of Arizona, "My area of practice relates to Federal Law. To the extent that she was referred to me for that area alone, it is within what I am licensed to practice. It is usually not necessary to apply Pro Hac Vice in a state for a Federal Matter." [Ex. 1, SBA 00002.] He acknowledges he intentionally lists on his website he practices California Law, but states it doesn't matter because there is "no statement of California Superior court practice..." He failed the California Bar examination and yet asserts, "After the test, the bar changed the grading parameters of the test and it was proven via a PHD in statistics that if the bar parameters had not been changed i.e. re-weighted, that my score would have passed." He concludes, "I take the position, that although I do not practice California Law, I have passed the test. If I have passed the test, then even if there had been California Practice of Law, I would in fact be an authorized to do so." [Ex. 1, SBA00003.]

COUNT ONE (File No. 15-1449/Lisa Childers)

2. Lisa Childers ("Childers"), who resides in New Mexico, sought Respondent's assistance with certain tax debt.

3. On October 11, 2013, Childers communicated with Mr. Moffatt Respondent via Facebook Messenger to retain him as her attorney to represent him. [Ex. 5, SBA00015-25.] She wrote to Respondent: "Hi[,] I'm the person [P]at [S]purlin talked to you about I just wanted to let you know I'm trying to get the 75.00 round up [for an initial consultation] and hopefully will be in touch with you next week."

4. Mr. Moffatt responded on the same day: "I take all sorts of things as trade fyi. C.A.P. Cash, Assets. . . ."

5. Childers replied: "I've pretty much sold everything I have of value[.] . . . So. . . . I will get it[,] it will just take [the] weekend."

6. Mr. Moffatt then asked Childers to send "me the basics" and stated that he would take "the position that it [the fee] is on the way."

7. Minutes later, Mr. Moffatt wrote Childers: "fyi-I have a bad boy streak in me, just like my father. This allows me to be flexible."

8. Childers responded: "Awesome. Rock on bad boy."

9. Mr. Moffatt then wrote: "How about a pic. And then send me the money later."

10. Childers responded: "A picture of?????"

11. Mr. Moffatt answered: "[W]hatever you think might motivate me. How does that sit with you? Did I offend you or are we ok."

12. Childers then wrote: "I'm not sure what motivates you. Lol."

13. Mr. Moffatt replied: "I am a bad boy that likes women. Any shape. Does that focus it[?]."

14. Childers then sent Mr. Moffatt a picture of herself with her grandson.

15. In response, Mr. Moffatt wrote: "[C]ash and assets are best, but a woman has more options. Nice pic."

16. Mr. Moffatt later wrote: "How about a pic without [the] kid or?? How much less will I be able to see. Workable or not?"

17. Childers subsequently sent Mr. Moffatt another picture of herself clothed and asked "[i]s this what you wanted."

18. Mr. Moffatt responded: "[G]ood start. How about removing something[?] [W]hen are you going to send me the docs. So I can get started."

19. Childers did not respond to the question about "removing something" and, therefore, Mr. Moffatt again messaged Childers: "[A]re you going to give me the pic with less as well. Lets just call it what I want. Yes I want a nude."

20. Childers responded: "I don't even take a shower nude. And what would that get me[?]"

21. Mr. Moffatt replied: "Give me a surrogate for you, or cash works."

22. Childers asked Mr. Moffatt what he meant by "a surrogate" and Mr. Moffatt informed her this meant "[a]nother woman."

23. Childers then asked Mr. Moffatt "[h]ow would I do that[?]" and Mr. Moffatt responded: "How many friends do you have[?] Say [c]an I borrow\$ [sic]. No, if not, I need a pic for **."

24. Childers next inquired "[h]ow much in services will that cover[?]"

25. Mr. Moffatt responded: "Pics buys time. Physical attention will be bartered. I could collect the physical when I am in town later in year."

26. Childers did not respond, and Mr. Moffatt followed up with Childers by writing: "[W]hich way are we going, pic, cash, physical?"

27. Childers, who operates a day care out of her house, then wrote: "I'm getting my babies ready for a nap[.] I will get back with you."

28. Mr. Moffatt informed Complainant he would call her and then subsequently messaged her stating that he tried to call her twice.

29. Childers subsequently filed a charge against Mr. Moffatt with the State Bar of California ("California") because Mr. Moffatt is in California. California then referred such bar charge to the State Bar of Arizona.

30. In response to a request for supplemental information, Mr. Moffatt advised the State Bar of Arizona that the State Bar of New Mexico ("New Mexico") reviewed the instant matter and "cleared me. . . ." A staff investigator from the State Bar of Arizona contacted New Mexico to seek documents regarding Mr. Moffatt. New Mexico would not provide the documents unless Mr. Moffatt executed a waiver.

31. A staff investigator contacted Mr. Moffatt twice to obtain the waiver but Mr. Moffatt did not timely respond to the staff investigator's requests.

32. On August 14, 2015, Mr. Moffatt finally responded to the staff investigator's requests for him to sign a waiver and refused to sign the waiver because it was allegedly overbroad. [Ex. 4.]

33. The staff investigator revised the waiver, narrowing its scope, but Mr. Moffatt again refused to sign the waiver. We find there is no evidence there was any "vindication" of Mr. Moffatt as alleged by him. [Ex. 7-9.]

34. Contrary to the denial in his answer, Mr. Moffatt admitted in his June 22, 2015 letter to the State Bar he “advised that an alternative barter would be possible to obtain more time to cover the consultation fee.” In the letter he acknowledges his communications with complainant and argues his bartering was “viable.” [Ex. 1.]

35. Contrary to the denial in his answer, Mr. Moffatt indirectly admitted by letter dated July 1, 2015, the communications with complainant. There he argued, “Since no nude was ever received, nor was it shared, no crime existed, even under the current regulation.” [Ex. 2.]

36. We find the complainant was both vulnerable and injured by the actions of Mr. Moffatt. [Ex. 5-6.]

37. Mr. Moffatt’s conduct in this count violated Rule 42, Ariz. R. Sup. Ct., 8.4(a), 8.4(b), 8.1(b), and Rules 54(d) and 41(g), Ariz. R. Sup. Ct.

CONCLUSIONS OF LAW

On January 28, 2016, the PDJ entered the sanction of effective default as being most akin to the entry of a default judgment against Mr. Moffatt for reasons stated within an order of that date. Although the allegations are deemed admitted by that sanction, there has also been an independent determination by the Panel that the State Bar has proven by clear and convincing evidence Mr. Moffatt violated the ethical rules.

We find the allegations in the complaint true, as importantly, we are satisfied the legal conclusions by the State Bar, although apparent from the facts, have been proven. We find by clear and convincing evidence Mr. Moffatt violated: Rule 42, Ariz. R. Sup. Ct., specifically ERs 8.4(a) (professional misconduct for lawyer to violate or attempt to violate the Rules of Professional Conduct including through the acts of

another), 8.4(b) (engage in criminal conduct), 8.1(b) (knowingly fail to respond to lawful demand for information from disciplinary authority), and Rules 54(d) (refusal to cooperate or failure to furnish information), and 41(g) (unprofessional misconduct), Ariz. R. Sup. Ct.

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). It is the guideline used by our Supreme Court. *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040, (1990). Under Standard 1.1,

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 to discharge their professional duties to clients, the public, the legal system and the legal profession.

See also *In re Brady*, 186 Ariz. 370, 923 P.2d 836 (1996). A second purpose of lawyer discipline is to deter others. *In re Brown*, 184 Ariz. 480, 910 P.2d 631 (1996). Concomitant with such purpose is to specifically deter repeat conduct by the lawyer.

Attorney discipline does not have the purpose of punishing the respondent attorney. *Brown*, supra. However, "The right to practice law is not one of the inherent rights of every citizen..[but] is a peculiar privilege granted and continued only to those who demonstrate special fitness in intellectual attainment and in moral character." *In re Crossen*, 880 N.E.2d 352, 388 (Mass. 2008) (citation omitted).

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. Moffatt violated his duty to the public and his duty as a professional.

Mental State and Injury:

We find *Standard 5.11, Failure to Maintain Personal Integrity*, applies to Mr. Moffatt's violation of ER 8.4(b) and provides Disbarment is appropriate when:

- (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Standard 5.12 provides:

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

It is unnecessary for a lawyer to be convicted of, or even charged with, a crime for disciplinary sanctions to be imposed for criminal conduct. *See, e.g., People v. Odom*, 941 P.2d 919 (Colo. 1997). A conviction is not a necessary condition precedent for initiating disciplinary proceedings against a lawyer based on criminal conduct. *People v. Chappell*, 927 P.2d 829 (Colo. 1996). Mr. Moffatt intentionally solicited sex for legal services from a prospective client, which is a crime in both

Arizona and in California, where Mr. Moffatt resides. See A.R.S. § 13-3214(A); A.R.S. § 13-3211(5); and Cal. Penal Code § 647. Soliciting sex in exchange for legal services from a prospective client is criminal misconduct and seriously adversely reflects on Mr. Moffatt's fitness to practice law. We find this was not an isolated instance of misconduct, where there was a single inappropriate communication or message. Instead, this was a series of contacts, which took place over a short time period of time. Mr. Moffatt on separate occasions repeatedly solicited sex from the client.

He also sought to have complainant solicit for him a "surrogate" in the alternative. He thereby sought to have sexual relations with a "surrogate" through the actions of his prospective client. When a lawyer solicits another to commit a criminal offense, the lawyer can be disciplined under *Standard 5.11(a)*. *In re Walker*, 713 S.E.2d 264 (S.C. 2011). Lawyers can be disbarred under *Standard 5.11(a)*, when they strive to help clients violate the law. See, e.g., *People v. Chappell*, 927 P.2d 829, 831 (Colo. 1996). Complainant was a prospective client and the conduct of Mr. Moffatt was intentional and for his own personal and sexual gratification.

The facts support Mr. Moffatt's conduct was not inadvertent or an attempt at bad humor. We find his course and pattern of continued and repeated conduct demonstrates complete indifference to his legal obligations as a lawyer, a flagrante disregard for the law, and indifference to the desperate financial, emotional and personal position of his prospective client. It is especially troubling that Mr. Moffatt argued because there was no formal contract entered, he could not be held accountable for his conduct. We find his conduct occurred in his capacity as an Arizona licensed lawyer practicing Federal Law under that license.

We find his conduct sought to have his client engage in criminal conduct. His actions seriously and adversely reflect on his fitness as an attorney. While in many of his pleadings he states he only sought a nude picture of his client to buy time for payment, or simply exercised free speech, his own statements to his potential client contradict those assertions and show his disregard for the truth. He stated (finding 15 above), “[C]ash and assets are best, but a woman has more options. Nice pic.” In finding 19, “[A]re you going to give me the pic with less as well. Lets just call it what I want. Yes I want a nude.” In finding 20, “Give me a surrogate for you, or cash works.” And in finding 25, “Physical attention will be bartered. I could collect the physical when I am in town later in year.”

Standard 7.0, Violations of Other Duties Owed As A Professional, applies to Mr. Moffatt’s violation of ERs 8.1(b) and Rules 54(d) and 41(g). *Standard 7.1* provides:

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.

The annotation to *Standard 7.1* offers clarification to its applicability to the unique facts and circumstances before us. “Disbarment should be imposed when a lawyer knowingly engages in conduct that violates a duty owed as a professional with the intent to benefit the lawyer...and the lawyer causes...potentially serious injury to a client, the public or the legal system.” The actions of Mr. Moffatt were intentional and “fundamentally inconsistent with the basic obligations of a lawyer, who is sworn to uphold the law.” *In re Disciplinary Action Against Nassif*, 547 N.W. 2d 541 (N.D. 1996). *In re Disciplinary Proceedings Against Van Camp*, 257 P.3d 599 (Wash. 2011), the Court held a lawyer who deceived a client with an ambiguous fee agreement had

the requisite mental state under *Standard 7.1* warranting disbarment. We find the mental state of Mr. Moffatt to be intentional. His conduct is exacerbated by his non-responsiveness to the State Bar requests for information and discovery. His pleadings and actions demonstrate “a persistent disregard for the rules of professional conduct and the duties the accused owes to his clients, the public, the legal profession and the legal system.” *Van Camp supra*.

Mr. Moffatt repeatedly sought to have the United States District Court take jurisdiction on what that court determined were legally meritless grounds. We find his actions were intentionally obstructionist. [Ex. 11, 13-15, 17, 19-22 and 23.] However, we conclude his actions were in bad faith because he filed no initial disclosure statement, refused to participate in the settlement conference, failed to respond to any discovery; and did not appear for his deposition or at the hearing on discovery set at his request. Mr. Moffatt affirmatively alleged as a defense the State Bar of New Mexico investigated this matter and dismissed it. [Ex. 1.] He offered no proof of his assertion. Mr. Moffatt refused to execute a waiver permitting the State Bar to obtain the State Bar of New Mexico’s records relating to Mr. Moffatt. [Ex. 3-4, 7-9.]

We find by intentionally sending to a prospective client numerous emails requesting nude photographs and sex in exchange for legal services intending to benefit himself, that he violated Rule 41(g). Such a “fee” is improper, illegal and in violation of his duty to act as a professional. *In re Mincey*, 477 S.E.2d 116 (Ga. 1996) the court ordered disbarment for charging cocaine as a fee for legal services and knowingly engaging in conduct that violated a duty owed to the profession to benefit him causing potentially serious injury to the public and the legal system. Mr. Moffatt’s

misconduct caused potentially serious injury to a potential client and potentially serious injury to the legal system.

AGGRAVATING AND MITIGATING FACTORS

In attorney discipline matters, aggravating circumstances may justify an increase in discipline to be imposed. *Standard 9.21, Definition*. The Panel finds the following aggravating factors are present in this matter:

Standard 9.22(a): Prior disciplinary offenses. Mr. Moffatt was censured and placed on probation for one year (LOMAP) in File No. 07-1428 for violating ERs 1.1, 1.3, 3.1, and 8.4(d). [Ex. 24-26.]. We note, Mr. Moffatt's prior discipline involved filing pleadings with the courts that failed to meet the most basic requirement, as they had overwhelming deficiencies such as incorrect captions, citing basis for jurisdiction of the court incorrectly and unclearly, failing to state claim, putting in the facts underlying claim unclearly and in a confusing fashion, which is similar to his pleadings before us.

Standard 9.22(b): Selfish motive.

Standard 9.22(e): Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. "Failure to cooperate with disciplinary authorities is a significant aggravating factor." *Matter of Pappas*, 159 Ariz. 516, 768 P.2d 1161, 1172 (1998). Mr. Moffatt refused to sign a waiver so the State Bar could obtain his records from the State Bar of New Mexico despite affirmatively alleging those proceedings as a defense. [Ex. 3-4, 7-9.] After the State Bar filed its complaint against Mr. Moffatt, he filed a notice of removal to the District Court and refused to withdraw his notice of removal or stipulate to remanding the case after the State Bar provided him authority holding that the

Arizona Supreme Court has exclusive jurisdiction over discipline matters. [Ex. 10-12.] The State Bar had to move to remand. [Ex. 13.] After that Court remanded the case back to the PDJ, Mr. Moffatt filed a notice of appeal to the Ninth Circuit. [Ex. 15, 17.] Mr. Moffatt refused to withdraw his notice of appeal even after the State Bar provided Mr. Moffatt with authority holding there is no appeal of an order remanding a case. [Ex. 19-20.] The State Bar had to move to dismiss in the Ninth Circuit. The Ninth Circuit subsequently granted the motion. [Ex. 21-22.]

Mr. Moffatt failed to submit an initial disclosure statement to the State Bar despite the State Bar's request he do so. [See State Bar's December 30, 2015, Motion for Sanctions.]. The State Bar moved for sanctions and the PDJ subsequently issued a January 28, 2016, Order Issuing Sanctions and Setting Aggravation/Mitigation Hearing. (*Id.*).

Mr. Moffatt emailed the State Bar 106 Requests for Admission on topics that are not relevant, and on non-relevant, immaterial matters which the State Bar would have no knowledge. [Ex. 18.] The State Bar moved to strike these requests for admissions and the PDJ granted such motion on January 28, 2016.

Mr. Moffatt violated the PDJ's January 22, 2016, Orders Setting Supreme Court Rule 58(F)(3) Hearing with Personal Attendance Mandated, the PDJ's January 22, 2016 Order Granting Hearing Re Motion to Strike Respondent's Request for Admissions, and the PDJ's January 22, 2016, Orders Denying The Motion to Quash, Resetting the Deposition, and Setting Sanctions Hearing by failing to attend a deposition and a sanctions hearing on January 26, 2016. [Ex. 23.]

Mr. Moffatt further delayed these proceedings by filing numerous motions we find contained nonsensical or unsupported allegations. Examples of such motions

include: (1) Respondent's December 28, 2015, Motion for Stay of Proceedings. This motion makes the nonsensical allegation an attorney named William King represented the State Bar in these proceedings; (2) Respondent's Request for a Hearing regarding Respondent's Requests for Admission. Respondent attaches to this request a letter he allegedly sent the State Bar, stating that the State Bar admitted certain requests for admissions. The State Bar, however, did not receive this letter until Respondent filed his Request for a Hearing and the State Bar never responded to Respondent's Requests for Admissions; and (3) Respondent's Motion to Recommend Investigation to the Arizona Inspector General for Prosecutorial Misconduct.

Mr. Moffatt cited a Washington Post article to states "Judge Kozinski has stated, Arizona has been a blight for Prosecutorial Misconduct, and this present case is no different." However, Mr. Moffatt's citation does not support his statement. Nothing in the Washington Post article contains such a quotation nor mentions prosecutorial misconduct in a State Bar proceeding. Similarly, he referenced his wife is a political candidate for office and asserted in a motion "Political favors, as recognized by Judge Kozinski inside Arizona, provide a basis that the State Bar of Arizona is impermissibly reaching." No references were cited. He concluded, "Political election tempering, provides a basis that the State Bar of Arizona is impermissibly reaching." [Motion to Challenge Bar Sanctions, Page 7 and 8.]

Mr. Moffatt filed motions that contradict his answer to the State Bar's complaint. In his answer, Mr. Moffatt denied all of the allegations of the State Bar's complaint, including that he sent Childers messages requesting nude photographs and sex in exchange for legal services. [Respondent's Answer at ¶ 10.] However, in a motion to quash a subpoena and a motion to challenge State Bar sanctions, Mr.

Moffatt alleged that his communications with Childers were protected by the First Amendment. Mr. Moffatt asserted there was no jurisdiction as “The State Bar of Arizona has no jurisdiction covering free speech.” [Motion to Challenge Sanctions, Page 11.]

In that motion, he concluded, “If a hearing is denied, Jeff Moffatt requests to file the case with The Arizona Supreme Court; with the new member of the Arizona Supreme Court coming from the Conservative Goldwater Commission that actually wrote a report regarding disbanding the Arizona State Bar, this should be interesting.” [Motion to Challenge Sanctions, Page 16.]

On February 10, 2016, Mr. Moffatt filed a second notice of removal to Federal District Court despite knowing removal would again be unsuccessful as he cited substantially the same grounds as the first notice. [Ex. 10, 16, 22.] The Panel gave great weight to this aggravating factor as we find it was intentionally done for delay. The Oregon Supreme Court in issuing its judgment of disbarment stated, “[t]his court considers the failure to cooperate with a disciplinary investigation to be a serious ethical violation.” *In re Bourcier*, 939 P.2d 604, 606 (Or. 1997).

Standard 9.22(g): Refusal to acknowledge wrongful nature of conduct. In his answer to the State Bar’s complaint, Mr. Moffatt denies that he violated any of the Rules and ERs cited in the State Bar’s complaint. (Respondent’s Answer at ¶ 10; and Ex. 1 at p. 1 (stating “no rules were broken”).] His absence of remorse is equally troubling to the Panel. The Panel therefore, gives significant weight to this factor as his unwillingness to recognize the wrongfulness of his misconduct aggravates any presumptive sanction.

Standard 9.22(h). Vulnerability of victim. Childers informed the State Bar she was previously the victim of physical and sexual abuse. [Ex. 5-6.]

Standard 9.22(k). Illegal conduct. Mr. Moffatt solicited sex in exchange for legal services which is illegal in both Arizona and where Respondent resides in California. See A.R.S. § 13-3214(A) (“It is unlawful for a person to knowingly engage in prostitution”); A.R.S. § 13-3211(5) (defining prostitution as “offering to engage in sexual conduct under a fee arrangement with any person for money or any other valuable consideration”); and Cal. Penal Code § 647 (a person is guilty of disorderly conduct if they solicit “any act of prostitution” and defining prostitution as “any lewd act between persons for money or other consideration”).

The Panel finds there are no applicable mitigating factors present in the record. The unique facts and circumstances of the intentional conduct of Mr. Moffatt are compounded by the aggravating factors present, which include his intentional bad faith obstruction of the disciplinary proceeding. We conclude disbarment is warranted.

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. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the State Bar. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Panel has made the above findings of fact and conclusions of law. The Panel determined the sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the lack of any mitigating factor, and the goals of the attorney discipline system. The Panel orders:

1. Mr. Moffatt shall be disbarred from the practice of law effective thirty (30) days from the date of this order.

2. Mr. Moffatt shall pay all costs and expenses incurred by the State Bar. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

A final judgment and order will follow.

DATED this 7th day of March, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING:

Lorie B. Patrick

Lorie B. Patrick, Volunteer Attorney Member

Jan S. Enderle

Jan S. Enderle, Volunteer Public Member

Copy of the foregoing
Emailed this 7th day of March, 2016, and
Mailed this 8th day of March, 2016, to:

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Respondent

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by: AMcQueen

NOV 03 2015

BY  FILED

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**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**JEFFREY D. MOFFATT,
Bar No. 021642,**

Respondent.

PDJ 2015-9115

COMPLAINT

State Bar No. 15-1449

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 July 9, 2002.

COUNT ONE (File no. 15-1449/Childers)

2. Lisa Childers ("Childers"), who resides in New Mexico, sought Respondent's assistance with certain tax debt.

3. On October 11, 2013, Childers started communicating with Respondent via Facebook Messenger and wrote to Respondent the following: "Hi[,] I'm the person [P]at [S]purlin talked to you about I just wanted to let you know I'm

trying to get the 75.00 round up [for an initial consultation] and hopefully will be in touch with you next week."

4. Respondent responded on the same day: "I take all sorts of things as trade fyi. C.A.P. Cash, Assets. . . ."

5. Childers replied: "I've pretty much sold everything I have of value[.] . . . So. . . . I will get it[,] it will just take [the] weekend."

6. Respondent then asked Childers to send "me the basics" and stated that he would take "the position that it [the fee] is on the way."

7. Minutes later, Respondent wrote Childers: "fyi-I have a bad boy streak in me, just like my father. This allows me to be flexible."

8. Childers responded: "Awesome. Rock on bad boy."

9. Respondent then wrote: "How about a pic. And then send me the money later."

10. Childers responded: "A picture of?????"

11. Respondent answered: "[W]hatever you think might motivate me. How does that sit with you? Did I offend you or are we ok."

12. Childers then wrote: "I'm not sure what motivates you. Lol."

13. Respondent replied: "I am bad boy that likes women. Any shape. Does that focus it[?]."

14. Childers then sent Respondent a picture of herself with her grandson.

15. In response, Respondent wrote: "[C]ash and assets are best, but a woman has more options. Nice pic."

16. Respondent later wrote: "How about a pic without [the] kid or?? How much less will I be able to see. Workable or not?"

17. Childers subsequently sent Respondent another picture of herself clothed and asked "[i]s this what you wanted."

18. Respondent responded: "[G]ood start. How about removing something[?] [W]hen are you going to send me the docs. So I can get started."

19. Childers did not respond to the question about "removing something" and, therefore, Respondent again messaged Childers: "[A]re you going to give me the pic with less as well. Lets just call it what I want. Yes I want a nude."

20. Childers responded: "I don't even take a shower nude. And what would that get me[?]"

21. Respondent replied: "Give me a surrogate for you, or cash works."

22. Childers asked Respondent what he meant by "a surrogate" and Respondent informed her that this meant "[a]nother woman."

23. Childers then asked Respondent "[h]ow would I do that[?]" and Respondent responded: "How many friends do you have[?] Say [c]an I borrow\$ [sic]. No, if not, I need a pic for **."

24. Childers next inquired "[h]ow much in services will that cover[?]"

25. Respondent responded: "Pics buys time. Physical attention will be bartered. I could collect the physical when I am in town later in year."

26. Childers did not respond, and Respondent followed up with Childers by writing: "[W]hich way are we going, pic, cash, physical?"

27. Childers, who operates a day care out of her house, then wrote: "I'm getting my babies ready for a nap[.] I will get back with you."

28. Respondent informed Complainant that he would call her and then subsequently messaged her stating that he tried to call her twice.

29. Childers subsequently filed a charge against Respondent with the State Bar of California ("California") because Respondent is located in California. California then referred such bar charge to the State Bar of Arizona.

30. In response to a request for supplemental information, Respondent advised the State Bar of Arizona that the State Bar of New Mexico ("New Mexico") reviewed the instant matter and "cleared me. . . ." A staff investigator from the State Bar of Arizona contacted New Mexico to seek documents regarding Respondent. New Mexico would not provide the documents unless Respondent executed a waiver.

31. A staff investigator contacted Respondent twice to obtain the waiver but Respondent did not timely respond to the staff investigator's requests.

32. On August 14, 2015, Respondent finally responded to the staff investigator's requests for him to sign a waiver and refused to sign the waiver because it was allegedly overbroad.

33. The staff investigator revised the waiver, narrowing its scope, but Respondent again refused to sign the waiver.

34. Respondent's conduct in this count violated Rule 42, Ariz. R. Sup. Ct., 8.4(a), 8.4(b), 8.1(b), and Rules 54(d) and 41(g), Ariz. R. Sup. Ct.

DATED this 3rd day of November, 2015.

STATE BAR OF ARIZONA



Nicole S. Kasetta
Staff 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 November, 2015.

by: Jeckie Orentler
NSK:jld

FILED

OCT 16 2015

STATE BAR OF ARIZONA

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,**

**JEFFREY D. MOFFATT
Bar No. 021642**

Respondent.

No. 15-1449

PROBABLE CAUSE ORDER

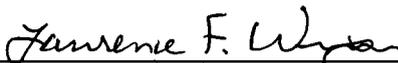
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 9, 2015, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 5-0-4¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-1449.

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 16 day of October, 2015.



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

¹ Committee members Ben Harrison, Karen E. Osborne, Jeffrey G. Pollitt, and William J. Friedl did not participate in this matter.

Original filed this 16th day
of October, 2015, with:

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by: Jeekie Dorender