

SUPREME COURT OF ARIZONA

In the Matter of a Disbarred) Arizona Supreme Court
Member of the State Bar of) No. SB-15-0035-AP
Arizona)
) Office of the Presiding
GARY L. LASSEN,) Disciplinary Judge
Attorney No. 5259) No. PDJ20149082
)
)
Respondent.)
) **FILED 12/04/2015**
)
_____)

DECISION ORDER

Pursuant to Rule 59, Rules of the Supreme Court, Respondent Gary L. Lassen appealed the hearing panel's findings and imposition of disbarment. The Court has considered the parties' briefs and the record in this matter.

The Court accepts the panel's determinations as to the charged ethical violations with one exception. The Court rejects the panel's determination in Count Four that Lassen violated ER 1.4.

With respect to the sanction, the Court affirms the imposition of disbarment and the assessment of costs and expenses of the discipline proceeding.

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

DATED this 4th day of December, 2015.

/s/
SCOTT BALES
Chief Justice

TO:

Gary L Lassen

Craig D Henley

Jennifer Albright

Sandra Montoya

Maret Vessella

Don Lewis

Beth Stephenson

Perry Thompson

Mary Pieper

Netz Tuvera

Lexis Nexis

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**GARY L. LASSEN,
Bar No. 005259**

Respondent.

No. 2014-9082

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar Nos. 14-0401, 14-0784,
14-2071, and 14-2297]

FILED MAY 18, 2015

On March 16 and 17, 2015, the Hearing Panel ("Panel"), composed of Anne B. Donahoe, a public member, Harlan J. Crossman, an attorney member, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a two day hearing pursuant to Rule 58(j), Ariz. R. Sup. Ct. Craig Henley appeared on behalf of the State Bar of Arizona ("State Bar"). Mr. Lassen appeared pro per. The Panel carefully considered the Complaint, Answer, Amended Joint Pre-Hearing Statement, and admitted exhibits.¹ The Panel now issues the following "Decision and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz. R. Sup. Ct.

I. SANCTION IMPOSED:

DISBARMENT AND COSTS OF THESE DISCIPLINARY PROCEEDINGS

II. BACKGROUND AND PROCEDURAL HISTORY

Probable Cause Orders were filed on June 12, 2014 and the State Bar filed its 82 paragraph Complaint on September 22, 2014, containing two (2) counts alleging

¹ Consideration was also given to sworn testimony of Susan Bejarano, Jinju Park, Gregory Riccio, and William Hobson.

violations of twelve (12) different Ethical Rules (ERs): 1.2 (failure to abide to client's decisions), 1.3 (diligence), 1.4 (communication), 1.5 (unreasonable fees), 1.15 (safekeeping property), 1.16 (failure to withdraw representation) 3.2 (failure to make reasonable efforts to expedite litigation), 8.1 (failure to respond to lawful demand for information from the disciplinary authority), 8.2(a) (reckless statements), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentations) and (d) (conduct prejudicial to the administration of justice), Rule 54(d) (refusal to cooperate with bar counsel), and Rule 72 (failure to notify court of suspension).

Mr. Lassen filed his Answer on October 15, 2014. Mr. Lassen admitted paragraphs 1-8, 11 and 17 of the Complaint. He denied paragraphs 9-10, 12-16, 45, and 57-82. Mr. Lassen did not deny the other allegations. Civil Rule 8(d) is incorporated into disciplinary proceedings by Supreme Court Rule 48(b). Civil Rule 8(d) states:

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage are admitted when not denied in the responsive pleading.

Paragraphs 18-44 and 46-56 not having been denied are admitted by Mr. Lassen.

An initial case management conference was held on October 27, 2014. Mr. Lassen filed a motion to Dismiss Counts One and Two on October 15, 2014. The PDJ filed an Order Denying Motion to Dismiss on December 10, 2014. The parties filed their Joint Pre-Hearing Statement on December 22, 2014.

The State Bar filed a motion to amend the complaint on December 24, 2014. Mr. Lassen joined the motion in his Response to Motion to Amend Complaint filed January 5, 2015, adding proposed paragraphs 83-105. The PDJ filed an Order Granting Motion to Amend Complaint and Continue Hearing Date on January 5, 2015.

Mr. Lassen's supplemental answer was filed January 12, 2015. He admitted paragraphs 83, 93 and 100 and denied all other paragraphs. Subsequently, Mr. Lassen filed a Motion for Continuance of Hearing and the State Bar filed a response to the motion indicating no opposition. The PDJ filed an Order Granting Motion to Continue and Setting New Hearing Dates on February 6, 2014. An Amended Joint Pre-Hearing Statement was filed on February 26, 2015.

The State Bar asserts disbarment is the appropriate sanction in this matter for Mr. Lassen's failure to abide to his client's decisions; lack of diligence; failure to reasonably communicate with his clients; charging of unreasonable fees to his clients; failure to account for and return unearned fees to his clients; failure to properly withdraw from his representation; failure to make reasonable efforts to expedite litigation to the extent reasonably practicable to protect a client's interests; failure to respond to lawful demand for information from the disciplinary authority; making reckless statements concerning the qualifications or integrity of a judge; conduct involving dishonesty, fraud, deceit, or misrepresentation; conduct prejudicial to the administration of justice; engagement in the unauthorized practice of law while suspended; failure to inform client and the court that he was suspended from the practice of law; failure to take the steps necessary to protect his client's rights when his representation was terminated; refusal to cooperate with bar counsel; and his failure to notify the court of his suspension.

FINDINGS OF FACT

Mr. Lassen was licensed to the practice of law in the State of Arizona on April 22, 1978. [Amend. Jt. Pre-Hrg. Stmt, p. 2.]

Count One (File No. 14-0401/Bejarano)

In July 2006, Susan Bejarano (“Complainant” under this count) signed a one-year contract with Roosevelt Elementary School District No. 66 of Maricopa County (“RSD”) as the Assistant Superintendent of Teaching and Learning. [Amend. Jt. Prehrg. Stmt. ¶ 8; Complaint admitted ¶ 8.] Shortly thereafter, a school employee filed a complaint against Complainant. [Amend. Jt. Prehrg. Stmt. ¶ 9; Complaint admitted ¶ 11.] In November 2007, Complainant filed a complaint with the Attorney General’s Office alleging that the Board violated the Open Meetings Law when they heard issues related to her investigation in Executive Session on November 1, 2007. [SB Ex. 17, Bates SBA000189-91.]

In the 2006-2007 school year, Complainant met Mr. Lassen. She was referred to him by a mutual friend. She was having issues in the school district where she worked and wanted legal representation. [Testimony of Bejarano, 9:42:56.] She contacted Mr. Lassen and talked to him about legally representing her. [Testimony of Bejarano, 9:43:05.] Ms. Bejarano was a school administrator and after thirty years of employment, of which the last two were in an administrative position, she was having an employment dispute with the school district. She expected Mr. Lassen to represent her and protect her legal rights. She decided to have him represent her. We find Mr. Lassen agreed to represent her *pro bono* and began advising her prior to the 2007-2008 school year. [Testimony of Bejarano, 9:43:57.]

Around January 2008, Complainant was placed on administrative leave and was informed that her contract would not be renewed. [SB Ex. 17, SBA000121; Testimony of Bejarano.] Within a month Mr. Lassen presented her with a contract which she didn’t sign because it was very confusing to her and there is no evidence he explained it to her. We find Mr. Lassen instead told her a contract was not needed and he

would take a partial percentage of any monetary award she received on a contingency basis. [Testimony of Bejarano, 9:44:38.] Mr. Lassen intentionally violated E.R. 1.5(b) and soon disregarded that rule again. We find from the evidence received in the hearing, Mr. Lassen believed her case had a value of at least \$900,000. As a result of Mr. Lassen's valuation, Complainant offered to settle for that amount at a later settlement conference. [Testimony of Bejarano, 9:49:45.]

Later, Mr. Lassen told Complainant he needed payment for couriers and transcriptions. Not long after, he informed her he was having a cash flow problem and requested regular lump sum payments, but we find no written communication to Complainant of what the basis was for such lump sum payments. We find nothing in the record that Mr. Lassen provided her with any confirmatory writing regarding the representation and find there was no written fee agreement between the parties. [Testimony of Bejarano, 9:45:00; SB Ex. 2, Bates, SBA00048.] We find Mr. Lassen knew he was required under ER 1.5 to communicate in writing what the rate of his fee and expenses for which Complainant would be responsible was, but intentionally failed to. We are disinclined to presume this was mere negligence.

We recognize there is an email from Mr. Lassen to Complainant on April 10, 2010, stating "As we discussed, IU will agree to handle the appeal for a flat fee of ten thousand dollars plus five thousand dollars to cover costs." [SB Ex. 2, SBA000052.] We also note Complainant paid \$10,500 within weeks. [Id. at SBA000089-90.] We are satisfied that writing, although unsigned, is sufficient in light of her payment. Mr. Lassen acknowledged in both his testimony and written closing argument, he told Complainant he would assist her "without fee in non-litigation efforts." He also agreed to handle the Petition for Review with the Supreme Court on

a “costs-only basis.” [Testimony of Lassen; Respondent’s Closing Argument, p. 2, lines 10-17.]

We find it clear Complainant believed Mr. Lassen was handling the litigation on a “contingency” basis. In an email complaining to Mr. Lassen of his non-responsiveness, she suggested such a fee arrangement was resulting in his unwillingness to respond to her. Complainant stated unequivocally, “...you have taken it on contingency.” [SB Ex. 2, SBA000016.] Mr. Lassen offered no writing disputing the email or testimony of Complainant that Mr. Lassen was representing her on a contingency fee basis. Mr. Lassen offered no testimony or exhibits regarding any written agreement between them. A written statement concerning the terms of engagement would have removed the possibility of misunderstanding. Rule 42, E.R. 1.5, footnote 3, Ariz. R. Sup. Ct. We find Mr. Lassen did not contradict this statement of his client during the time of the underlying case, because that was their unwritten agreement.

As stated above, we find Mr. Lassen violated E.R. 1.5. The contingent fee agreement was required to be in writing with its terms detailed. See E.R. 1.5(c). Even if the agreement had been an hourly fee agreement, Mr. Lassen intentionally violated his duty to communicate to his client in writing “the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible.” See E.R. 1.5(a).

During the hearing, Mr. Lassen asserted there was a change in the agreement. We find nothing to support his assertion. Even if there had been a change in the basis or rate of the fee, Mr. Lassen intentionally violated his duty to communicate that change in writing to his client as required by E.R. 1.5(b).

We agree with the State Bar that such an intentional violation makes the fee inherently unreasonable, especially under the facts of this charge. Complainant advanced monies to Mr. Lassen well in excess of the costs incurred in the litigation. From the evidence it is apparent to us Mr. Lassen underestimated the time the litigation would require. He complained to Complainant of the litigation tactics of opposing counsel, Georgia Staton, as a "scorched earth policy." [SB Ex. 2, SBA000049.] It is also apparent Mr. Lassen began to have financial issues. Mr. Lassen wrote Complainant on October 7, 2009, asking her,

...to continue the \$5000 payments for a couple of months. I am experiencing a cash flow crunch that should subside in a month or so, but bringing Michael on full time has affected my cash flow in the short term. Thanks.

[SB Ex. 2, SBA000042.]

Faced with such a continuing "cash flow crunch" it the evidence shows Mr. Lassen chose to do what is expressly forbidden by Comment 5 to E.R. 1.5. As a result, Complainant was left in the untenable position of being forced into accepting this "bargain" of Mr. Lassen. Obviously, this practice violated E.R. 1.5(c). See *In re Struthers*, 179 Ariz. 216, 222, 877 P.2d 789, 795 (1994).

We decline to find Mr. Lassen violated E.R. 1.15. It is undisputed Complainant paid Mr. Lassen \$46,149.00, which was well in advance of the costs incurred in the litigation. It is unclear to us what the arrangements were for such payments. We find the evidence clear and convincing that the agreement was on a contingency. It is not clear what the terms were for these advance payments. Regardless, the agreement was improper. However, we find the State Bar has failed in its burden of proof. Although it was an improper fee under E.R. 1.5, it appears the terms of the agreement were to improperly aid Mr. Lassen in his "cash flow" problems. We decline

as a result to find he had a duty to keep such payments "separate" from the lawyer's own property.

On April 10, 2008, the Board voted against renewing Complainant's contract and later paid the balance remaining on the contract. [Complaint admitted ¶ 17.] Complainant notified Mr. Lassen of "support issues" she wanted him to assist in resolving quickly, including, but not limited to, the School District's payment for vacation and sick time. Complainant believed her sick days had a value of approximately \$10,000. [Testimony of Bejarano; SBA Ex. 2, SBA000028.] Mr. Lassen also believed the value of her sick days was \$10,000. In discussing a later appeal in this matter, Mr. Lassen wrote to Complainant stating their agreement for his handling of her appeal to be \$10,000. Mr. Lassen wrote, "[I] will attempt to recoup your unpaid leave to get you reimbursed." [SB Ex. 2, SBA 000052.]

On May 15, 2008, Complainant gave Mr. Lassen a directive to address the "sick days/vacation." The following day she provided Mr. Lassen with a copy of the District policy for the sick days, which "states a 15 day prior notification." She received no response. On June 4, 2008, she asked again if there was any information regarding this issue, but received no response. [SB Ex. 2, Bates SBA000013-15; Testimony of Bejarano, 9:46:13.]

On Monday, July 28, 2008, Complainant wrote Mr. Lassen an e-mail "venting" about delays in the case and Mr. Lassen's failure to follow her directive to address the issues regarding her vacation and sick leave pay-out. In the same e-mail, Complainant requested a meeting to determine whether Mr. Lassen was too busy to handle her "contingency" case. [SB Ex. 2, SBA000016-17.] On the same day, Mr. Lassen responded to Complainant claiming he had prepared a detailed complaint but

needed to make some revisions before sending it to Complainant to review. He made no mention of her requests regarding sick day reimbursement. [Id. at SBA000016.]

Mr. Lassen filed the complaint on July 31, 2008 against RSD and RSD related board members. At the time of filing Mr. Lassen knew Complainant was seeking pay for unused leave and sick days she was not paid for, yet he did not include that in the damages sought. If Mr. Lassen had reasons for never taking any demonstrable action toward resolving that issue, the record does not contain any evidence he discussed such a decision with his client. [SB Ex. 6.]

Despite the recent emails of Ms. Bejarano, Mr. Lassen wrote to counsel for RSD on August 1, 2008, without any mention of her vacation and sick leave claim. The letter from Mr. Lassen consists of two sentences: "Ms. Bejarano informs me that she needs to obtain her personal belongings at the District and also has yet to receive her longevity pay relating to her 30 years of tenure in the District. Can you contact me so that a time can be set up to arrange that?" We find no evidence the letter was not copied to his client. [Lassen Ex. 1A, Bates 000418.]

The Human Resource Department of RSD sent Complainant a check for her unused vacation time with an itemization dated September 4, 2008. [SB Ex. 2, Bates SBA000019.] Complainant emailed that document to Mr. Lassen on September 10, 2008, informing him "I am still owed for my sick days." [Id. at Bates SBA000018.] Mr. Lassen did not respond. More than nine weeks later, having received no response from Mr. Lassen, Complainant again emailed him on November 15, 2008, reminding Mr. Lassen "The district hasn't paid me my sick days and there's a policy that states all wages must be paid within 2 weeks." She again attached the District policy. [Id.

at Bates SBA000019.] On that same day, Mr. Lassen finally responded with one sentence: "Let's make demand." [SB Ex. 2, Bates SBA000023.]

Four months later, Mr. Lassen had still done nothing regarding this issue. Ms. Bejarano wrote his legal assistant on March 18, 2009, stating, she "talked to Gary" about the district "not paying my SICK DAYS, to see if this could be requested. I believe it's about \$10G." [Id. at Bates SBA000028.] Despite speaking to Mr. Lassen and writing his legal assistant to remind him of this, Mr. Lassen still failed to abide by the decision of Complainant concerning this objective and took no action. We further find Mr. Lassen never provided Complainant with documentation of his efforts, if any, to address the sick days, or the vacation days for that matter. [Testimony of Bejarano, 9:54:58.]

In his closing argument, Mr. Lassen asserted, "The allegations in the complaint failed to apprise Respondent of the specific instances in which he failed to communicate with Ms. Bejarano." We reviewed the complaint at his urging. We find his assertions untruthful. Paragraphs 18-21 of the complaint, identify these specific instances by dates and emails. In his answer to the complaint, Mr. Lassen did not deny any of those allegations.

In his written closing argument to the Panel, Mr. Lassen states,

Bar Counsel claims Respondent did not address sick leave payment. This is untrue, and it became part of the claim later in the lawsuit and became subject matter of discovery and Bejarano's deposition.

[Respondent's Closing Argument, p. 6, lines 11-14; SB Ex. 6.]

We also reviewed the complaint regarding this assertion and find nothing in the complaint or in the appeal which addressed this issue.

If the discovery Mr. Lassen refers to in his closing argument is existent, he failed to offer it or point us to whatever discovery he refers to. We were not provided the deposition of Ms. Bejarano. However, even if it was a "subject matter" of her deposition, we fail to see how his questioning of her in a deposition matters in light of his failure to properly make the claim.

The record does not support his arguments and instead presents a rationalization of conduct far more demonstrating a complete lack of remorse. We find the record clear, Mr. Lassen knew Complainant had a claim and was provided with the written District policy supporting that claim on multiple occasions. He was directed to pursue that claim by his client. He instead repeatedly ignored her and never abided by that directive.

We find the April 20, 2010, email of Mr. Lassen to Complainant to be an unapologetic acknowledgment of his failure to assert this claim. Nearly two years after Complainant had directed him to address the sick days issue and after having the trial court entered judgment denying her other claims, Mr. Lassen sought permission to file an appeal and stated, "I will attempt to recover your unpaid sick leave to get you reimbursed. [SB Ex. 2, SBA000052.]

We find Mr. Lassen violated ER 1.2 regarding this support issue of sick days in this charge. He knew of the objective of his client and was repeatedly told of it. He did not consult with her as to the means by which it was to be pursued and instead ignored it repeatedly and failed to abide by her decision.

We find Mr. Lassen violated ER 1.3. Mr. Lassen not only failed to act with reasonable diligence and promptness in representing Complainant on this issue; he failed to act at all. He also violated ER 1.4 as he repeatedly failed to reasonably

consult with Complainant about the means by which her objective was to be accomplished. Mr. Lassen did not keep Complainant informed at all about the status of this issue and did not comply with her reasonable requests for information regarding the support issue.

We also find Mr. Lassen violated E.R. 3.2. We find Mr. Lassen made no reasonable efforts to expedite this part of the litigation consistent with the clear and multiple directives of his client. As stated in the Comment to E.R. 3.2, "Dilatory practices bring the administration of justice into disrepute." We find Mr. Lassen's action far worse than "dilatory practices" regarding this issue.

As demonstrated above, Complainant sent numerous e-mails to Mr. Lassen in the course of the representation, but Complainant would go weeks at a time without hearing from him. [SB Ex. 2.] Complainant's e-mails were cc'ed to his secretary because she had concerns Mr. Lassen wasn't responding in a timely manner. [Testimony of Bejarano, 9:49:39.] For the first four months of 2009, virtually all communications to Complainant came from his legal assistant. [SB Ex. 2, SBA000025-31.] Typically, the only way Ms. Bejarano received communication from Mr. Lassen's office was if she initiated contact with the office throughout the representation. [Bejarano Testimony, 10:02:40 and 10:03:40.]

Often when Mr. Lassen did respond, his answers were virtually non-responsive. By example, on April 9, 2009, not having heard directly from Mr. Lassen for months, Complainant sent Mr. Lassen an email stating, "I hope you're doing well. I know it's been really busy in the office but, am wondering if I can get an update or status of my case. If I don't speak to you, have a wonderful Easter." Mr. Lassen answered, "I need to interview witnesses." [SB Ex. 2, SBA000031.]

In October 2008, Complainant submitted interrogatory responses to Mr. Lassen. [Amend. Jt. Prhrg. Stmnt., ¶ 17; Complaint admitted ¶¶ 24-25; SB Ex. 2, Bates SBA00020-22; see also Bejarano Testimony, 9:56:17.] In November 12, 2008, Complainant e-mailed Mr. Lassen complaining that the interrogatory responses contained grammatical errors and also alleging they were altered without Complainant's knowledge or consent. Complainant testified the interrogatories were missing information she provided. [Amend. Jt. Prhrg. Stmnt., ¶ 18; Complaint admitted ¶ 26; SB Ex. 2, Bates SBA00020-22; see also Bejarano Testimony, 10:00:24.]

We find the State Bar failed in its burden of proof to demonstrate regarding the interrogatory responses, Mr. Lassen violated E.R. 8.4(c) or (d) in relation to these discovery issues. It is not clear to us whether the answers submitted contained the corrected information of Complainant or if not, that those answers involved his knowingly engaging in conduct involving dishonesty, fraud, deceit or misrepresentations regarding these interrogatories or that the answers were prejudicial to the administration of justice.

On June 5, 2009, the parties requested Scott & Skelly, L.L.C. serve as a mediator for the lawsuit with an agreement that each of the lawyers and clients share joint responsibility for their respective pro-rata portion of the mediation fees. [Complaint admitted ¶ 28; SB Ex. 25, Bates SBA000224.]

On August 25, 2009, the parties participated in a brief mediation with Scott & Skelly, LLC. The first of several monthly bills were mailed to Mr. Lassen on August 26, 2009, in the amount of one thousand thirty-five (\$1,035.00) dollars, for a pro-rata share of the total mediation fees. [Amend. Jt. Prhrg. Stmnt. ¶ 21; Complaint ¶

30; SB Ex. 25, Bates SBA000226-235. Mr. Lassen told Complainant \$1,000 was her share. Complainant sent Mr. Lassen a check satisfying the total amount of the mediation fees. Mr. Lassen told Complainant he was paying that bill. Bejarano Testimony 10:08:05. She was unaware the mediator fees had not been paid. [Bejarano Testimony, 10:08:38.] We note a statement from Mr. Lassen under "Costs Advanced," lists on August 28, 2009, he had advanced the \$1,035.00 and paid the bill. That was untrue. [Respondent Ex. 9081-000242.] That same document shows Complainant paid \$2,000 on September 21, 2009 and \$3,000 on September 23, 2009.

Beginning in August 2009, monthly payment requests were sent to Mr. Lassen from Scott & Skelly, LLC, seeking the Complainant's \$1,035.00 pro-rata share of the costs of the August 2009 mediation. [Amend. Jt. Prehrg. Stmt. ¶ 30; Complaint admitted ¶ 38; SB Ex. 25, Bates SBA000226-235.] Complainant never saw these letters and was not notified of them. Mr. Lassen testified he received the letters and did not respond to them. [Lassen Testimony, 1:39:40.] However, after receiving a hand written note on the bottom of the final of those letters, he testified he called Mr. Skelly. [Ex. 25, Bates SBA0000235.] Mr. Lassen then testified he told Mr. Skelly that he was going to file bankruptcy and Mr. Skelly was a "pre-petition creditor." However he then testified he didn't know why the bill was not paid. Mr. Lassen acknowledged Complainant had paid him the monies for the mediation debt. [Lassen Testimony, 1:40:50.] He speculated he may not have paid it because of some "upset" regarding what he perceived to be a lack of good faith on the part of the other parties. [Lassen Testimony, 1:41:18.]

After a year of non-payment, on August 13, 2010, Scott & Skelly, LLC, filed the Arcadia-Biltmore Justice Court case entitled *Scott & Skelly, LLC v. Lassen and Bejarano*, Case No.: CC 2010-469389-SC (“Justice Court” case), which named both Mr. Lassen and Complainant and sought a judgment in the outstanding amount of \$1,035.00, the pro-rata amount of mediation fees. [Amend. Jt. Prehrg. Stmt. ¶ 30; Complaint admitted ¶ 39; SB Exs. 26, 28.] On August 24, 2010, Mr. Lassen was served with a copy of the Summons and Complaint. [Amend. Jt. Prehrg. Stmt. ¶ 31; Complaint admitted ¶ 40; SB Ex. 26.] Mr. Lassen never communicated to Complainant about the lawsuit even though he was served. We note no affidavit or acceptance of service was presented regarding Ms. Bejarano. An affidavit for entry of default against Mr. Lassen was submitted to the court on September 30, 2010. [SB Ex. 27.] We note no similar affidavit for Ms. Bejarano has been presented to this Panel.

Regardless, Mr. Lassen never communicated to Complainant the entry of default against him even though he was aware of it. Whatever the method of service and default on Ms. Bejaran, Mr. Lassen testified he intentionally did not notify her of the lawsuit “[B]ecause “I accepted responsibility for that expense.” He then explained he meant, “[W]hatever mechanism was available to have it paid should not affect her and that I was going to take responsibility for it.” [Lassen Testimony, 1:42:09-1:42:36.] He acknowledged at some point he became aware judgment was being sought against Claimant. Still he did nothing.

On December 8, 2010, the court entered a judgment against both Mr. Lassen and Complainant in the Justice Court lawsuit. [Amend. Jt. Prhrg Stmt. ¶ 33; Complaint admitted ¶ 42; SB Ex. 28.] Complainant was not informed by Mr. Lassen

of the Judgment despite the Judgment naming both of them and Mr. Lassen being personally aware of that judgment. [Bejarano Testimony, 10:10:10-10:12:00.] Mr. Lassen testified he knew this could be harm to his client: "As between us it was always my understanding and intent that, that was my responsibility, not hers. And I didn't want her to be bothered. Unfortunately, it became a bother to her." [Lassen Testimony, 1:44:40.]

Complainant did not learn there was a judgment against her regarding this until she hired new counsel, Tom Ryan. [Bejarano Testimony, 10:09:20.] Ultimately, Mr. Ryan settled the matter by speaking with Mr. Skelly, without payment from Complainant towards the debt. On March 28, 2013, a Satisfaction of Judgment was filed in favor of Complainant regarding the December 8, 2010 judgment in the Justice Court lawsuit. [SB Ex. 29.] Mr. Ryan notified Complainant of the satisfaction by email on that same date. [SB Exhibit 2, Bates 00010.]

We find Mr. Lassen violated ER 1.3. Mr. Lassen not only failed to act with reasonable diligence and promptness in representing Complainant on this issue; he failed to act at all. Mr. Lassen did not inform Complainant at all about this issue. Mr. Lassen also violated ER 1.4 as he repeatedly failed to reasonably consult with Complainant about this important issue.

We also find Mr. Lassen violated E.R. 3.2. Mr. Lassen made no reasonable efforts to expedite the proper resolution of this matter. As cited above, Comment to E.R. 3.2, "Dilatory practices bring the administration of justice into disrepute." We find Mr. Lassen's action far worse than "dilatory practices" regarding this issue.

We also find Mr. Lassen violated E.R. 8.4(c) and (d). We find the actions of Mr. Lassen fraudulent, dishonest and deceitful. He acknowledged he was paid the monies

by Complainant. He listed on his invoice that he had paid the bill of the mediator. He knew this was untrue. He received each letter stating the bill had not been paid and yet continued in his deceit. His actions were prejudicial to the administration of justice.

On August 24, 2009, opposing counsel filed a Motion for Summary Judgment regarding all of Complainant's claims. [Amend. Jt. Prhrg. Stmnt. ¶ 20; Complaint admitted ¶ 29; SB Ex. 8, Bates SBA000132-152.] On October 23, 2009, the Court granted the fully briefed Motion for Summary Judgment without oral argument finding "[c]omplainant had simply failed to present facts or law which allows her to sue for relief she seeks." [Amend. Jt. Prhrg. Stmnt. ¶ 22; Complaint admitted ¶ 31; SB Exs. 11, 13.] By minute entry dated December 1, 2009, the case was transferred to a new judge and all future hearings were ordered to be heard by the new judge. [Amend. Jt. Prhrg. Stmnt. ¶ 23; Complaint admitted ¶ 32; SB Ex. 12.] After filing a Motion for New Trial, Motion for Clarification of Minute Entry and Objection to the form of Judgment submitted by opposing counsel, the Court issued a Minute Entry on December 21, 2009, finding in pertinent part:

"[t]he simple fact is that the Court found Defendant's positions to be legally and factually appropriate on every point. For example ... inadequate performance of one's job does not prevent one from being fired regardless of how legitimate one's whistleblowing activity ... Moreover, Plaintiff was not fired; instead, her contract was not renewed."

[Amend. Jt. Prhrg. Stmnt. ¶ 24; Complaint admitted ¶ 33; SB Ex. 12, Bates SBA000173.] The Court then denied all pending motions and awarded \$42,852.05, in attorney fees, \$2,147.95 in non-taxable costs, and \$3,407.17 in taxable costs against Complainant. A formal judgment was entered on January 13, 2010. [Amend. Jt. Prhrg. Stmnt. ¶ 25; Complaint admitted ¶ 34; SB Ex. 12, 13.]

On February 11, 2010, Mr. Lassen filed a Notice of Appeal and the following day a Motion for Relief from Judgment under Rule 60(c), in which Mr. Lassen claimed receipt of new evidence supporting one of Complainant's claims. The court denied the motion finding the new evidence and the stated contentions insufficient to grant the motion. [Amend. Jt. Prhrg Stmnt ¶¶ 26-27; Complaint admitted ¶¶ 35-36; SB Exs. 14, 15, 16.]

Despite that ruling, on March 3 and 4, 2010, in response to a request from Complainant for a status of the case, Mr. Lassen replied:

- a. "[w]e have not had a ruling or any hearing set on our trial court motion. I need to let you know that I think the appeal is likely the only way to get justice. That will unfortunately require additional appeal fees and costs to be incurred. I thus need to impose upon you to send or deliver more funds like you have so graciously done in recent months. Please be aware that I remain confident that in the end that we will win, and that these monies, and much more will be coming our way."
- b. "I fully understand your concern, but I want you to remember that we ran into a scorched earth policy by the insurance company's lawyers and a lazy initially assigned judge."

Six (6) months later, Mr. Lassen wrote in an email to Complainant: "[T]he trial judge was lazy." [Amend Jt. Prhrg. Stmnt. ¶¶ 28, 32; Complaint admitted ¶¶ 37, 41; SB Ex. 2, Bates SBA000049, 58, Ex. 16.] Mr. Lassen acknowledged he told his client in three emails that Judge Mangum was lazy. [Lassen Testimony, 1:46:54.] Complainant never responded to Mr. Lassen's comments against the judge, but she testified that these comments were consistent throughout the representation both verbally and in e-mails. [Bejarano Testimony.] Mr. Lassen was asked if he could see how that could be interpreted as disparaging a judge. He testified his communication about the judge was a confidential communication. [Lassen Testimony, 1:47:22.]

From that we conclude Mr. Lassen believes an attorney cannot disparage a judge in communications with a client. We disagree.

Notwithstanding, we decline to find Mr. Lassen violated E.R. 8.2(a). We do not believe these private comments rise to the level of a violation. We find the State Bar failed in its burden of proof to demonstrate these comments violated E.R. 8.2(a).

From September 21, 2009 to May 7, 2010, Complainant paid Mr. Lassen \$34,000.00 by check including the \$1,034.00 in mediation fees. [SB Ex. 2, Bates SBA000078-90.] On October 5 2009, Complainant paid an additional \$7,040.00 to Mr. Lassen. [Id.]

On January 10, 2011, Mr. Lassen informed Complainant that an appeal had been filed. [Respondent Ex. 9082-000071.] On February 17, 2011, Mr. Lassen sent Complainant a letter informing her he was still waiting for a decision from the Arizona Court of Appeals. [Respondent Ex. 9082-000060.] On April 12, 2011, Division One of the Court of Appeals filed a Memorandum Decision in *Bejarano v. Roosevelt Elementary School District, et al*, 1 CA-CV 10-0231, affirming the lower court rulings. [Amend. Jt. Prhrg Stmnt. ¶ 34; Complaint admitted ¶ 43; SB Ex. 17.] The Court of Appeals found Mr. Lassen had failed to preserve for appeal any challenge to the trial court's decision to grant summary judgment on her defamation claims. More importantly, the Court of Appeals found Mr. Lassen failed to properly present the issue of the trial court's award of attorney fees against Complainant. Mr. Lassen failed in his brief to raise any challenge to that award of attorney fees and did not cite to the trial court record. [SB Ex. 17, Bates SBA000202.]

On May 24, 2011, Mr. Lassen emailed Complainant telling her he was filing a Petition for Review with the Supreme Court. He also informed her, "I am not charging

you for my time, but there is a filing fee and costs for copying and binding of briefs. If you could send \$750 I would be most appreciative, this should be the last of costs. I am hopeful that petition will be granted, it looks good.” [SB Ex. 2, Bates SBA000062.] During the hearing, Mr. Lassen in cross-examining Complainant repeatedly used leading questions, which he was permitted to do. He asked her if it wasn’t a fact “I agreed to take on the appeal on a costs only basis.” [Bejarano Testimony, 10:59:40.] But she disagreed pointing that he began asking for lump sum payments. We note Ms. Bejarano paid Mr. Lassen \$9,000 on April 29, 2010, \$1,500 on May, 7, 2010 in addition to the \$750 on May 25, 2011, requested by him in the letter above referenced. [Respondent Ex. 9082-000233.]

It was undisputed all communication between Mr. Lassen and Complainant ceased between June 2011 and early 2013. [Complaint admitted ¶ 44; Bejarano Testimony.] The testimony of Complainant was not refuted by Mr. Lassen that he never told her the Supreme Court, by its Order dated October 25, 2011, had denied the petition for review. [Bejarano Testimony, 11:02:26.] Mr. Lassen never told her the judgment as a result was final. We find no evidence in the record to the contrary; giving no notice of any kind to her that his representation had terminated.

We find it entirely reasonable that Complainant assumed Mr. Lassen continued to represent her until the appeal was final. Mr. Lassen knew or should have known his failure to communicate the result of the petition for review would likely cause her harm. Mr. Lassen violated ER 1.16(d) in failing to take the steps necessary to protect his client. Mr. Lassen was required to take the steps to protect her interests, “such as giving reasonable notice to the client....” Mr. Lassen simply abandoned her.

There is nothing in the record that demonstrates Mr. Lassen sat down and discussed with Complainant the ramifications of the finality of the judgment. There is nothing in the record that demonstrates he sought to recover her sick day monies despite his promise in writing he would. As pointed out above, if Mr. Lassen intended to dispute the attorney fees awarded against Complainant by the trial court, as with the sick days, he failed to do so. Likewise, he failed to properly conclude his representation with his client by taking the steps "reasonably practicable to protect a client's interests, such as giving reasonable notice to the client." His failure to do so caused her direct harm as a result and further potential harm from a later issued arrest warrant.

The State Bar argues Mr. Lassen was still attorney of record for Complainant during the time he was suspended in PDJ-2011-9079 for thirty days for violating several E.R.s, effective April 28, 2012, and after he was reinstated on June 25, 2012. [SB Ex. 38, 39.] They had no communications at all.

Bar Counsel also expressed his concern Mr. Lassen never filed a Notice of Withdrawal. We are more than troubled by the actions of Mr. Lassen and his inaction in not communicating with his client the finality of the judgment and its implications. However, we are cited to neither rule nor law that provides he was still attorney of record after the Petition for Review was denied and the Mandate from the Court of Appeals issued.

Civil Rule 5.1(a)(1) provides the attorney of record is responsible "until the time for appeal from a judgment has expired or a judgment has become final after appeal..." We are not convinced Mr. Lassen continued as counsel of record, despite his failing in his obligation to notify his client of the finality of the judgment. We

therefore decline to find Mr. Lassen violated Supreme Court 72 by failing to notify Complainant of his suspension occurring after the mandate in the underlying action.

On or about January 17, 2013, the School District obtained an order for Complainant's appearance at a Judgment Debtor Examination. [Ex. 2, Bates SBA000106-110; Ex. 20.] Complainant was personally served with that order of appearance [SB Ex. 26], but she alleged Mr. Lassen failed to inform her that she was compelled to appear or face possible arrest during her last discussions with him. [Bejarano Testimony.] On March 1, 2013, the Court issued a Civil Arrest Warrant directing any peace officer to arrest Complainant for her failure to appear at the Judgment Debtor Examination with a cash bond of \$1,000.00. [SB Ex. 21.] Mr. Lassen testified he never received notice of the Civil Arrest Warrant. [Lassen Testimony.] We find nothing in the exhibits to support he did receive notice.

Complainant retained successor counsel, Thomas Ryan, for representation. Complainant did not learn of the initial judgment against her for attorney's fees and costs until informed by successor counsel, Mr. Ryan. [Bejarano Testimony, 10:10:10.]

On March 12, 2013, Mr. Ryan filed a Motion to Quash the Civil Arrest Warrant as he began negotiating a settlement on behalf of Complainant. [SB Ex. 22.] In early 2013, Complainant refinanced her home and paid the amounts, including interest. [SB Ex. 2, Bates SBA000111; see also Bejarano Testimony.] The failure of Mr. Lassen to inform Complainant of the finality of the Superior Court Judgment led to her unintentional non-payment resulting in a lien affecting her ability to refinance her home to satisfy the judgment once she learned of it. [SB Ex. 2, SBA000100, 103.] Complainant testified that the refinancing of her home caused hardship and personal

turmoil in her household as did the arrest warrant. [Bejarano Testimony.] On March 26, 2013, a Satisfaction of Judgment was filed in favor of Complainant for full payment of the January 13, 2010 judgment in the Superior Court lawsuit. [SB Ex. 24.]

We find Mr. Lassen violated E.R. 8.4(d). The failure of Mr. Lassen to inform Complainant of the Supreme Court denial of the Petition for Review and the issuance of the Mandate by the Court of Appeals and the implications of the finality of the judgment was inexplicable. His inaction virtually assured what followed.

On February 20, 2014, the State Bar mailed Mr. Lassen an initial screening letter requesting that a response to the allegations to be provided within twenty days. [SB Ex. 3.] The initial screening letter also informed Mr. Lassen that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz. R. Sup. Ct., E.R. 8.1(b). [Id.] On March 19, 2014, the State Bar mailed Mr. Lassen a second request for a response to be provided within ten days. [SB Ex. 4.] The second letter again informed Mr. Lassen that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline. [Id.] To date, Mr. Lassen has not responded to the State Bar regarding Complainant's allegations. Mr. Lassen testified he had not responded to any of those requests. [Lassen Testimony, 1:48:00.]

The closing argument of Mr. Lassen makes clear his failure to respond was intentional. He declared the charges of his clients untenable, the Attorney Discipline Probable Cause Committee and Bar Counsel's actions unconstitutional and concluded that "relieves the Respondent of any duty to response as the Complaints were facially defective." [Respondent Closing Argument, p. 5, lines 17-18.]

We find Mr. Lassen violated E.R. 8.1(b) and Supreme Court Rule 54(d), by refusing to cooperate, furnish information or respond to the inquiry and request from Bar Counsel regarding these charges.

Count Two (File No. 14-0784/Riccio)

Mr. Gregory Riccio ("Complainant" under this count) knew Mr. Lassen for a number of years in his capacity as a school administrator. Mr. Riccio hired Mr. Lassen on approximately October 10 or 12, 2012. Mr. Riccio had an insurance policy through his educational association membership for attorney fees. [Riccio Testimony, 10:40:28.] Mr. Lassen assured Mr. Riccio he would word their agreement in such a way Mr. Riccio would be reimbursed for the \$2,000 personally paid by Mr. Riccio to Mr. Lassen.

Mr. Lassen prepared a claim on the insurance policy, setting down a hourly rate for the insurance company that was higher than the amount Mr. Riccio was being charged. In addition, Mr. Lassen was to be paid a percentage of any proceeds to assure he had "skin in the game." The claim was made on the insurance for the policy limits of \$7,000 and the proceeds paid to Mr. Lassen. Mr. Lassen was then to return the previously paid \$2,000 retainer funds to Mr. Riccio. This would leave Mr. Lassen with a \$5,000 fee paid by the insurance company. [Riccio Testimony, 11:41:49-11:42:36; SB Ex. 31, SBA 000256.]

A letter of concern was to be written by Mr. Lassen to the school not later than December 18, 2012. Mr. Lassen requested Mr. Riccio write it and then Mr. Lassen would "tweak it" and send it to counsel for the school. Despite this directive from his client, Mr. Lassen did not send the letter. Complainant and his wife met with Mr. Lassen approximately four times between November 2012 and February 2013. [SB

Ex. 30; Riccio Testimony, 11:46:52.] In each meeting Mr. Lassen repeated similar excuses including being on his second or third secretary and his own health issues as to his progress on the matter. Subsequently, Complainant thought the letter had been sent. It wasn't until he returned from the holidays that he discovered it had not been sent.

As a result of the inaction of Mr. Lassen, counsel for the Board was unaware of the position of Complainant. This resulted in Complainant being notified he would be terminated from his position in February 2013. [Riccio Testimony, 11:47:56.] Mr. Lassen was instructed to send the letter to counsel for the board prior to the termination date of February 15, 2013. Complainant prepared a draft for that purpose and sent it to Mr. Lassen. [SB Ex. 34, SBA000272-274.] Mr. Lassen again failed to send it. Complainant was terminated from his employment. [Riccio Testimony 11:48:39; SB Ex. 31, SB000252.] This resulted in a meeting with the lawyer for the District who stated he was completely unaware of the concerns of Complainant as Mr. Lassen had told the District's counsel nothing the actions of the Board chair that was the basis of the claim of Complainant. [Riccio Testimony, 11:48:56.]

With the deadline passed and litigation being the only option, Complainants signed a fee agreement setting forth the hourly rate of \$125.00 per hour along with 30% of the anticipated settlement proceeds. [SB Ex. 34.] Mr. Lassen assured Complainant his claim was worth \$1,000,000. [Riccio Testimony, 11:54: 00.] Mr. Lassen was instructed to file a notice of claim. Complainant handed Mr. Lassen a check for \$2,000 representing \$500 dollar a month payments for March through June for the ongoing pursuit of the claim. Complainant was to get a statement every

month. Mr. Lassen anticipated the litigation taking two years. [Ricchio Testimony, 11:55:00.] Mr. Lassen was to notify Complainant each month and Complainant would then pay him an additional \$500 per month until the law suit was filed and concluded. Mr. Lassen initially failed to send a statement and then later refused to.

The wife of Complainant was clear they wanted statements each month, but heard nothing from Mr. Lassen. [Ricchio Testimony, 11:49:40.] In an e-mail dated March 12, 2013, Mr. Lassen contacted Complainant regarding a "global" notice of claim purportedly being prepared on Complainant's behalf. [SB Ex. 31, Bates SBA 000254.] Among other promises, Mr. Lassen promised that a draft would be prepared quickly so that "we can get it served next week." [Id.] Complainant assumed the claim had been made. [Ricchio Testimony, 12:01:00.] However, unknown to Complainant was that Mr. Lassen neither sent a letter of intent nor notice of claim. [Ricchio Testimony, 11:47:30; SB Ex. 31, SBA000252.]

On April 11, 2013, Complainant emailed Mr. Lassen that Complainant received notice that his wife was approved to become his beneficiary – thereby eliminating one of the proposed sections of Complainant's notice of claim. [SB Ex. 31, SBA000243-44.] Complainant's email stated, in part, "[s]o, if you haven't sent out the claim, you can strike that and if you have already, se (sic) la vie!" [SB Ex. 31, Bates SBA000243-244, 249.] Complainant only meant to strike the part of his wife's loss, but still desired for Mr. Lassen to send out the claim and assumed it had been sent. [Ricchio Testimony, 11:50:48; see also SB Ex. 31, SBA000252.]

Mr. Lassen did not respond to the April 11, 2013 e-mail. Complainant attempted to reach Mr. Lassen in August by telephone and received a recorded message that the office was closed beginning July 22, 2013. [Ricchio Testimony,

11:50:16; SB Ex. 31, SBA000245.] Complainant and his wife traveled to Europe between August 2013 and October 2013. Upon their return in October 2013, Complainant attempted to contact Mr. Lassen and again received the same recording that the offices were closed beginning July 22, 2013. [Riccio Testimony, 11:50:50.] From between April 11, 2013 until January 2014, Complainant received no communication from Mr. Lassen at all. [Riccio Testimony, 12:05:43.] Complainant subsequently learned Mr. Lassen did not send a notice of claim. Complainant never received statements detailing his work at all during his representation. Between January 2014 and February 2014, Complainant sent Mr. Lassen several e-mails alleging that Mr. Lassen failed to perform the agreed upon legal services or take any substantive action. On February 18, 2014, Complainant emailed Mr. Lassen stating, in pertinent part:

“Please note it has been **seven** weeks since I communicated to you and if you had not sent the letter of intent and filed the claim last year, I wanted you to return my \$2,000 back.”

“This email below sent to me in March 2013 is is (sic) just one of many where you said you would get the letter out within a week-and did not.”

“Your delays in sending notice cost me sick leave of 34 days and much, much more. I am willing to move on, but I am not willing to do do (sic) so without you returning the \$2000.00. The email below from you is clearly stating that you were going to send the notice in mid-March, and from the time in December before this when you told me you had some health issues, until now, you have consistently told me one thing and found an excuse to now follow through.”

[SB Ex. 31, Bates SBA000254.]

On February 19, 2014, Mr. Lassen responded by acknowledging the receipt of seven thousand dollars (\$7,000.00) and reciting certain discussions that purportedly occurred between Mr. Lassen and others. [SB Ex. 31, Bates SBA000256.] The e-mail

further states, among other things, that “[i]t is important to note that your total payment to me did not come close to (sic) the time expended even as of January 28, 2013., (sic)...I do apologize for now (sic) responding earlier, but the situation with my secretary who appears unable to carry on has been a difficult and delicate one. Again, I have no problem with sitting down and going over everything with you.”

[Id.]

On March 20 2014, Complainant responded stating in part,

“Now, I may have used up the money for March, April, May and June...I don’t know. I do know that we just spent over six weeks going back and forth trying to sort this out. So, send me a statement for time spent over the six weeks...if that time utilizes the \$2000.00 then we are finished and I will not pursue this further...Now again, to be clear, send us the itemized statement of date and time you worked on my behalf....”

[SB Ex. 31, Bates SBA000257.] As of the hearing in this matter, Complainant has not received a response to the March 20, 2014 e-mail. [Riccio Testimony, 12:07:10; see also Lassen Testimony.] Further, despite repeated requests, Mr. Lassen has failed to provide Complainant an accounting for the funds paid during the entire representation. [Riccio Testimony, 12:07:43.]

Mr. Lassen testified that the goals of the lawsuit changed substantially throughout the representation. [Lassen Testimony; see also Respondent’s Ex. 9082-001053; 9082-10014; 9082-000937-38; 9082-000675; 9082-1062.] We find the record does not substantiate his contention.

In his closing argument, Mr. Lassen argues there was no written agreement. We note this recurrent pattern of Mr. Lassen of intentionally refusing to adhere to E.R. 1.5(b) and then utilizing the absence of a written fee agreement as a defense. We find a motive to take advantage of his clients to profit himself. As with the prior count, Mr. Lassen alters his position and then terminates representation without

notice in violation of E.R. 1.16(d). He does not dispute he refused to send any statements for services and never timely sent the pre-litigation letter nor the notice of claim. Mr. Lassen, in a footnote, argues, "Dr. Riccio ignored the multiple emails, phone calls to opposing counsel and correspondence all sent in efforts to reach a mutually agreed upon resolution." Mr. Lassen offered emails to demonstrate his communications. But we find little else demonstrating work product that followed the directives of his client. We are not inclined to follow the argument of Mr. Lassen that his communications constituted work product when they did not to follow the directives of his client and he refused to produce for his client or the State Bar, the documents purportedly reflecting his work. Mr. Lassen intentionally refused to deliver any statement demonstrating his work product to his client. Nothing precluded him from calling opposing counsel or producing proof of a delivery of a statement of the services he purportedly rendered. We find his argument implausible and not supported by the evidence.

We find Mr. Lassen failed to abide his client's decisions concerning the representation in failing to prepare and file the notice of claim or letter of intent. We find Complainant informed Mr. Lassen that time was of the essence in sending out a pre-notice, which term was used by Mr. Lassen. Time was of the essence and that document was not sent before his termination. Mr. Lassen told Complainant multiple times that he was preparing the Notice of Claim and that it would be sent out soon. On March 12, 2013, Mr. Lassen contacted Complainant regarding a "global" notice of claim being prepared on Complainant's behalf.

We find over the course of 2013, Mr. Lassen told Complainant multiple times he was preparing a notice of claim and letter of intent. After coming back from

vacation on October 2013, Complainant had great difficulty communicating with Mr. Lassen. Complainant discovered Mr. Lassen never sent out the notice of claim. Complainant then sent Mr. Lassen several e-mails alleging Mr. Lassen failed to perform the agreed upon legal services. At this point, Complainant demanded return of \$2,000 of his fees due to Mr. Lassen's failure to send out a notice of claim. Mr. Lassen testified that the goals of the lawsuit changed substantially throughout the representation and that the lawsuit became a moving target, making the claims unclear.

Even if Mr. Lassen's assertions that the claims became unclear are with merit, his failure to send out a notice of claim is not excused. As evidenced above, Complainant emphasized the importance of a timely Notice of Claim and Mr. Lassen understood the importance of it. He made multiple empty promises to Complainant that the notice would be completed and sent out timely. Even if the lawsuit became a "moving target," it was Mr. Lassen's duty to clarify the claims and the goals of the lawsuit. Instead, Mr. Lassen became nearly absent from his representation and chose not to clarify anything with Complainant. Thus, Mr. Lassen also failed to act diligently in representing Complainant.

We find Mr. Lassen violated E.R. 1.2 by failing to abide by his client's decisions concerning the objectives of representation. He violated E.R. 1.3 by repeatedly failing to act with reasonable diligence and promptness. Mr. Lassen violated E.R. 1.4 by failing to reasonably consult with his Complainant, failing to keep him reasonably informed and to promptly comply with reasonable requests for information. We also find Mr. Lassen violated E.R. 1.5 when he charged, collected, and retained unreasonable fees during the representation. Mr. Lassen acknowledges he violated

E.R. 1.5(b) by having no written agreement with Complainant. Further, Mr. Lassen has offered little written documentation to his client to support his testimony or arguments. He violated E.R. 1.15 by failing to promptly render a full accounting of the fees he was paid. He violated E.R. 1.16 by refusing to take the steps reasonably practicable to protect his client's interest nor to give notice of that termination. Under the circumstances of billing the insurance company in advance and at a heightened billing rate, we also find Mr. Lassen violated E.R. 8.4(c). We find his conduct was dishonest, deceitful and involved misrepresentation.

On March 27, 2014, the State Bar mailed Mr. Lassen an initial screening letter requesting that a response to the allegation be provided within twenty days. The initial screening letter also informed Mr. Lassen that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz. R. Sup. Ct., E.R. 8.1(b). [SB Ex. 32.] On April 22, 2014 the State Bar sent Mr. Lassen a second letter giving him ten (10) days to respond to the March 27 letter. [SB Ex. 33.] As of the date of the hearing in this matter, Mr. Lassen had not responded to the State Bar regarding Complainant's allegations. We find Mr. Lassen violated ER 8.1 and Rule 54(d), Ariz. R. Sup. Ct., for failing to respond to a lawful demand for information and refusing to cooperate with the State Bar.

Count Three (File No. 14-2071/Foster and Thompson)

Mr. Lassen was suspended from the practice of law in PDJ 2013-9068 (State Bar Nos. 11-3770 and 12-2382) for a period of eighteen months effective May 7, 2014. [Complaint admitted ¶83. SB Exs. 41-43; Joint Prhrgr. Stmtnt. ¶83; Lassen Testimony 2:06:57.]

On or about June 24, 2014, Mr. Lassen signed and submitted a pleading in the State of Arizona Board of Education case of *In the Matter of Jeff S. Williamson*, C-2013-071. In his answer Mr. Lassen specifically denied he signed this pleading. In his testimony he admitted he signed the pleading. Mr. Lassen swore he signed it for William Hobson. He testified he knew it was not the preferred practice but it was done fairly often. Mr. Lassen agreed the date of the sending of the pleading was correctly listed on the cover later which was dated June 24, 2014. Mr. Lassen swore he knew he was suspended at the time he signed the pleading. We find he was suspended at the time of his signing the pleading. Mr. Lassen swore the pleading was not required to be signed by the attorney of record, stating others could sign at the direction of the attorney of record. He also testified it was done by paralegals and is not the preferred practice, but is authorized under the rules especially now with electronic filings. [SB Ex. 46, Bates SBA000387-391; Lassen Testimony, 2:09:13.]

The June 24, 2014 cover letter accompanying the action contained the letterhead of "Law Office of Gary L. Lassen, PLC" and was signed by Ellen S. Carpenter who listed herself as the "Legal Assistant to Gary L. Lassen." [SB Ex. 46, SBA000387.] Mr. Lassen testified the letterhead was an oversight on the part of his legal assistant, but took no steps to correct that oversight. [Lassen Testimony, 2:11:06.] We find this implausible. As demonstrated in the count that follows, Mr. Lassen had no hesitation continuing to use his law office letterhead even in July, 2014. [SB Ex. 48, SBA000404.]

Mr. Lassen testified he signed the pleading under the direction of attorney William Hobson. "Yes, that was done at his direction." Mr. Lassen acknowledged at the time of his signing the pleading, the client, Jeff S. Williamson, had never met Mr.

Hobson. [Lassen Testimony, 2:11:29 and 2:14:40.] We find his testimony not credible.

Mr. Hobson was not aware at the time of the filing of the answer of anything relating to the case. He first became aware of Mr. Lassen signing his name after he received a call from Assistant Attorney General Jinju Park in early August, 2014. [Hobson Testimony, 2:42:20.] He had been on vacation out of state from July 23 to August 3, 2014. [Hobson Testimony, 2:40:40.] He informed her he does not recall ever allowing or authorizing Mr. Lassen or anyone else to sign the motion on his behalf. [Hobson Testimony, 2:43:01.] Mr. Hobson was aware that Mr. Lassen was suspended and testified that he would not allow a suspended attorney to sign a pleading on his behalf. [Id.]

Assistant Attorney General Jinju Park represented the State of Arizona in the case. She received the letter and pleading from the office of Mr. Lassen. It was confusing to her because the cover letter was from the office of Gary L. Lassen but the pleading was from the office of William Hobson. Ms. Park concluded from the cover letter Mr. Lassen was licensed to practice law in Arizona. [Park Testimony, 11:28:15; SB Ex. 46 SBA 000487-91.]

Thereafter, Mr. Lassen called Ms. Park to discuss settling the case of Mr. Williamson. To the best of Ms. Park's recollection, Mr. Lassen told Ms. Park that Mr. Williamson had made a mistake and not done the things alleged in the investigation and alleged in the complaint. She testified Mr. Lassen told her Mr. Williamson should not be disciplined for unprofessional conduct. Ms. Park states she told Mr. Lassen that seemed like a factual issue and if certain events occurred perhaps that could be resolved in a settlement conference. Mr. Lassen informed Ms. Parks he would confer

with his client and get back with her. [SB Ex. 46, Bates SBA000385-6; Park Testimony, 11:30:23.]

From the statements of Mr. Lassen, Ms. Park believed Mr. Lassen represented Mr. Williamson. She believed Mr. Lassen may have also requested the complaint be dismissed. [Park Testimony, 11:31:35.] Upon learning from her paralegal that Mr. Lassen's license had been suspended, Ms. Park contacted the Attorney General Ethics Counsel on June 26, 2014, asking what office policy was regarding the issue. [Parks Testimony, 11:32:53; SB Ex. 46, SBA000385.] Mr. Lassen testified the only purpose of his call was to ask whether an answer had to be filed by Mr. Williamson. We do not find the testimony of Mr. Lassen credible. [Lassen Testimony, 2:11:50.]

We find Mr. Lassen violated E.R. 5.5 by engaging in the unauthorized practice of law while suspended when he deceitfully signed a motion while suspended and without authorization. Mr. Lassen also negotiated with Ms. Park, leading her to conclude he was an attorney representing the client and sought to settle the case.

We find Mr. Lassen violated E.R. 8.4(c). Mr. Lassen knowingly engaged in conduct involving dishonesty, deceit, or misrepresentation by holding himself out as a licensed attorney representing Jeff S. Williamson during his conversation with Ms. Park.

While the State Bar argues Mr. Lassen violated Rule 54(d), Ariz. R. Sup. Ct., by failing to respond to a lawful demand for information and refusing to cooperate with the State Bar in this charge, we find neither exhibits nor testimony to support their contention and dismiss that allegation in this Count.

Count Four (File No. 14-2297/Judicial Referral)

Mr. Lassen represented the plaintiff in the United States District Court case of *Turney v. Farmers New World Insurance Company*, CV-13-01283-PHX-SPL. [Lassen Testimony, 2:15:50, see also SB Exs. 48-51.] During the representation, Mr. Lassen was suspended from the practice of law in PDJ-2013-9068 (State Bar Nos. 11-3770 and 12-2382) for a period of eighteen months. The suspension was effective May 7, 2014. [Lassen Testimony 2:06:57; SB Exs. 41-43.] Mr. Lassen did not give notification as required under Supreme Court Rule 72 to opposing counsel of his suspension until July 2014 when the Supreme Court denied his special action requesting a stay of that suspension. Even then he only gave oral notification. He also gave no notice to the Federal District Court as required by Local Rules of that Court.

As an admitted attorney of the Arizona District Court, Mr. Lassen was aware of F.R.Civ.P. 83. He knew or should have known under that Federal Local Rule, his continuing membership in the bar of that Court was "limited to attorneys who are active members in good standing of the State Bar of Arizona." Further, he knew or should have known that Rule required, "[A]ny attorney admitted or authorized to practice law in this Court who is disbarred or subjected to other disciplinary action in any other jurisdiction shall promptly report the matter to this Court."

United States District Judge Steven P. Logan found by Order dated July 18, 2014, Mr. Lassen "[H]as not notified the Court at any time of his suspension...." The Court then withdrew him as counsel and ordered the Clerk of Court to "**terminate Gary Lassen** from this action." (Emboldened type included in original.) [SB Ex. 51 SB000445, Footnote 1 and SB000446, Lines 15-19.]

Mr. Lassen, at the time of our hearing, was aware of the District Court finding. Notwithstanding he swore, despite not giving notification of his suspension to that District Court, that he remained authorized to practice in that Court "under the law." We find implausible Mr. Lassen was practicing in the District Court with no knowledge of its local rules. We conclude Mr. Lassen intentionally refused to adhere to the Supreme Court Rules and the District Court Local Rules in order to continue to profit himself by practicing law. [Lassen Testimony, 2:17:22 and 2:20:01.]

On July 7, 2014, opposing counsel discovered Mr. Lassen had been suspended and questioned him about his continued representation of plaintiff in the lawsuit during his suspension. By letter dated July 7, 2014, the letterhead for the Law Office of Gary L. Lassen, PLC, Mr. Lassen informed opposing counsel that plaintiff obtained substitute counsel. He stated, William Hobson and Kevin Koelbel "have agreed to substitute in this matter" and the appropriate notices of substitution of counsel would be filed. [SB Ex. 48, SBA000404.] Mr. Lassen knew this was untrue. Mr. Lassen testified Mr. Koelbel "indicated he was not going to become involved in that case." [Lassen Testimony, 2:24:55.] In fact Mr. Lassen had at best given the name of his client to each of them but neither had "agreed to substitute in this matter."

Mr. Lassen contended William Hobson had agreed to substitute as counsel. Mr. Lassen testified the problem with the sequence of events was entirely due to Mr. Hobson being out of town for the entire month of July, 2014. [Lassen Testimony, 2:24:38.] Mr. Lassen swore Mr. Hobson had told him prior to the time of his letter to opposing counsel that he had agreed to substitute as counsel in the matter. We find this untrue.

We find Mr. Hobson had not agreed to take the case until after his review. He was not out of state for the entire month but rather from July 23 to August 3, 2014. He had not agreed to substitute as counsel, but rather was reviewing the file and was unaware of status of the case until his return in August, 2014. [Hobson Testimony, 2:37:03, 2:40:40]

We find the statement of Mr. Lassen to opposing counsel was false. He knew Mr. Hobson only showed interest in the case and required a review of the file before he would agree to substitute into the case. At the time of the letter of Mr. Lassen to opposing counsel there was no agreement and Mr. Lassen knew it. [Lassen Testimony, 2:25:06.]

On July 8, 2014, opposing counsel contacted the purported substituting attorneys. Mr. Koelbel told them what he had already informed Mr. Lassen, he was not involved in the lawsuit and would not substitute in as counsel of record. [SB Ex. 48, SBA000406-411.] The record does not demonstrate Mr. Hobson replied to their inquiry. This resulted in the opposing counsel filing the Emergency Motion for Rule 16 Conference and Motion to Compel. [SB Ex. 48.] On July 18, 2014, Judge Logan issued the order referenced above. [SB Ex. 51.]

We find Mr. Lassen violated E.R.s 1.3 and 1.4 and Rule 72, Ariz. R. Sup. Ct., by failing to inform his client, opposing counsel, and the Court he was suspended from the practice of law. Mr. Lassen also violated E.R. 1.16(d) by failing to take the steps necessary to protect his client. Mr. Lassen had a duty to inform the client he was suspended. He knew of the suspension and failed to assure he had substitute counsel in a timely manner. Instead, it appears Mr. Lassen continued his representation and acted in disregard of his client's rights.

Mr. Lassen violated E.R. 5.5 by engaging in the unauthorized practice of law during his suspension period. Mr. Lassen violated E.R. 8.4(d) by engaging in conduct which was prejudicial to the administration of justice. His actions were in violation of Federal Local Rules and caused Federal and Court resources to be wasted as well as halting his client's legal proceedings.

While the State Bar argues Mr. Lassen violated Rule 54(d), Ariz. R. Sup. Ct., by failing to respond to a lawful demand for information and refusing to cooperate with the State Bar, we find neither exhibits or testimony to support such argument. The State Bar has failed in its burden of proof as to that allegation in this Court.

CONCLUSIONS OF LAW AND DISCUSSION OF DECISION

The Panel finds clear and convincing evidence Mr. Lassen violated E.R.s 1.2 (failure to abide to client's decisions), 1.3 (diligence), 1.4 (communication), 1.5 (unreasonable fees), 1.15 (failure to return unreasonable fees), 1.16(d) (failure to properly withdraw representation), 3.2 (failure to make reasonable efforts to expedite litigation), 8.1 (failure to respond to lawful demand for information from the disciplinary authority), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentations), 8.4(d) (conduct prejudicial to the administration of justice), Rule 54(d) (refusal to cooperate with bar counsel), and Rule 72 (failure to notify opposing counsel and court of suspension).

VI. SANCTIONS

In consideration of an appropriate sanction, the Panel considered the following factors set forth in the American Bar Association *Standards for Imposing Lawyer*

Discipline (Standards):

- (a) the duty violated;
- (b) the lawyer's mental state;

- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors. *Standard 3.0.*

The Panel determined that a detailed discussion of the *Standards* on a count by count basis is not necessary and applies the *Standards* to Mr. Lassen's most egregious violations. See *In re Woltman*, 181 Ariz. 525, 892 P.2d 861 (1995). That does not ignore the multiple other violations we noted above.

Standard 4.41, Lack of Diligence, is applicable to Mr. Lassen's violations of Rule 42, E.R.s 1.2, 1.3, and 1.4. Mr. Lassen knowingly failed to perform services for his clients in counts one and two causing potentially serious injury to his client. *Standard 4.41* provides Disbarment is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client, or
- (b) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

In Count One, Mr. Lassen received multiple e-mails from Complainant about addressing her sick days. Mr. Lassen responded to Complainant twice about these sick days but never addressed them to the school district. Mr. Lassen did not communicate reasonably throughout the lawsuit with Complainant in that she had to wait weeks at a time for a response from Mr. Lassen about the lawsuit. To make things worse, Mr. Lassen never communicated to Complainant that there was an active lawsuit against her and he failed to terminate his representation with Complainant. Thus, Mr. Lassen knowingly failed to perform services for his client causing potentially serious monetary harm in that Complainant never had a chance to receive compensation for her sick days and never received notice of a lawsuit against her.

In Count Two, Complainant communicated to Mr. Lassen multiple times about timely communicating to the Board and timely sending out a Notice of Claim. Although Mr. Lassen made drafts of the Notice of Claim, he did not timely send them to the school district as promised. Mr. Lassen argues that the claims became moving targets and overly complex; however, Mr. Lassen should have diligently tried to clarify the claims with Complainant. Instead, Mr. Lassen did not communicate reasonably with Complainant throughout the lawsuit regarding these claims. At a minimum, Mr. Lassen left Complainant unattended and uninformed with a simple answering machine message that he would be unavailable starting July 22, 2013. Further, he failed to respond to Complainant's e-mails of April 11, 2013 and February 20, 2014. Thus, Mr. Lassen failed to perform the services that he was hired to do causing Complainant's lawsuit to not go forward and causing serious or potentially serious monetary harm.

Standard 4.61, Lack of Candor, is applicable to Mr. Lassen's misconduct in violation of E.R.s 1.5 and 8.4(c). *Standard 4.61* provides:

Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client.

In Count One, Mr. Lassen Mr. Lassen charged unreasonable fees to Complainant throughout the representation. There was no written agreement. The parties had an oral contingency fee agreement. If the case was handled on an hourly basis we would not be inclined to make this finding. From September 21, 2009 to May 7, 2010, Complainant paid Mr. Lassen thirty-four thousand dollars (\$34,000.00) by check including the one thousand thirty-four (\$1,034.00) in mediation fees. On October 2009, Complainant paid an additional seven thousand forty dollars (\$7,040.00). To make these excessive fees worse, Mr. Lassen never paid the one thousand thirty-four

(\$1,034.00) for the mediation causing an adverse lawsuit against Complainant, which Mr. Lassen never informed Complainant about. Complainant has provided checks and receipts documenting purported "cost payments" of forty six thousand one hundred forty nine dollars (\$46,149.00), and despite repeated demands, Mr. Lassen has not provided Complainant with an accounting of these funds. He had similar conduct in Count Two.

In Count Three, Mr. Lassen knowingly represented his client while he was suspended for his own benefit by signing a motion purportedly on behalf of another attorney and communicating with Ms. Park about legal matters on behalf of his client.

In Count Four, Mr. Lassen knowingly represented his client while he was suspended for his own benefit. Mr. Lassen never told the court, opposing counsel or his client of his suspension, which was discovered by opposing counsel. Only after this discovery did Mr. Lassen try to take actions in finding substitute counsel but failed to do so. Mr. Lassen's actions caused actual injury in that his client's lawsuit was postponed and all court proceedings stayed.

Standard 4.1 Failure to Preserve the Client's Property is applicable to Mr. Lassen's violation of ER 1.15. *Standard 4.11* provides:

Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

Standard 7.0, Violations of Duties Owed as a Professional, is applicable to Mr. Lassen's violations of E.R.s 1.16(d), 5.5, 8.1, 8.2 and Rule 54(d). *Standard 7.1* provides:

Disbarment is generally appropriate when a layer 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 8.1, Prior Disciplinary Orders, is applicable to Mr. Lassen's violation of Rule 72, Ariz. R. Sup. Ct. *Standard 8.1* provides Disbarment is generally appropriate when a lawyer:

- (a) Intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system or the profession; or
- (b) Has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further acts of misconduct that causes injury or potential injury to a client, the public, the legal system, or the profession.

Mr. Lassen was suspended and disbarred for similar rule violations and he knowingly, if not intentionally violated the prior disciplinary orders by not notifying clients and others of his membership status required by Rule 72, Ariz. R. Sup. Ct.

Standard 6.2, Abuse of the Legal Process is applicable to Mr. Lassen's violations of E.R.s 3.2 and 8.4(d). *Standard 6.21* provides:

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

In Count Four, Mr. Lassen never informed his client or the Court of his May 7, 2014, suspension causing actual injury to his client, the legal system, and the profession. Mr. Lassen's client was actually injured in that his lawsuit was delayed as the Court had to excuse Mr. Lassen for practicing while suspended. This delay caused serious interference with the lawsuit and caused wasted resources for the legal system. Further, the breaching of his most fundamental responsibilities in a way that

negatively and severely impacts client interests significantly harms the profession in general.

Mr. Lassen breached his most fundamental duty to the public, which is to maintain personal honesty and integrity. Mr. Lassen also breached his most fundamental duty to his clients, which is to advocate on behalf of their interests. Not just the misconduct, but also the degree of the harm caused by this misconduct is to be considered. *Matter of Scholl*, 200 Ariz. 222, 224, 25 P.3d 71, 712 (1990). His misconduct caused serious harm to his clients and their interests. Not only did his clients suffer, but the breaching of his most fundamental responsibilities significantly harms the legal profession and general public. Such activities create public mistrust and a cynicism against the legal profession. As such, Mr. Lassen's actions caused a severe degree of harm to clients, the public, and the profession in general.

The State Bar has requested restitution on behalf of clients Bejarano and Riccio, however, the Panel determined that fee arbitration or a malpractice action would be the best venue to determine the value, if any, of the legal services performed by Mr. Lassen.

AGGRAVATION AND MITIGATION

The Panel determined that the following aggravating factors are supported by the record:

- *Standard 9.22(a)* (prior disciplinary offense). Mr. Lassen prior disciplinary offenses are as follows:

Mr. Lassen was suspended for 18 months effective May 7, 2014, in PDJ 2013-9068 for violating ERs 1.4(a)(3), (4) ad 1.16(d), 5.5 and 8.4(c).

Mr. Lassen was disbarred effective August 28, 2014 in PDJ 2014-9026 for violating ERs 1.1, 1.2, 1.4(a), 1.3, 1.5(a) 1.16, 3.1, 3.2, 3.3, 3.4, 5.5, 8.1, 8.4(c) and (d) and Rule 54(d)(2) Restitution was also imposed.

Pursuant to an Agreement for Discipline by Consent, a 30 day suspension effective April 28, 2012, was imposed in PDJ 2011-9079 for violating ERs 1.3, 1.4(a), 1.4(b), 1.5(b), 2.1, 8.1 and 8.4(c).

Effective December 14, 2009, Respondent was censured and placed on one year probation (MAP) in File 06-1529 for violating ER 8.4(b) and Rules 53(h)(1). Mr. Lassen pled no contest and was found guilty of extreme DUI, endangerment and leaving the scene of an injury accident. He was placed on probation for three years beginning November 7, 2006, and required to serve 10 days in the county jail on work release.

- *Standard 9.22(b)* (dishonest or selfish motive). Mr. Lassen represented clients in Counts One, Three, and Four while suspended without regard for clients or the Court's welfare.
- *Standard 9.22(c)* (pattern of misconduct). Mr. Lassen's lack of diligence and reasonable communication is prevalent in Counts One and Two. Further, Mr. Lassen did not inform his clients of the Courts of his suspension and practiced law while suspended in Counts One, Three, and Four.
- *Standard 9.22(d)* (multiple offenses). There are four counts against Mr. Lassen with violations of thirteen ethical rules.
- *Standard 9.22(g)* (refusal to acknowledge wrongful nature of conduct). Nowhere in Mr. Lassen's testimony does he acknowledge his wrongdoing. Further, Mr. Lassen never responded to multiple requests from the State Bar for information regarding the allegations.
- *Standard 9.22(i)* (substantial experience in the practice of law). Mr. Lassen has practiced law for thirty-seven (37) years, as he was admitted to practice law in Arizona in 1978.
- *Standard 9.22(j)* (indifference to making restitution).

Mr. Lassen presented no mitigating factors in this matter, therefore, the Panel finds none are present.

VII. CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *In re Peasley*, 208 Ariz. 27, 38, 90 P.3d 764, 775 (2004). Based on the facts, conclusions of law, and application

of the *Standards*, including aggravating factors, the Panel determined that disbarment is the appropriate sanction. Accordingly,

IT IS ORDERED Mr. Lassen is disbarred from the practice of law effective the date of this Decision and Order.

IT IS FURTHER ORDERED Mr. Lassen shall initiate fee arbitration proceedings with clients Susan Bejarano and Gregory Riccio within ten (10) days from the date of this Decision. Mr. Lassen shall thereafter timely comply with any fee arbitration award.

IT IS FURTHER ORDERED that Mr. Lassen shall pay costs and expenses in this matter.

A final judgment and order will follow.

DATED this 18th day of May, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING

Anne B. Donahoe

Anne Donahoe, Volunteer Public Member

Harlan J. Crossman

Harlan Crossman, Volunteer Attorney Member

COPY of the foregoing e-mailed/mailed
this 18th day of May, 2015, to:

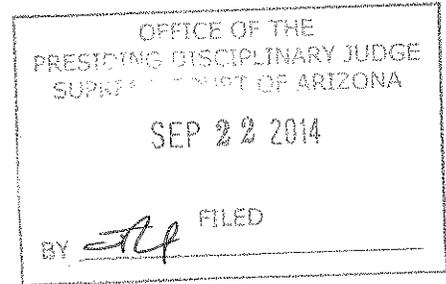
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**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

**GARY L. LASSEN,
Bar No. 005259,**

Respondent.

PDJ 2014-9082

COMPLAINT

State Bar Nos. 14-0401 and 14-0784

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 on April 22, 1978.
2. By Final Judgment and Order dated August 28, 2014, Respondent was disbarred in PDJ-2014-9026 for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.1 [3x], 1.2 [3x], 1.3 [3x], 1.4 [2x], 1.5 [1x], 1.16 [1x], 1.7(a)(2) [1x], 3.1 [4x], 3.2 [2x], 3.3 [2x], 3.4 [1x], 4.1(a) [1x], 5.5 [2x], 8.1 [1x], 8.4(c) [2x], 8.4(d) [4x] and Rule 54(d)(2) [1x].
3. A notice of appeal was timely filed on behalf of Respondent and is currently pending.
4. By Final Judgment and Order dated March 13, 2014, Respondent was suspended in PDJ-2013-9068 for a period of Two (2) Years effective May 7, 2014 for

violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 5.5, 8.4(c), 8.4(d) and Rule 54(c), Arizona Rules of Supreme Court.

5. While a notice of appeal was timely filed on behalf of Respondent and is currently pending, the court denied a motion to stay the execution of the sanction.

6. By Agreement for Discipline by Consent, Respondent was suspended in PDJ-2012- for a period of Thirty (30) Days effective April 28, 2012 for violating Rule 42, Arizona Rules of Supreme Court, ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c). Respondent was reinstated on June 25, 2012.

7. By Final Judgment and Order dated December 14, 2009, Respondent was censured (currently, reprimand) and placed on probation for a conviction of extreme DUI, endangerment and leaving the scene of an injury accident in violation of Rule 42, Arizona Rules of Supreme Court, ER 8.4(b), and Rule 53(h)(1), Arizona Rules of Supreme Court.

COUNT ONE (File no. 14-0401/Bejarano)

8. In July 2006, Complainant signed a one-year contract with the School District as the Assistant Superintendent of Teaching and Learning.

9. In or around March 2007, Complainant expressed concern about the director of staff development and was later authorized to write the director with a letter that his contract would not be renewed.

10. In or around April 2007, the Board of Directors for the School District unanimously extended Complainant's contract for another one-year term.

11. Shortly thereafter, an unrelated school employee filed a complaint against Complainant alleging a hostile work environment and an independent investigator hired to investigate the allegations later concluded that:

- a. Complainant did not follow due process investigation protocol and common sense standards;
- b. Complainant delayed reporting the results of her investigation;
- c. Complainant improperly excluded the principal from meeting witnesses;
- d. Complainant misstated two witnesses' statements; and
- e. Complainant apparently wanted her investigation to reach a certain conclusion.

12. In November 2007, Complainant filed a complaint with the Attorney General's Office alleging that the Board violated the Open Meetings Law when they heard issues related to her investigation in Executive Session on November 1, 2007.

13. In December 2007, Complainant contacted Respondent for representation.

14. In or around January 2008, Complainant was placed on administrative leave and informed that her contract would not be renewed later that spring.

15. In early 2008, Respondent began actively representing Complainant purportedly on a contingency basis.

16. To the best of Complainant's recollection, Respondent did not provide her with any confirmatory writing regarding the representation. To date, Respondent has failed to provide the State Bar with a response to this investigation.

17. On April 10, 2008, the Board unanimously voted not to renew Complainant's contract and later paid the balance of the contract.

18. In May 2008, Complainant began identifying issues that she had certain "support issues" that she wanted resolved quickly including, but not limited to, the School District's payment for vacation and sick time.

19. Complainant's attempts to contact Respondent regarding these issues included three e-mails dated May 15th, 16th and 17th, an e-mail dated September 10, 2008 and a final e-mail dated November 15, 2008.

20. On July 28, 2008, Complainant wrote Respondent an e-mail complaining about delays in the case and Respondent's failure to address the "support issues".

21. In that same e-mail, Complainant also requested a meeting in order to determine whether Respondent was too busy to handle her "contingency" case.

22. That same day, Respondent responded and claimed that he had prepared a pretty detailed complaint but needed to make one more set of revisions before sending it to Complainant for review.

23. On July 31, 2008, Respondent filed the complaint and Arizona attorney Georgia Staton began representing the School District in Maricopa County Superior Court case of *Bejarano v. Roosevelt Elementary School District, et. al.*, CV2008-018174.

24. During her representation, Ms. Staton requested Complainant's availability for a deposition and also submitted interrogatories to Respondent.

25. In October 2008, Complainant submitted her interrogatory responses to Respondent.

26. On November 12, 2008, Complainant e-mailed Respondent complaining that the interrogatory responses contained grammatical errors and were changed without her knowledge or consent.

27. After months of inactivity, Respondent filed a Motion to Set and Certificate of Readiness on May 8, 2009.

28. On June 5, 2009, the parties requested that Scott & Skelly, L.L.C. serve as mediator in the lawsuit and agreed by participation that each of the lawyers and clients will share joint responsibility for their respective pro-rata portion of the mediation fees.

29. On August 24, 2009, opposing counsel filed a Motion for Summary Judgment regarding all of Complainant's claims.

30. On August 25, 2009, the parties participated in the mediation with Scott & Skelly, L.L.C. The first of several monthly bills were mailed to Respondent on August 26, 2009 for One Thousand Thirty Five Dollars (\$1035.00), representing Complainant's/Respondent's pro-rata share of total mediation fees.

31. On October 23, 2009, the Court granted the fully briefed Motion for Summary Judgment without oral argument finding that "(Complainant) has simply failed to present facts or law which allow her to sue for relief she seeks."

32. By minute entry dated December 1, 2009, the case was administratively transferred to a new judge and all future hearings were ordered to be heard by the new judge.

33. After filing a Motion for New Trial, Motion for Clarification of Minute Entry and Objection to the Form of Judgment submitted by opposing counsel, the Court issued a minute entry on December 21, 2009 finding in pertinent part:

"The simple fact is that the Court found Defendant's positions to be legally and factually appropriate on every point. For example...inadequate performance of one's job does not prevent one from being fired regardless of how legitimate one's whistle blowing activity....Moreover, Plaintiff was not fired; instead, her contract was not renewed."

34. The Court then denied all of the pending motions and awarded Forty Two Thousand Eight Hundred Fifty Two Dollars and 05/100 in attorney's fees (\$42,852.05), Two Thousand One Hundred Forty Seven Dollars and 95/100 (\$2147.95) in non-taxable costs and Three Thousand Four Hundred Seven Dollars and 17/100 (\$3407.15) in taxable costs against Complainant. A formal judgment was entered on January 13, 2010.

35. On February 11, 2010, Respondent contemporaneously filed a Notice of Appeal and pleading titled Motion for Relief From Judgment Under Rule 60(c) in which Respondent claims receipt of new evidence supporting one of Complainant's claims.

36. After receiving responsive pleadings from the Defendants, the Court denied the motion after identifying the possible jurisdictional problems created by Respondent's contemporaneous filing of the motion and a Notice of Appeal.

37. On March 3rd and 4th, 2010, after receiving a request for a status of the case, Respondent stated:

- a. "We have not had a ruling or any hearing set on our trial court motion. I need to let you know that I thinking the appeal is the likely only way to get Justice. That will unfortunately require additional appeal fees and costs to be incurred. I thus need to impose upon you to send or deliver more funds like you have so graciously done in recent months. Please be aware that I remain confident that in the end that we will win, and that these monies, and much more will be coming our way."
- b. "I fully understand your concerns, but I want you to remember that we ran into a scorched earth policy by the insurance company's lawyers and a lazy initially assigned Judge."

38. On June 22, 2010, Respondent received another monthly request for payment from Scott & Skelly, L.L.C.; this one containing a handwritten note requesting a phone call regarding the status of the payment.

39. On August 13, 2010, Scott & Skelly, L.L.C. filed the Arcadia-Biltmore Justice Court case of *Scott & Skelly, LLC v. Lassen and Bejarano*, CC2010-469389 SC naming both Respondent and Complainant and seeking a judgment of One Thousand Thirty Five Dollars (\$1035.00).

40. On August 24, 2010, a copy of the Summons and Complaint was personally served upon Respondent.

41. On September 12, 2010, Respondent repeated his statement about the judge in an e-mail stating, among other things, "I have been scouring the prior pleadings and briefs and exhibits (sic) and intend to emphasize:...4. The trial Judge was lazy."

42. On December 8, 2010, the Court entered a judgment against both Defendants in the Arcadia-Biltmore lawsuit.

43. On April 12, 2011, Division One of the Court of Appeals filed a Memorandum Decision in *Bejarano v. Roosevelt Elementary School District, et. al.*, 1 CA-CV 10-0231 affirming the lower court rulings.

44. All communication between Complainant and Respondent ceased between June 2011 and early 2013.

45. While Respondent was still attorney of record for Complainant, Respondent was suspended in State Bar file 10-1508 for thirty days for violations of 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, 8.4(c), effective April 28, 2012. Respondent was reinstated on June 25, 2012.

46. On or about January 17, 2013, the School District obtained an order for Complainant's appearance at a Judgment Debtor Examination.

47. Complainant was personally served with the order of appearance, but alleges that Respondent failed to inform her of that she was compelled to appear or face possible arrest during her last discussions with Respondent.

48. On March 1, 2013, the Court issued a Civil Arrest Warrant directing any Peace Officer to arrest Complainant for her failure to appear at the Judgment Debtor Examination and further set a cash bond of One Thousand Dollars (\$1000.00).

49. When Complainant learned of the arrest warrant from a former employer, she contacted Respondent who claimed that he was unaware of any of the events surrounding the arrest warrant. Complainant then contacted successor counsel, Thomas Ryan, for representation.

50. On March 12, 2013, a Motion to Quash the Civil Arrest Warrant was filed as Thomas Ryan began negotiating a settlement agreement on behalf of Complainant.

51. In early 2013, Complainant refinanced her home and paid the amounts contained in the Superior Court and Justice Court judgments.

52. On March 26, 2013, a Satisfaction of Judgment was filed in favor of Complainant indicating a full payment of the January 13, 2010 judgment in the Superior Court lawsuit.

53. On March 28, 2013, a Satisfaction of Judgment was filed in favor of Complainant indicating a full payment of the December 8, 2010 judgment in the Justice Court lawsuit.

54. Complainant has provided checks and receipts documenting purported "cost payments" of Forty Six Thousand One Forty Nine Dollars (\$46,149.00).

Despite repeated demands, Respondent has not provided Complainant with an accounting of these funds.

55. On February 20, 2014, the State Bar mailed Respondent an initial screening letter requesting that a response to the allegations to be provided within twenty days. The initial screening letter also informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz.R.Sup.Ct., ER 8.1(b).

56. On March 19, 2014, the State Bar mailed Respondent a second request for a response to be provided within ten days. The second letter again informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline.

57. To date, Respondent has not responded to the State Bar regarding Complainant's allegations.

58. By engaging in the misconduct described above, Respondent violated the following ethical rules:

- a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 – Respondent failed to abide to his client's decisions concerning the representation particularly failing to take action on the "support issues" raised by Complainant at the beginning of the representation.
- b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently throughout the lawsuit and his representation of his client.

- c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with his client regarding the status of the case or respond to inquiries by the client.
- d. Rule 42, Ariz. R. Sup. Ct., ER 1.5 – Respondent charged, collected and retained unreasonable fees during the representation which were not communicated to the client by writing.
- e. Rule 42, Ariz. R. Sup. Ct., ER 1.15 – Respondent charged, collected and retained unreasonable fees during the representation and failed to return unauthorized or unearned fees to the client.
- f. Rule 42, Ariz. R. Sup. Ct., ER 1.16 – Respondent failed to properly withdraw from the representation and take the steps to the extent reasonably practicable to protect a client’s interests.
- g. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Respondent failed to make reasonable efforts to expedite litigation consistent with the interests of his clients.
- h. Rule 42, Ariz. R. Sup. Ct., ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority in connection with the instant investigation.
- i. Rule 42, Ariz. R. Sup. Ct., ER 8.2(a) – Respondent made statements with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

- j. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) – Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentations.
- k. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of justice.
- l. Rule 54(d), Ariz. R. Sup. Ct. – Respondent refused to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.
- m. Rule 72, Ariz. R. Sup. Ct. – Respondent failed to notify the Court and his client regarding his April 2012 suspension.

COUNT TWO (File no. 14-0784/Riccio)

59. In or around October 2012, Complainant and his wife paid Respondent Five Thousand Dollars (\$5000.00) in order to represent them regarding certain employment disputes.

60. On February 22, 2013, Complainants paid Respondent another Two Thousand Dollars (\$2000.00) bringing the total amount paid to Seven Thousand Dollars (\$7000.00).

61. Respondent explained that, during his representation, Respondent would tell the opposing party an hourly billing rate different than the rate actually billed in order to "have some skin in the game."

62. Complainants signed a fee agreement setting forth the hourly rate of One Hundred Twenty Five Dollars per hour (\$125.00/hr) along with thirty percent (30%) of the anticipated settlement proceeds.

63. Between October 2012 and February 2013, Complainant and his wife met with Respondent approximately four times.

64. By e-mail dated March 12, 2013, Respondent contacted Complainant regarding a "global" notice of claim purportedly being prepared on Complainant's behalf. Among other things, Respondent promised that a draft would be prepared quickly so that "we can get it served next week".

65. Over the course of the next year, Respondent randomly met and e-mailed Complainant claiming to be in the process of preparing the notice of claim and a letter of intent.

66. On April 11, 2013, Complainant e-mailed Respondent that Complainant received notice that his wife was approved to become his beneficiary – thereby eliminating one of the proposed sections of Complainant's notice of claim.

67. Complainant stated, in part, "[s]o, if you haven't sent out the claim, you can strike that and if you have already, *se (sic) la vie!*"¹

68. Respondent did not respond to the April 11, 2013 e-mail.

¹ Emphasis in original.

69. Complainant attempted to contact Respondent in August and received a recorded message that the office was closed beginning July 22, 2013.

70. Complainant and his wife traveled to Europe between August 2013 and October 2013.

71. Upon their return in October 2013, Complainant attempted to contact Respondent and again received the same recording that the offices were closed beginning July 22, 2013.

72. Between January 2014 and February 2014, Complainant sent Respondent several e-mails alleging that Respondent failed to perform the agreed upon legal services or take any substantive action.

73. On February 18, 2014, Complainant e-mailed Respondent stating, in pertinent part:

- a. "Please note it has been **seven** weeks since I communicated to you and if you had not sent the letter of intent and filed the claim last year, I wanted you to return my \$2000.00 back."²
- b. "This email below sent to me in March 2013 is is (sic) just one of many where you said you would get the letter out within a week- and did not."
- c. "Your delays in sending notice cost me my sick leave of 34 days and much, much more. I am willing to move on, but I am not willing to do do (sic) so without you returning the \$2000.00. The email below from you is clearly stating that you were going to send the notice in mid-March, and from the time in December before this when you told me you had some health issues, until now, you have consistently told me one thing and found an excuse to not follow through."

² Emphasis in original.

74. On February 19, 2014, Respondent responded by acknowledging the receipt of Seven Thousand Dollars (\$7000.00) and reciting certain discussions that purportedly occurred between Respondent and others.

75. The e-mail further states, among other things, that “[i]t is important to note that your total payment to me did not come close to (sic) the time expended even as of January 28, 2013., (sic)...I do apologize for now (sic) responding earlier, but the situation with my secretary who appears unable to carry on has been a difficult and delicate one. Again, I have no problem with sitting down and going over everything with you. .(sic)”.

76. On February 20, 2014, Complainant responded stating, in pertinent part, “Now, I may have used up the money for March, April, May and June...I don’t know. I do know that we just spent over six weeks going back and forth trying to sort this out. So, send me a statement for time spent over the six weeks...if that time utilizes the \$2000.00 then we are finished and I will not pursue this further...Now again, to be clear, **send us the itemized statement of date and time you worked on my behalf...**”.³

77. As of the date of this report, Complainant has not received a response to the February 20, 2014 e-mail.

78. Despite repeated requests, Respondent has failed to provide Complainant an accounting for the funds paid during the representation.

³ Emphasis in original.

79. On March 27, 2014, the State Bar mailed Respondent an initial screening letter requesting that a response to the allegations to be provided within twenty days. The initial screening letter also informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz.R.Sup.Ct., ER 8.1(b).

80. On April 22, 2014, the State Bar mailed Respondent a second request for a response to be provided within ten days. The second letter again informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline.

81. To date, Respondent has not responded to the State Bar regarding Complainant's allegations.

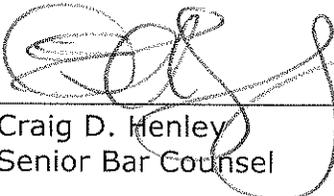
82. By engaging in the misconduct described above, Respondent violated the following ethical rules:

- a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 – Respondent failed to abide to his client's decisions concerning the representation particularly failing to prepare and file the notice of claim or letter of intent.
- b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Respondent failed to act diligently throughout the lawsuit and his representation of his client.
- c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Respondent failed to reasonably communicate with his client regarding the status of the case or respond to inquiries by the client.

- d. Rule 42, Ariz. R. Sup. Ct., ER 1.5 – Respondent charged, collected and retained unreasonable fees during the representation.
- e. Rule 42, Ariz. R. Sup. Ct., ER 1.15 – Respondent failed to account for or return the unearned fees to the client.
- f. Rule 42, Ariz. R. Sup. Ct., ER 1.16 – Respondent failed to properly withdraw from the representation and take the steps to the extent reasonably practicable to protect a client’s interests.
- g. Rule 42, Ariz. R. Sup. Ct., ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority in connection with the instant investigation.
- h. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) – Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentations.
- i. Rule 54(d), Ariz. R. Sup. Ct. – Respondent refused to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

DATED this 22nd day of September, 2014.

STATE BAR OF ARIZONA

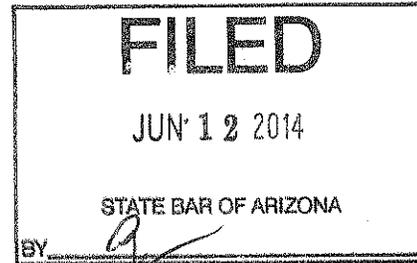


Craig D. Henley
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 22nd day of September, 2014.

by: Robert T. Baw
CDH/rtb

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



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

GARY L. LASSEN,
Bar No. 005259,

Respondent.

No. 14-0401

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 6, 2014, 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 7-0-2¹, the Committee finds probable cause exists that Respondent violated the Rules of the Supreme Court of Arizona:

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 11th day of June, 2014.

Lawrence F. Winthrop

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

¹ Committee members Daisy Flores and Bill Friedl did not participate in this matter.

Original filed this 12th day
of June, 2014 with:

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

Copy mailed this 17th day
of June, 2014, to:

Gary L. Lassen
1234 South Power Road,
Suite 254
Mesa, Arizona 85206-3761
Respondent

Copy emailed this 17th day
of June, 2014, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

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

by: Anthony T. Brown

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



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

GARY L. LASSEN,
Bar No. 005259,

Respondent.

No. 14-0784

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 6, 2014, 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 7-0-2¹, the Committee finds probable cause exists that Respondent violated the Rules of the Supreme Court of Arizona:

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 11th day of June, 2014.

A handwritten signature in cursive script that reads "Lawrence F. Winthrop". The signature is written over a horizontal line.

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

¹ Committee members Daisy Flores and Bill Friedl did not participate in this matter.

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Phoenix, Arizona 85007
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4201 North 24th Street, Suite 100
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by: Rodney T. Bowe