BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JAMES R. OLSEN,** **Bar No. 026833** Respondent.	**PDJ-2016-9069** **FINAL JUDGMENT AND ORDER** [State Bar No. 15-2921] **FILED OCTOBER 19, 2016**

This matter was heard by the Hearing Panel, which rendered its Decision and Order. No appeal has been filed and the time to appeal has expired.

Accordingly,

IT IS ORDERED, Respondent, **JAMES R. OLSEN**, **Bar No. 026833,** is suspended from the practice of law for sixty (60) days effective October 20, 2016, for conduct in violation of his duties and obligations as a lawyer as stated in the Hearing Panel's Decision and Order Imposing Sanctions filed on September 19, 2016.

IT IS FURTHER ORDERED Mr. Olsen shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED as a condition of reinstatement and in addition to his annual CLE obligation, Mr. Olsen shall complete ten (10) hours of continuing legal education in the area of ethics.

IT IS FURTHER ORDERED Mr. Olsen shall pay the costs and expenses of the State Bar of Arizona in the amount of $2,000.00. There are no costs or

expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 19th day of October, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 19th day of October, 2016.

James R. Olsen
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Emails: jimolsen1@gmail.com; jamesolsen11@gmail.com
Respondent

Bradley F. Perry
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Email: lro@staff.azbar.org

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JAMES R. OLSEN, Bar No. 026833** Respondent.	**PDJ 2016-9069** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar No. 15-2921] **FILED SEPTEMBER 19, 2016**

On September 14, 2016, the Hearing Panel, comprised of the Presiding Disciplinary Judge (PDJ), William J. O'Neil, James M. Marovich, attorney member, and Archer Shelton, public member, conducted a hearing pursuant to Rule 58 Ariz. R. Sup. Ct.[1] Mr. Olsen filed no answer and pursuant to Rule 58(d), the allegations were deemed admitted upon the effective entry of default.

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on July 7, 2016. On July 11, 2016, the complaint was served on Respondent by certified, delivery restricted mail, and by regular first class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. The PDJ was assigned to the matter. A notice of default was issued on August 8, 2016, as Mr. Olsen's failed to file an answer or otherwise defend. Default became effective on August 30, 2016. Notice of the aggravation and mitigation hearing was sent to all parties giving notice of the aggravation mitigating hearing scheduled for September 14, 2016, at 1:30 p.m., at the State Courts Building, 1501

[1] All references to rules are to the Arizona Rules of the Supreme Court unless otherwise stated.

West Washington, Phoenix, Arizona 85007-3231. On September 14, 2016, the Hearing Panel conducted the hearing.

A respondent against whom a default has been entered may no longer litigate the merits of the factual allegations, but retains the right to appear and participate in the hearing that will determine the sanctions. Included with that right to appear is the right to testify and the right to cross-examine witnesses, in each instance only to establish facts related to aggravation and mitigation. Mr. Olsen appeared for the hearing. All exhibits were admitted without objection. Mr. Olsen stated he agreed with the sixty (60) day suspension but argued that he was an honest individual.

FINDINGS OF FACT

The facts listed below are those set forth in the SBA's complaint and were deemed admitted by Respondent's default.

1. Respondent is a lawyer licensed to practice law in Arizona having been first admitted to practice in Arizona on March 5, 2009.

COUNT ONE (File No. 15-2921/Arizona)

2. On April 1, 2015, Respondent sold his bankruptcy practice to James Gaudiosi and transferred his trust account funds to him. [Exhibits 1, 2.] Mr. Gaudiosi is Respondent's former paralegal who became licensed as an attorney in July 2014.

3. Respondent sent a letter to his clients informing them he was "unable to continue serving" as their attorney and stating he "arranged substitute counsel," James Gaudiosi, to continue their representation. [Exhibit 4.] Respondent's letter calls Mr. Gaudiosi "an experienced bankruptcy attorney" despite Mr. Gaudiosi receiving his license less than ten (10) months prior to the sale of the firm.

4. Respondent's letter does not inform clients the firm was being sold.

5. Bar Counsel asked Respondent to explain why he referred to Mr. Gaudiosi as an experienced bankruptcy attorney in his letter to his clients. [Exhibit 5.] Respondent stated that Gaudiosi was experienced because he worked for Respondent as Respondent's "primary Chapter 7 and backup Chapter 13 paralegal for years." [Exhibit 6.] We find this untrue as Mr. Gaudiosi worked as Respondent's paralegal from September 27, 2012 through December 31, 2013. [Exhibit 14.] In the hearing, Mr. Olsen acknowledged these statements regarding Mr. Gaudiosi were untrue.

6. On February 10, 2016, Bar Counsel sent Respondent an email asking him to explain how the client letter regarding sale of the firm complied with ER 1.17. [Exhibit 7.] The email requested a response not later than February 15, 2016, at 5:00 P.M. The email was sent to jimolsen1@gmail.com, which was the only email on file with the State Bar. Bar Counsel's assistant, Sharon Berkley, was CC'd on the message. The email used to copy Ms. Berkley was Sharon.Berkley@staff.azbar.org.

7. On February 12, 2016, Respondent called Ms. Berkley and informed her he received an email from her referencing additional information requested but did not know what information he needed to provide. Ms. Berkley informed Respondent she sent no email and requested he forward her the message.

8. Respondent forwarded the email to Ms. Berkley at 4:19 p.m. [Exhibit 8.] The email purported to be sent by Ms. Berkley to Respondent on February 12, 2016, states:

> We have not heard back from you on an additional detail that was requested. I am sending this as a courtesy follow-up to both emails that

I have on file. Your response is due Monday, February 15, 2016. Please respond promptly so further investigation isn't necessary.

9. The email Respondent claims was sent by Ms. Berkley is a forgery. It supported a request for additional time to respond to Bar Counsel's February 10, 2016, request for more information.

10. The email originated from sberkley.azbarstaff@gmail.com, not Sharon.Berkley@staff.azbar.org, and was sent to jamesolsen11@gmail.com, an email the State Bar previously did not know existed. Emails sent from the State Bar's Outlook system list the identifying information in header in the following order: From, Sent (date and time), To, and Subject. The forwarded email lists the identifying information in the header in this order: From, Date, Subject, To, and contains no time stamp on the date line included in Outlook emails. The forwarded email also contains a forgery of Ms. Berkley's electronic signature. The forgery is apparent because it does not contain the following elements of Ms. Berkley's true electronic signature: a State Bar illustration, an email line under the phone number, the www.azbar.org link, and the quote "Serving the public and enhancing the legal profession."

11. On February 12, 2016, at 5:07 p.m., Respondent sent Bar Counsel an email asking for additional time to respond to the February 10, 2016, request for information, stating "I did not know that you had sent me anything as evidenced by my conversation with Sharon today." [Exhibit 9.]

12. During an interview with a State Bar investigator, Respondent denied noticing anything out of the ordinary with the email sent from sberkley.azbarstaff@gmail.com. Respondent informed the State Bar investigator he

told no one about his Bar charge. Mr. Olsen told the investigator he did not disclose Ms. Berkley's name to anyone so he was unsure who may have created the email address or sent the forged email. Respondent, in our hearing, emphasized he did not create the email. He offered no testimony refuting he did not cause it to be created. In light of his statements to the investigator that he told no one he was involved in a bar investigation or the name of Ms. Berkley, that such an email would be created and sent to him without his participation or awareness. We find implausible that anyone but Mr. Olsen caused the email account to be created and the email sent. We find the evidence clear and convincing that Mr. Olsen either drafted or caused the email to be crafted and sent the forged message.

13. Respondent's conduct violated Rule 42 Ariz. R. Sup. Ct., ERs 1.17, 8.1(a), and 8.4(c).

CONCLUSIONS OF LAW

Mr. Olsen failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Respondent violated: Rule 42 Ariz. R. Sup. Ct., ERs 1.17, 8.1(a), and 8.4(c).

ABA STANDARDS ANALYSIS

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

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

Duties violated:

Respondent violated his duty to his clients by violating E.R. 1.17, his duty owed as a professional by violating E.R. 8.1(a), and his duty owed to the public by violating 8.4(c).

Mental State and Injury:

Mr. Olsen knowingly violated his duty owed as a professional, implicating *Standard* 7.2. *Standard* 7.2 states: "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."

The practice of law is a profession. The sale of profession is not the sale of commodities that can be purchased and sold at will. Mr. Olsen, belatedly at the hearing, acknowledged he misled his clients in his letter to them. We find this unfortunate. However, in response to the State Bar, Mr. Olsen failed to acknowledge his ethical shortfalls and compounded them.

Mr. Olsen either opened or caused to be opened a Gmail account in the name of a State Bar employee, sent himself an email from that Gmail account which purported to remind him of an upcoming deadline by which he was to provide supplemental information to the State Bar, and then attempted to use the forged email as the basis for a request for extension of time to provide the requested information. In his request for extension, Mr. Olsen claimed that he needed

additional time because he only received the reminder email and not the State Bar's original email requesting supplemental information.

Mr. Olsen's conduct diminishes the integrity of the profession. Maintaining the integrity of the profession is a duty owed as a professional. See *Standards*, at 5. The Supreme Court expects and demands candor in disciplinary proceedings. *In re. Varbel,* 182 Ariz. 451, 454, 897 P.2d 1337, 1340 (1995).

AGGRAVATING AND MITIGATING FACTORS

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

- *Standard* 9.22(b) – Dishonest or selfish motive.
- *Standard* 9.22(f) – Deceptive practices during the disciplinary process.

The Hearing Panel finds the following mitigating factor applies:

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

PROPORTIONALITY

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

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases factually similar. *See In re Peasley,* 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case**,** as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778

(citing *In re Alcorn,* 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In *In re Johnson,* SB04-0076-D (2004), Johnson was appointed to represent a client in a criminal matter. Thereafter, the client filed a complaint against Respondent with the State Bar of Arizona alleging lack of communication and diligence. Respondent responded to the complaint and attached a forged letter addressed to the client at his current address instead of the address at which the client resided when the letter was allegedly written. Respondent later admitted that he fabricated the letter to support his response to the client's complaint. Johnson was suspended for six months and one day for his conduct. Aggravating factors included prior disciplinary violations (prior reprimand and suspension), dishonesty, and substantial experience in the practice of law.

Mr. Olsen has no disciplinary history and has only been a member of the bar since 2009.

CONCLUSION

The Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the sanction using the facts deemed admitted and an independent review of those admitted facts, the *Standards*, the aggravating factors, the sole mitigating factor, and the goals of the attorney discipline system. Accordingly:

IT IS ORDERED Mr. Olsen shall be suspended from the practice of law for sixty (60) days effective thirty (30) days from the date of this order.

IT IS FURTHER ORDERED as a condition of reinstatement and in addition to his annual CLE obligation, Mr. Olsen shall complete ten (10) hours of CLE in ethics.

IT IS FURTHER ORDERED Mr. Olsen shall pay all costs and expenses incurred by the SBA. There are no costs of the Office of the Presiding Disciplinary Judge.

A final judgment and order will follow.

DATED this 19th day of September, 2016.

William J. O'Neil
Presiding Disciplinary Judge

CONCURRING:

James M. Marovich
James M. Marovich, Volunteer Attorney Member

Archer Shelton
Archer Shelton, Volunteer Public Member

/ / /

Copy of the foregoing emailed
this 19th day of September, 2016, and
mailed September 20, 2016, to:

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Respondent

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
JUL 7 2016
FILED
BY

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JAMES R OLSEN,** **Bar No. 026833,** Respondent.	**PDJ 2016-9069** **COMPLAINT** [State Bar No. 15-2921]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on March 05, 2009

COUNT ONE (File No. 15-2921/Arizona)

2. On April 1, 2015, Respondent sold his bankruptcy practice to James Gaudiosi. Mr. Gaudiosi is Respondent's former paralegal who became licensed as an attorney in July 2014.

3. Respondent sent a letter to his clients informing them that he was "unable to continue serving" as their attorney and stating that he "arranged substitute counsel" James Gaudiosi to continue representation. Respondent's letter

calls Mr. Gaudiosi "an experienced bankruptcy attorney" despite Mr. Gaudiosi receiving his license less than 10 months prior to the sale of the firm.

4. Respondent's letter does not inform clients the firm was being sold.

5. Bar Counsel asked Respondent to explain why Mr. Gaudiosi was referred to as an experienced bankruptcy attorney in Respondent's letter. Respondent stated that Gaudiosi was experienced because he worked for Respondent as Respondent's "primary Chapter 7 and backup Chapter 13 paralegal for years." Mr. Gaudiosi only worked as Respondent's paralegal from September 27, 2012 through December 31, 2013.

6. On February 10, 2016, Bar Counsel sent Respondent an email asking him to explain how the client letter regarding sale of the firm complied with ER 1.17 by no later than February 15, 2016 at 5:00pm. The email was sent to jimolsen1@gmail.com, which was the only email on file with the State Bar. Bar Counsel's assistant, Sharon Berkley, was CC'd on the message. The email used to copy Ms. Berkley was Sharon.Berkley@staff.azbar.org.

7. On February 12, 2016, Respondent called Ms. Berkley and informed her that he received an email from her referencing additional information requested but did not know what information he needed to provide. Ms. Berkley informed Respondent she did not send an email and requested he forward her the message.

8. Respondent forwarded the email to Ms. Berkley at 4:19 p.m. The email purported to be sent by Ms. Berkley to Respondent on February 12, 2016 states "We have not heard back from you on an additional detail that was requested. I am sending this as a courtesy follow-up to both emails that I have on file. Your response

is due Monday, February 15, 2016. Please respond promptly so further investigation isn't necessary."

9. The email Respondent claims was sent by Ms. Berkley is a forgery drafted by Respondent to support a request for additional time to respond to Bar Counsel's February 10, 2016, request for more information.

10. The email originated from sberkley.azbarstaff@gmail.com, not Sharon.Berkley@staff.azbar.org, and was sent to jamesolsen11@gmail.com, an email the State Bar previously did not know existed. Emails sent from the State Bar's Outlook system list the identifying information in header in the following order: From, Sent (date and time), To, and Subject. The forwarded email lists the identifying information in the header in this order: From, Date, Subject, To, and does not contain a time stamp on the date line which is included in Outlook emails. The forwarded email also contains a forgery of Ms. Berkley's electronic signature which does not contain the following elements included in Ms. Berkley's true electronic signature: a State Bar illustration, an email line under the phone number, the www.azbar.org link, and the quote "Serving the public and enhancing the legal profession."

11. On February 12, 2016, at 5:07 p.m., Respondent sent Bar Counsel an email asking for additional time to respond to the February 10, 2016, request for information, stating "I did not know that you had sent me anything as evidenced by my conversation with Sharon today."

12. During an interview with a State Bar investigator, Respondent denied noticing anything out of the ordinary with the email sent from sberkley.azbarstaff@gmail.com. Respondent said he did not tell anyone about his Bar charge and did not disclose Ms. Berkley's name to anyone so he was unsure who may

have created the email address or sent the forged email. Respondent denied creating the email address or sending the forged email.

13. Respondent's conduct violated Rule 42 Ariz. R. Sup. Ct., ERs 1.17, 8.1(a), and 8.4(c).

DATED this 7th day of July, 2016.

STATE BAR OF ARIZONA

Bradley F Perry
Bar Counsel - Litigation

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 7th day of July, 2016.

by: _____
BFP:sab

FILED
JUN 29 2016
STATE BAR OF ARIZONA
BY Elaine Parra

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

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JAMES R. OLSEN,** **Bar No. 026833,** Respondent.	No. 15-2921 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 10, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 7-0-2[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-2921.

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 29 day of June, 2016.

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

[1] Committee member Daisy Flores and Ella G. Johnson did not participate in this matter.

Original filed this 29th day
of June, 2016, with:

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Respondent

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by: Shawn Beckley