

SUPREME COURT OF ARIZONA

In the Matter of a Member of the	)	Arizona Supreme Court
State Bar of Arizona,	)	No. SB-22-0085-AP
	)	
VLADIMIR GAGIC,	)	Office of the Presiding
Attorney No. 21781	)	Disciplinary Judge
	)	No. PDJ20229050
Respondent.	)	
_____	)	FILED 05/03/2023

O R D E R

Respondent Vladimir Gagic appealed the September 15, 2022 order by the Presiding Disciplinary Judge ("PDJ") granting the State Bar's Motion for Summary Judgment and the December 6, 2022 Decision and Order Imposing Sanctions by the Disciplinary Panel ("Panel"). The Panel's Decision and Order suspended Respondent from the practice of law for one year, provided for terms of probation to be determined upon reinstatement, and ordered Respondent to pay the State Bar's costs and expenses.

The Court denies the appeal and affirms the summary judgment ruling and the Decision and Order Imposing Sanctions.

Procedural History

The State Bar filed a complaint against Respondent alleging violations of ER 3.5(d) (prohibiting conduct likely to disrupt a tribunal); ER 8.2(a) (prohibiting false statements about the qualifications or integrity of a judge); ER 8.4(d) (prohibiting misconduct prejudicial to the administration of justice); and Rule 41(b)(7) (directing lawyers to avoid unprofessional conduct and to

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advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the duties to a client or the tribunal). The complaint alleged the following general categories of misconduct: (1) Accusations Against the Honorable Roy "Chuck" Whitehead; (2) Accusations Against the Honorable Laura M. Reckart; (3) Accusations Against the Honorable Justin Beresky; (4) Accusations Against Opposing Counsel; and (5) Respondent's Conduct in Other Litigation.

Throughout the disciplinary proceeding, Respondent filed various dispositive motions including a August 17, 2022 "Motion for Summary Judgment All Allegations Per Rule 56," an August 19, 2022 "Counter Motion for Summary Judgment," and an August 29, 2022 "3RD Defense Motion for Summary Judgment to Dismiss Complaint in Entirety," all of which were denied.

The Bar filed a "Motion for Summary Judgment RE: Violation of Ethical Rules" and "Statement of Facts in Support of Motion for Summary Judgment." Respondent filed a "Response to SBA Motion for Summary Judgment," which included his "Countermotion for Summary Judgment." The PDJ granted the Bar's motion for summary judgment in part, and denied Petitioner's "countermotion", observing that in responding to the Bar's motion, Respondent failed to comply with Civil Rule 56(c)(3)(B), which required him to file a separate statement of facts in the form prescribed by Rule 56(c)(3)(A). Also, Respondent did not controvert any portion of the Bar's Statement of Facts, and did not discuss the ethical rules at issue or cite

relevant legal authority.

In the summary judgment ruling, the PDJ found:

As a matter of law, Respondent engaged in substantial and repeated violations of **the Oath, the Creed, Rule 41(b)(7), ER 3.5(d), ER 8.2(a), and ER 8.4(d)**. Respondent admits making the following written statements, and he has asserted no cognizable defense to the charged ethical violations or come forward with competent, relevant evidence that controverts any of the State Bar's proffered evidence.

(Emphasis added.) These representations were made in pleadings and motions during the course of Respondent's representation of a defendant in criminal proceedings and in his response to the bar charge filed by Judge Justin Beresky.¹

1. "I defy anyone to find a set of facts more extreme than the hostility and nastiness of not only Judge Reckart, but of the collective Maricopa County Superior Court judiciary has against me, Mr. Pennington's lawyer." (Respondent's August 9, 2021 *Petition for Special Action in the Court of Appeals*, Exhibit K)
2. "I am concerned Judge Reckart is trying to sanitize the case file and deny as many defense motions as she can before another eventually [sic] judge takes over, making denials of defense motions law of the case. It also concerns me if there are other sanitation efforts, which would be more difficult to uncover, are underway or already done. . . It is a cover up." (Respondent's August 28, 2021 *Motion for Change of Judge for Cause Under 10.1 and Change of Venue Under 10.3*, Exhibit M)
3. Judge Reckart "wrote in the minute entry that my motion for cause change of judge - 'after defense counsel attempted to remove this judge' had been 'quelled.' That is most bizarre choice of words I have read in a minute entry ever and I would ask Judge Reckart to explain why she seems to believe me an insurrectionist. If my first

¹ The referenced exhibits were included in the Bar's Statement of Facts and establish the context in which the statements were made.

name was not the same as the most hated man in modern American history, Vladimir Putin, would she have used the words 'quelled' or 'attempted to remove this judge'? Of course not. Those words are deliberate to evoke Russia-gate and the Capitol riots. It is a dogwhistle at my expense and my client's expense." (Exhibit M)

4. "Judge Reckart viciously insults me comparing me with a drunk, cocaine abusing derelict, who missed 30 days of court because he was in jail, and completely disdainful to his personal honor, and the honor of his profession and country. It is an insult without rival. That is Judge Reckart telling the whole world, on public court record that I am the typical dirty, drunk, Slavic brute deserving of nothing more than cheap shots to my face and professional reputation 20 years in making. Not withstanding [sic] my untermensch name and DNA, I am a law abiding American citizen, I pay my taxes on time every time, I don't drink and drive, I don't hit women nor am I the least bit sexist, I brake for animals, I am an honorably discharged US Marine and volunteered to defend this country and its laws with my life. If Judge Reckart has any respect for her office, an office temporarily loaned to her safe keeping by the people of the state of Arizona, including me and my client, she will unequivocally apologize to me and retract the filth immediately." (Exhibit M)
5. "I write the denial [of my motion to dismiss for selective prosecution] was seemingly out of nowhere because before that minute entry denial, coming after Judge Reckart issued her infamous minute entry of 8.6.21 . . . containing McCarthyite Red bating [sic] innuendo I am traitor and failed insurrectionist and noted my character as that of a drunk, drug abusing, and criminal, not criminal defense, but criminal lawyer who missed 30 days of court because he was in jail, there was about a 3 week period in which the case judge was, as far as I could figure out, TBD." (Respondent's August 31, 2021 *Petition for Special Action in the Court of Appeals*, Exhibit N)
6. "Judge Reckart['s] statement that the defense filed a motion to compel the interview 'in turn' after the state had filed it is a flat out, unequivocal lie." (Respondent's February 7, 2022 *Petition for Special Action*, Exhibit Q)
7. "Judge Reckart is [prosecutor Fisher's] apologist and

parrots DCA Fisher's lie the state filed the motion to compel first and I only did so 'in turn.' Judge Reckart's minute entry ignores the fact of the defense' [sic] motion to compel in entirety . . . All this is to avoid admonishing DCA Fisher for her lying to the court on 5.27.21 that the state had filed the motion first. That point is so clear and obvious a very slow and stupid child would recognize it instantly." (Exhibit Q)

8. "If I had lied as blatantly as DCA Fisher did in open court, is there any doubt Judge Reckart would have hammered me with joyful relish and it would not be the Sgt. Schultz 'I see nothing. I hear nothing' routine as with DCA Fisher? Of course not. I would have been sitting in jail for contempt and disbarred within the hour. But if any judge or prosecutor thinks bullying me with a threat to take my license will stop me from challenging state misconduct, molon labe." (Exhibit Q)
9. "Judge Reckart also now lays claim to being the adult in the room, but entirely ignored without apology is Judge Reckart's conduct as fire-starter and narrative engineer. The court slanders me, in no particular order, as a drunk, traitor, insurrectionisht [sic], drug addict, jail denizen, and the all around general sleaze bag." (Exhibit Q)
10. Respondent alleged, without corroboration, "a systematic pattern of anti-Slavic ideology within Maricopa County and scheme to penalize me for, among other things, for my exercise of my 1st Amendment rights. And the easiest way to punish me is by removing me from this case, on a pretext, which is exactly what Judge Reckart tried to do." (Exhibit K)
11. "To the surprise of no one, not one bureaucrat has given one moment of one thought to the optics of all-Anglo police officers and all-Anglo detectives and all-Anglo prosecutors, with a generous hand from all-Anglo judges and indifference from an all-Anglo save one - judicial commission, manufacturing the guilt of a very black man named Jamal. That is not to mention the high school slurs directed at that very same very black man's very non-Anglo lawyer named Vladimir. Judge Reckart's behavior has been an anachronism, behavior that would not be believable if it was to be told in the typical over the top and self righteous John Grisham novel. But this is not the Raj of a White Man's Burden and 2022 is not 1922." (Exhibit K)

12. "Obviously, [Judge] Beresky's plan was to deny all the defense motions and find reasons, not necessarily good reasons but any contrived reason will do, to justify denying all defense motions after the fact. Deny then justify." (Respondent's March 30, 2022 *Petition for Special Action in the Court of Appeals*, Exhibit V)
13. "What is far worse however, is [Judge] Beresky's finding that 'evidence ... does in and of itself exculpate the Defendant ...'. That burden of 'in and of itself exculpate the defendant' is far worse than even 'clear and convincing'. While Beresky does not cite any authority for imposing that monster of a burden upon Mr. Pennington, I can only guess the source was the Spanish Inquisition or Stalin's show trials or something else more domestic." (Respondent's March 29, 2022 *Petition for Review of a Special Action Decision*, Exhibit U)
14. "Judge Beresky denied the motion in his typical haughty manner." (Exhibit V)
15. "Amusingly, in all self-important seriousness, [Judge] Beresky even claimed that although he does not know what I.H. said . . . that does not prevent his keen Sherlock Holmes like insight knowing why she said it." (Exhibit V)
16. "Why is [Judge] Beresky presuming Mr. Pennington to be guilty of the crimes the state has charged him as the very means to deny Mr. Pennington's motion to prove he is not guilty of those crimes? Did Beresky and the state have an evidentiary hearing and just not tell me about it, or is Beresky not aware that Mr. Pennington is innocent until proven guilty beyond a reasonable doubt?" (Exhibit V)
17. "So to make this simple, if judges have such contempt for me, born from whatever cause, and will glibly subvert Mr. Pennington's rights, then at least have the courage to say that to his face like a grown man, and then let him decide what he wants to do [sic] going forward." (Exhibit U)
18. In response to the bar charge filed against him by Judge Beresky, Respondent called a statement Judge Beresky made in a ruling "a dirty lie," accused Judge Beresky of "brazenly" lying to the State Bar, and stated that "neither Judge Reckart nor the self-righteous Judge Beresky ever address my concerns of ethic [sic] stereotyping" and stated, "I can only conclude it is

because he is full agreement [sic] with such stereotyping and ethnic race baiting.” (Respondent’s April 20, 2022 Response to Bar Complaint, attached to Respondent’s April 26, 2022 Motion to Continue, Exhibit Z)

19. In his response to the bar charge, Respondent stated: “Beresky ought neither be a judge nor a lawyer. He does not have the ethical capacity for either, and further he is a by the numbers xenophobe.” (Exhibit Z)

In the order, the PDJ indicated she would not rule on several other allegations as a matter of law and gave the Bar the option of presenting those at a November 14, 2022 disciplinary hearing or, if the Bar did not wish to pursue the other charges, the PDJ would convert the November 14, 2022 hearing to an aggravation/mitigation hearing. The Bar opted not to pursue the additional charges, and the PDJ issued an order converting the November 14, 2022 hearing into an aggravation/mitigation hearing.

Respondent filed a “Supplement to Motion in Aggravation by Defense,” stating, in pertinent part:

As far as rescheduling the aggravation hearing, a telephone conference is not necessary. **I am not going to any such hearing regardless of when it is scheduled** because in all seriousness, I do not have the stomach to force myself to be in close proximity with either this court or bar counsel. It’s not like anything I have to say matters anyway. So have it at your leisure.

(Emphasis added.) The Panel convened for the scheduled November 14, 2022 hearing, and, when Respondent did not appear, considered the Bar’s evidence and admitted certain exhibits.

The Panel issued its Decision and Order incorporating the summary judgment ruling. It observed that Sanctions are determined

in accordance with the American Bar Association Standards for Imposing Lawyer Sanctions ("ABA Standards"), see Supreme Court Rule 58(k). Based on the ABA Standards, the State Bar asked for a suspension of one year or, at a minimum, six months and one day.

In fashioning an appropriate sanction, the Panel articulated that it will consider the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. See *In re Scholl*, 200 Ariz. 222, 224 (2001). The Panel concluded that Respondent violated core ethical duties owed as a professional. He acted knowingly and intentionally and expressed no remorse for his conduct, and his conduct also disrupted and expanded the superior court proceedings and necessitated changes in assigned judicial officers. The Panel concluded that Standard 7.2 applied:

7.2 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.

After determining that the presumptive sanction was suspension, the Panel found aggravating factors: **9.22(d)** (multiple offenses); **9.22(e)** (bad faith obstruction of the disciplinary proceedings, as demonstrated by his "frivolous counterclaim for fraud" and some 20 meritless motions); **9.22(g)** (refusal to acknowledge wrongful nature of conduct) and **9.22(i)** (substantial experience in the practice of law). Because Respondent did not attend the hearing, he offered no mitigating evidence. Bar counsel conceded one mitigating factor

9.32(a) (absence of a prior disciplinary record). The Panel concluded that a long-term suspension was appropriate, and that Respondent should be required to prove his rehabilitation before resuming the practice of law, which will require, *inter alia*, identification of “just what weaknesses caused the misconduct” and a demonstration of how “he has overcome those weaknesses.” *In re Arrotta*, 208 Ariz. 509, 513 (2004). The Panel entered a one-year suspension, terms of probation to be considered if he is reinstated, and directed Respondent to pay the Bar’s costs and expenses.

Standard of Review

The Court reviews questions of law *de novo*, and in reviewing findings of fact, the court applies a clearly erroneous standard. See Supreme Court Rule 59(j). Findings are clearly erroneous if they are not supported by reasonable evidence. See *In re Alexander*, 232 Ariz. 1, 5 ¶11 (2013) quoting *In re Non-Member of State Bar of Arizona, Van Dox*, 214 Ariz. 300, 303 ¶ 15 (2007). In reviewing the granting of summary judgment, the appellate court views the evidence in a light most favorable to the party against whom summary judgment was entered. See *Logerquist v. Danforth*, 188 Ariz. 16, 18 (App. 1996) (addressing a statute of limitations defense). Summary judgment is proper when the evidence presented by the party opposing the motion has so little probative value, given the required burden of proof, that reasonable jurors could not agree with the opposing party's conclusions. *Orme School v. Reeves*, 166 Ariz. 301 (1990) (internal

citations omitted.) The Court only considers those arguments, theories, and facts properly presented to the court below. *CDT, Inc. v. Addison, Roberts & Ludwig, C.P.A., P.C.*, 198 Ariz. 173, 178 ¶ 19 (App. 2000).

Request for Stay

Respondent filed in this Court a special action petition in *Gagic v. State Bar of Arizona and Presiding Disciplinary Judge*, CV-22-0293-SA seeking a stay of order of suspension. The Court entered an order stating that “[Respondent] has not addressed or established the elements of a stay, nor has he proffered any conditions of supervision he believes would be appropriate while the appeal is pending. The Court is unable to consider the request on the limited record presented.” The order denied the stay request and dismissed the special action without prejudice.

Respondent filed a second Petition for Stay, and, on December 20, 2022, the Court entered an order noting his arguments but pointing out again that he had not submitted any proposed terms of supervision or established the elements required for a stay.

On December 28, 2022, Respondent filed his “Second Amended Petition for Special Action for Stay of Order of Suspension.” He expressed no proposed terms, but agreed to whatever terms of supervision the Court had imposed on Douglas Levy, “even though I have no idea what those terms actually were.” The Court issued a third order, on December 30, 2022, pointing out that the Court had

twice denied a stay because Respondent failed to address the requirements for a stay and that he still had not done so. The court for the third time denied the request for stay and dismissed the special action without prejudice.

On December 30, 2022, Respondent filed a motion requesting the Court change the dismissal of his special action from "without prejudice" to "with prejudice." The Bar responded pointing out that he had not submitted any proposed terms of supervision. On January 10, 2023, the Court acceded to his request and entered the order dismissing the special action with prejudice.

Arguments on Appeal

1. Defects in Briefing

In a disciplinary appeal, "We must insist that a bona fide and reasonably intelligent effort to comply with the rules be manifest." *In re Aubuchon*, 233 Ariz. 62, 64-65 ¶ 6 (2013), as amended (Oct. 25, 2013) (observing we will consider waived those arguments not supported by adequate explanation, citations to the record, or authority) (internal citation omitted).

The Court notes that Rule 59, Ariz. R. Sup. Ct., requires that briefs filed in disciplinary appeals conform with ARCAP Rule 13. Respondent, however, presents no statement of the case, statement of facts with appropriate references to the record, statement of the issues, or citations to legal authorities. Instead, relying on name-calling, hyperbole, sarcasm and inuendo, he questions the motives of

those involved in the disciplinary process. His briefing is inadequate to establish that the findings of fact adopted by the Panel were clearly erroneous or that the Panel's conclusions of law were in error.

2. Due Process

Respondent asserts that he was denied due process at various points in the proceeding, including the denial of his request for stay, the order partially granting summary judgment without a hearing, and the imposition of the sanction.

A lawyer has the right to procedural due process in a disciplinary hearing. See *Matter of Levine*, 174 Ariz. 146, 169 reinstatement granted, 176 Ariz. 535 (1993). Due process requires "notice and an opportunity to be heard, as well as other protections, including the right to have counsel present, the opportunity to cross examine witnesses, and the right to present evidence." *Moncier v. Bd. Of Prof'l Responsibility*, 406 S.W.3d 139, 156 (Tenn. 2013), citing *In re Ruffalo*, 390 U.S. 544, 550 (1968).

A. Stay Requests

First, as to Respondent's request for stay, he alleges:

- 7) I did not receive stay pending appeal despite no prior history because bar counsel and the panel claimed-with zero exposition-no conditions of supervision would safeguard the public, meaning I lost my entire livelihood without due process or even decency;

Respondent was afforded three opportunities to establish appropriate terms of supervision and present his arguments in favor of a stay. He

failed to do so. He was not denied due process.

B. Summary Judgment Proceedings

Respondent contends he was entitled to a hearing on the Bar's summary judgment motion.

Rule 48(b) of the Rules of the Supreme Court incorporates Civil Rule 56 into disciplinary proceedings. As the PDJ observed in the order granting the Bar's summary judgment motion, Respondent's response to the Motion for Summary Judgment was deficient because of his failure to comply with Rule 56(c)(3)(B) by presenting a separate statement of facts with citations to the record, failure to controvert the Bar's statement of facts, failure to discuss the ethical rules at issue, and his failure to cite relevant legal authority. Respondent never requested a hearing on the summary judgment motion or other relief under Civil Rule 56(c)(1) ("On timely request by any party, the court must set oral argument unless it determines that the motion should be denied or the motion is uncontested") or Civil Rule 56(d) (allowing a party to seek expedited relief if it is unable to present evidence essential to justify its opposition).

The Bar cites persuasive authority for the proposition that due process involving similar types of matters requires an evidentiary hearing only when there is a material fact in dispute. See, e.g., *Codd v. Velger*, 429 U.S. 624 (1977) (per curiam) (rejecting a former police officer's claim that he was wrongfully dismissed without a

hearing, finding that "if the hearing mandated by the Due Process Clause is to serve any useful purpose, there must be some factual dispute between an employer and a discharged employee which has some significant bearing on the employee's reputation"); *Wozniak v. Conry*, 236 F.3d 888, 890 (7th Cir. 2001) (concluding that an evidentiary hearing is required only if there are material factual disputes). (involving a university's decision to strip a college professor of certain duties).

Also, as the Bar points out, Respondent never argued below that entry of summary judgment against him would be a denial of his due process rights. See *State ex rel. Brnovich v. Miller*, 245 Ariz. 323, 324 ¶ 5 (App. 2018) (stating that arguments not raised in the trial court are waived on appeal); see also *Pitts v. Bd. Of Educ. of U.S.D.* 305, 869 F.2d 555, 557 (10th Cir. 1989) (finding that the appellant had waived his due process argument by failing to invoke procedures that were available to him); *Correa v. Nampa Sch. Dist. No. 131*, 645 F.2d 814, 817 (9th Cir. 1981) (same).

Finally, even if Respondent had requested oral argument or if he had raised his due process arguments below, he has never denied making the statements. See *Sexton v. Arkansas Supreme Court Comm. on Prof'l Conduct*, 730 F. Supp. 285, 287 (W.D. Ark. 1990) (stating that although due process requires a respondent in a disciplinary hearing to receive notice of facts so that he may offer proof that those facts are untrue; any error associated is rendered harmless by the

fact that the facts were true).

C. Aggravation/Mitigation Hearing

Again, due process requires “notice and an opportunity to be heard, as well as other protections, including the right to have counsel present, the opportunity to cross examine witnesses, and the right to present evidence.” *See Moncier, supra*. When the PDJ entered an order converting the scheduled November 14, 2022 hearing to an aggravation/mitigation hearing, Respondent indicated in writing he would waive his right to appear and then did not appear. He was not denied due process.

3. Other Arguments

A. Opportunity to Defend the Statements

As this Court has stated:

The Court is mindful that the purpose of professional discipline is to protect the public and deter similar conduct by others. The heat of litigation may foment anger and result in an occasional poorly-worded epithet. However, a relentless campaign to malign and embarrass opposing counsel and the judiciary is clearly prohibited conduct.

In re: Levy, SB-21-0085-AP. Although Respondent contends he was deprived of the opportunity to establish that his “repeated use of demeaning language was objectively and reasonably necessary to advance the litigation,” it is dubious whether that showing can be made in light of the nature of Respondent’s statements.

More to the point, as indicated by Respondent’s multiple motions for summary judgment, Respondent was well aware that summary judgment proceedings are incorporated into the disciplinary proceedings

(Supreme Court Rule 48), and yet he never properly countered, explained or justified any of his statements with admissible evidence. See Civil Rule 56(c)(5) (requiring an affidavit in support of or opposition to a motion for summary judgment be made on personal knowledge and set out facts that would be admissible in evidence). Nor does he offer any coherent suggestion here that he could make such a showing.

Respondent is correct that the Bar must establish the violations by clear and convincing evidence, Supreme Court Rule 58(j)(3). In its Statement of Facts, the Bar did so. A motion for summary judgment "should be granted if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme School*, 166 Ariz. at 309. Under Civil Rule 56, the burden was on Respondent to properly refute the factual allegations and make his legal arguments. As noted above, he failed to do so.

B. Offer of Diversion

Respondent's suggestion that his misconduct was of little concern because the Bar initially offered diversion is beside the point. Again, Respondent makes no reference to the record to establish any such offer. And even if the Bar had done so, Supreme Court Rule 56(b)(4) requires findings that the public interest and the welfare of clients will not be harmed if the lawyer agrees to and

complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it. If Respondent had initially seen the wisdom in deciding not to contest the evidence of misconduct and agreed that he would comply with ethical rules going forward, his conduct would have been subject to appropriate supervision to prevent his ongoing unapologetic tirades. As the Panel found, he has expressed no remorse for his conduct.

4. Proportionality of Sanction

The Court reviews questions of law and the sanctions imposed de novo. Ariz. R. Sup. Ct. 59(j); see *Alexander*, 232 Ariz. at 13 ¶ 48. This Court has jurisdiction over any person engaged in the practice of law in Arizona. Ariz. R. Sup. Ct. 31(a).

Respondent complains that Mr. Levy received only a six-month-and-a-day suspension for similar transgressions, *In re: Douglas B. Levy*, SB-21-0085-AP. We conclude that Respondent's conduct in the criminal case and related special action proceedings and additional aggravating circumstance found here support the extended suspension.

In *Levy*, the Panel found that the respondent had engaged in substantial and repeated violations of what is now Rule 41(b)(7), the Oath of Admission to the Bar, and the Creed. He also violated ER 4.4(a). This Court imposed a six-month-and-one-day suspension, requiring the respondent to make the requisite showing of rehabilitation pursuant to the factors set forth in *In re Arrotta*, 208 Ariz. 509, 513 ¶ 17.

As to the misconduct in that case similar to the misconduct here, the Panel found aggravating factors: 9.22(g) (refusal to acknowledge wrongful nature of conduct)(also found here); 9.22(i)–substantial experience in the practice of law)(also found here). The Panel found mitigating factor 9.32(g) (character or reputation)(not found here). The Panel also found 9.22(a) prior disciplinary offenses. As Respondent points out, he has no prior disciplinary offenses.

Here, however, the Panel found that Respondent's conduct disrupted and expanded the superior court proceedings and necessitated changes in assigned judicial officers. The Panel also found 9.22(e) (bad faith obstruction of the disciplinary proceeding) as shown in a frivolous counterclaim for fraud and some twenty examples of groundless motions. And although the Bar conceded 9.32(a) (absence of a prior disciplinary record), Respondent waived his right to present any additional mitigation evidence.

In *Levy*, this Court noted a Colorado case where a lawyer received a one year and one day suspension for conduct during the course of a trial that began respectfully but "became increasingly obstreperous as the trial proceeded," which conduct was "boorish and insolent to a degree that he impeded the proceedings" See *People v. Brennan*, 240 P.3d 887, 895 (Colo. O.P.D.J. 2009). We also referenced *Ciardi v. Off. of Pro. Conduct*, 379 P.3d 1287, 1291 ¶ 18 (Utah 2016) (overruling the panel's findings that the respondent should be

disbarred and suspending him for two years). We observed:

In *Ciardi*, the attorney disrupted court proceedings and "expressed his disdain toward the screening panel members and the proceedings before the panel, referring to the hearing as a 'complete sham' and a 'joke proceeding.' He also repeatedly interrupted witnesses and referred to them as liars and idiots." *Ciardi*, 379 P.2d at 1288 ¶ 5.

We explained:

[T]he public and members of the profession must be protected from Respondent's bullying and demeaning language. It is critical to note that the degree to which the broader public holds the legal profession in esteem is directly proportionate to the degree that lawyers act as custodians of that esteem and the degree to which we hold lawyers accountable for their unprofessional conduct. And, as Bar counsel notes, in *Alcorn* this Court reiterated the importance of lawyer discipline as a deterrent to other attorneys: "Perhaps more important than rehabilitation of an individual attorney, however, is the value of discipline as a deterrent to other attorneys and as a process that maintains 'the integrity of the profession in the eyes of the public.'" *In re Alcorn*, 202 Ariz. 62, 75 ¶ 48 (2002) (quoting *In re Fioramonti*, 176 Ariz. 182, 187 (2002)).

The nature and posture of Petitioner's statements are of greater concern here. In *Levy*, the Panel concluded that the Bar had not established that the statements about the judge were statements that Mr. Levy knew to be false or were made with reckless disregard of their truth or falsity, finding no violation of ER 8.2(a) proven. Here, there were numerous violations of ER 8.2(a) where Petitioner made unsubstantiated contentions that a judge is engaged in a "cover up" and also made wild, unsubstantiated accusations that several judges are motivated by personal animus and harbor racial and ethnic bias against Petitioner and his client.

Also, Mr. Levy's abuse was presented mostly in the context of email and other communication with opposing counsel, and then became directed toward bar counsel during the course of the bar proceedings. Petitioner, on the other hand, presented his abusive tirades in numerous pleadings disrupting his client's criminal proceeding. Petitioner also initiated several special action proceedings with outlandish and unsubstantiated assertions, requiring the attention of judicial and perhaps other resources. Also, Petitioner's 20 baseless motions during the disciplinary proceeding and failure to comply with court rules in his appeal are of concern.

Also, we believe the nature of the unfounded allegations—implicating several judges in imaginary schemes in concert with the prosecutors and the bar—are inherently damaging to public confidence in the fairness of the court system. See *The Florida Bar v. Ray*, 797 So. 2d 556, 558–59 (Fla. 2001) cert denied 535 U.S. 930 (2002) (observing that “ethical rules that prohibit attorneys from making statements impugning the integrity of judges are not to protect judges from unpleasant or unsavory criticism. Rather, such rules are designed to preserve public confidence in the fairness and impartiality of our system of justice” where the attorney made “outrageously false accusations” about the judge's conduct at a hearing). And in *Ray*, the Supreme Court of Florida determined that the standard to be applied is whether the attorney had an objectively reasonable factual basis for making the statements, and noted, “Our

resolution of this case does not limit an attorney's legitimate criticism of judicial officers; we simply hold that an attorney must follow the Rules of Professional Conduct when so doing." *Id.*, 560.

Finally, we are troubled by Petitioner's unsubstantiated suggestion that the judges and prosecutors are motivated by a racial animus against Petitioner's client or an ethnic bias against Petitioner. This proceeding is about Petitioner's conduct. On this record, we fail to comprehend how such statements could have been in his client's interest.

We conclude that the Panel's imposition of a one-year suspension was warranted based on the evidence presented at the aggravation/mitigation hearing, Respondent's disruptive tactics in the course of representing his client and by initiating the numerous special action proceedings, and his obstruction of the disciplinary proceeding with his many meritless motions and complete disregard for the requirements of the Supreme Court Rules. Therefore,

IT IS ORDERED affirming the Panel's findings of fact, conclusions of law and sanction.

IT IS FURTHER ORDERED:

1. Affirming that Vladimir Gagic is suspended from the practice of law for one year, effective 30 days from the date of the December 6, 2022 Order and is required to comply with Rule 72, Ariz. R. Sup. Ct.
2. If Mr. Gagic is reinstated, terms of probation will be considered by the hearing panel that presides over the reinstatement proceedings.
3. In accordance with Supreme Court Rule 60(d) and

Administrative Order 2011-17, Mr. Gagic shall pay the costs and expenses of these proceedings prior to being reinstated, which include costs incurred by the State Bar and by the Office of the Presiding Disciplinary Judge.

DATED this 3rd day of May, 2023.

/s/
ROBERT BRUTINEL
Chief Justice

TO:

Vladimir Gagic
Kelly A Goldstein
Susan Hunt
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Mary Pieper
Mary Rose Dominguiano
Princess Mutya Zorilla
Lexis Nexis

SUPREME COURT OF ARIZONA

In the Matter of a Suspended)
Member of the State Bar of)
Arizona,)
)
)
MEYER L. ZIMAN,)
Attorney No. 2624)
)
)
Respondent.)
_____) **FILED 12/4/2012**

O R D E R

The Court has received "Appellant's Opening Brief" on appeal, and "Appellee State Bar of Arizona's Answering Brief." Upon consideration of the briefs, and the "Report and Order Imposing Sanctions" filed by the Hearing Panel convened by the Presiding Disciplinary Judge of the Supreme Court of Arizona,

IT IS ORDERED that the Respondent's appeal is DENIED.

IT IS FURTHER ORDERED that the decision and sanction of the Hearing Panel is AFFIRMED.

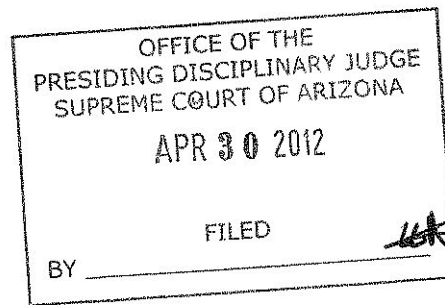
DATED this 8th day of December, 2012.

REBECCA WHITE BERCH
Chief Justice

TO:
Laura Hopkins
Sandra Montoya
Don Lewis
Beth Stephenson
Mary Pieper
Netz Tuvera
Lexis Nexis
Joseph E Collins
Craig D Henley

damr

SBA000062



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

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

**MEYER L. ZIMAN,
Bar No. 002624,**

Respondent.

PDJ-2011-9067

**REPORT AND ORDER IMPOSING
SANCTIONS**

Nos. 10-1394, 10-2329, 11-0130

On February 29, 2012 and March 1, 2012, the Hearing Panel ("Panel") composed of Jan Enderle, a public member from Maricopa County, James M. Marovich, an attorney member from Maricopa County, and the Presiding Disciplinary Judge ("PDJ") held a two day hearing pursuant to Supreme Court Rule 58(j), Ariz.R.Sup.Ct. Craig D. Henley appeared on behalf of the State Bar of Arizona ("State Bar") and Joseph E. Collins appeared on behalf of Respondent. The witness rule was invoked.¹ The Panel considered the testimony, the parties' Joint Pre-Hearing Statement and the exhibits listed without objection in the Joint Pre-Hearing Statement, individual pre-hearing statements, individual proposed findings of fact and conclusions of law, and evaluated the credibility of the witnesses. The PDJ and Panel now issue the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz.R.Sup.Ct.

¹ Consideration was given to the testimony of Sonda Hudson, Lusia Rascon, Cheryl Morrissey, Christopher DeJolie, Diane Hendrickson, Miodrag Jovic, Michelle Lorenz, David Whitman and Antonio Roscacci, Esq.

I. SANCTION IMPOSED:

ATTORNEY SUSPENDED FOR ONE YEAR AND UPON REINSTATEMENT, TWO YEARS OF PROBATION WITH THE STATE BAR'S MEMBER ASSISTANCE PROGRAM ("MAP") AND LAW OFFICE MANAGEMENT ASISTANCE PROGRAM ("LOMAP"), RESTITUTION AND COSTS.

II. PROCEDURAL HISTORY

The Probable Cause Order was filed on September 12, 2011 and the Complaint in this matter was filed on October 17, 2011 alleging violations of Rule 31(a)(2), Rule 41(g), ERs 1.5(c), 1.7, 1.7(a), 8.4(c), 8.4(d). On November 14, 2011, Respondent filed his Answer. An initial case management conference was held on November 1, 2011 and a final prehearing conference was held on February 1, 2012. The matter was then set for a two day evidentiary hearing.

Upon conclusion of the hearing on the merits, the PDJ ordered the parties' to submit closing arguments and proposed findings of fact and conclusions of law. The parties filed their proposed facts and conclusions on April 6, 2012.

III. FINDINGS OF FACT

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 September 26, 1970.

COUNT ONE (File No. 10-1394/Ruelas)

1. In or around June 2010, Respondent contacted Ms. Rascon and informed her that he had requested certain records but received records for his client "K. Jr." rather than "K. Sr."²

2. When Ms. Rascon asked Respondent to resubmit his request,

² See Exhibits 2 at Bates SBA000003, Exhibit 3 at Bates SBA000004; see also Exhibit 5 at Bates SBA000010-11, Exhibit 12 at Bates SBA000030, Answer, page 7-8, ¶ E - F

Respondent got frustrated and began berating Ms. Rascon.³

3. When Ms. Rascon told Respondent that she would be sure the copy service got his request, Respondent again got frustrated.⁴

4. Ms. Rascon informed Respondent to only contact Ms. Hudson for future requests.⁵

5. Respondent became frustrated stating that everyone tells him to call back to speak to someone else.⁶

6. After yelling a string of expletives at Ms. Rascon, Respondent hung up.⁷

7. In or around June 2010, Respondent contacted Ms. Hudson and informed Ms. Hudson that he had requested medical records for his clients but only received records for the client's son.⁸

8. When Ms. Hudson asked Respondent to refax the requests and explained that she only worked at the hospital one day a week, Respondent became frustrated and started cursing.⁹

9. When Ms. Hudson told Respondent that his language was inappropriate and there were better ways to handle the situation, Respondent replied that his language was appropriate and continued yelling profanities.¹⁰

10. When Ms. Hudson then said "excuse me but you are talking to a lady,"

³ Id.; see also Answer, page 8 ¶ F

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.; see also Answer ¶ 7 and ¶ F

⁹ Id.

¹⁰ Id.

Respondent stated that she was not a lady and that she was nothing but a slut who worked for a copy service.¹¹

11. As testified to by Ms. Hudson, Respondent then repeated the word "slut" slowly and loudly.¹²

12. Ms. Hudson hung up the phone and reported the incident to Ms. Rascon.¹³

13. In or around July 2010, Respondent called to check on his records request.¹⁴

14. Ms. Rascon asked if she could put him on hold, and Respondent said "well that's a stupid question to ask, what if I don't want to hold."¹⁵

15. After being told that the requested records had been sent, Respondent immediately hung up.¹⁶

Testimony of witness Sonda Hudson

Sonda Hudson testified she has been employed for 7 years by IOD Inc., a medical records copying service which serves Maryvale Hospital. Ms Hudson testified about the policies and procedures for obtaining records and her assigned duties. Ms. Hudson stated that Respondent called on June 10th and advised her he had previously requested medical records for both father and son but only received medical records for the son. Ms. Hudson stated she did not receive the request for the records of the father and that if Respondent sent in another request, she would

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

get the records out the next day. Ms. Hudson stated that Respondent became enraged and began cursing. (using many explicatives).

Ms. Hudson stated she initially "let it slide" did not say anything regarding his language, however the cursing continued. Ms. Hudson asked Respondent to refrain from cursing, as "he was speaking to a lady." Ms. Hudson testified that Respondent said "You are nothing but a slut that works for a copy service." Ms. Hudson testified that she asked him "I am a what!" and that he again referred to her as a slut and repeated the word slowly. Ms. Hudson ultimately hung up on Respondent. Ms. Hudson stated she is positive Respondent called her a slut. She has never had a problem in distinguishing words ending in "t" or "g".

After the call, Ms. Hudson stated that she contacted her supervisor to inform her of the incident. Ms. Hudson e-mailed a summary of her communications with Respondent to the Medical Records Director of Maryvale Hospital, Jill Herschel, who then forwarded the e-mail to the hospital's legal department. Ms. Hudson further stated that Respondent has never apologized to her and she requested that in the future, she have no further contact with Respondent. See Exhibit 2.

Testimony of witness Luisa Rascon

Ms. Rascon testified that she has been employed by Maryvale Hospital for approximately seven years. During the relevant time period (approximately June 2010) she worked in the medical records department and received a call from Respondent checking on the status of a records request. Ms. Rascon stated Respondent called and indicated he had only received one set of records when he had previously requested records on both a senior and junior family members' record. Ms. Rascon stated she then checked the copy service request, which

indicated that the records had been sent. Ms. Rascon reassured Respondent that if he re-submitted his request to her attention, she would ensure it reached Sonda Hudson for processing on Tuesday. Ms. Rascon stated that Respondent became frustrated and upset, said "this is bullshit, fuck, fuck, fuck" and then terminated the conversation by hanging up on her.

Ms. Rascon stated she was also present when Respondent called back to speak to Sonda Hudson and she transferred that call to Ms. Hudson. After Ms. Hudson spoke with Respondent, she came out and informed Ms. Rascon that she would no longer accept calls from him because of his inappropriate language and to transfer his calls in the future to the Medical Director, Jill Herschel. Ms. Rascon further stated she reported the incident to Jill Herschel and sent an e-mail regarding the call. She did this because this type of call was out of the ordinary and she was asked to document the conversation by risk management which she did. See Exhibit 3.

Respondent testified he has practiced law for 42 years of practice and in the last 10-15 years, he has primarily practiced in the area of personal injury. Respondent stated he routinely calls various hospitals for records but sometimes gets frustrated because the process for obtaining records can at times be frustrating. He admits his level of frustration is increased when he perceives staff is not being helpful. Respondent explained that it is a long process and when records are not timely received, it causes him to become frustrated. He admits he was the caller. Respondent stated he did not use the term slut when speaking to Ms. Hudson; He in-artfully used the term slug, but he was merely referring to the process being slow, sluggish and cumbersome. The Panel finds he used the word

slut. Respondent's testimony is implausible. He initially testified he did not have an independent recollection of the call. This transformed into recalling the call and then morphed into a vivid recollection of the call. He does not believe it is inappropriate to use either term (slut or slug) in a business setting and that Ms. Hudson merely reverted to the more familiar term of slut during the conversation.

IV. CONCLUSIONS OF LAW

COUNT ONE (File No. 10-1394/Ruelas)

The Panel finds clear and convincing evidence is present that Respondent violated Rule 42, Ariz.R.Sup.Ct, specifically Rule 31(a)(2)(E) and Rule 41(g). Respondent failed to refrain from engaging in unprofessional and offensive conduct by failing to adhere to the provisions set forth in the Supreme Court Rules, the Oath of Admission to the State Bar, and the Lawyer's Creed of Professionalism.

V. FINDINGS OF FACT

COUNT TWO (File No. 10-2329/Jocic)

1. Miodrag and Gordana Jocic (hereinafter referred to as "Complainants") are husband and wife and parents of their disabled 30-year-old daughter, Maja Jocic.¹⁷

2. On August 31, 2010, all three were involved in a rear-end automobile accident while their vehicle was stopped at a red light.¹⁸

3. On September 4, 2010, Complainants hired Respondent on a contingency fee basis to represent them and their daughter regarding the accident.¹⁹

¹⁷ See Answer ¶ 17

¹⁸ See Answer ¶ 17

4. Complainants signed Respondent's one page fee agreement on their own behalf.²⁰

5. Respondent's fee agreement contains a number of deficiencies and failed to state whether his fee would be determined before or after expenses were deducted from any settlement or judgment.²¹

6. Respondent through counsel acknowledged that "[t]he handicapped child did not sign the contract...[i]t is a rudimentary legal principle that someone whose is (sic) severely handicap as is Maja, is not capable of entering into contracts."²²

7. The Progressive Insurance policy provided for \$15,000.00 medical per person, \$30,000.00 per accident, and \$10,000.00 property damage. The Colorado Casualty's policy provided for \$25,000.00 medical per person, \$50,000.00 per accident, and \$25,000.00 property damage.²³

8. On September 14, 2010, Colorado Casualty, Complainants' insurance carrier, sent Respondent a written appraisal for the damage done to Complainants' vehicle claiming a value of Eighteen Thousand Two Hundred Fifty Six Dollars and 51/100 (\$18,256.51).²⁴

¹⁹ See Answer ¶ 17; see also Exhibit 14 at Bates SBA000033

²⁰ See Exhibit 14 at Bates SBA000033

²¹ See Exhibit 14 at Bates SBA000033; see also Answer ¶ 20, Exhibit 21 at Bates SBA000045, Ariz.R.Sup.Ct. 42, ER 1.2, 1.5

²² See Exhibit 34 at Bates SBA000076 [Response to Question 1]; and Exhibit 14.

²³ See Answer ¶ 22

²⁴ Id.

11. On September 15, 2010, Complainant notified Respondent by fax to reject any offer regarding property damage based upon Colorado Casualty's appraisal.²⁵

12. On or about October 6, 2010, Complainants on their own obtained a report from a certified appraiser that their vehicle was worth Twenty Four Thousand Four Hundred Ninety Seven Dollars (\$24,497.00).²⁶

13. Complainants submitted that appraisal to Progressive Insurance Company.²⁷

14. On October 19, 2010, Respondent sent a demand letter to Progressive Insurance demanding payment of the policy limits and stating that Complainants' vehicle was valued "somewhere in the area of \$20,000.00."²⁸

15. In the October 19, 2010 demand letter, Respondent also proposed a distribution of the policy limits among the three clients.²⁹

16. At some point during the representation, Respondent, Complainant and Michelle Lorenz, an adjuster from Colorado Casualty Insurance Company and/or its parent company Safeco, spoke on the telephone regarding the value of Complainant's vehicle.³⁰

17. During a telephone conversation with Complainant and Michelle Lorenz, a Colorado Casualty Insurance Company adjuster, Respondent screamed at

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.; see also Exhibit 15 at SBA000034

²⁹ See Exhibit 15 at Bates SBA000037

³⁰ Id.

Mr. Jovic and stated he would no longer represent him if Mr. Jovic did not agree to accept Colorado Casualty's offer.³¹

18. In or about early November 2010, Complainants requested an accounting of Respondent's representation of Complainants and their daughter.³²

19. On November 3, 2010, Respondent sent a letter to the claims department at Progressive Insurance, without his clients' approval, stating, "[W]e agreed to settle the above-referenced claims of my clients, Miodrag Jovic for \$15,000.00, Gordana Jovic for \$9,000.00, and Maya [sic] Jovic for \$6,000.00. . . . My clients and I agree to hold harmless [the at-fault driver] and Progressive Insurance Company for all medical expenses known and unknown incurred by my clients that relate to the accident of August 31, 2010."³³

20. On November 15, 2010, Respondent sent a letter to Complainants identifying the agreed upon distribution among the three (3) clients but stating that Complainants had the right to "decide to accept these offers" and specifically stated "[y]ou do not have to accept the offer from Progressive of policy limits."³⁴

21. On November 27, 2010, Complainants received a check from Colorado Casualty Insurance Company for property damage.³⁵

22. Complainants were upset that the insurance company paid \$8,044.91 to Desert Schools Federal Credit Union, a lienholder based upon the loan it made to Complainants to purchase the vehicle.³⁶

³¹ See Exhibit 21 at Bates SBA000045

³² See Answer ¶ 25

³³ See Answer ¶ 26

³⁴ See Exhibit 20 at Bates SBA000043

³⁵ See Exhibit 22 at Bates SBA000048

³⁶ Id.; see also Exhibit 16 at Bates SBA000038

23. Complainants claim Respondent never disclosed to them that part of any settlement proceeds would have to be paid to the lienholder on their automobile title.³⁷

24. On November 29, 2010, Respondent met with Complainants and explained that he had received three checks from Progressive Insurance - one for each Complainant and one for their daughter.³⁸

25. During the meeting, Respondent asked Complainants to sign the checks and explained how he would distribute the settlement funds.³⁹

26. During the November 29, 2010 meeting with Complainants, as the conversation deteriorated, Respondent attempted to hit Complainant-Miodrag, hit his binder, bit his own fists, and then escorted Complainants from his office stating: "I am done. Door is on the left side. Fucking people."⁴⁰ In essentially terminating them as clients, Respondent never informed them he considered his work completed and would still demand his percentage fee.

27. Respondent gave Complainants the Progressive settlement checks and releases for signature if they wanted to accept Progressive Insurance's tender of the policy limits or return if they reject the offer and file a lawsuit.⁴¹

28. Complainants did not sign the Progressive settlement checks and releases and sought alternate counsel.⁴²

³⁷ See Exhibit 22 at Bates SBA000048

³⁸ See Answer ¶ 28

³⁹ Id.

⁴⁰ See Exhibit 22 at Bates SBA000046; see also Exhibit 29 at Bates SBA000061-2 ¶¶ 4, 12

⁴¹ See Answer ¶ 28

⁴² See Answer ¶ 31

29. Respondent admits that "[t]here were animated discussions", but claims that this was due to a language barrier and Complainant's refusal to allow an interpreter to be present.⁴³

30. Respondent failed to provide Complainants with an accounting until December 28, 2010 when he sent a calculation and payment of medical bills incurred in this accident.⁴⁴

31. Respondent falsely informed them that one of the insurance companies was in bankruptcy and had no money for a second appraisal of his vehicle.

32. Respondent participated in the State Bar's Fee Arbitration Program and was awarded his fee in the amount of \$7,500.00 or 25% of the gross recovery and \$509.55 in costs. The only issue before the Arbitrator was if the fee charged was reasonable for the amount of work performed.⁴⁵ This further injured his clients, assuring he would receive an entire fee, having refused to consult with his clients regarding the settlement.

33. Mr. Jovic filed a complaint with the Attorney General's Office.⁴⁶

34. In his response to the State Bar's investigation regarding a guardian for the disabled client, Respondent responded it is not applicable because there was no known guardian.⁴⁷

35. Respondent did not advise the Jovics to seek independent counsel for Maja or take any actions to have a guardian appointed during the settlement negotiations. [Respondent's Hearing testimony]

⁴³ Exhibit 29 at Bates SBA000061-2 ¶¶ 4, 12

⁴⁴ See Answer ¶ 25 and SB Exhibit 24.

⁴⁵ See Respondents' Exhibit A, Bates 17.

⁴⁶ Exhibit 22.

⁴⁷ Exhibit 34, Bates 81.

36. Respondent admits it not clear how the settlement proceeds are to be divided. [Respondent's Hearing Testimony]

37. Exhibit 17 does not reflect that the matter is settled prior to the execution of signed releases.

Diane Hendricks

Ms. Hendricks testified that she did not witness conversation between Respondent and Mr. Jovic. She was on the back side of the building heard pounding and the client yelling. Mr. Ziman appeared frustrated and the other attorney wanted to call police.

Testimony of Miodrag Jovic

Mr. Jovic testified he met with Respondent and told him he was not the guardian for his disabled daughter Maja but that he and his wife have cared for her all his life. In the past he has signed medical releases on Maja's behalf.

Mr. Jovic stated he did not authorize Respondent to settle the claims for the listed amounts in Exhibit 17. There was a fee dispute with Respondent. Mr. Jovic stated he was concerned because his property settlement was inadequate, his medical liens were not paid and he had not been compensated for lost wages. He had negotiated a more favorable property settlement by himself. At the meeting on November 29, 2010, Respondent was just asking for his money and did not have an accounting of the medical liens. Mr. Jovic said he would not sign the settlement checks without an accounting at which time, Respondent erupted, bit his own hands, tried to hit him with a binder, opened the conference room door and said "I am done; fucking people". Mr. Jovic acknowledged that during the conference call with insurance adjustor Michelle Lorenz, he stated "what do I have to do, kill

someone or pray to God for cancer" but that no one would listen to him about the value of the car.

Respondent testified that Mr. Jovic informed Respondent that his daughter, Maja was disabled when they presented for the initial consultation. There were no physical signs of disability but Mr. Jovic told Respondent he takes care of all his daughter's needs. Respondent stated he took the personal injury case on contingency fee basis. (Exhibit 14) However, client Maja's signature does not appear on the retainer agreement for contingency representation and he has no independent recollection that she did sign a fee agreement. Respondent acknowledges that the fee agreement states that "No dismissal of settlement will be made without the consent of Client and Attorney." This statement in Respondent's fee agreement is contrary to ER 1.2 regarding settlement agreements, which provides that the client determines whether or not a settlement offer is accepted. The fee agreement also provides for an attorney fee of $\frac{1}{4}$ or 25% of recovery but does not indicate if the contingency fee is $\frac{1}{4}$ of the gross or net percentage of recovery. In addition, a breakdown of the distribution of any settlement fees is not captured in the fee agreement.

Respondent stated he is aware that the State Bar offers sample fee agreements on their website but that he has used this form since 2000 and in his practice of 42 years, he has never had a client question the distribution of the settlement proceeds. Respondent is open to changing fee agreement form. Aware of limited recovery pool and that claims of individual clients would exceed policy. In his demand letter, Respondent states he suggested the following disbursements to Progressive Insurance Company: \$12,500 for Gordana, \$12,500 for Miodrag and \$5,000 for Maja. (See Exhibit 15) Respondent admits that a copy of the letter was not sent to the client. In

addition, Respondent admits the fact sheet in Exhibit 17 dated 11/3/2010 was prepared to settle any and all claims but clients were not aware of that proposed distribution and did not receive a copy of the fact sheet. These amounts were different than previously suggested at the direction of Progressive claims adjustor, Dave Whitman based on the dollar amount of medical bills. Respondent admits he did not have the clients' authority to approve the proposed distribution proposed in Exhibits 15 or 17 and the clients ultimately did not agree to the distribution.

Respondent testified that he prepared Exhibit 18 on November 4, 2010 to inform Colorado Casualty that the claim with Progressive had settled and to advise Colorado Casualty of an under-insured motorist ("UIM") claim. Although the fax (Exhibit 18) states that "we have settled the 3 liability claims with Progressive Insurance for the policy limits. Please now set up a UIM claim for each of my clients and let me know who UIM adjustor and phone number is." Respondent admits the clients were not aware of the action and did not receive a copy of Exhibit 18.

Respondent stated he was aware that the limited pool amount would impact amount recovered by each client and allowed Mr. Jovic to make the decision regarding the distribution of funds. Respondent states Gordana and Maja never spoke to him and that Mr. Jovic always spoke for wife and daughter. Respondent admits there was no informed consent for concurrent representation, only a fee agreement and subsequent conversations.

Respondent admits there are no documents that appoint Mr. Jovic as the guardian for his adult daughter. Respondent acknowledges he approved/accepted Progressive's distribution amount and had obtained the settlement checks based on verbal communications with Mr. Jovic. [Exhibit 20]

Although Exhibit 21 demonstrates that the client did not agree or understand the fee agreement and distribution of settlement funds, Respondent maintains the amounts of each check did not matter. Respondent stated it was important to get the funds into the trust account and then the funds could be distributed however Mr. Jovic wanted.

A complaint against Respondent was filed by Mr. Jovic with the AG's office and Respondent filed a response. Respondent advised that a dispute arose with Mr. Jovic at the meeting on November 29, 2010, to obtain signatures on the checks and releases. Mr. Jovic began pounding his fist and demanded how he would be paid and how Respondent would be paid. Mr. Jovic wanted to be reimbursed for any loss of income and then Respondent would be paid his ¼ or 25%.

Respondent admits he became frustrated at the November 29, 2012 meeting, raised his voice, used explicatives during the meeting, and told the clients to leave. He says he repeatedly asked that Mr. Jovic bring interpreter because of the confusion and language barrier, but Mr. Jovic refused and continually said that he understood. The panel finds Respondent's testimony inconsistent and implausible.

Respondent also testified as to his procedures for handling and disbursing settlement proceeds. In the case of Maja, Respondent stated his procedure was that if it was determined she needed a conservatorship or guardianship after receiving the settlement funds, he would file with the court for approval of her settlement and the parents' funds would be delayed pending that approval. This was never discussed with the Jovic because "substance trumps form" and he believed the father could make a proper decision about the limited amount of

settlement and distribution as it was a minor amount of money that would eat into her proceeds and he has cared for her all his life. Respondent stated he does not recall who signed the authorization for release of Maja's medical records.

Respondent acknowledges that the authority to settle lies with the client, who is the ultimate authority and their decision controls. Respondent said he received the settlement checks from Progressive and met with Mr. and Mrs. Jovic on November 29, 2010. Maja was not present at that meeting, only Mr. and Mrs. Jovic and Mrs. Jovic had never spoken to Respondent; she only accompanied her husband and he does all of the talking for the family. Respondent stated the confrontation began when he discussed the outstanding medical liens and explained the procedure for resolving those liens. He also reminded the medical liens were, his costs and fees totaled, he became angry and pounded his fists on the table. Respondent stated Mr. Jovic demanded that his medical liens and lost wages be paid prior to Respondent receiving his fee. The representation was terminated on that day.

VI. CONCLUSIONS OF LAW

COUNT TWO (File No. 10-2329/Jovic)

The Panel finds clear and convincing evidence is present that Respondent violated Rule 42, Ariz.R.Sup.Ct, specifically ER 1.5(c), 1.7, 1.7(a), 8.4(c), 8.4(d), Rule 31(a)(2)(E) and Rule 41(g), Ariz.R.Sup.Ct. Based on the allegations sufficiently pled in the complaint and the testimony at hearing, the Panel determined Respondent also violated ER 1.14 (client with diminished capacity) based on his representation of Maja Jovic, a disabled individual. Respondent had an obvious conflict, an obligation to advise the clients of the conflict and to seek

independent legal advice, and obtain a written informed consent. There was a significant risk that the clients' interest were materially limited by the Mother and Father's interests.

The Supreme Court of Arizona has previously held that the attorney was not denied due process when State Bar Disciplinary Board added allegations of unethical conduct to the complaint against him following his testimony at a disciplinary hearing, since he had ample time and opportunity to respond to the allegations. *In re Riley*, 142 Ariz. 604, 691 P.2d 695. *In re Tocco*, 194 Ariz. 453, 984 P.2d 539 (1999) (holding that a lawyer can be convicted of uncharged ethical violation if it is not based on separate incidents of misconduct). Rule 47 also provides that when issues not raised by the pleadings are tried by express or implied consent of the parties, they are treated as such.

VII. FINDINGS OF FACT

COUNT THREE (File No. 11-0130/DeJolie)

1. On or about January 6, 2011, Respondent called the North Scottsdale Ambulatory Surgery Center ("NSASC") and asked Cheryl Morrissey ("Morrissey"), a NSASC employee, to speak with Susan Weber ("Weber"), another NSASC employee, about medical records related to a personal injury case.⁴⁸

2. Morrissey stated Weber was out of the office and inquired whether Respondent would like to leave a message on Weber's voice-mail.⁴⁹

⁴⁸ See Exhibit 37; see also Exhibit 38, Exhibit 40 at Bates SBA000093 ¶ 2, Exhibit 41 at Bates SBA000096-7, Exhibit 42 at Bates SBA000102-3

⁴⁹ *Id.*

3. After several attempts to get Respondent to leave a message, Respondent then stated to Morrissey that he was getting so excited thinking about calling back the next day that “[he] just came all over [him]self.”⁵⁰

4. At that time, Morrissey hung up the phone.⁵¹

5. On or about January 7, 2011, Respondent called NSASC.⁵²

6. Morrissey again answered the phone.⁵³

7. When Respondent identified himself at “Maurie Sieman”, Morrissey attempted to transfer the call to Christopher DeJolie (“DeJolie”), a supervisor, but was unable to do so.⁵⁴

8. Respondent denies he identified himself as “Maurie Sieman” when he called the ambulatory service. The Panel finds he did so identify himself.

9. Respondent testified that he does not recall making the comment to Ms. Morrissey but at 67, it is physically impossible at his age to “come all over himself.”

10. Respondent called NSASC again approximately seven minutes later at 12:23 p.m.⁵⁵

11. DeJolie answered the telephone and asked how he could assist Respondent.⁵⁶

12. Respondent refused to talk to DeJolie and asked to speak with Weber.⁵⁷

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

13. When DeJolie informed Respondent that Weber wasn't in the office and asked Respondent his name, Respondent asked for his car.⁵⁸

14. When DeJolie then identified himself to Respondent as the office manager, Respondent once again asked for DeJolie's car.⁵⁹

15. When DeJolie asked Respondent why he asked for his car, Respondent stated he should not have to provide his name if DeJolie wasn't going to give him his car and then hung up.⁶⁰

16. Respondent admits through counsel that he has a vague recollection of the call to NSASC on January 6, 2011, and remembers joking with the person who answered the telephone.⁶¹

17. Respondent admits through counsel that he also called NSASC on January 7, 2011, and asked to speak with a person in the records department that he had spoken with regarding other cases.⁶²

Testimony of witness Cheryl Morrissey

Ms. Morrissey testified she worked at North Scottsdale Ambulatory Surgery Center in January 2011 as a patient admitter. Susan Weber works with her admitting patients and also handles the records requests. Ms. Morrissey stated she received a call on January 6, 2011, and the gentleman asked to speak with Susan Weber. Ms. Morrissey told the caller that Ms. Weber was not available and did he want to leave a message. The caller then stated, "No I would rather call back

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

tomorrow and be treated rudely and put on hold for ten minutes.” Ms. Morrissey stated that she ignored the comment and asked again if he wanted to leave a message for Ms. Weber. He said no, that he would call back the next day then and stated that he was so excited just thinking about it that “I just came all over myself.” Ms. Morrissey stated she has never experienced such vulgar and offensive conduct and she hung up on him. Ms. Morrissey stated she immediately prepared e-mail to her supervisor, Chris Jolie while the incident was fresh in her memory. When he called back the next day, Ms. Morrissey stated she recognized his voice and he identified himself as “Maurie Sieman.” Ms. Morrissey stated she transferred the call to her supervisor, Christopher DeJolie.⁶³ Ms. Morrissey stated that if Mr. Ziman calls the center again, staff has been directed to transfer the call to a supervisor.

Testimony of witness Christopher DeJolie

Mr. DeJolie testified he has been employed at North Scottsdale Ambulatory Surgery Center for six years. On January 7, 2011, Mr. DeJolie stated Ms. Morrissey had received an inappropriate call that left her shaken up. When the gentleman called back a few minutes later, Mr. DeJolie picked up the call from his station, greeted the caller and asked for his name. He immediately asked for Susan Weber. Mr. DeJolie stated he then informed the caller that Ms. Weber was not in the office and again stated “can I have your name”; he refused and responded, “can I have your car.” Mr. DeJolie stated he identified himself as the office manager and asked Respondent why he wanted his car. It went back and forth and Respondent

⁶³ Exhibit 37.

ultimately hung up. Mr. DeJolie stated he has never encountered similar calls and most callers, including attorneys, are professional when requesting records.

Mr. DeJolie stated that the policy regarding inappropriate calls is to log them. He asked his employee Ms. Morrissey to document the call and its content and reported the incident to the charge nurse and administrator.⁶⁴

Respondent admits that he was the caller who spoke to Mr. DeJolie on January 7, 2011. He made the comment because Mr. DeJolie's question was grammatically incorrect.

VIII. CONCLUSIONS OF LAW

COUNT THREE (File No. 11-0130/DeJolie)

The Panel finds clear and convincing evidence is present that Respondent violated Rule 31(a)(2)(E) and Rule 41(g).

XI. SANCTIONS

In determining an appropriate sanction, Court generally utilizes the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") as a guideline. Rule 58(k), Ariz.R.Sup.Ct. The appropriate sanction depends on the facts and circumstances of each case.

Analysis under the ABA STANDARDS

When imposing a sanction, consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004). See also *Standard 3.0*.

⁶⁴ Exhibit 38.

The *Standards* however, do not account for multiple charges of misconduct and advise that the ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct. See 1992 amended *Standards, Theoretical Framework*, p. 7.

In this matter, Respondent violated duties owed to clients, the public and as a professional and caused actual and potential injury. The Panel applies the following *Standards* to Respondent's particular misconduct:

Standard 4.31 Failure to Avoid Conflicts of Interest is applicable to Respondent's violation of ER 1.7 and provides in part:

Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

(b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client

Standard 4.32 provides:

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Standard 5.11(b) Failure to Maintain Personal Integrity is applicable to Respondent's violation of ER 8.4(c) and provides that Disbarment is appropriate when:

(b) a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Standard 5.12 provides:

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

Standard 7.1, Violations of Duties Owed as a Professional is applicable to Respondent's violation of ERs 1.5(c), 1.14, Rule 31(a)(2), Rule 41(g) and provides:

Disbarment is generally appropriate when a layer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Standard 7.2 provides:

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 proceeding.

Respondent's misconduct was knowing and caused actual and or potential harm to clients and the profession. Therefore, the presumptive sanction falls between disbarment and suspension.

DISCUSSION

The *Rules of Professional Conduct* define "unprofessional conduct" as substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism and is ground for discipline. See Supreme Court Rule 31(a)(2)(E) and Rule 54(h) (2012). In taking The Oath of Admission to the Bar, lawyers swear that they will abstain from offensive conduct. Respondent repeatedly and intentionally committed offensive conduct. Respondent still does not accept that his conduct is offensive.

The Panel notes that Respondent's misconduct occurred over a period of time with several employees and establishes a clear pattern of misconduct. Prior efforts at rehabilitation from his offensive and unprofessional misconduct have been unsuccessful and clearly the behavior has not been arrested. His testimony that he does not remember aspects of his prior disciplinary record is troublesome and unbelievable. Given his past, similar history, the Panel is not persuaded by Respondent's assertion that he used the word slug as opposed to slut in Count One. Respondent maintains because his statements in Count One and Three were made to the public, did not invoke fear or violence, and were protected by the First Amendment, that no ethical violation occurred.

Lawyers should always strive to treat others with dignity and respect. Rude attacking comments reflect poorly on a self regulating profession. When making business calls, it is not necessary to give grammar lessons, but that is not a sanctionable action. It does however demonstrate a pattern of insensitivity and intentional disregard of others and rules which prior discipline had little impact upon. Worse and more aggressively to the point, it is inexcusable to make profane and insulting remarks. When followed by a pattern of neglect with respect to client matters, his conduct runs the gambit of minor to major transgressions and behavior that he has little apparent interest in controlling or addressing. Collectively there is a pattern that spells indifference to his legal and ethical obligations from which the public has no protection.

Over all, the Hearing Panel found Respondent's testimony to be jaded and unapologetic. Briefly put, he knows the rules but believes he is superior to them, ignores them intentionally and is explosive when he does not receive the special

treatment to which he feels entitled. It is not that he has little regard for other people's feelings in these matters; he has no regard for their feelings. His sense of entitlement has obliterated any sense of duty to his client and any sensibility to others on the remaining counts.

Individuals have an absolute freedom to hold any number of views. Respondent clearly holds other in extreme low regard that he deems inconvenience him. He is entitled to hold that opinion. However, Respondent brandishes his opinion as a battering ram, intentionally offending people. This Panel does not believe these are "slips of the tongue" or inadvertent. Respondent is intentional in his conduct and bull whips people by his words with a zeal. While in his private life he may be as rude, offensive and demeaning as he chooses, in his professional life he may not hide behind his First Amendment rights to ignore his sworn responsibilities. Unprofessional conduct is defined by Rule 31 Ariz. Sup. Ct. as violations of the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona. That Oath requires attorneys in their professional lives to "abstain from all offensive conduct." *In re Abrams* 257 P.3d 167 (2011).

In this matter, when Respondent testified about his experiences with LOMAP, his attitude was more than cynical. He claimed that LOMAP was not helpful, blaming the LOMAP representative because she primarily talked about movies and books. He repeatedly blamed the LOMAP representative for the program's failure to help him and their failure to point out deficiencies in his fee agreement form. He never accepted any personal responsibility concerning LOMAP. For him, he had no responsibility; his unethical actions were their problem, not his.

When confronted about the profanity Respondent used against the employees of the records departments, he claimed entitlement under the 1st Amendment to use profanity. Because he did not receive the medical records to which he felt he was entitled, Respondent became frustrated and angry and lashed out against the employees with profanity. Whether he actually was entitled or not does not matter; when he did not receive the special treatment to which he felt he was entitled, he struck out with anger.

Respondent's testimony further demonstrated a lack of empathy about the feelings of the employees. He testified that it does not bother him when others yell at him or tell him to "fuck off." Because profanity and mistreatment directed at him is okay, he concludes that it should be okay with everybody else. He demonstrated a failure to recognize the feelings of the employees.

When Respondent muttered "those fucking people" loud enough for his clients, the Jocics to hear, he displayed a complete disregard for their feelings and an attitude of superiority, including a complete failure to understand why the Jocics' would feel the way they did. Respondent espouses a debonair nihilism, where moral principles simply do not apply to him.

Respondent refused to adhere to the most fundamental principles of attorney representation by responding to his client's request for information and settling a case without any attempt to include his client in those negotiations. His cavalier actions are identical to those he was previously sanctioned for in, *In re Ziman supra*. It is patently offensive that he then proceeded to fee arbitration knowing the only issue would be the reasonableness, objectively, of the fee. To ignore his clients and then attempt to bully them into accepting an agreement he intentionally kept them from

knowing the details of is the height of duplicity. It is only topped off by his firing them as his clients and demanding a full fee as a reward for his unethical actions.

His clients were injured by these actions. His work was minimal. His clients provided the investigative proof of the value of the car, which he promptly ignored. Being untruthful regarding the bankruptcy of the insurance company to speed up his fee is blatant misconduct. He knew one of the clients was completely disabled and refused to protect her interests. In every aspect his conduct and his prior history are inexcusable.

Standard 9.0, Aggravating and Mitigating factors

Aggravating factors in attorney discipline proceedings need only be supported by reasonable evidence. *Matter of Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). The Panel finds the following aggravating factors are present in this matter:

Standard 9.22(a) prior disciplinary offenses (Exhibits 44-47):

An informal reprimand was imposed in 1991 in File No. 90-1892 for violating ER 1.4 and 1.16.

In 1993, a 90 day suspension and one year of probation (LOMAP and CLE) was imposed by way of an Agreement for Discipline by Consent in File No. SB-92-0073-D for violating ERs 1.2, 1.3, 1.4, 3.2, 3.3, 3.4, 3.5, 8.4, and Rule 41(g).

In 1997 File No. SB-97-0029-D, censure and restitution were imposed for violating ERS 1.2, 1.3, 1.4 and 1.5.

In 2002 File No. SB-01-0195-D, a 30 day suspension was imposed for violating ER 1.15(b).

In 2009 Order of Informal Reprimand and Probation (LOMAP and CLE) was imposed for violating ER 1.1, 1.2(a), 1.3, 1.4, 1.5(b) and 1.16(b) and (d).

9.22(b) dishonest or selfish motive;

9.22(c) a pattern of misconduct; Respondent was previously suspended for similar misconduct in 1993 when he made an offensive and profane comment to the arbitrator and violated Rule 41(g) and entered into stipulations without knowledge or consent of his client.

9.22(d) multiple offenses;

9.22(g) refusal to acknowledge wrongful nature of conduct; and

9.22(i) substantial experience in the practice of law; [Admitted in 1970]

9.22(h) vulnerability of victim [disabled client]

The Panel finds the following mitigation factor is present:

9.32(e) full and free disclosure to disciplinary board or cooperative attitude towards proceedings.

Respondent asserted that mitigating factor 9.32(c) personal or emotional problems is present, among others. However, the record is devoid of any evidence to support that factor. [See Brief of Respondent filed February 15, 2012]

In regards to sanctions, Respondent argues that if any violations occurred, they are technical violations and no harm occurred. Respondent requests that the matter be dismissed. The State Bar asserts that the violations have been proven by clear and convincing evidence and asserts a suspension of no less than one year is appropriate.

Respondent asserted that his misconduct in 1993 was out of character for him, an isolated event, and that he understood the need to avoid such misconduct. To the contrary, this panel finds his conduct in this action to be entirely and miserably consistent. He was put on notice at that time that making profane and insulting remarks may reflect adversely on his fitness to practice. *In re Ziman*, 174 Ariz. 61, 847 P.2d 106 (1993). It is an opinion he testified he had no memory of. He would

have been better served to have remembered it and strove to adhere to its instruction instead of ignore it as an inconvenience.

CONCLUSION

Based on the facts in this matter, consideration of the *Standards* including the numerous aggravating factors present and the sole mitigating factor present, the Panel determined that a suspension of one year, two years of probation upon reinstatement (LOMAP and MAP), and costs of these disciplinary proceedings is the appropriate sanction. Specific terms and conditions of probation will be addressed at the time of reinstatement.

Restitution is awarded to his past clients, the Jovic family in an amount identical to his Fee Arbitration Award, less any actual costs that may have been incurred and unreimbursed in his representation of them.

DATED this 30 day of April, 2012.



**William J. O'Neil, Presiding Disciplinary Judge
Office of the Presiding Disciplinary Judge**

CONCURRING


James M. Marovich, Volunteer Attorney Member
Jan Enderle, Volunteer Public Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 30th day of April, 2012.

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