

PUBLIC MATTER

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9

FILED

MAY 29 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

10 STATE BAR COURT

11 HEARING DEPARTMENT - LOS ANGELES
12

13 In the Matter of:) Case Nos. 14-O-06098, 14-J-05962
14 DONALD EDWARD FERGUS, JR.,)
No. 87334,) NOTICE OF DISCIPLINARY CHARGES
15)
16 A Member of the State Bar.) (Bus. & Prof. Code, § 6049.1; Rules Proc. Of
State Bar, rules 5.350 to 5.354)

NOTICE - FAILURE TO RESPOND!

18 IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
19 WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
20 THE STATE BAR COURT TRIAL:

- 21 (1) YOUR DEFAULT WILL BE ENTERED;
22 (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;
23 (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;
24 (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
25 OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
26 FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

27 kwiktag® 183 823 855



1 The State Bar of California alleges:

2 JURISDICTION

3 1. Donald Edward Fergus, Jr. ("respondent") was admitted to the practice of law in the
4 State of California on August 1, 1979, was a member at all times pertinent to these charges, and
5 is currently a member of the State Bar of California.

6
7 COUNT ONE

8 Case No. 14-O-06098
9 Business and Professions Code section 6068(k)
[Failure to Comply with Conditions of Probation]

10 2. Respondent failed to comply with conditions attached to respondent's disciplinary
11 probation in State Bar case number 11-J-11428 as follows, in willful violation of Business and
12 Professions Code section 6068(k):

- 13 A. Failing to attend a session of Ethics School, pass the test given at the end of
14 the session and submit proof of same to the Office of Probation by November
15 18, 2012;
- 16 B. Failing to timely submit a quarterly report by its due date of October 10, 2014;
17 and
- 18 C. Failing to timely submit a final report by its due date of November 18, 2014.

19
20 COUNT TWO

21 Case No. 14-O-06098
22 Business and Professions Code section 6106
[Moral Turpitude - Misrepresentation]

23 3. On January 4, 2013, respondent falsely reported under penalty of perjury to the
24 Office of Probation that he had complied with all the conditions of his probation when
25 respondent knew or was grossly negligent in not knowing that he had failed to submit proof of
26 attendance at a session of Ethics School, and thereby committed an act involving moral

1 turpitude, dishonesty or corruption in willful violation of Business and Professions Code section
2 6106.

3 14-J-05962

4 PROFESSIONAL MISCONDUCT IN A FOREIGN JURISDICTION

5 4. On or about October 27, 2014, the Supreme Court of the State of Arizona ordered that
6 respondent be disbarred upon findings that respondent had committed professional misconduct in
7 that jurisdiction as set forth in the Final Judgment and Order. Thereafter, the decision of the
8 foreign jurisdiction became final.

9 5. A certified copy of the final order of disciplinary action of the foreign jurisdiction, the
10 October 27, 2014 Final Judgment and Order, is attached as Exhibit 1, and incorporated by
11 reference.

12 6. A certified copy of the Report and Order Imposing Sanctions filed on September 30,
13 2014, upon which the Arizona Supreme Court's October 27, 2014 Final Judgment and Order was
14 based, is attached as Exhibit 2 and incorporated by reference.

15 7. Copies of the statutes, rules or court orders of the foreign jurisdiction found to have
16 been violated by respondent are attached as Exhibit 3 and incorporated by reference.

17 8. Respondent's culpability as determined by the foreign jurisdiction indicates that the
18 following California statutes or rules have been violated or warrant the filing of this Notice of
19 Disciplinary Charges: Business and Professions Code sections 6068(a), 6125 and 6126
20 (unauthorized practice of law), 6103 (failure to comply with court order) and 6106 (moral
21 turpitude – misrepresentations).

22 ISSUES FOR DISCIPLINARY PROCEEDINGS

23 9. The attached findings and final order are conclusive evidence that respondent is
24 culpable of professional misconduct in this state subject only to the following issues:

25 A. The degree of discipline to impose;

26 B. Whether, as a matter of law, respondent's culpability determined in the
27 proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of
28

1 California under the laws or rules binding upon members of the State Bar at the time the member
2 committed misconduct in such other jurisdiction; and

3 C. Whether the proceedings of the other jurisdiction lacked fundamental
4 constitutional protection.

5 10. Respondent shall bear the burden of proof with regard to the issues set forth in
6 subparagraphs B and C of the preceding paragraph.

7
8 **NOTICE - INACTIVE ENROLLMENT!**

9 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR
10 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE
11 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL
12 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO
13 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
14 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
15 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
16 RECOMMENDED BY THE COURT.**

17
18 **NOTICE - COST ASSESSMENT!**

19 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC
20 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS
21 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING
22 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND
23 PROFESSIONS CODE SECTION 6086.10.**

24 Respectfully submitted,

25 THE STATE BAR OF CALIFORNIA
26 OFFICE OF THE CHIEF TRIAL COUNSEL

27 DATED: 5/29/2015

28 By: 

Jamie J. Kim
Deputy Trial Counsel

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

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

**DONALD E. FERGUS JR.,
Bar No. 019459,**

Respondent.

PDJ 2014-9060

**REPORT AND ORDER IMPOSING
SANCTIONS**

State Bar No. 13-3441

FILED SEPTEMBER 30, 2014

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on July 18, 2014. On July 21, 2014, the complaint was served on Mr. Fergus by certified, delivery restricted mail, as well as by regular first class mail, pursuant to Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct.¹ The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. A notice of default was properly issued on August 20, 2014, given Mr. Fergus' failure to file an answer or otherwise defend. Mr. Fergus did not file an answer or otherwise defend against the complainant's allegations and default was properly entered on September 15, 2014. That same date a notice of aggravation and mitigation hearing was sent to all parties notifying them the aggravation/mitigation hearing was scheduled for September 29, 2014 at 9:00 a.m., at the State Courts Building, 1501 West Washington, Hearing Room 109, Phoenix, Arizona 85007-3231. On September

¹ All references to rules are to the Arizona Rules of the Supreme Court.

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Certified this 10 day of November, 2014

By [Signature]
Disciplinary Clerk
Supreme Court of Arizona

29, 2014, the Hearing Panel, composed of Sandra E. Hunter, attorney member and Bruce M. Brannan, public member heard argument.

The purpose of an aggravation/mitigation hearing is not only to weigh mitigating and aggravating factors, but also to assure there is a nexus between a respondent's conduct deemed admitted and the merits of the SBA's case. A respondent against whom a default has been entered no longer has the right to litigate the merits of the factual allegations of the complaint. However, the respondent retains the right to appear and participate in the hearing concerning that nexus and the sanctions sought. Included with that right to appear is the right to dispute the allegations relating to aggravation and to offer evidence in mitigation. Mr. Fergus was afforded these rights.

Due process requires a hearing panel to independently determine whether, under the facts deemed admitted, ethical violations have been proven by clear and convincing evidence. The hearing panel must also exercise discretion in deciding whether sanctions should issue for the respondent's misconduct. If the hearing panel finds that sanctions are warranted, then it independently determines which sanctions should be imposed. It is not the function of the hearing panel to simply endorse or "rubber stamp" any request for sanctions.

FINDINGS OF FACT

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

COUNT ONE of ONE (File no. 13-3441/King)

1. At all times relevant, Mr. Fergus was suspended from the practice of law in Arizona. He had been admitted to practice in Arizona on May 21, 1999.

2. While suspended from the practice of law, Mr. Fergus sent to a former client (Complainant's wife) a "Memorandum Regarding Funding of Trust."

3. The memorandum rendered legal advice by advising the client how to avoid probate of her trust upon her death.

4. The memorandum is on letterhead entitled "Donald E. Fergus Jr. Paralegal."

5. The letterhead address is a mailbox at a Mail Copy Plus business in a Lakeside, Arizona strip mall, next to a Subway restaurant, and does not belong to a law office.

6. Mr. Fergus charged the client \$1,000 and invoiced her in August and September 2013 "For Legal Service Rendered in Connection With: Revised Estate Planning."

7. The described services include preparation of a will, amendment of a trust, preparation of durable financial and health care powers of attorney, and a living will.

8. Mr. Fergus told the bar in screening that while suspended he has "done sporadic paralegal projects as an independent contractor under the supervision of [attorney] Rad Vucichevich, including providing changes to [this client's] separate property trust"

9. In reality, beginning in about 2011, Mr. Fergus worked on about four or five projects for Mr. Vucichevich but none for this client ever, or for any others dating back to October 2012.

10. By rendering legal advice and legal services to Complainant's wife while suspended from the practice of law and while acting as a paralegal without supervision by an active member of the State Bar, Mr. Fergus violated Rule 42 ER 5.5, and Rule 31 (Unauthorized Practice of Law).

11. By falsely claiming to the State Bar that he was supervised by attorney Rad Vucichevich at the time he rendered paralegal services to Complainant's wife, Mr. Fergus knowingly make a false statement of material fact in violation of ER 8.1.

12. By engaging in the unauthorized practice of law while he was suspended from practicing law by order of the Arizona Supreme Court, Mr. Fergus knowingly violated a rule and order of the court in violation of Rule 54.

CONCLUSIONS OF LAW

Mr. Fergus 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). Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Mr. Fergus violated Rules 31 and 54, and Rule 42, specifically ERs 5.5 and 8.1.

ABA STANDARDS ANALYSIS

In a lawyer discipline case, sanctions are imposed in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* ("Standards"). Rule 58(k). In imposing a sanction, the following factors should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard* 3.0.

Duties violated:

Rule 31 and Rule 42, ER 5.5 – Unauthorized Practice of Law.

Mr. Fergus violated his duties to a client and as a professional by engaging in the unauthorized practice of law.

Rule 31, Regulation of the Practice of Law

* * *

(a)2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

- (1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
- (2) preparing or expressing legal opinions . . .
- or
- (5) negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or

(2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

* * *

(b) Authority to Practice. Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.

(c) Restrictions on Disbarred Attorneys' and Members' Right to Practice. No member who is currently suspended . . . shall practice law in this state or represent in any way that he or she may practice law in this state.

(d) Exemptions. Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

18. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with ER 5.3 of the rules of professional conduct. This exemption is not subject to section (c).

Rule 42 ER 5.5 – Unauthorized Practice of Law ["UPL"]

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

Rule 42, ER 8.1 – Knowingly Making a False Statement of Material Fact in Connection with a State Bar Disciplinary Matter. Mr. Fergus violated his duties to the public and as a professional by his knowingly making a false statement of material fact in connection with a State Bar investigation. He claimed to be supervised by a licensed attorney while providing “paralegal” services when he knew that claim was false.

Rule 54. Grounds for Discipline

Grounds for discipline of members and non-members include the following:

* * *

(c) Knowing violation of any rule or any order of the court. This includes court orders issuing from a state, tribe, territory or district of the United States, including child support orders.

Mr. Fergus violated his duties to the public, the legal system, and as a professional when he engaged in the unauthorized practice of law while suspended, contrary to a Supreme Court Judgment forbidding him to practice law while suspended.

Mental State and Injury:

Mr. Fergus intentionally or knowingly committed the foregoing violations. Mr. Fergus caused actual and potential injury and serious injury to a client, the public, the legal system, and as a professional.

Based on the foregoing, the following Standards are implicated:

ER 5.5 and Rule 31 – Unauthorized Practice of Law

Standard 7.1: Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

ER 8.1 – knowing false statement of material fact to the bar

Standard 5.11(b): Disbarment is generally 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.

Rule 54(c)- Knowing violation of any rule or any order of the court.

Standard 6.21: Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.

Standard 8.1: Disbarment is generally appropriate when a lawyer:

(a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or

(b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

The "most common case" in which disbarment is the appropriate sanction is when "a lawyer has been suspended but, nevertheless, practices law." *Standards, Commentary to Standard 8.1.* Mr. Fergus intentionally and knowingly violated the terms of his order of suspension by engaging in UPL. Also, he was suspended for

dishonest behavior and acted similarly dishonestly in his false statements to the bar during the screening investigation.

AGGRAVATING AND MITIGATING FACTORS

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

Standard 9.22(a), prior disciplinary offenses.

November 30, 2010, SBA File No. 08-2061, suspension for three years and probation for one year following reinstatement on terms to be determined at that time. Respondent instructed in or assisted in the forgery of his deceased client's name on a power of attorney, and in the use of the fraudulently obtained power of attorney to execute trust documents. He then falsely told his secretary that he had witnessed the signatures and instructed her to notarize both documents. After the widow hired an attorney to challenge the probate of the estate, he denied wrongdoing. An investigation followed and he was ultimately terminated from employment. Aggravating factors included: dishonest or selfish motive, substantial experience in the practice of law, and indifference to making restitution. Mitigating factors included: absence of prior disciplinary offenses, character or reputation, and full and free disclosure to the disciplinary board or cooperative attitude toward proceedings. Respondent violated ERs 1.7 (conflict of interest), 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another), 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

August 8, 2012, SBA File No. 11-2116, admonition, ERs 1.15 (failure to promptly render a full accounting of fees to a client), 1.16 (failure to refund the unearned portion of an advance fee payment), and Rules 72(a) and (d) (failure to comply with duties following suspension).

Standard 9.22(b), dishonest or selfish motive;

Standard 9.22(c), a pattern of misconduct (dishonesty);

Standard 9.22(d), multiple offenses;

Standard 9.22(f), submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

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

Standard 9.22(i), substantial experience in the practice of law;

There are no mitigating factors present in the record.

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, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). And, it is 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 determined the appropriate sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the absence of any mitigating factors, and the goals of the attorney discipline system. Based upon the above, the Hearing Panel orders as follows:

IT IS ORDERED:

1. Mr. Fergus is disbarred from the practice of law effective the date of this Order;
2. Mr. Fergus shall pay restitution of \$1,000.00 plus interest at the maximum statutory rate to Elizabeth Veker King;
3. Mr. Fergus shall pay all costs and expenses incurred by the SBA, plus interest at the maximum statutory rate; and
4. A final judgment and order will follow

DATED this 30th day of September, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Bruce M. Brannan

Volunteer Public Member

Sandra E. Hunter

Volunteer Attorney Member

Copies of the foregoing mailed/emailed
this 30th day of September, 2014, to:

Donald E. Fergus, Jr.
441 Enclave Cir., Ste. 301
Costa Mesa, CA 92626-8263
Email: dfergusjr@gmail.com
Respondent

David L. Sandweiss
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4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Lawyer Regulation Records Manager
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Phoenix, Arizona 85016-6266

by: JAlbright

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**DONALD E. FERGUS JR.,
Bar No. 019459**

Respondent.

PDJ-2014-9060

[State Bar No. 13-3441]

FINAL JUDGMENT AND ORDER

FILED OCTOBER 27, 2014

This matter having come before the Hearing Panel of the Supreme Court of Arizona, it having duly rendered its decision; and no appeal having been filed and the time for appeal having passed, accordingly,

IT IS HEREBY ORDERED Respondent, **DONALD E. FERGUS JR.**, is disbarred from the practice of law effective September 30, 2014, and his name is stricken from the roll of lawyers for conduct in violation of his duties and obligations as a lawyer, as disclosed in the Hearing Panel's Report. Respondent is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the court.

IT IS FURTHER ORDERED Respondent 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 Respondent shall pay restitution to the following individual in the following amount:

<p>restoration to the following, and correct copy of the original on file in this office.</p> <p>Certified this <u>10</u> day of <u>November 2014</u></p> <p>By <u>[Signature]</u> Disciplinary Clerk Supreme Court of Arizona</p>
--

Restitution

Elizabeth Veker King \$1,000.00 plus interest at the legal rate until paid.

IT IS FURTHER ORDERED that Respondent pay those costs and expenses awarded to the State Bar of Arizona in the amount of \$2,000.00, within 30 days of the date of this order. 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 27th day of October, 2014.

William J. O'Neil

William J. O'Neil
Presiding Disciplinary Judge

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TOC: Arizona Court Rules > / . . . / > LAW FIRMS AND ASSOCIATIONS > **ER 5.5. Unauthorized practice of law [Effective until January 1, 2015]**

Ariz. Rules of Prof'l Conduct R. 5.5

ARIZONA COURT RULES ANNOTATED

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*** This document reflects changes received by the publisher through September 8, 2014. ***

ARIZONA RULES OF PROFESSIONAL CONDUCT
LAW FIRMS AND ASSOCIATIONS

Ariz. Rules of Prof'l Conduct R. 5.5 (2014)

Review Court Orders which may amend this Rule.

ER 5.5. Unauthorized practice of law [Effective until January 1, 2015]

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law: or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter.

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other

alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, and not disbarred or suspended from practice in any jurisdiction may provide legal services in this jurisdiction as authorized by federal law or other law of this jurisdiction. A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, and registered pursuant to Rule 38(h) of these rules, may provide legal services in this jurisdiction that are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission.

(e) An attorney who engages in the authorized multijurisdictional practice of law in the State of Arizona under this rule must advise the lawyer's client that the lawyer is not admitted to practice in Arizona, and must obtain the client's informed consent to such representation.

(f) Attorneys not admitted to practice in the State of Arizona, who are admitted to practice law in any other jurisdiction in the United States and who appear in any court of record or before any administrative hearing officer in the State of Arizona, must also comply with Rules of the Supreme Court of Arizona governing *pro hac vice* admission.

(g) Any attorney who engages in the multijurisdictional practice of law in the State of Arizona whether authorized in accordance with these Rules or not, shall be subject to the Rules of Professional Conduct and the Rules of the Supreme Court regarding attorney discipline in the State of Arizona.

HISTORY: Effective December 1, 2003 by R-02-0045; amended by R-03-0035, June 8, 2004, effective December 1, 2004; amended by R-08-0006 September 16, 2008, effective January 1, 2009; amended by R-09-0010, effective January 1, 2010; amended by R-11-0036, effective January 1, 2013.

NOTES:
COMMENT

[1985 ADOPTION]

[1] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (b) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See ER 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed *pro se*.

[2] Lawyers who are not members of the State Bar of Arizona may comply with paragraph (b) (2) by stating in any advertisement or communication that targets or specifically offers legal services to Arizona residents that: (1) the non-member is not licensed to practice law by the Supreme Court of Arizona; or (2) the non-member's practice is limited to federal or tribal legal matters (for example, a non-member may state his or her practice is limited to immigration

matters).

CODE COMPARISON

With regard to ER 5.5(a), DR 3-101(B) of the Code provided that "A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction."

LexisNexis 50 State Surveys, Legislation & Regulations

Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

↓ Disbarment.

↓ Unauthorized Practice by Employee.

↓ Unauthorized Practice of Law.

↓

-- Practice of Law During Suspension.

⚡ DISBARMENT.

Suspended attorney was disbarred where, inter alia, nine of the twelve counts against him involved the unauthorized practice of law in thirty known cases and his failure to obey orders and to notify clients; he also had a prior three year suspension and other discipline had been imposed. In re Brown, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 67 (Apr. 25, 2002).

⚡ UNAUTHORIZED PRACTICE BY EMPLOYEE.

Attorney was negligent in supervising his employee where the attorney hired a paralegal who, unbeknownst to the attorney, represented himself to be and conducted himself as an attorney in legal matters in the office and placed inappropriate advertisements in publications. In re Olds, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 118 (Nov. 22, 2000).

⚡ UNAUTHORIZED PRACTICE OF LAW.

Attorney engaged in the unauthorized practice of law, in violation of this rule and Ariz. Sup. Ct. R. 31, but her conduct was negligent, not knowing, and it caused little or no injury; the attorney's failure to respond to the Arizona Bar constituted a violation and persuaded the supreme court that an informal reprimand was appropriate. In re Van Dox, 214 Ariz. 300, 152 P.3d 1183, 2007 Ariz. LEXIS 20 (2007).

Attorney, who had been suspended for six months for failing to comply with mandatory continuing legal education requirements, was suspended for another year for practicing while suspended and ordered to undergo an independent medical evaluation, because she presented bar counsel with a dead rat during her deposition to demonstrate that she "smelled a rat" in

connection with her suspension for failing to comply with mandatory continuing legal education requirements. In re Axford, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 189 (Oct. 31, 2002), cert. denied, 538 U.S. 1057, 123 S. Ct. 2219, 155 L. Ed. 2d 1106 (2003).

Attorney engaged in the unauthorized practice of law when he represented clients while on administrative suspension, he also failed to communicate with the clients and generally neglected their representation to the point that their case was placed on the court's inactive list, he was subsequently suspended for one year and was to be placed on probation for two years after his reinstatement. In re Kistler, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 27 (Feb. 26, 2002).

Attorney who was a nonmember of the State Bar of Arizona was censured and ordered to pay costs where the attorney wrongfully represented himself as authorized to practice in Arizona, consulted with clients, filed pleadings court, identified himself as "attorney for defendants," and corresponded through letterhead that failed to indicate he was not admitted to practice in Arizona. In re Mothershed, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 63 (Apr. 17, 2001).

While in a suspended status for non-payment of bar dues and noncompliance with Mandatory Continuing Legal Education requirements, attorney filed pleadings, appeared in court, communicated with opposing counsel and then failed to respond to the State bar's inquiry and cooperate in the investigation of this matter; thus, attorney was censured, placed on probation for twelve months, and ordered to pay costs of these disciplinary proceedings. In re Stanley, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 16 (Jan. 18, 2001).

Where attorney appeared in the U.S. Bankruptcy Court for the Southern California District, mistakenly believing he was admitted to all district courts in California, and promptly paid his application fee and was properly admitted upon becoming aware of the problem, and where he also failed to consult with clients, failed to act with reasonable diligence and failed to keep clients informed as to the status of their case, and finally where he made misstatements and misrepresentations to bar counsel investigating these matters, the attorney was censured, given one year probation, and ordered to pay costs and expenses. In re Firestein, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 119 (Nov. 22, 2000).

Where attorney, prior to being reinstated to active status after a two-year suspension, prepared a will for a client free of charge and transmitted it to devisees under the will using his legal letterhead, he had engaged in the unauthorized practice of law and was censured and ordered to pay the costs of the disciplinary proceeding. In re Savoy, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 80 (Aug. 28, 2000).

Where attorney was suspended from the practice of law yet continued to practice law during the suspension period, falsely stated that he did not engage in the practice of law during the suspension, and failed to cooperate with the State Bar investigation, the attorney's conduct violated this Rule, ER 8.1, ER 8.4, and Supreme Court Rule 51 subsections (e),(h), (i), and (k). In re Royston, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 50 (May 31, 2000).

Attorney violated this rule when he delegated client's case to an attorney in his firm who was not a licensed attorney in Arizona. In re Brown, 175 Ariz. 134, 854 P.2d 768 (1993).

✦

✦

--PRACTICE OF LAW DURING SUSPENSION.

Suspended attorney was disbarred where, inter alia, the attorney's repeated unauthorized practice of law during her suspension period added additional impetus for the sanction of disbarment, and initially the attorney failed to cooperate in the disciplinary proceedings. In re Harrison, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 107 (July 3, 2002).

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ARIZONA RULES OF PROFESSIONAL CONDUCT
 MAINTAINING THE INTEGRITY OF THE PROFESSION

Ariz. Rules of Prof'l Conduct R. 8.1 (2014)

Review Court Orders which may amend this Rule.

ER 8.1. Bar admission and disciplinary matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by ER 1.6.

HISTORY: Effective December 1, 2003 by R-02-0045.**NOTES:**
COMMENT

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that

the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including ER 1.6 and, in some cases, ER 3.3.

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Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

- ⚡Cooperation with State Bar.
- ⚡Failure to Communicate.
- ⚡Failure to Cooperate.
- ⚡Misrepresentation of Facts.
- ⚡Standard of Proof.
- ⚡Submission of Fraudulent Documents.

⚡COOPERATION WITH STATE BAR.

Suspended attorney was disbarred for failing to comply with state bar's inquiries regarding client's allegations, taking money and failing to provide legal services, and failing to communicate to clients that license was suspended. In re Leon, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 63 (Apr. 25, 2002).

⚡FAILURE TO COMMUNICATE.

Where attorney (1) was retained to represent a client in a personal injury case and failed to communicate with the client, (2) was retained to defend a client in a civil suit and failed both to communicate with his client and to appear for a hearing, (3) filed a motion to set aside a default judgment while he was suspended from the practice of law, and (4) failed to respond to the State Bar's inquiry and refused to cooperate in the investigation of these matters the attorney was disbarred and ordered to pay costs and restitution. In re Meyer, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 96 (Sept. 29, 2000).

Attorney was censured, placed on probation for a period of one year, required to attend the State Bar's Ethics Enhancement Program, and ordered to pay costs of the disciplinary proceedings where the attorney represented clients in a bankruptcy matter but failed to

communicate with his clients, failed to file their bankruptcy petition, and failed to respond to the State Bar's inquiry of the matter. In re Hull, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 85 (Aug. 28, 2000).

An attorney's license was suspended when he failed to communicate a settlement offer to his clients and intentionally lied during disciplinary proceedings in an attempt to conceal his failure to communicate the offer. In re Varbel, 182 Ariz. 451, 897 P.2d 1337 (1995).

✦FAILURE TO COOPERATE.

Attorney, who had been suspended for six months for failing to comply with mandatory continuing legal education requirements, was suspended for another year for practicing while suspended and ordered to undergo an independent medical evaluation, because she presented bar counsel with a dead rat during her deposition to demonstrate that she "smelled a rat" in connection with her suspension for failing to comply with mandatory continuing legal education requirements. In re Axford, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 189 (Oct. 31, 2002), cert. denied, 538 U.S. 1057, 123 S. Ct. 2219, 155 L. Ed. 2d 1106 (2003).

Attorney was given a six month and one day suspension, and ordered to pay the costs of disciplinary proceedings for knowingly failing to comply with the rules of the tribunal, failing to carry out court ordered duties as an arbitrator, knowingly failing to appear as ordered at a hearing, and failing to comply with requests for information from the State Bar. In re Merchant, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 87 (August 25, 2000).

Where attorney was suspended from the practice of law yet continued to practice law during the suspension period, falsely stated that he did not engage in the practice of law during the suspension, and failed to cooperate with the State Bar investigation, the attorney's conduct violated this Rule, ER 5.5, ER 8.4, and Supreme Court Rule 51 subsections (e),(h), (i), and (k). In re Royston, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 50 (May 31, 2000).

Attorney's felony conviction for perjury was conclusive evidence of his guilt for the purposes of discipline proceeding warranting disbarment. In re Savoy, 181 Ariz. 368, 891 P.2d 236 (1995).

Attorney was censured and placed on probation where she had failed to provide competent representation; failed to act with reasonable diligence and promptness in her representation failed to keep clients apprised as to case status; and failed to cooperate with the state bar's investigations into her conduct. In re O'Brien-Reyes, 177 Ariz. 362, 868 P.2d 945 (1994).

Attorney disbarred for consistently refusing or failing to communicate with clients; terminating representation of a client without taking steps reasonably practical to protect the client's interests; repeatedly lying to the state bar about his involvement in the forgery of client's signature; counseling, encouraging, and participating in the preparation of a forged document; and for failing to respond to and cooperate with the state bar's investigations. In re Redeker, 177 Ariz. 305, 868 P.2d 318 (1994).

Attorney who failed to adequately supervise a non-lawyer assistant engaged in debt collection in the respondent's name, which resulted in misappropriation of funds and, apparently, destruction of client files, and who failed to timely respond to the state bar's inquiries into this matter, merited suspension for 12 months, after weighing the aggravating and mitigating circumstances. In re Miller, 178 Ariz. 257, 872 P.2d 661 (1994).

Attorney failed to perform matters entrusted to him in violation of ER 1.3, failed to adequately communicate with his clients in violation of ER 1.4, and failed to cooperate with the State Bar in violation of this rule. In re Redondo, 176 Ariz. 334, 861 P.2d 619 (1993).

Attorney violated this rule and Supreme Court Rule 51(h) and (i) when he failed to cooperate

with the state bar's investigations into the matters of clients. In re Brown, 175 Ariz. 134, 854 P.2d 768 (1993).

Where attorney accepted representation, took initial action, then ignored the client until forced to address the matter again, the attorney's conduct exhibited lack of competence, lack of diligence, failure to adequately communicate with clients, failure to safekeep a client's property, failure to properly terminate representation of a client, and failure to respond to inquiries from the state bar. In re Evans, 175 Ariz. 404, 857 P.2d 1258 (1993).

Actions warranted six-month suspension of practice, enrollment in law office management assistance program and restitution to client where attorney violated many rules, including this rule by failing to cooperate with State Bar's investigations. In re Carrasco, 176 Ariz. 459, 862 P.2d 219 (1993).

✦ MISREPRESENTATION OF FACTS.

Because an attorney either made false statements of material fact or created a misapprehension on the part of the state bar by stating that client had signed documents when in fact attorney had signed for her client. In re Miranda, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 91 (June 10, 2002).

Attorney created a misapprehension on the part of the state bar by stating that client had signed documents when in fact attorney had signed for her client. In re Miranda, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 91 (June 10, 2002).

Attorney's conduct violated ER 1.1 when he failed to provide client with competent representation; ER 1.2 when he failed to consult with client regarding a summary judgment; ER 1.3 by his failure to act with reasonable diligence in representing client; ER 1.4 when he failed to keep client reasonably informed; and this rule when he falsely stated that he had, in fact, responded to client's former attorney and when he failed to respond to the state bar's inquiries into the matter. In re Riddle, 175 Ariz. 379, 857 P.2d 1233 (1993).

Three-year suspension of attorney was appropriate and proportional where attorney, in an attempt to deceive the court and cause hardship to his tenant, altered an installment promissory note after the signature of the tenant without the tenant's knowledge; in addition, the attorney falsely responded to inquiries from the state bar, claiming that the handwritten language which altered the note was added at the time the note was executed. In re Rosenzweig, 172 Ariz. 511, 838 P.2d 1272 (1992).

✦ STANDARD OF PROOF.

Clear and convincing evidence established respondent's violations of this section. In re Brady, 186 Ariz. 370, 923 P.2d 836 (1996).

✦ SUBMISSION OF FRAUDULENT DOCUMENTS.

Disbarment was appropriate where attorney created fraudulent letters to support his defense in the disciplinary process. In re Silver, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 25 (Feb. 16, 2001).

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RULES OF THE SUPREME COURT
V. REGULATION OF THE PRACTICE OF LAW
G. GROUNDS FOR DISCIPLINE

Ariz. Sup. Ct. R. 54 (2014)

Review Court Orders which may amend this Rule.

Rule 54. Grounds for discipline

Grounds for discipline of members and non-members include the following:

(a) Violation of a rule of professional conduct. -- This includes violations of professional conduct rules in effect in any jurisdiction.in effect in any jurisdiction.

(b) Violation of a canon of judicial conduct.

(c) Knowing violation of any rule or any order of the court. -- This includes court orders issuing from a state, tribe, territory or district of the United States, including child support orders.

(d) Violation of any obligation pursuant to these rules in a disciplinary or disability investigation or proceeding. -- Such violations include, but are not limited to, the following:

1. Evading service or refusal to cooperate. -- Evading service or refusal to cooperate with officials and staff of the state bar, the committee, the presiding disciplinary judge, a hearing panel, or a conservator appointed under these rules acting in the course of that person's duties constitutes grounds for discipline.

2. Failure to furnish information. -- The failure to furnish information or respond promptly to any inquiry or request from bar counsel, the board, the committee, the presiding disciplinary judge, a hearing panel, or this court, made pursuant to these rules for information relevant to pending charges, complaints or matters under investigation concerning conduct of a lawyer, or

failure to assert the ground for refusing to do so constitutes grounds for discipline. Nothing in this rule shall limit the lawyer's ability to request a protective order pursuant to Rule 70(g). Upon such inquiry or request, every lawyer:

A. shall furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

B. shall permit inspection and copying of the lawyer's business records, files and accounts;

C. shall furnish copies of requested records, files and accounts;

D. shall furnish written releases or authorizations where needed to obtain access to documents or information in the possession of third parties including, in the case of inquiries into the physical or mental capacity of a lawyer, written releases or authorizations needed to obtain access to medical, psychiatric, psychological or other relevant records and opinions; and

E. shall comply with discovery conducted pursuant to these rules.

(e) Violation of a condition of probation or diversion.

(f) Violation of a condition of admission imposed by the court or the Committee on Character and Fitness pursuant to Rule 36(a)(4)(D).

(g) Conviction of a crime. -- A lawyer shall be disciplined as the facts warrant upon conviction of a misdemeanor involving a serious crime or of any felony. "Serious crime" means any crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft or moral turpitude. A conspiracy, a solicitation of another or any attempt to commit a serious crime, is a serious crime. Receipt by the state bar of a certified copy of the judgment of conviction, or other information of conviction of a lawyer, shall be treated and processed as is any other charge against a lawyer, except that the sole issue to be determined shall be the extent of the discipline to be imposed. In any discipline proceeding based on the conviction, proof of conviction shall be conclusive evidence of the attorney's guilt of the crime. Lawyers shall comply with the duty to self-report convictions as set forth in Rule 61(c)(1).

(h) Discipline imposed in another jurisdiction.

(i) Unprofessional conduct as defined in Rule 31(a)(2)(E).

HISTORY: Added June 9, 2003, effective December 1, 2003; amended by R-05-0021, effective January 1, 2008; amended by R-06-0035 September 16 and 29, 2008, effective January 1, 2009; amended and renumbered by R-09-0044 from Rule 53, effective January 1, 2011; amended by R-12-0010, effective January 1, 2013.

NOTES:

EDITOR'S NOTE.

"Notes to 2003 Amendments" were deleted effective January 1, 2013 by order R-12-0010 of the Arizona Supreme Court.

Formerly Rule 53, renumbered as Rule 54 by R-09-0044, effective January 1, 2011. A former Rule 54, Investigation; initiation of proceedings, was renumbered as Rule 55 by R-09-0044, effective January 1, 2011.

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Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

⚡Failure to Cooperate.

⚡Sanctions.

⚡FAILURE TO COOPERATE.

Attorney's suspension from the practice of law for six months was proper because she violated multiple professional rules. She also failed to cooperate with the initial bar investigation, filing multiple motions designed to delay the process. Regardless of the comprehensive nature of the attorney's ultimate response to the screening letter, it came too late to satisfy her obligation to "promptly" respond. In re Alexander, 232 Ariz. 1, 659 Ariz. Adv. Rep. 19, 300 P.3d 536, 2013 Ariz. LEXIS 127 (2013).

⚡SANCTIONS.

Attorney engaged in the unauthorized practice of law, in violation of Ariz. R. Prof. Conduct 5.5 and Ariz. Sup. Ct. R. 31, but her conduct was negligent, not knowing, and it caused little or no injury; the attorney's failure to respond to the Arizona Bar constituted a violation and persuaded the supreme court that an informal reprimand was appropriate. In re Van Dox, 214 Ariz. 300, 152 P.3d 1183, 2007 Ariz. LEXIS 20 (2007).

Supreme court dismissed suit by insurer against an attorney for intentional interference with contract, rejecting insurer's argument that suit was the only remedy against the attorney; the supreme court found that lawyers who engage in deceit face severe consequences. Safeway Ins. Co. v. Guerrero, 210 Ariz. 5, 446 Ariz. Adv. Rep. 51, 106 P.3d 1020, 2005 Ariz. LEXIS 19 (2005).

DECISIONS UNDER PRIOR LAW

Editor's note. The decisions cited below were decided under former rules 51, 57 and 58.

ANALYSIS

⚡In General.

⚡Purpose.

⚡Breach of Duty.

⚡Concealment of Documents.

⚡Convictions.

⚡Discipline Appropriate.

⚡Drug Addiction.

- ⚡ Failure to Cooperate.
- ⚡ Failure to Perform Services.
- ⚡ Foreign Discipline to be Reported.
- ⚡ Lack of Competence.
- ⚡ Multiple Violations.
- ⚡ Perjury.
- ⚡ Practice After Suspension.
- ⚡ Prior Discipline.
- ⚡ Reciprocal Discipline.
- ⚡ Relitigation.
- ⚡ "Serious Crime."

⚡ IN GENERAL.

Disciplinary action may be taken for any act or omission either related or unrelated to the practice of law. In re Gabriel, 172 Ariz. 347, 837 P.2d 149 (1992).

⚡ PURPOSE.

The purpose of professional discipline is to protect the public, the administration of justice, and the integrity of the legal system, not to punish the attorney. In re Wolfram, 174 Ariz. 49, 847 P.2d 94 (1993).

⚡ BREACH OF DUTY.

Suspension of an attorney is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. In re Wolfram, 174 Ariz. 49, 847 P.2d 94 (1993).

⚡ CONCEALMENT OF DOCUMENTS.

Attorney was censured where the attorney negligently misrepresented to an expert that portions of his file were non-discoverable and negligently advised the expert to remove documents from his file, thereby resulting in concealing documents from the opposing party. In re Hoyt, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 51 (Apr. 6, 2001).

⚡ CONVICTIONS.

For the purposes of disciplining an attorney for violations of § 13-702(G), undesignated offenses are not felonies for disciplinary purposes under this rule, unless and until a court designates them felonies; because the charge against the attorney rested solely on the

existence of felony convictions, and not underlying conduct, the complaint was dismissed. In re Beren, 178 Ariz. 400, 874 P.2d 320 (1994).

Under subdivision (a)(3), an attorney's guilt is conclusively established by conviction. In re Morris, 164 Ariz. 391, 793 P.2d 544 (1990).

The fact that an attorney's felony conviction was vacated pursuant § 13-907 does not affect the conclusiveness of guilt, because the order to vacate is unrelated to the merits of the conviction; therefore it does not affect attorney discipline for a violation of this rule. In re Rivkind, 164 Ariz. 154, 791 P.2d 1037 (1990).

⚡DISCIPLINE APPROPRIATE.

Suspension imposed upon attorney in California was appropriate in the state of Arizona; therefore, attorney was suspended from the practice of law for two years with reinstatement contingent upon demonstrating compliance with the terms of the California discipline. In re Sanders, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 15 (Jan. 18, 2001).

⚡DRUG ADDICTION.

As a result of addiction to cocaine and alcohol attorney was suspended from the practice of law for two years, dating back to the date he voluntarily withdrew from practice, and following suspension was placed on probation for two years, for violation of ER 1.3, 1.4, 8.1 and this rule. In re Nicolini, 168 Ariz. 448, 814 P.2d 1385 (1991).

⚡FAILURE TO COOPERATE.

Because an attorney either made false statements of material fact or created a misapprehension on the part of the state bar by failing to disclose pertinent information in connection with a grievance investigation, the attorney violated Ariz. Sup. Ct. R. 51(h), (i). In re Miranda, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 91 (June 10, 2002).

Remaining cognizant of a pending disciplinary proceeding by maintaining contact with one's attorney is required in order to cooperate. In re Brady, 186 Ariz. 370, 923 P.2d 836 (1996).

Respondent attorney violated ER 1.3 and 1.4 by failing to handle his client's case or communicate with her, and that he violated ER 8.1(b) and this rule by failing to respond to or cooperate with the state bar's investigation. In re Carrasco, 178 Ariz. 468, 875 P.2d 127 (1994).

Attorney, who violated many rules including this rule, by his failure to furnish information or respond promptly to any inquiry and by his evading service or failure to cooperate with the state bar's investigation, warranted a four year suspension of his license. In re Manning, 180 Ariz. 45, 881 P.2d 1150 (1994).

Attorney's excuse for failing to cooperate with state bar, that he had too many legal matters on hand to make prompt response to the state bar's inquiries, was unpersuasive; the finding of violation of paragraphs (h) and (i) was upheld. In re Wolfram, 174 Ariz. 49, 847 P.2d 94 (1993).

Attorney violated ER 8.1(b) and this rule when he failed to cooperate with the State Bar's investigations into the matters of clients. In re Brown, 175 Ariz. 134, 854 P.2d 768 (1993).

Respondent's almost two-year delay in compliance with a former clear and direct court order

violated ER 1.15 and this rule. In re Arrick, 161 Ariz. 16, 775 P.2d 1080 (1989).

A six-month suspension from the practice of law was proper where an attorney failed to follow a direct order of the court regarding disbursement of client's court award. In re Arrick, 161 Ariz. 16, 775 P.2d 1080 (1989).

Respondent who failed to comply with the conditions imposed by the supreme court's order readmitting him to the practice of law in Arizona was disbarred. In re Diettrich, 161 Ariz. 338, 778 P.2d 1234 (1989).

✦FAILURE TO PERFORM SERVICES.

Disbarment was appropriate for attorney whose actions included conversion of funds, failure to perform work for which he was retained and for which he accepted retainers, failure to pursue the clients' cases with diligence and competence, failure to maintain communication with clients, misrepresentation to clients concerning the status of their case, failure to return client files and property, practice of law after being placed on interim suspension, threatening adverse parties with physical violence, failure to remit money received on the clients' behalf, and allowing clients' cases to be dismissed or delayed. In re Woltman, 178 Ariz. 548, 875 P.2d 781 (1994).

Where attorney who had a prior history of misconduct failed to interview a witness for a past conviction relief hearing, failed to perform services for which he had accepted a retainer, failed to diligently handle an estate, and failed to properly respond to state bar inquiries, he was retroactively suspended from practice for a year, since he had voluntarily stopped practicing prior to disciplinary proceedings. In re Nelson, 174 Ariz. 589, 852 P.2d 404 (1993).

Attorney failed to perform matters entrusted to him in violation of ER 1.3, failed to adequately communicate with his clients in violation of 1.4, and failed to cooperate with the state bar in violation of ER 8.1(b) and this rule. In re Redondo, 176 Ariz. 334, 861 P.2d 619 (1993).

Disbarment was appropriate for a lawyer who knowingly failed to perform services for client and engaged in a pattern of neglect with respect to client matters, and caused serious or potentially serious injury to clients, where attorney was previously suspended for matters arising out of circumstances similar to the incidents in this matter. In re Feeley, 176 Ariz. 196, 859 P.2d 1329 (1993).

Attorney's suspension from the practice of law for a period of three months was properly ordered, where respondent undertook representation in a malpractice action, and failed to communicate with his client regarding the status of the case and where, respondent failed to take any action whatsoever regarding the case. In re Anderson, 163 Ariz. 362, 788 P.2d 95 (1990).

✦FOREIGN DISCIPLINE TO BE REPORTED.

Reciprocal suspension of 180 days was imposed on an attorney who had been disciplined in another state and failed to inform the disciplinary clerk within 30 days of that foreign action in accordance with Ariz. Sup. Ct. R. 58. In re Suspended Mbr. of the State Bar of Ariz., -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 9 (Jan. 14, 2002).

✦LACK OF COMPETENCE.

Suspension of an attorney is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential

injury to a client. In re Wolfram, 174 Ariz. 49, 847 P.2d 94 (1993).

Where attorney accepted representation, took initial action, then ignored the client until forced to address the matter again, the attorney's conduct exhibited lack of competence, lack of diligence, failure to adequately communicate with client, failure to safekeep a client's property, failure to properly terminate representation of a client, and failure to respond to inquiries from the state bar. In re Evans, 175 Ariz. 404, 857 P.2d 1258 (1993).

Commission's recommendation that attorney should be disbarred was approved where attorney's pattern of behavior created concern that neither his clients nor the general public would be protected if he was allowed to continue practicing law. In re Gaynes, 168 Ariz. 574, 816 P.2d 231 (1991).

✦ MULTIPLE VIOLATIONS.

Attorney, suffering from drug and alcohol problems, was suspended for two years for conflicts in violation of ER 1.7 and 1.9 and violation of ER 8.4(b), ER 8.4(d), and subsection (a) of this rule. In re Politi, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 21 (Feb. 16, 2001).

Attorney was censured, placed on probation for two years, and ordered to pay costs and restitution where the attorney failed to provide competent representation, failed to abide by his client's decisions concerning representation, failed to act with reasonable diligence, failed to keep the client informed as to the status of the case, failed to take reasonable steps to protect the client's interests upon termination, failed to make reasonable efforts to expedite litigation, and behaved in a manner prejudicial to the administration of justice. In re Loftus, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 50 (Apr. 6, 2001).

Where attorney admitted violating ER 5.5, ER 8.4(d), and subsection (e) of this section on two occasions, the attorney received a public censure, followed by a term of probation, and was assessed the costs of the disciplinary proceeding. In re Kistler, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 137 (Dec. 28, 2000).

Attorney was given a six month and one day suspension, and ordered to pay the costs of disciplinary proceedings for knowingly failing to comply with the rules of the tribunal, failing to carry out court ordered duties as an arbitrator, knowingly failing to appear as ordered at a hearing, and failing to comply with requests for information from the State Bar. In re Merchant, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 87 (August 25, 2000).

Where attorney was suspended from the practice of law yet continued to practice law during the suspension period, falsely stated that he did not engage in the practice of law during the suspension, and failed to cooperate with the State Bar investigation, the attorney's conduct violated ER 5.5, ER 8.1, ER 8.4 of the Arizona Rules of Professional Conduct, and subsections (e), (h), (i), and (k) of this Rule. In re Royston, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 50 (May 31, 2000).

Where attorney retained for divorce proceeding failed to return client's telephone calls and failed to transfer the file to subsequent counsel, which caused the client to incur additional attorney's fees and costs and attorney later failed to respond and cooperate with the state bar in the investigation of said matters, he was suspended for violations of ER 1.4, ER 1.16(d), ER 8.1(b), ER 8.4(d) of the Arizona Rules of Professional Conduct, and subsections (h) and (i) of this rule. In re Sill, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 32 (Apr. 26, 2000).

Respondent violated subsections (e), (h) and (i) by willfully disobeying a court order, failing to furnish information to the State Bar, evading service, and refusing to cooperate with the State Bar. In re Brady, 186 Ariz. 370, 923 P.2d 836 (1996).

By virtue of his conviction of perjury, attorney violated ER 3.3(a)(1) by making a false statement of material fact to a tribunal; violated ER 8.4(b) by committing a criminal act that reflects adversely on his honesty, trustworthiness, and/or fitness as a lawyer; violated ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and violated ER 8.4(d) by engaging in conduct prejudicial to the administration of justice. Additionally, his conviction of a felony violated subsection (a) of this rule. In re Savoy, 181 Ariz. 368, 891 P.2d 236 (1995).

Attorney who abandoned his law practice without informing the client that he was discontinuing representation, left the state without informing the client of his whereabouts, and failed to respond, in violation of ER 1.1, ER 1.2, ER 1.3, ER 1.4, ER 1.15, ER 1.16(d), ER 8.1, and subsections (h) and (i) of this rule, exhibited a pattern of misconduct and bad faith obstruction of the disciplinary proceeding warranting disbarment. In re Peartree, 180 Ariz. 518, 885 P.2d 1083 (1994).

Actions warranted six month suspension of practice, enrollment in law office management assistance program, and restitution to client, where attorney failed to provide competent representation in violation of ER 1.1; failed to act with reasonable diligence and promptness in his representation of clients in violation of ER 1.3; failed to adequately communicate with clients in violation of ER 1.4; attempted to limit his liability to a client by conditioning the \$3,000 payment on her signing a release letter, without advising her to seek independent counsel, in violation of ER 1.8(h); violated ER 8.1(b) and subsections (h) and (i) of this rule in failing to cooperate with state bar's investigations; and led client to believe that her case was being actively pursued when, in fact, it had been dismissed, in violation of ER 8.4(c), which prohibits conduct involving dishonesty or misrepresentation. In re Carrasco, 176 Ariz. 459, 862 P.2d 219 (1993).

Disbarment was the proper sanction, where respondent engaged in numerous acts of misconduct that centered on his lack of diligence in handling several clients' matters, to the injury of those clients. In re MacAskill, 163 Ariz. 354, 788 P.2d 87 (1990).

✦PERJURY.

Attorney's felony conviction for perjury was conclusive evidence of his guilt for the purposes of discipline proceeding warranting disbarment. In re Savoy, 181 Ariz. 368, 891 P.2d 236 (1995).

✦PRACTICE AFTER SUSPENSION.

While in a suspended status for non-payment of bar dues and noncompliance with mandatory continuing legal education requirements, attorney filed pleadings, appeared in court, communicated with opposing counsel and then failed to respond to the state bar's inquiry and cooperate in the investigation of this matter; thus, attorney was censured, placed on probation for twelve months, and ordered to pay costs of these disciplinary proceedings. In re Stanley, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 16 (Jan. 18, 2001).

The court ordered retroactive suspension of attorney's law license and costs where attorney filed a Notice of Appearance and substantive pleadings in an attempt to assist a childhood friend with a domestic relations matter, pro bono, while under suspension for nonpayment of dues. In re Prince, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 10 (Feb. 17, 2000).

✦PRIOR DISCIPLINE.

Attorney's prior disciplinary offenses, a pattern of misconduct relating to his failure to cooperate

with the state bar, his lack of remorse, and his substantial experience in the practice of law were aggravating circumstances in determining the appropriate discipline. In re Wolfram, 174 Ariz. 49, 847 P.2d 94 (1993).

↕ RECIPROCAL DISCIPLINE.

Attorney censured where he personally served a copy of his complaint alleging judicial misconduct on Nevada judge. Conduct was forbidden by the rules and potentially disruptive, given that the attorney was handling the case over which the judge was presiding. In re Stuhff, 177 Ariz. 547, 869 P.2d 1200 (1994).

Where attorney repeatedly ignored both the laws of California and the terms of his multiple probations resulting from his previous criminal conduct, two-year suspension and probation were appropriate sanctions, which was the identical discipline imposed by the Supreme Court of California. In re Dwyer, 176 Ariz. 492, 862 P.2d 865 (1993).

Where lawyer was disciplined by the Supreme Court of New Jersey for aiding the unauthorized practiced of law and dividing legal fees with a nonlawyer, and where the Supreme Court of New Jersey imposed the sanction of a public reprimand, the equivalent of a censure, imposition of a public censure was warranted. In re Gottesman, 172 Ariz. 121, 834 P.2d 1266 (1992).

↕ RELITIGATION.

This rule does not permit relitigation of the merits of the criminal case. In re Morris, 164 Ariz. 391, 793 P.2d 544 (1990).

Multiple charges of misconduct should receive one sanction that is consistent with the sanction appropriate for the most serious instance of misconduct. In re Summers, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 7 (Feb. 15, 2000).

Where state bar investigation showed attorney failed, inter alia, to keep individual client ledger cards or duplicate deposit slips and failed to keep personal funds separate from client funds, he was suspended for thirty days with probation. In re Buffenstein, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 29 (Feb. 26, 2002).

↕ "SERIOUS CRIME."

The disciplined attorney's crimes were not "serious crimes" because they did not involve interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft or moral turpitude. In re Beren, 178 Ariz. 400, 874 P.2d 320 (1994).

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DECLARATION OF SERVICE

by
U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 14-O-06098, 14-J-05962

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 S. Figueroa Street, Los Angeles, California 90017-2515, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

- (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)
(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9414 7266 9904 2010 0717 92 at Los Angeles, addressed to: (see below)
(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to:
Row 1: Donald Edward Fergus, Jr., 441 Enclave Cir # 301 Costa Mesa, CA 92626, Electronic Address

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS').

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: May 29, 2015

SIGNED: [Signature] LAURA JETT Declarant