

By: _____
FILED
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Board of Disciplinary Appeals
appointed by the
Supreme Court of Texas

**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

**IN THE MATTER OF §
ALAN EDWARD GOODING §
STATE BAR CARD NO. 24028488 §**

CAUSE NO. 53370

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Alan Edward Gooding, (hereinafter called "Respondent"), showing as follows:

1. Pursuant to Rules 190.1 and 190.3, Texas Rules of Civil Procedure (TRCP), Petitioner intends discovery in this case to be conducted under the Level II Discovery Control Plan.
2. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.
3. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at 3573 E. Sunrise Dr., Ste. 133, Tucson, Arizona 85718.
4. On or about July 31, 2012, a Complaint (Exhibit 1) was filed before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a*

Suspended Member of the State Bar of Arizona, Alan E. Gooding, Bar No. 023060, Respondent, PDJ-2012-9070, [State Bar File Nos. 11-0421,11-0976, 11-2125, 11-2369, 11-2412, 11-2526, 11-2686, 11-2763, 11-2960, 11-3628, 11-3909].

5. On or about August 29, 2012, a Notice of Default (Exhibit 2) was filed before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Suspended Member of the State Bar of Arizona, Alan E. Gooding, Bar No. 023060*, Respondent, PDJ-2012-9070, [Nos. 11-0421,11-0976, 11-2125, 11-2369, 11-2412, 11-2526, 11-2686, 11-2763, 11-2960, 11-3628, 11-3909].

6. On or about September 11, 2012, an Entry of Default and Notice of Aggravation/Mitigation Hearing (Exhibit 3) was filed before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Suspended Member of the State Bar of Arizona, Alan E. Gooding, Bar No. 023060*, Respondent, PDJ-2012-9070, [State Bar File Nos. 11-0421,11-0976, 11-2125, 11-2369, 11-2412, 11-2526, 11-2686, 11-2763, 11-2960, 11-3628, 11-3909].

7. On or about October 29, 2012, a Report and Order Imposing Sanctions (Exhibit 4) was filed before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Suspended Member of the State Bar of Arizona, Alan E. Gooding, Bar No. 023060*, Respondent, PDJ-2012-9070, [State Bar File Nos. 11-0421,11-0976, 11-2125, 11-2369, 11-2412, 11-2526, 11-2686, 11-2763, 11-2960, 11-3628, 11-3909]. The Report and Order Imposing Sanctions states Mr. Gooding violated the following Arizona Rules of Professional Conduct: Rule 1.2(a); Rule 1.3 (three counts); Rule 1.4(a)(1) (three counts); Rule 1.4(a)(3); Rule 1.4(a)(4) (two counts); Rule 1.8(a); Rule 1.15(a); Rule 3.2 (two counts); Rule 5.5(a); Rule 8.1(b) (eight counts); Rule 8.4(c); and Rule 8.4(d) (three counts).

8. On or about November 14, 2012, a Final Judgment and Order (Exhibit 5) was filed before the Presiding Disciplinary Judge of the Supreme Court of Arizona in a matter styled, *In the Matter of a Suspended Member of the State Bar of Arizona, Alan E. Gooding, Bar No. 023060*, Respondent, PDJ-2012-9070, [File Nos. 11-0421, 11-0976, 11-2125, 11-2369, 11-2412, 11-2526, 11-2686, 11-2763, 11-2960, 11-3628, 11-3909], that that states in pertinent part as follows:

.... IT IS HEREBY ORDERED that Respondent, Alan E. Gooding, is hereby suspended from the practice of law for three (3) years effective immediately, for his conduct in violation of the Arizona Rules of Professional Conduct.

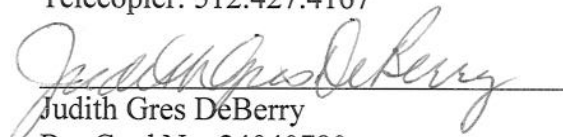
Certified copies of the Complaint, Notice of Default, Entry of Default and Notice of Aggravation/Mitigation Hearing, Report and Order Imposing Sanctions, and Final Judgment and Order are attached hereto as Petitioner's Exhibits 1, 2 3, 4 and 5, and made a part hereof for all intents and purposes as if the same were copied verbatim herein.

9. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme of Arizona and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Judith Gres DeBerry", written over a horizontal line.

Judith Gres DeBerry
Bar Card No. 24040780
ATTORNEYS FOR PETITIONER

**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

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**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chairperson.
- (c) “Classification” is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE (“TRDP”) 2.10 by the Chief Disciplinary Counsel (“CDC”) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “Clerk” is the executive director or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “Executive Director” is the executive director of BODA.
- (f) “Panel” is any three-member grouping of BODA.
- (g) “Party” is a complainant, respondent, or the CDC.

Rule 1.02 General Powers

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE (“TRCP”), TEXAS RULES OF APPELLATE PROCEDURE (“TRAP”), and TEXAS RULES OF EVIDENCE (“TRE”) apply to all disciplinary matters before BODA, except appeals from classification decisions, which are governed by Section 3 of these Internal Rules.

Rule 1.04 Appointment of Panels

- (a) BODA may consider any matter or motion through appointment of a panel, except as specified in subpart (b) of this Rule. The chair may delegate appointment of panels for any BODA action to the executive director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing

contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as respondent shall be considered by BODA sitting *en banc*.

Rule 1.05 Record Retention

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

Rule 1.06 Trial Briefs

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

Rule 1.07 Service

In any disciplinary proceeding before BODA initiated by service of a petition upon the respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to respondent as addressee only, or in any other manner permitted by applicable rule(s) and authorized by BODA that is reasonably calculated under all the circumstances to apprise the respondent of the proceeding and to give him or her reasonable time to appear and answer. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the respondent's signature.

Rule 1.08 Publication

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and notify each respondent in a compulsory discipline, reciprocal discipline, revocation of probation, or disability matter filed with BODA where these rules are available.

Rule 1.09 Photocopying Costs

The clerk of BODA may charge to the requestor a reasonable amount for the reproduction of non-confidential documents filed with BODA. BODA may set a fee for the reproduction of documents. The fee shall include compensation for staff and recovery of actual production costs.

Rule 1.10 Abstracts

BODA may, in its sole discretion, periodically prepare abstracts of inquiries, grievances, or disciplinary proceedings for publication pursuant to Texas Gov't Code § 81.072(b)(3) and Part VI of the TRDP.

Rule 1.11 Hearing Setting and Notice

(a) **Original Petitions.** For any compulsory case, reciprocal case, revocation of probation, or other matter initiated by the CDC filing a petition with BODA, the CDC may contact the BODA clerk for the next regular available hearing date before filing the original petition. The CDC may then include in the petition a hearing notice specifying the date, time, and place of the hearing. The hearing date must be at least thirty (30) days from the date that the petition is served on the respondent, except in the case of a petition to revoke probation.

(b) **Filing without notice.** The CDC may file any matter with BODA without first obtaining a hearing date so long as it thereafter serves notice on the respondent of the date, time, and place of the hearing in accordance with TRCP 21a (or other applicable TRCP) at least thirty (30) days before the hearing date, except in the case of a petition to revoke probation.

(c) **Expedited settings.** If a party desires a hearing on a matter on a date other than the next regular available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. The expedited hearing setting must be at least thirty (30) days from the date of service of the petition, motion or other pleading, except in the case of a petition to revoke probation. BODA may grant or deny a request for an expedited hearing date in its sole discretion.

(d) **Setting notices.** BODA shall notify the parties by first class mail of any hearing date, other than a hearing set on the next regularly available hearing date as noticed in an original petition or motion.

(e) **Announcement docket.** Attorneys and parties appearing before BODA shall check in with the BODA clerk in the courtroom immediately prior to the time docket call is scheduled to begin. The chair will call an announcement docket immediately following the call to order of BODA hearings. Attorneys for each party with a matter on the docket shall appear at that time to give their announcement of readiness, a time estimate for the hearing, and any preliminary motions or matters. The chair will set and announce the order of cases to be heard following the docket announcements.

Rule 1.12 Time to Answer

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.13 Facsimile and Electronic Filing

(a) Any document required to be filed with BODA may be filed by facsimile transmission with a copy to the BODA clerk by first class mail. A document filed by facsimile will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by facsimile after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day.

(b) Any document required to be filed with BODA may be filed by emailing a copy of the document file to the email address designated by BODA for that purpose with a copy sent to the BODA clerk by first class mail. A document filed by email will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by email after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day. The date and time of receipt shall be determined by the date and time shown on the BODA clerk's email.

(c) It is the responsibility of the party filing a document by facsimile or email to obtain the correct telephone number or email address for BODA and confirm that the document was received by BODA in legible form. Any document which is illegible or which cannot be opened as part of an email attachment by BODA will not be considered received or filed. Parties using facsimile or email filing must still comply with TRCP requirements for signatures.

(d) Papers will not be deemed filed if sent to any individual BODA member or other office or address.

Rule 1.14 Hearing Exhibits

Counsel should provide an original and twelve copies of any document, pleading, exhibit, or other material which the attorney intends to offer or otherwise make available to the BODA members at a hearing and not already filed with BODA prior to the hearing.

Rule 1.15 BODA Work Product and Drafts

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.

Rule 1.16 BODA Opinions

(a) BODA may render judgment with or without written opinion in any disciplinary matter. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and shall be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this Rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this Rule and may be issued without a written opinion.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters And Legal Malpractice Cases

(a) No current member of BODA shall represent a party with respect to any disciplinary action or proceeding. No current member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a party in any disciplinary action or proceeding.

(b) No current BODA member may serve as an expert witness providing opinions regarding the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

(a) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose matters discussed in conference concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any disciplinary proceeding, including depositions, a member of BODA shall promptly notify the chair of BODA and the CDC.

Rule 2.03 Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal respectively as provided in TRCP 18b.

(b) BODA members may, in addition to recusals pursuant to (a) above, voluntarily recuse themselves from any discussion and voting for any other reason.

(c) Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party in any disciplinary proceeding or before BODA.

Rule 2.04 Communications with BODA

Correspondence or other communications relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Appeal

(a) If the grievance filed by the complainant is not classified as a complaint, the CDC shall notify the complainant of his or her rights to appeal as set out in TRDP 2.10 or other applicable rule.

(b) To facilitate the potential filing of an appeal, the CDC shall send the complainant an Appeal Notice form with the classification disposition which shall include, but is not limited to, the docket number of the matter, the time deadline for appealing as set out in TRDP 2.10 or other applicable provision, and information for mailing or faxing the Appeal Notice to BODA.

Rule 3.02 Complaint on Appeal

BODA shall review only the original grievance on appeals from classification decisions. The CDC shall forward a copy of the complete grievance to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental information which was not reviewed as part of the original screening and classification decision.

Rule 3.03 Notice of Disposition

BODA shall mail complainant, respondent, and the CDC written notice of the decision of the appeal by first class mail to the addresses provided BODA by the CDC in the appeal transmittal.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Signing, Filing, and Service

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, email address, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Number of Copies.** Each party shall file an original and two (2) copies of all briefs and motions with the clerk. Only one copy of the clerk's record and reporter's record shall be filed.

(c) **Service.** Copies of all papers other than the record filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 4.02 Computation of Time

(a) **Beginnings of Periods.** The date the chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.21.

(b) **TRAP Followed.** Computation of time for purposes of this section shall follow TRAP 4.1 and 9.2(b).

Rule 4.03 Record on Appeal

(a) **Contents.** The record on appeal shall consist of a clerk's record and where necessary to the appeal, a reporter's record.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and reporter's record to be included in the record on appeal by written stipulation filed with the custodian of records of the evidentiary panel.

(c) **Responsibility for Filing Record.** The custodian of records of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record if a notice of appeal has been filed. The court reporter is responsible for timely filing the reporter's record if a notice of appeal has been filed, the appellant has requested that the reporter's record be prepared, and the party responsible for initiating the appeal has paid the reporter's fee or has made satisfactory arrangements with the reporter. The party initiating the appeal shall pay the cost of preparing the record.

(d) **Clerk's Record.**

- (1) Unless otherwise stipulated by the parties, the clerk's record on appeal shall include all papers on file with the evidentiary panel, including, but not limited to, the election letter, all pleadings upon which the hearing was held, the docket sheet, the evidentiary panel's charge, the final hearing order with attachments or exhibits, any findings of fact and conclusions of law, all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.
- (2) Upon receipt of a copy of the notice of appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the clerk's record to BODA. If the CDC is unable for any reason to prepare and transmit the clerk's record by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the clerk's record can be filed.
- (3) The clerk's record should be in the following form:
 - (i) contain a detailed index identifying each document included in the record, the date of filing, and the page where it first appears;

- (ii) arranged in ascending chronological order by document by date of filing or occurrence;
- (iii) tabbed with heavy index tabs to show the beginning of each document;
- (iv) consecutively numbered in the bottom right-hand corner of the pages;
- (v) bound together so that the record will lie flat when opened; and
- (vi) contain the custodian's certification that the documents contained in the clerk's record are true and correct copies and are all the documents required to be filed.

(e) **Reporter's Record.** The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter for the reporter's record, designating the portion of the evidence and other proceedings to be included. A copy of such request shall be filed with the evidentiary panel and BODA and be served on the appellee. The reporter's record shall be certified by the official court reporter.

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. In appeals to BODA, the non-stenographic recording must be transcribed and the transcription filed as the reporter's record.

(g) **Other Requests.** At any time before the clerk's record is prepared or within ten (10) days after service of a copy of appellant's request for the reporter's record, any party may request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the reporter's record shall be submitted by BODA to the evidentiary panel for resolution and to conform the reporter's record.

Rule 4.04 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to apply presumptions against the appellant.

(b) **If No Record Filed.**

- (1) If the clerk's record or reporter's record has not been timely filed, the BODA clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and the evidentiary panel.
- (2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:
 - (i) the appellant failed to request a reporter's record; or
 - (ii)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and
 - (b) the appellant is not entitled to proceed without payment of costs.

(c) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record BODA may, upon written motion of a party or upon its own motion, direct a supplemental record to be certified and transmitted by the CDC or the official court reporter.

Rule 4.05 Copies of the Record

The record shall not be withdrawn from the custody of the BODA clerk. Any party may obtain a copy of the record or any designated part thereof by making written request to the clerk and paying copying charges.

Rule 4.06 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within thirty (30) days after the later of the date on which the clerk's record or the reporter's record was timely filed.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within thirty (30) days after the filing of appellant's brief.

(c) **Contents.** Briefs shall contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are

cited. The subject matter of each point or group of points shall be indicated in the table of contents;

- (3) a brief general statement of the nature of the cause or offense and the result;
- (4) a statement of the points upon which an appeal is predicated or the issues presented for review;
- (5) a brief of the argument;
- (6) prayer for relief; and,
- (7) an appendix consisting of copies of pertinent parts of the record upon which the party relies.

(d) **Length of Briefs.** Briefs shall be typewritten or otherwise legibly printed on letter-size (8½" x 11") paper and shall not exceed fifty (50) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda or appendix containing statutes, rules, regulations, etc., except upon leave of BODA.

(e) **Amendment or Supplementation.** Briefs may be amended or supplemented upon leave of BODA.

(f) **Failure to File a Brief.** If the appellant fails to timely file a brief, BODA may:

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief; or
- (2) decline to dismiss the appeal and give further direction to the case as it considers proper.

Rule 4.07 Oral Argument

(a) **Request.** A party desiring oral argument before BODA shall request same in writing and include the request in the notice of appeal or on the front cover of that party's first brief. BODA may grant or deny the request in its sole discretion. If oral argument is granted, the clerk shall notify the parties of the time and place for submission. BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case. The parties may agree to submit the case without argument after requesting same.

(b) **Time Allowed.** Each party shall have twenty (20) minutes in which to argue. BODA may, upon request of a party or in its discretion, extend or shorten the time allowed for oral argument.

Rule 4.08 Motions Generally

An application for an order or other relief shall be made by filing a motion with the BODA clerk for same supported by sufficient cause with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other papers shall be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. BODA may determine a motion before a response is filed.

Rule 4.09 Motions for Extension of Time

(a) **When due.** Any request for extension of time other than to file a brief must be filed with the BODA clerk no later than fifteen (15) days after the last day allowed for filing the item in question.

(b) **Contents.** All motions for extension of time shall be in writing, comply with BODA Internal Procedural Rule 4.08, and specify the following:

- (1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (2) if the appeal has been perfected, the date when the appeal was perfected;
- (3) the original deadline for filing the item in question;
- (4) the length of time requested for the extension;
- (5) the number of extensions of time which have been granted previously regarding the item in question; and,
- (6) the facts relied upon to reasonably explain the need for an extension.

(c) **For Filing Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied upon to reasonably explain the need for an extension must be supported by an affidavit of the court reporter, which shall include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

Rule 4.10 Decision and Judgment

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

- (1) the panel that entered the finding(s); or,

- (2) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(c) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

Rule 4.11 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, the CDC shall contact the BODA clerk to confirm whether the next regular available hearing date will comply with the thirty-day requirement of TRDP. The chair may designate a three-member panel to hear the motion, if necessary, to meet the thirty-day requirement of TRDP 2.23.

(b) Upon filing of the motion, the CDC shall serve the respondent in accordance with TRDP 2.23 with the motion and supporting documents, if any, in accordance with the TRCP and these rules. The CDC shall notify BODA of the date service is obtained on the respondent.

Rule 5.02 Hearing

Within thirty (30) days of service of the motion on the respondent, BODA shall docket and set the matter for a hearing and notify the parties of the time and place for the hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE MATTERS

Rule 6.01 Initiation of Proceeding

Pursuant to TRDP 8.03, the CDC shall file a petition for compulsory discipline with BODA and serve the respondent in accordance with the TRDP and Rule 1.07 above.

Rule 6.02 Notice of Decision

The BODA clerk shall mail a copy of the judgment to the parties within ten (10) days from the date the decision is signed by the chair. Transmittal of the judgment shall include all information required by the TRDP and the Supreme Court.

SECTION 7: RECIPROCAL DISCIPLINE MATTERS

Rule 7.01 Initiation of Proceeding

(a) Pursuant to TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction.

(b) The petition shall request that the respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction including a copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

Rule 7.02 Order to Show Cause

Upon the filing of the petition with BODA, the chair shall immediately issue a show cause order including a hearing setting notice and forward it to the CDC, who shall serve the order on the respondent. The CDC shall notify BODA of the date service is obtained.

Rule 7.03 Attorney's Response

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer but thereafter appears at the hearing, BODA may, at the discretion of the chair, receive testimony from the respondent relating to the merits of the petition for reciprocal discipline.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds pursuant to TRDP 2.17P(2) or the CDC believes pursuant to TRDP 2.14C that a respondent is suffering from a disability, the rules in this section shall apply to the District Disability Committee *de novo* proceeding held pursuant to TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's report that an attorney is believed to be suffering from a disability, the BODA chair shall appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. The BODA clerk shall notify the CDC and respondent that a committee has been appointed and notify the respondent where the procedural rules governing disability proceedings are available.

(c) A respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing in writing and enter into an agreed judgment of indefinite disability suspension or probated suspension, provided that the respondent is competent to so waive the hearing. If the respondent is not represented, the waiver shall include a statement by the respondent that he has been advised of his right to have counsel appointed for him and that he waives that right.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee shall be filed with the BODA clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA chair may appoint a substitute member.

Rule 8.02 Hearing Order

(a) Upon being notified that the District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the BODA clerk and then serve upon the respondent either in person or by certified mail, return receipt requested with delivery restricted to the respondent as addressee with a copy by first class mail, a proposed hearing order containing a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. If service is by certified mail, the return receipt with the respondent's signature must be filed with the BODA clerk.

(b) The respondent shall, within twenty (20) days after receiving the CDC's proposed hearing order, file with the BODA clerk and serve the CDC by certified mail a proposed hearing order including a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.

(c) The District Disability Committee chair may adopt either the CDC's proposed hearing order, the respondent's proposed hearing order, or an order of his or her own. The BODA clerk shall prepare the final hearing order at the instruction of the District Disability Committee chair and send to the parties by first class mail. The BODA clerk shall set the final hearing date at the instruction of the chair. The adopted order shall be the final hearing order and shall contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the respondent.

(d) Requests for an extension of time to file the proposed hearing order by either party must be by written motion filed with the BODA clerk.

Rule 8.03 Provisions for Physical or Mental Examinations

(a) Upon motion by the CDC or upon its own motion, the District Disability Committee may order the respondent to submit to a physical and/or mental examination by a qualified health care or mental health care professional. The respondent shall be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination. Any objections(s) to the motion for an exam and request for a hearing shall be filed with the BODA clerk within fifteen (15) days of receipt of the motion.

(b) The examining professional shall file with the BODA clerk his detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, and deliver a copy to the CDC and to the respondent.

(c) Nothing contained herein shall be construed to limit the respondent's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 8.04 Ability to Compel Attendance

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

(a) The notice to the respondent that a District Disability Committee has been appointed and the notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

(b) If the respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be filed with the BODA clerk within sixty (60) days of the date respondent receives the CDC's proposed hearing order. Any request for appointment of counsel after sixty (60) days from the date of receipt of the proposed hearing order must show good cause for the failure to do so timely and that the request is not sought for delay only.

Rule 8.06 Limited Discovery

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the BODA clerk a verified written request for discovery showing good cause and substantial need with the proposed hearing order.

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the final hearing order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may not be based upon the granting or denial of a discovery request without a showing of material unfairness or substantial harm.

Rule 8.07 Hearing

(a) The party seeking to establish the disability must prove by a preponderance of the evidence that the respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

(b) Such proceedings shall begin and conclude no earlier than thirty (30) days from the date the respondent receives the CDC's proposed hearing order nor later than ninety (90) days from that date; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act. Nothing herein shall be construed to limit the parties' right to request a continuance of the hearing for good cause.

(c) If the Committee is unable for any reason to hold a hearing within ninety (90) days of the date the respondent receives the proposed hearing order, BODA may appoint a new committee to handle the case.

Rule 8.08 Notice of Decision

The District Disability Committee shall certify its finding and any recommendations to BODA which shall issue the final judgment in the matter.

Rule 8.09 Confidentiality

All proceedings before the District Disability Committee are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.

(b) The petition shall set forth the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition shall affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may seal all or any part of the record of the proceeding.

Rule 9.02 Discovery

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

Rule 9.03 Physical or Mental Examinations

(a) BODA may order the petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC or its own motion. The petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The petitioner shall be given reasonable notice of the examination by written order specifying the name, address and telephone number of the person conducting the examination.

(c) The examining professional shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing contained herein shall be construed to limit the petitioner's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include such other orders as protecting the public and the petitioner's potential clients may require.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT

Rule 10.01 Docketing by the Clerk

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations on compulsory discipline, reciprocal discipline, revocations of probation, and disability suspensions will be docketed by the clerk of the Supreme Court in the same manner as petitions for review.

(b) No fee shall be charged by the clerk for filing any appeal from BODA decisions.

(c) The notice of appeal must be filed directly with the clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within thirty (30) days thereafter.

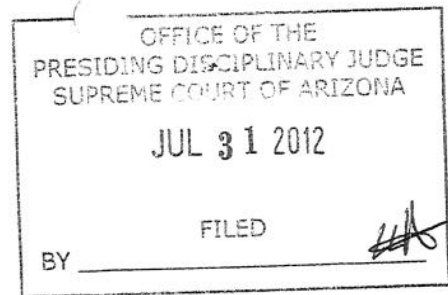
(d) The BODA clerk shall include the information contained in subpart (c) above with transmittal of each final determination to the parties.

Rule 10.02 Appellate Rules to Apply

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, revocations of probation, and disability suspension cases will be announced on the Court's orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.

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

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

**ALAN E. GOODING,
Bar No. 023060,**

Respondent.

PDJ- 2012- 9070

[State Bar File Nos. 11-0421, 11-0976,
11-2125, 11-2369, 11-2412, 11-2526,
11-2686, 11-2763, 11-2960, 11-3628,
11-3909]

COMPLAINT

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was licensed to practice law in Arizona, having been admitted on September 17, 2004.
2. On April 14, 2011, Respondent and the State Bar entered into an Agreement for Discipline by Consent [PDJ-2011-9001], for a six-month and one-day suspension.
3. On April 22, 2011, the Presiding Disciplinary Judge ("PDJ") entered an order suspending Respondent as of May 22, 2011.



COUNT ONE
(File No. 11-0421/Valenzuela)

Rock Roofing, L.L.C. v. Dorn Homes, Inc., et al., Pima County Superior Court file no. C20099068

4. In 2006, Ms. Valenzuela hired Respondent to represent her business, Rock Roofing LLC, in a litigation matter against Dorn Homes.

5. Ms. Valenzuela's company installed a new \$10,600.00 roof on Respondent's home in lieu of a cash payment for Respondent's legal representation of her business in the litigation matter against Dorn Homes.

6. Respondent indicated to Ms. Valenzuela that he was going to prepare a lawsuit, but he failed to do so for several years.

7. On March 16, 2009, Respondent filed suit against Dorn Homes.

8. On March 27, 2009, Respondent served the complaint on the defendant.

9. On April 16, 2009, the defendant filed an answer and a counterclaim.

10. On December 11, 2009, the court placed the matter on the inactive calendar.

11. On March 16, 2010, the court dismissed the matter for lack of prosecution.

12. In the fall of 2010, Ms. Valenzuela hired another attorney, Corey Larson. Mr. Larson informed Ms. Valenzuela that the Dorn Homes lawsuit was dismissed for lack of prosecution.

13. In September 2010, Mr. Larson began trying to obtain Ms. Valenzuela's client file from Respondent. He telephoned, and emailed him

numerous times, until Respondent eventually provided the file to him over a year later on October 22, 2011.

14. Mr. Larson reviewed the file and determined that Respondent's involvement in the case was limited to filing the complaint. In Mr. Larson's opinion, the value of the legal services Respondent provided is \$1,000.00 to \$2,000.00 and Respondent should provide a "refund" based on the value of the roof installed by Ms. Valenzuela company.

Rock Roofing LLC/Smith Construction

15. In October 2005, Ms. Valenzuela also hired Respondent to represent Rock Roofing against Smith Construction. Ms. Valenzuela believed that a lawsuit was filed by her through Respondent on the company's behalf. Ms. Valenzuela later learned that no such lawsuit was ever filed.

16. Mr. Larson also took over this representation. Ms. Valenzuela did not have the original documents and Respondent did not respond to Mr. Larson's requests to provide the original documentation. This hampered Mr. Larson's efforts on behalf of Ms. Valenzuela's company.

17. Upon information and belief Respondent still has the original case documents.

18. Mr. Larson negotiated a settlement in the matter.

Screening Investigation

19. Ms. Valenzuela submitted a bar charge regarding Respondent's conduct and the State Bar began an investigation.

20. Respondent was asked to provide a response to the bar charge in letters dated March 18, April 18, and May 5, 2011.

21. Respondent failed to provide a written response.
22. Bar counsel asked a State Bar staff investigator ("the staff investigator") to contact Respondent, who was interviewed on September 1, and September 8, 2011.
23. Respondent stated to the staff investigator that he did not provide the requested written response because he was gathering information to respond.
24. Respondent never provided a written response to the State Bar.
25. Respondent violated ER 1.2(a) when he failed to abide by the Ms. Valenzuela's decisions to initiate a lawsuit in the Smith Construction matter and when he failed to pursue the Dorn Homes matter.
26. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.3, when he failed to diligently pursue the Smith Construction and Dorn Homes matters.
27. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.4(a)(3), when he failed to inform Ms. Valenzuela about the dismissal of the Dorn Homes matter.
28. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.8(a), when he accepted a new roof instead of cash as payment for his legal fees and failed to put the transaction to writing.
29. Respondent violated ER 1.15(d), when he failed to promptly provide a copy of the Dorn Homes file to subsequent counsel and when he failed to provide any original copies of documents to subsequent counsel in the Smith Construction matter.
30. Respondent violated ER 3.2, when he failed to take reasonable efforts to expedite the Dorn Homes matter.

31. Respondent violated ER 8.1(b), when he knowingly failed to respond to the State Bar's requests for a written response.

32. Respondent violated ER 8.4(d), when he engaged in conduct that was prejudicial to the administration of justice by failing to prosecute the Dorn Homes matter, causing it to be dismissed rather than litigated on its merits.

33. Respondent violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to furnish the requested written response to the bar charge.

34. Respondent's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4(a)(3), 1.8(a), 1.15(d), 3.2, 8.1(b), 8.4(d) and Rule 54(d)(2), Ariz.R.Sup.Ct.

COUNT TWO
(File No. 11-0976/Hunnicut)

35. In November 2009, John and Loretta Hunnicutt ("the Hunnicutts") retained Respondent to represent them in a breach of contract matter in which the Hunnicutts' loaned money to a company called Oncaldera.

36. On November 20, 2009, Respondent filed suit against Mashih Madani ("Mr. Madani"), his company Oncaldera, and various other defendants, *Loretta G. Hunnicutt v. Mashih Madani, et al.*, Pima County Superior Court file no. C20099068 ("Oncaldera matter"). All defendants were served.

37. On January 7, 2010, counsel for Oncaldera filed an answer.

38. Also on January 7, 2010, counsel for the remaining defendants filed a motion to dismiss for failure to state a claim.

39. On January 15, 2010, Respondent emailed the Hunnicutts informing them about Oncaldera's answer and the motion to dismiss. Respondent told them

he would subpoena financial records in an effort to amend the complaint and overcome the motion to dismiss.

40. Respondent failed to subpoena the financial records or amend the complaint.

41. The response to the motion to dismiss was due on or about January 26, 2010. On February 12, 2010, the court granted the motion to dismiss, noting there was no response from Respondent.

42. On February 12, 2010, at 4:35 p.m., Respondent filed a response to the motion to dismiss.

43. Counsel for the dismissed defendants filed a motion seeking attorney's fees. Respondent did not file a response objecting to the motion.

44. On March 29, 2010, the court granted the motion and awarded the dismissed defendants \$1,980.00 in attorney fees. Respondent paid the amount himself, but he told the Hunnicutts he would try to get the award set aside.

45. On April 27, 2010, the Hunnicutts emailed Respondent asking for a copy of the motion for summary judgment Respondent promised to file in March. The Hunnicutts also asked about when they could meet. Respondent did not respond.

46. On May 1, 2010, the Hunnicutts emailed Respondent asking what was going on with the current litigation. They had also tried calling Respondent several times in the past three weeks with no response. The email closed with a request for a return phone call.

47. On May 5, 2010, the Hunnicutts sent an email asking if Respondent was still alive.

48. On May 6, 2010, the Hunnicutts sent an email asking Respondent to return their phone calls.

49. On May 10, 2010, Respondent emailed the Hunnicutts stating he was having "administrative difficulties" that caused the motion for summary judgment not to be filed. Respondent blamed a contract attorney for the motion for summary judgment not being filed. Respondent promised, "[I] am going to personally finish the document and get it to the court house today. I will drive down and file it myself and serve opposing counsel. Please accept my apologies."

50. The motion for summary judgment was not filed that day or the next day.

51. On June 1, 2010, the Hunnicutts emailed Respondent inquiring about the status of the motion for summary judgment.

52. On June 3, 2010, Respondent replied saying he received the motion from the courier and, "it had gotten lumped in with a file that was to be served, not filed." Respondent promised he was revising the motion to correct the date and would file the motion later in the day.

53. On June 7, 2010, Respondent stated he "pocketed" the motion for summary judgment because he spoke to the opposing counsel and they would consider consenting to a judgment against Oncaldera. Respondent promised he would file the motion by the end of the day if there was no progress.

54. On June 15, 2010, the Hunnicutts emailed Respondent and asked Respondent to acknowledge that he received the email. Respondent read the email the same day, but did not respond.

55. On June 30, 2010, the Hunnicutts emailed Respondent stating that they have been "presented with a subpoena for a judgment against us by Madani. Nothing has been filed that you said would be filed time and time again. We now owe money to a man that we lent money to." The Hunnicutts asked Respondent to, "Please do the right thing." Respondent read the email a few hours after it was sent, but he did not respond.

56. On July 1, 2010, Respondent emailed the Hunnicutts stating, "I think what happened is that they go [sic] an award of attorneys fees for the dismissal of the contract claims against the other entities. ... I was not aware they asked for an award or that they got one, but I think that is what happened."

57. While Respondent was representing the Hunnicutts in the breach of contract matter, Mr. Madani responded by defaming the Hunnicutts on the internet.

58. On August 20, 2010, Respondent emailed the Hunnicutts saying he had filed the defamation suit against Madani, which he had not.

59. On September 21, 2010, Respondent, filed suit against Masih Madani, *John Hunnicutt, et al. v. Masih madaj, et al.*, Pima County Superior Court file no. C20107460 ("the defamation matter") alleging defamation and other related torts committed by Mr. Madani against the Hunnicutts. Respondent stated he had difficulty in serving the defendant. Respondent did not move the court to serve by alternative methods.

60. The complaint in the defamation matter was not served on Masih Madani and ultimately dismissed by the court for lack of service on February 2, 2011.

61. On October 5, 2010, Respondent finally filed the previously promised motion for summary judgment in the Oncaldera matter.

62. On December 7, 2010, the court in the Oncaldera matter signed an order granting the Hunnicutts a monetary award and Respondent's attorney fees.

63. On January 18, 2011, the Hunnicutts emailed Respondent asking a question pertaining to the defamation matter. Complainants' say Respondent failed to respond to the Hunnicutts request for information.

64. On March 18, 2011, Respondent replied to an email with the subject line of "status Defamation suit?????" writing, "I am going by the judge's chambers to check on it this morning."

65. The Hunnicutts submitted a bar charge regarding Respondent's conduct. On March 28, 2011, the State Bar began an investigation.

66. On March 31, April 11, and May 5, 2011, the State Bar mailed letters to Respondent's address of record asking for a written response. Respondent failed to provide the requested written response.

67. On September 9, 2011, Respondent was interviewed by a staff investigator; however the interview was not completed. Respondent promised to continue the interview on September 12, 2011, at 10:30 a.m. with Respondent initiating the call. Respondent failed to call the investigator on September 12, 2011.

68. The staff investigator called Respondent on his office phone and cell phone on September 13, 14, and 15, 2011. Respondent failed to call the staff investigator.

69. On September 19, 2011, the staff investigator called Respondent's home phone and left a message requesting a return call.

70. On November 8, 2011, the staff investigator was able to complete the interview after additional efforts to locate Respondent were undertaken.

71. Respondent violated ER 1.3, when he failed to diligently pursue the promised motion for summary judgment in the Oncaldera matter and failed to litigate the defamation matter in a diligent manner.

72. Respondent violated ER 1.4(a)(4), when he failed to respond to the Hunnicutts' reasonable requests for information.

73. Respondent violated Rule ER 3.2, when he failed to expedite litigation by failing to timely file a response to the motion to dismiss, by failing to timely file the promised motion for summary judgment in the Oncaldera matter, and by failing to serve the defendant in the defamation matter.

74. Respondent violated ER 8.1(b), when he knowingly failed to provide the requested written response or complete the investigator's interview in a timely manner.

75. Respondent violated ER 8.4(c), when he told the Hunnicutts many things that later turned out to be false.

76. Respondent violated ER 8.4(d), when he failed to serve the defamation lawsuit and the matter was not adjudicated on its merits.

77. Respondent violated Rule 54(d)(1) and (2), Ariz. R. Sup. Ct., when he refused to cooperate with the State Bar by failing to provide the written response or complete the interview in a timely manner.

78. Respondent's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4(a)(4), 3.2, 8.1(b), 8.4(c) and (d) and Rule 54(d)(1) and (2), Ariz.R.Sup.Ct.

COUNT THREE
(File No. 11-2125/Jones)

79. On February 22, 2011, Geraldine Solomon ("Ms. Solomon") died. Carolyn Jones ("Mrs. Jones") was named the personal representative ("PR"). Respondent was hired to probate the matter since Respondent had performed previous legal work for Ms. Solomon.

80. On March 2, 2011, Respondent filed an application with the Pima County Superior Court requesting to informally probate the will and appoint Mrs. Jones as PR in *In the Matter of the Estate of Geraldine Powdrill Soloman*, Pima County Superior Court file no. PB20110235.

81. On March 4, 2011, Respondent filed a pleading indicating Mrs. Jones agreed to the appointment of PR, a verified statement that the PR is not a private fiduciary and will not charge a fee, a statement of appointment of the PR, and lodged a general order to the PR with the court. Respondent did not file anything else with the court in the matter.

82. On April 14, 2011, Respondent and the State Bar executed and filed an Agreement for Discipline by Consent in PDJ-2011-9001 whereby the parties agreed to a six month and one day suspension.

83. On April 20 and 21, 2011, Mrs. Jones and Respondent spoke about the estate's property. This was the last conversation Mrs. Jones had with Respondent despite numerous phone calls and emails.

84. On April 22, 2011, the Presiding Disciplinary Judge ("PDJ") in PDJ-2011-9001 entered an order accepting the agreement and ruled the effective date of the suspension to be May 22, 2011. Respondent did not file a motion to withdraw as the PR's attorney or otherwise notify the probate court of his suspension.

85. On June 25, 2011, Respondent was chastised for his lack of communication, despite Mrs. Jones repeated calls.

86. Subsequently, other counsel was hired and a bar charge was filed regarding Respondent's conduct.

87. In July 2011, the State Bar began an investigation and requested that Respondent provide a written response to the bar charge in letters dated July 28, and September 7, 2011. Respondent received the letters, but did not provide a written response. Respondent could not explain why he did not respond other than he was having a difficult time, "figuring out how to get all of this together."

88. On October 4, 5, and 13, 2011, the staff investigator called Respondent for an interview. Respondent did not timely respond to the staff investigator's calls; however, Respondent was eventually interviewed on November 8, 2011.

89. Respondent violated ER 1.4(a)(1) and (4), when he failed to keep Mrs. Jones informed about the matter or return numerous telephone calls; when Respondent failed to promptly inform Mrs. Jones about his suspension from the practice of law, thereby precluding Mrs. Jones from making the decision to find subsequent counsel in a timely manner; and when Respondent failed to respond many times when a response was requested.

90. Respondent violated ER 8.1(b), when he knowingly failed to provide a written response to the State Bar's request for information and a written response.

91. Respondent violated Rule 54(d)(1) and (2), Ariz. R. Sup. Ct., when he failed to cooperate with the State Bar's request to provide a written response to the bar charge and when he failed to comply with the State Bar's requests for an interview.

92. Respondent violated Rule 72(a), Ariz. R. Sup. Ct., when he failed to timely file a motion to withdraw as counsel of record or notify Mrs. Jones of his suspension.

93. Respondent's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.4(a)(1) and (4), 8.1(b), Rules 54(d)(1) and (2), and Rule 72(a) Ariz.R.Sup.Ct.

COUNT FOUR

(File Nos. 11-2369/State Bar of Arizona, and 11-2412/Qualls)

94. In March 2011, Rudy Qualls ("Mr. Qualls") hired Respondent to represent his company Qualls construction in an unjust enrichment and breach of contract matter.

95. On March 30, 2011, Respondent filed a complaint on behalf of Qualls Construction in *Qualls Construction & Design Inc. v. David M. Around, et al.*, Pima County Superior Court file no. C20102580 ("Qualls' matter").

96. In April 2011, Respondent contacted Mr. Qualls the night before Mr. Qualls's scheduled deposition, informing him for the first time about his deposition the next day.

97. On April 11, 2011, the court conducted a status conference in the Qualls matter. At the conference, the court rescheduled the trial from June 7, 2011, to September 13, 2011.

98. On April 14, 2011, Respondent and the State Bar executed and filed an Agreement for Discipline by Consent in PDJ-2011-9001 whereby the parties agreed to a six month and one day suspension.

99. On April 22, 2011, the PDJ in PDJ-2011-9001 entered an order accepting the agreement and ruled the effective date of the suspension to be May 22, 2011.

100. On May 19, 2011, counsel for the defendants in the Qualls matter filed a motion for summary judgment.

101. Respondent did not file a motion to withdraw as counsel of record in the matter due to his suspension nor did he mail the court a letter regarding his suspension.

102. Respondent failed to notify opposing counsel about the suspension.

103. Respondent failed to notify Mr. Qualls of his suspension.

104. Respondent failed to respond to the motion for summary judgment.

105. On July 7, 2011, counsel for the defendants requested that the court grant the unopposed motion for summary judgment.

106. On July 8, 2011, the court granted the defendants' motion for summary judgment.

107. On July 25, 2011, counsel for the defendants file a notice regarding Respondent. In the notice, counsel stated he learned of Respondent's suspension while reading the *Arizona Attorney* magazine. Additionally, counsel wrote, "The

undersigned counsel does not believe Respondent complied with Rule 72(a), Rules of the Supreme Court, as he received no notice of the April 22, 2011 order.”

108. On July 26, 2011, the court issued a ruling regarding summary judgment and Respondent’s conduct. Specifically, the court wrote, “A review of the file shows Respondent provided neither the Court nor opposing counsel notice of the then-pending matter prior to April 22, 2011. He also failed to notify the court and opposing counsel that his license had been suspended after disciplinary action was ultimately taken.”

109. The court scheduled a status conference on August 15, 2011 to determine whether the court should let the summary judgment order stand. The court mailed a copy of its order to Respondent and Mr. Qualls. Ultimately, the court let stand its summary judgment ruling because no one appeared on the plaintiff’s behalf in a subsequent court hearing.

110. The court notified the State Bar regarding Respondent’s conduct and the State Bar began an investigation, and assigned the investigation with 11-2369. The State Bar mailed letters addressed to Respondent’s address of record on August 1, and September 7, 2011, requesting a written response to the bar charge. Respondent did not provide such a written response.

111. Mr. Qualls submitted a bar charge regarding Respondent’s conduct and the State Bar began an investigation.

112. The State Bar mailed letters addressed to Respondent’s address of record on October 3, and November 1, 2011, requesting a written response to the bar charge. Respondent did not provide the requested written response.

113. On October 4, 5, and 13, 2011 the staff investigator called Respondent to conduct an interview regarding this matter. Respondent did not promptly return those calls.

114. On November 9, 2011, Respondent was interviewed regarding this matter. During the interview, Respondent admitted to not notifying the court or opposing counsel in the Qualls matter. Respondent also admitted to having difficulties in communicating with Mr. Qualls and by the time he reached Mr. Qualls, he already knew about the suspension. Respondent stated that he believed Mr. Qualls learned of the suspension from the opposing counsel.

115. In the November 9, 2011 interview, Respondent further admitted to not moving to withdraw as counsel of record. Additionally, Respondent admitted he received the State Bar's letters requesting a response to the bar charge and failed to respond.

116. Respondent violated ER 1.3, when he failed to act in a diligent manner by not withdrawing as attorney of record in the Qualls matter and when he failed to timely and diligently notify Mr. Qualls of his deposition.

117. Respondent violated ER 1.4(a)(1), when he failed to promptly inform Mr. Qualls about his suspension and he failed to keep Mr. Qualls reasonably informed about the status of the matter.

118. Respondent violated ER 8.1(b), when he knowingly failed to provide the requested information and a written response to the State Bar.

119. Respondent violated ER 8.4(d), when his conduct caused an additional burden on the court, the opposing counsel and the opposing party in the Qualls matter.

120. Respondent violated Rule 54(d)(1) and (2), Ariz. R. Sup. Ct., when he refused to cooperate with the State Bar's request to provide a written response to the bar charge or promptly comply with the State Bar's requests for an interview.

121. Respondent violated Rule 72, Ariz. R. Sup. Ct., when he failed to timely file a motion to withdraw as counsel of record; and he failed to adequately notify Mr. Qualls, opposing counsel, or the court of his suspension.

122. Respondent's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4(a)(1), 8.1(b), Rules 54(d)(1) and (2), and Rule 72(a) Ariz.R.Sup.Ct.

COUNT FIVE
(File No. 11-2526/O'Leary)

123. On May 20, 2009, Dolores O'Leary ("Ms. O'Leary") hired Respondent for representation in a construction default matter and paid him \$500. There was no signed fee agreement. Ms. O'Leary also made two separate payments on invoices that Respondent billed for a total of \$1,618.80.

124. The representation was to include the investigation and filing of charges against Carrera Custom Homes ("Carrera") regarding construction by Carrera in a lot behind her 26-year-old home which resulted in damage to her house's walls and floors.

125. At the first meeting Ms. O'Leary had with Respondent, he stated that time was not a factor.

126. On November 6, 2009, Respondent filed the Complaint in *O'Leary v. Carrera Custom Hones, Inc., et al.*, Pima County Superior Court file no. C20098692.

127. A couple of months later, Respondent suggested arbitration.

128. The arbitration was set for November 3, 2010. Ms. O'Leary observed that Respondent did not appear "prepared whatsoever" for the arbitration.

129. At the arbitration, Carrera's lawyer argued that the statute of limitations had run on the matter. The arbitrator found that the statute of limitations ran out in "either Fall 2009 or Fall 2010." The arbitrator informed Ms. O'Leary that if Respondent had done "a little research," he would have known that the statute of limitation had run.

130. On November 5, 2012, the arbitrator sent a bill to Respondent for the arbitration. When Ms. O'Leary later called the arbitrator's office to request a copy of her paper work she learned that Respondent had not paid the bill.

131. Complainant was also under the impression that Respondent filed a complaint with the Registrar of Contractors ("ROC"). A State Bar staff investigator contacted the ROC and no complaint was filed.

132. Respondent failed to notify Ms. O'Leary of his suspension. Ms. O'Leary learned of his suspension in July 2011, when she called the State Bar.

133. Ms. O'Leary submitted a bar charge regarding Respondent's conduct and the State Bar began an investigation.

134. Respondent was sent a charging letter on August 30, 2011. When he failed to respond, another letter was sent on October 4, 2011. He again failed to respond. A staff investigator was assigned to contact him and was finally able to talk to Respondent on November 9, 2011.

135. In the November 9, 2011 interview with the staff investigator, Respondent stated he felt that he communicated adequately with Ms. O'Leary and he accomplished what he was hired to do. In addition, Respondent stated that he did not notify the court of his suspension because he had difficulty dealing with all of the deadlines imposed by the Court.

136. Further, Respondent acknowledged that he received the letters from the State Bar requesting a response to the bar charge. Respondent stated that he does not have a "good reason" for not responding, except that he had difficulty collecting all of the data needed to respond.

137. Respondent violated ER 1.3, when he filed the complaint after the statute of limitations had run, and when he was hard to reach in order to set up the arbitration.

138. Respondent violated ER 1.4(a)(1), when he failed to keep Ms. O'Leary informed about the matter, failed to return her phone calls, and failed to discuss the ROC issue with her.

139. Respondent violated ER 8.1(b), when he knowingly failed to provide the requested written response from the State Bar.

140. Respondent violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he refused to cooperate with the State Bar's request to provide a written response to the bar charge

141. Respondent violated Rule 72, Ariz. R. Sup. Ct., when he failed to notify his client, opposing counsel, or the court of his suspension.

142. Respondent's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4(a)(1), 8.1(b), Rules 54(d)(1) and (2), and Rule 72(a) Ariz.R.Sup.Ct.

COUNT SIX
(File No. 11-2686¹/Shinn)

143. Mark L. Shinn ("Mr. Shinn") works for a realty company. Buyers bought a house from Mr. Shinn's client ("the seller"). Issues with the house's walls developed when the buyers started remodeling the house.

144. Respondent represented the buyers and was threatening to sue.

145. In August 2011, Respondent called Mr. Shinn, to push Mr. Shinn into arbitration.

146. Thereafter, Mr. Shinn learned of Respondent's suspension.

147. Respondent left Mr. Shinn a voice message on August 16, 2011, asking for the name of his attorney and indicating who a good arbitrator for the matter would be.

148. In the August 16, 2011, voice message, Respondent does not indicate that he has been suspended and through this omission, held himself out as the buyer's attorney.

149. Mr. Shinn submitted a bar charge regarding Respondent's conduct and the State Bar began an investigation.

¹ File No. 11-2686 is related to file no. 11-2960.

150. On January 13, 2012, Respondent was sent a copy of Mr. Shinn's allegations and asked to provide a written response within twenty days. Respondent failed to respond. On February 16, 2012, a second letter was sent to Respondent giving him ten days to respond. Respondent again failed to respond.

151. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 8.1(b), when he failed to provide the requested written response to the State Bar.

152. Respondent violated Rule 31(a) and (b), Ariz. R. Sup. Ct., when he held himself out as a practicing lawyer while suspended.

153. Respondent violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to provide the requested written response.

154. Respondent's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), Rules 31(a) and 54(d)(2) Ariz.R.Sup.Ct.

COUNT SEVEN
(File No. 11-2763/State Bar of Arizona)

155. On May 4, 2010, Respondent filed a complaint on behalf of Crimar Holdings, LTD². The matter was assigned to Judge Jan Kearney

156. A trial date was set for September 13, 2011.

157. Respondent was notified on March 9, 2011, that a pretrial conference was schedule for July 25, 2011.

158. On July 25, 2011, Respondent failed to appear at the pretrial conference. He had not communicated in any way with the court before the scheduled conference.

² *Crimar Holdings, Ltd. vs. Taddei Enterprises, et al.*, Pima County Superior Court file no. C-20103538

159. On July 25, 2011, the court's judicial assistant telephoned Respondent shortly after the start time of the conference. Respondent answered the telephone and said that he thought another attorney had substituted in for him on the case. Respondent failed to mention to the judicial assistant that he was suspended from the practice of law.

160. Shortly thereafter, the court learned that Respondent had been suspended on May 22, 2011.

161. Judge Kearney ordered Respondent to appear at an August 8, 2011, hearing to determine if sanctions should be imposed.

162. At the hearing on August 8, 2011, Respondent acknowledged that he had not provided the court with any notice of his suspended status as required by Rule 72, Ariz. R. Sup. Ct., and had not informed his client, even though a trial date was near at hand and would occur during his period of suspension.

163. As a result, Respondent's client had to retain other counsel and the hearing date had to be reset.

164. The court's minute entry regarding the August 8, 2011 hearing states in part, "At any time, failure to advise the Court of a revocation or suspension causes significant difficulties from the Court's point of view. But in this case, [Respondent's] complete failure to advise the Court, opposing counsel, and especially his client, in the face of a looming trial date, gives me [Judge Kearney] a great cause for concern."

165. On August 30, 2011, the State Bar sent Respondent a copy of the misconduct allegations regarding his conduct in *Crimar v. Taddei* and asked to respond within twenty days. Respondent failed to respond. On October 4, 2011, a

second letter was sent to Respondent giving him ten days to respond. Respondent failed to respond.

166. Respondent violated ER 8.1(b), when he knowingly failed to respond to the State Bar's request for a written response.

167. Respondent violated Rule 31(a) and (b), Ariz. R. Sup. Ct., when he held himself out as a practicing lawyer while suspended.

168. Respondent violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to provide the requested written response and promptly comply with the State Bar's request for an interview.

169. Respondent violated Rule 72(a) and (b), Ariz. R. Sup. Ct., when he failed to notify the appropriate people/parties that he was suspended May 22, 2011.

170. Respondent's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), Rules 31(a) and 54(d)(2), and 72(a) and (b), Ariz.R.Sup.Ct.

COUNT EIGHT
(File no. 11-2960³/Hannah)

171. Nathan B. Hannah ("Mr. Hannah") represents Theresa Zapotocky ("the seller") in a dispute concerning the sale of a residence to Michael and Melissa Bishop ("the buyers"), who were represented by Respondent.

172. Mr. Hannah wrote to the seller on July 25, 2011, to inform her that according to a report in the July/August, 2011, issue of the Arizona Attorney, Respondent had been suspended from the practice of law effective May 22, 2011.

³ File No. 11-2960 is related to file no. 11-2686.

173. On August 18, 2011, Mr. Hannah received a telephone call from Respondent. During the call, Respondent stated that the buyers wanted the dispute with the seller to proceed to arbitration and that he would send Mr. Hannah a written request that the arbitration be held under the rules of the Arizona Department of Real Estate. Respondent failed to inform Mr. Hannah of his suspension from the practice of law.

174. After the telephone call from Respondent, Mr. Hannah consulted with the firm's "ethics" partner concerning his obligation to report misconduct to the State Bar.

175. On August 25, 2011, the seller emailed Mr. Hannah that Respondent had contacted a potential witness in the dispute between the buyers and the seller. The witness reported this contact to the State Bar.

176. Mr. Hannah submitted a bar charge regarding Respondent's conduct and the State Bar began an investigation. Respondent responded only after a warning letter was sent to him.

177. Respondent violated ER 5.5(a), when he knowingly practiced law while suspended from the practice of law.

178. Respondent violated Rule 54(d)(2), Ariz.R.Sup.Ct., when he failed to timely provide the requested written response to the State Bar.

179. Respondent's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 5.5(a) and Rule 54(d)(2), Ariz.R.Sup.Ct.

COUNT NINE
(File No. 11-3628/Nannini)

180. Respondent was hired on June 29, 2010, to work with Steve L. Nannini's ("Mr. Nannini") current lawyers, Dan O'Connell of O'Connell & Associate, who represented Mr. Nannini and the other beneficiaries in the settlement of his dad's estate, the William Nannini Trust⁴, ("the Trust case").

181. Respondent was also hired to defend Mr. Nannini against a lawsuit brought by Northern Trust Bank ("NTB")⁵. NTB was the trustee of the William Nannini Trust and at some point Mr. Nannini had borrowed \$300,000.00 from the trust, ("the Note case").

182. In the Trust case, Mr. Nannini signed a fee agreement with Respondent on August 23, 2010, which Respondent claims is the authority under which he billed Mr. Nannini an additional \$5,253.50. Mr. Nannini disputes the additional fee. The fee agreement states that in the event of a dispute over fees, the issue shall be resolved through the State Bar's Fee Arbitration Program. There was no fee agreement in the Note case.

183. Respondent acknowledged to Mr. Nannini that he had received his pro-rata share of the legal fees paid in the Trust case. Respondent was paid \$6,720.00 and then demanded an additional \$5,253.50, which Mr. Nannini says is unreasonable and beyond what he is due. Respondent threatened Mr. Nannini with a civil lawsuit if he didn't pay the outstanding balance.

⁴ *In the Matter of the Estate of William M. Nannini*, Pima County Superior Court file no. PB20090990

⁵ *Northern Trust v. Steven L. Nannini*, Pima County Superior Court file no. C20103635

184. In letter dated June 29, 2011, sent by Respondent to Mr. Nannini regarding the fee dispute the letter head still contained the "Gooding Law Firm, PLLC" caption even though Respondent was suspended from the practice of law as of May 22, 2011.

185. Respondent sent emails to Mr. Nannini on November 14, 2011, and again on December 13, 2011, indicated it was from alangooding@goodinglaw.net, and was signed "Alan E. Gooding, Esq." Respondent again threatened to file a civil lawsuit to collect the fees he alleged Mr. Nannini still owed.

186. Mr. Nannini submitted a bar charge regarding Respondent's conduct. In his bar charge Mr. Nannini informed that for a period of over a year, Respondent caused delay and lacked diligence in performing his duties. Further, Respondent failed to respond to, "e-mails or phone calls; sometimes for several weeks on issues that were extremely important. In fact, most of the time [Respondent's] voice mail was "full" and [Mr. Nannini] could not leave a message." In addition Mr. Nannini indicated that Respondent at some point decided that it was no longer necessary for him to obtain Mr. Nannini's approval in negotiating the settlement of the Estate.

187. The State Bar began an investigation and on November 22, 2011, Respondent was sent a copy of Mr. Nannini's allegations and asked to respond within twenty days. Respondent failed to respond.

188. On December 16, 2011, a second letter was sent to Respondent giving him ten days to respond. Respondent responded on December 19, 2011.

189. The staff investigator attempted to set up an interview with Respondent by leaving messages for him on January 4, 6, and 10, 2012. His office

number had the following greeting: "You have reached the desk of Alan Gooding with the Gooding Law Firm...."

190. On January 10, 2012, the staff investigator attempted to leave a message on Respondent's office phone, but the voice mail box was full and would not accept any more messages.

191. On January 31, 2012, staff investigator sent a letter to Respondent requesting he contact her to set up an interview. Respondent never responded.

192. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 8.1(b), when he knowingly failed to provide a written response to the State Bar until the second warning letter was sent to him. Respondent then failed to respond to a request for a follow up interview.

193. Respondent violated Rule 31(a) and (b), Ariz. R. Sup. Ct., when he held himself out as a practicing lawyer while suspended from the practice of law.

194. Respondent violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to timely respond to the State Bar.

195. Respondent's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), Rules 31(a) and Rule 54(d)(2), Ariz.R.Sup.Ct.

COUNT TEN
(File No. 11-3909/State Bar of Arizona)

196. The State Bar received a Minute Entry ("ME") for Judge Gordon's court in *Bank of the West v. Tucson Land & Realty Advisors L.L.C., et al.*, Pima County Superior Court file no. C20109296, dated November 14, 2011.

197. In the ME Judge Gordon noted that Respondent was suspended and when he asked Respondent's client if she was aware of the suspension, she responded that she was not.

198. On December 14, 2011, Respondent was sent a copy of the November 14, 2011 ME and was asked to respond within twenty days. Respondent failed to respond.

199. On January 13, 2012, a second letter was sent to Respondent giving him ten days to respond. Respondent failed to respond.

200. Opposing counsel in C20109296, was unaware of Respondent's May 22, 2011, suspension. Judge Gordon's office was not notified of Respondent's suspension.

201. The staff investigator attempted to contact Respondent on his cell phone and office phone on January 30, 2012. Both numbers indicated that the "service is temporarily unavailable."

202. On January 31, 2012, the staff investigator sent a letter to Respondent requesting he contact her to set up an interview, but Respondent never responded.

203. On January 31, 2012, staff investigator emailed Respondent to set up an interview, but Respondent never responded.

204. Respondent violated ER 8.1(b), when he knowingly failed to provide the requested written response to the State Bar.

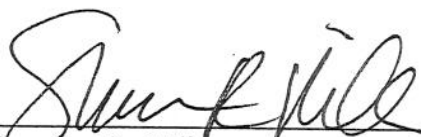
205. Respondent violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to timely respond to the State Bar's request for information.

206. Respondent violated Rule 72(a) and (b), Ariz. R. Sup. Ct., when he failed to notify the appropriate people/parties that he was suspended from the practice of law as of May 22, 2011.

207. Respondent's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), and Rules 31(a), 54(d)(2) and 72(a) and (b), Ariz.R.Sup.Ct.


DATED this 31st day of July, 2012.

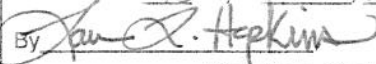
STATE BAR OF ARIZONA



Shauna R. Miller
Senior Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 31st day of July, 2012.

by: 
SRM:amp

The foregoing instrument is a full, true, and correct copy of the original on file in this office.
Certified this 18th day of June, 2013
By 
Disciplinary Clerk
Supreme Court of Arizona

FILED

MAY 21 2012

STATE BAR OF ARIZONA

BY

B. Arnold

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

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

**ALAN E. GOODING
Bar No. 023060**

Respondent

Nos. 11-0421, 11-0976, 11-2125, 11-2369,
11-2412, 11-2526, 11-2686, 11-2763,
11-2960, 11-3628, and 11-3909

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona, (“Committee”) reviewed this matter on May 18, 2012, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar’s Report of Investigation and Recommendation.

By a vote of 7-0-2,¹ the Committee finds probable cause exists to file a complaint against Respondent in File Nos. 11-0421, 11-0976, 11-2125, 11-2369, 11-2412, 11-2526, 11-2686, 11-2763, 11-2960, 11-3628 and 11-3909.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 18th day of May, 2012.

Lawrence E. Winthrop

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

¹ Committee members Jeffrey Pollitt and Ben Harrison did not participate in this matter.

Original filed this 21st day
of May, 2012, with:

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

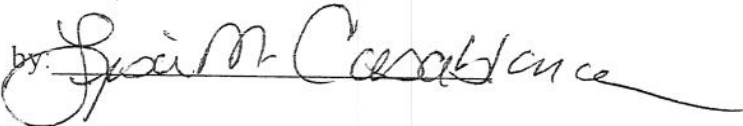
Copy mailed this 29th day
of May, 2012, to:

Alan E. Gooding
Gooding Law Firm, PLLC
3573 East Sunrise Drive, Suite 133
Tucson, Arizona 85718-3206
Respondent

Copy emailed this 29th day
of May, 2012, to:

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

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

by: 

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

AUG 29 2012

BY _____ FILED



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

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

**ALAN E. GOODING,
Bar No. 023060**

Respondent.

No. PDJ-2012-9070

NOTICE OF DEFAULT

**[Nos. 11-0421, 11-0976, 11-
2125, 11-2369, 11-2412, 11-
2526, 11-2686, 11-2763, 11-
2960, 11-3628, 11-3909]**

**TO: Alan E. Gooding
3573 E. Sunrise Drive, Suite 133
Tucson, AZ 85718-3206**

NOTICE IS HEREBY GIVEN that the Disciplinary Clerk has this date filed a Notice of Default, pursuant to Rule 58(d), Ariz.R.Sup.Ct.

The Disciplinary Clerk will enter a default against Respondent, if you do not file answer or otherwise defend prior to the expiration of ten (10) days from the service of this notice, default will be effective the following day for your failure to answer or otherwise defend in this proceeding within the time required by the Rules of the Arizona Supreme Court. Respondent has failed to file an answer. If a default is entered, the allegations in the complaint shall be deemed admitted and the Presiding Disciplinary Judge shall schedule an aggravation/mitigation hearing before the hearing panel. Respondent is strongly encouraged to govern yourself accordingly.

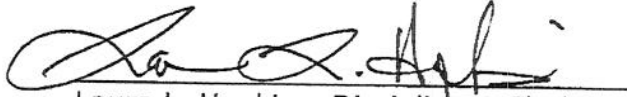
The Affidavit of Mailing states "that a copy of the State Bar's Complaint was mailed by regular first class and by certified, delivery restricted mail, receipt

Exhibit

2

number 7007 1490 0000 0284 2941 to Respondent, Alan E. Gooding, at **3573 E. Sunrise Dr., Suite 133, Tucson, AZ 85718-3206** on August 1, 2012.”

DATED this 29th of August, 2012.



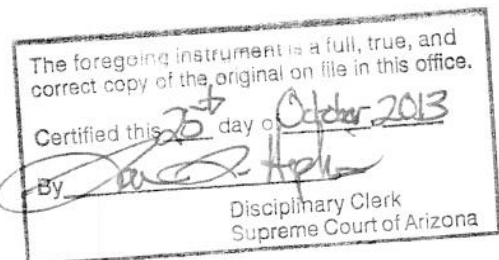
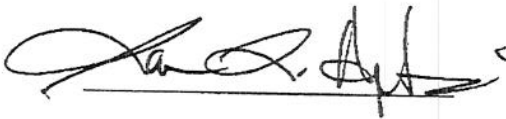
Laura L. Hopkins, Disciplinary Clerk
Office of the Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
this 29th day of August, 2012.

COPY of the foregoing e-mailed/mailed
this 29th day of August, 2012, to:

Shauna R. Miller
State Bar Of Arizona
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: lro@staff.azbar.org

Alan E. Gooding
Gooding Law Firm PLLC
3573 E. Sunrise Drive, Suite 133
Tucson, AZ 85718-3206
Email: alangooding@goodinglaw.com
Respondent



SEP 11 2012

BY _____ FILED



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

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

ALAN E. GOODING,
Bar No. 023060

Respondent.

No. PDJ-2012-9070

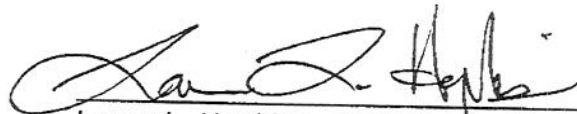
**ENTRY OF DEFAULT AND
NOTICE OF AGGRAVATION
/MITIGATION HEARING**

**[Nos. 11-0421, 11-0976, 11-
2125, 11-2369, 11-2412, 11-
2526, 11-2686, 11-2763, 11-
2960, 11-3628, 11-3909]**

ENTRY OF DEFAULT is hereby made by the Disciplinary Clerk on September 10, 2012, pursuant to Rule 58(d) of the Rules of the Arizona Supreme Court. The allegations in the complaint are deemed admitted. Entry of default shall not be set aside except in cases where such relief would be warranted under Rule 60(c) of the Arizona Rules of Civil Procedure.

NOTICE IS HEREBY GIVEN by the Presiding Disciplinary Judge that an aggravation/mitigation hearing has been set before the Hearing Panel on **Friday, September 28, 2012 at 9:00 a.m.** The location of hearing is State Courts Building, 1501 West Washington, Court of Appeals, CR 2, Phoenix, AZ 85007-3231.

DATED this 11th of September, 2012.



Laura L. Hopkins, Disciplinary Clerk
Office of the Presiding Disciplinary Judge

Exhibit

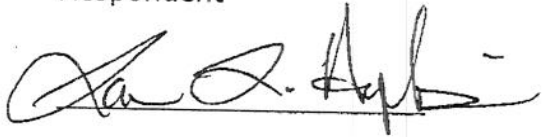
3

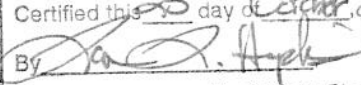
Original filed with the Disciplinary Clerk
this 11th day of September, 2012.

COPY of the foregoing e-mailed/mailed
this 11th day of September, 2012, to:

Shauna R. Miller
State Bar Of Arizona
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: lro@staff.azbar.org

Alan E. Gooding
Gooding Law Firm PLLC
3573 E. Sunrise Drive, Suite 133
Tucson, AZ 85718-3206
Email: alanegooding1@gmail.com
Respondent



The foregoing instrument is a full, true, and
correct copy of the original on file in this office.
Certified this 20th day of October, 2013
By 
Disciplinary Clerk
Supreme Court of Arizona

OCT 29 2012

BY _____ FILED 

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

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

**ALAN E. GOODING,
Bar No. 023060**

Respondent.

PDJ-2012-9070

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar File Nos. 11-0421, 11-0976, 11-2125, 11-2369, 11-2412, 11-2526, 11-2686, 11-2763, 11-2960, 11-3628, 11-3909]

On September 28, 2012, the Hearing Panel ("Panel"), composed of Mark Salem, a public member from Maricopa County, James Marovich, an attorney member from Maricopa County, and the Honorable William J. O'Neil, Presiding Disciplinary Judge ("PDJ"), held a one day aggravation/mitigation hearing pursuant to Supreme Court Rule 58(k), Ariz.R.Sup.Ct. Shauna Miller appeared on behalf of the State Bar of Arizona ("State Bar") and the Mr. Gooding appeared *pro per*. The Rule was invoked.

Default was previously entered. The formal entry of default by the Disciplinary Clerk resulted in the allegations of the complaint being "deemed admitted" pursuant to Rule 58(d). An aggravation/mitigation hearing was conducted before a Hearing Panel. The purpose of the aggravation/mitigation hearing is not only to weigh the mitigating and aggravating factors, but the hearing also serves to assure there is a nexus between the respondent's judicially admitted

actions and the merits of the case. A respondent against whom a default has been entered no longer has the right to litigate the merits of the factual allegations, but 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 cross-examine witnesses but not for the purpose of disputing the factual allegations. The Panel considered the admitted exhibits, the State Bar Prehearing Statement, and the testimony of four witnesses regarding restitution.¹

Due process requires the 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 conduct and, if sanctions are warranted, which sanctions should issue. It is not the function of a Hearing Panel to simply endorse or "rubber stamp" any request for sanctions. The State Bar recommended that Mr. Gooding be disbarred. The Panel agrees his conduct was egregious and that the recommendation was reasonable. For the reasons set forth hereinafter, however, the Panel chose not to follow that recommendation. There has been an independent determination by the Hearing Panel that the State Bar has, by clear and convincing evidence, proven that the actions of Mr. Gooding are in violation of the ethical rules.

The Panel now issues the following Report and Order Imposing Sanctions, ordering that Mr. Gooding is suspended for a period of three years.

¹ Telephonic testimony was heard from Mrs. Marcia Valenzuela, Mr. Corey Larson, Mr. Steven L. Nannini, and Mrs. Delores O'Leary on the matter of restitution. Respondent also testified.

I. PROCEDURAL HISTORY

The State Bar of Arizona filed its complaint in this matter on July 31, 2012. On August 7, 2012, the Presiding Disciplinary Judge ("PDJ") was assigned and a notice issued that an initial case management conference would be held on August 29, 2012. Because Mr. Gooding failed to file an answer, a Notice of Default was issued by the Disciplinary Clerk on that same day. Mr. Gooding and Ms. Miller for the State Bar appeared for the telephonic initial case management conference. Mr. Gooding was cautioned in that conference that a Notice of Default had been issued, and that if Default was entered the allegations in the complaint would be deemed admitted. Mr. Gooding did not file an answer or otherwise defend against the State Bar's allegations. Default was properly entered on September 11, 2012. Notice of Aggravation/Mitigation Hearing was contingently set in the Initial Case Management Conference Orders and scheduled for and heard on September 28, 2012, at 9:00 a.m. On September 26, 2012, the State Bar filed its Prehearing Statement. Mr. Gooding did not file any prehearing documents.

II. FINDINGS OF FACT

1. Alan E. Gooding was still under suspension pursuant to an Order of the Presiding Disciplinary Judge arising from an Agreement for Discipline by Consent when the current complaint was filed on July 31, 2012. [Complaint]

2. Mr. Gooding was eligible to apply for reinstatement beginning in November of 2011. He had not done so because he felt he had not yet been rehabilitated. [Mr. Gooding's testimony]

3. Although Mr. Gooding defaulted on the formal complaint in this matter, he appeared *pro per* at both the telephonic ICMC conference and the aggravation/mitigation hearing. [State Bar's Prehearing Statement, Hearing]

4. The State Bar recommended in its Prehearing Statement and at the aggravation/mitigation hearing that Mr. Gooding be disbarred. [State Bar Prehearing Statement and Hearing Opening/Closing Statements]

5. The underlying allegations in the ten-count complaint as detailed below in items 6 through 209, are deemed admitted by Default. [Entry of Default]

6. At all times relevant, the license of Mr. Gooding to practice law in Arizona was suspended. He was originally admitted to the practice on September 17, 2004.

COUNT ONE

(File No. 11-0421/Valenzuela)

Rock Roofing, L.L.C. v. Dorn Homes, Inc., et al., Pima County Superior Court file no. C20099068

7. In 2006, Ms. Valenzuela hired Mr. Gooding to represent her business, Rock Roofing LLC, in a litigation matter against Dorn Homes.

8. Ms. Valenzuela's company installed a new \$10,600.00 roof on Mr. Gooding's home in lieu of a cash payment for Mr. Gooding's legal representation of her business in the litigation matter against Dorn Homes.

9. Mr. Gooding indicated to Ms. Valenzuela that he was going to file a lawsuit on her behalf, but he failed to do so for several years.

10. On March 16, 2009, Mr. Gooding filed suit against Dorn Homes.

11. On March 27, 2009, Mr. Gooding served the complaint on the defendant.

12. On April 16, 2009, the defendant filed an answer and a counterclaim.

13. On December 11, 2009, the court placed the matter on the inactive calendar.

14. On March 16, 2010, the court dismissed the matter for lack of prosecution.

15. In the fall of 2010, Ms. Valenzuela hired another attorney, Corey Larson. Mr. Larson informed Ms. Valenzuela that the Dorn Homes lawsuit was dismissed for lack of prosecution.

16. In September 2010, Mr. Larson began trying to obtain Ms. Valenzuela's file from Mr. Gooding. He telephoned and emailed Mr. Gooding numerous times, until Mr. Gooding eventually provided the file to him over a year later on October 22, 2011.

17. Mr. Larson reviewed the file and determined that Mr. Gooding's involvement in the case was limited to filing the complaint. In Mr. Larson's opinion, the value of the legal services Mr. Gooding provided is \$1,000.00 to \$2,000.00 and Mr. Gooding should provide a "refund" based on the value of the roof installed by Ms. Valenzuela's company.

Rock Roofing LLC/Smith Construction

18. In October 2005, Ms. Valenzuela also hired Mr. Gooding to represent Rock Roofing against Smith Construction. Ms. Valenzuela believed that a lawsuit was filed by her through Mr. Gooding on the company's behalf. Ms. Valenzuela later learned that no such lawsuit was ever filed.

19. Mr. Larson also took over this representation. Ms. Valenzuela did not have the original documents and Mr. Gooding did not respond to Mr. Larson's requests to provide the original documentation. This hampered Mr. Larson's efforts on behalf of Ms. Valenzuela's company.

20. Upon information and belief Mr. Gooding still has the original case documents.

21. Mr. Larson negotiated a settlement in the matter.

Screening Investigation

22. Ms. Valenzuela submitted a bar charge regarding Mr. Gooding's conduct and the State Bar began an investigation.

23. Mr. Gooding was asked to provide a response to the bar charge in letters dated March 18, April 18, and May 5, 2011.

24. Mr. Gooding failed to provide a written response.

25. Bar counsel asked a State Bar staff investigator ("the staff investigator") to contact Mr. Gooding, who was interviewed on September 1, and September 8, 2011.

26. Mr. Gooding stated to the staff investigator that he did not provide the requested written response because he was gathering information to respond.

27. Mr. Gooding never provided a written response to the State Bar.

28. Mr. Gooding violated ER 1.2(a) when he failed to abide by Ms. Valenzuela's decisions to initiate a lawsuit in the Smith Construction matter and when he failed to pursue the Dorn Homes matter.

29. Mr. Gooding violated Rule 42, Ariz. R. Sup. Ct., ER 1.3, when he failed to diligently pursue the Smith Construction and Dorn Homes matters.

30. Mr. Gooding violated Rule 42, Ariz. R. Sup. Ct., ER 1.4(a)(3), when he failed to inform Ms. Valenzuela about the dismissal of the Dorn Homes matter.

31. Mr. Gooding violated Rule 42, Ariz. R. Sup. Ct., ER 1.8(a), when he accepted a new roof instead of cash as payment for his legal fees and failed to put the transaction into writing.

32. Mr. Gooding violated ER 1.15(d), when he failed to promptly provide a copy of the Dorn Homes file to subsequent counsel and when he failed to provide any original copies of documents to subsequent counsel in the Smith Construction matter.

33. Mr. Gooding violated ER 3.2, when he failed to take reasonable efforts to expedite the Dorn Homes matter.

34. Mr. Gooding violated ER 8.1(b), when he knowingly failed to respond to the State Bar's requests for a written response.

35. Mr. Gooding violated ER 8.4(d), when he engaged in conduct that was prejudicial to the administration of justice by failing to prosecute the Dorn Homes matter, causing it to be dismissed rather than litigated on its merits.

36. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to furnish the requested written response to the bar charge.

37. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4(a)(3), 1.8(a), 1.15(d), 3.2, 8.1(b), 8.4(d) and Rule 54(d)(2), Ariz.R.Sup.Ct.

COUNT TWO

(File No. 11-0976/Hunnicutt)

38. In November 2009, John and Loretta Hunnicutt ("the Hunnicutts") retained Mr. Gooding to represent them in a breach of contract matter in which the Hunnicutts' loaned money to a company called Oncaldera.

39. On November 20, 2009, Mr. Gooding filed suit against Mashih Madani ("Mr. Madani"), his company Oncaldera, and various other defendants, *Loretta G. Hunnicutt v. Mashi Madani, et al.*, Pima County Superior Court file no. C20099068 ("Oncaldera matter"). All defendants were served.

40. On January 7, 2010, counsel for Oncaldera filed an answer.

41. Also on January 7, 2010, counsel for the remaining defendants filed a motion to dismiss for failure to state a claim.

42. On January 15, 2010, Mr. Gooding emailed the Hunnicutts informing them about Oncaldera's answer and the motion to dismiss. Mr. Gooding told them he would subpoena financial records in an effort to amend the complaint and overcome the motion to dismiss.

43. Mr. Gooding failed to subpoena the financial records or amend the complaint.

44. The response to the motion to dismiss was due on or about January 26, 2010. On February 12, 2010, the court granted the motion to dismiss, noting there was no response from Mr. Gooding.

45. On February 12, 2010, at 4:35 p.m., Mr. Gooding filed a response to the motion to dismiss.

46. Counsel for the dismissed defendants filed a motion seeking attorney's fees. Mr. Gooding did not file a response objecting to the motion.

47. On March 29, 2010, the court granted the motion and awarded the dismissed defendants \$1,980.00 in attorney fees. Mr. Gooding paid the amount himself, but he told the Hunnicutts he would try to get the award set aside.

48. On April 27, 2010, the Hunnicutts emailed Mr. Gooding asking for a copy of the motion for summary judgment Mr. Gooding promised to file in March. The Hunnicutts also asked about when they could meet. Mr. Gooding did not respond.

49. On May 1, 2010, the Hunnicutts emailed Mr. Gooding asking what was going on with the current litigation. They had also tried calling Mr. Gooding several times in the past three weeks with no response. The email closed with a request for a return phone call.

50. On May 5, 2010, the Hunnicutts sent an email asking if Mr. Gooding was still alive.

51. On May 6, 2010, the Hunnicutts sent an email asking Mr. Gooding to return their phone calls.

52. On May 10, 2010, Mr. Gooding emailed the Hunnicutts stating he was having "administrative difficulties" that caused the motion for summary judgment not to be filed. Mr. Gooding blamed a contract attorney for the motion for summary judgment not being filed. Mr. Gooding promised, "[I] am going to personally finish the document and get it to the court house today. I will drive down and file it myself and serve opposing counsel. Please accept my apologies."

53. The motion for summary judgment was not filed that day or the next day.

54. On June 1, 2010, the Hunnicutts emailed Mr. Gooding inquiring about the status of the motion for summary judgment.

55. On June 3, 2010, Mr. Gooding replied saying he received the motion from the courier and, "it had gotten lumped in with a file that was to be served, not filed." Mr. Gooding promised he was revising the motion to correct the date and would file the motion later in the day.

56. On June 7, 2010, Mr. Gooding stated he "pocketed" the motion for summary judgment because he spoke to the opposing counsel and they would consider consenting to a judgment against Oncaldera. Mr. Gooding promised he would file the motion by the end of the day if there was no progress.

57. On June 15, 2010, the Hunnicutts emailed Mr. Gooding and asked Mr. Gooding to acknowledge that he received the email. Mr. Gooding read the email the same day, but did not respond.

58. On June 30, 2010, the Hunnicutts emailed Mr. Gooding stating that they have been "presented with a subpoena for a judgment against us by Madani. Nothing has been filed that you said would be filed time and time again. We now owe money to a man that we lent money to." The Hunnicutts asked Mr. Gooding to, "Please do the right thing." Mr. Gooding read the email a few hours after it was sent, but he did not respond.

59. On July 1, 2010, Mr. Gooding emailed the Hunnicutts stating, "I think what happened is that they go [sic] an award of attorneys fees for the dismissal of the contract claims against the other entities. ... I was not aware they asked for an award or that they got one, but I think that is what happened."

60. While Mr. Gooding was representing the Hunnicutts in the breach of contract matter, Mr. Madani responded by defaming the Hunnicutts on the internet.

61. On August 20, 2010, Mr. Gooding emailed the Hunnicutts saying he had filed the defamation suit against Madani, which he had not.

62. On September 21, 2010, Mr. Gooding, filed suit against Mr. Madani, *John Hunnicutt, et al. v. Masih Madani, et al.*, Pima County Superior Court file no. C20107460 ("the defamation matter") alleging defamation and other related torts committed by Mr. Madani against the Hunnicutts. Mr. Gooding stated he had difficulty in serving the defendant. Mr. Gooding did not move the court to serve by alternative methods.

63. The complaint in the defamation matter was not served on Mr. Madani and ultimately dismissed by the court for lack of service on February 2, 2011.

64. On October 5, 2010, Mr. Gooding finally filed the previously promised motion for summary judgment in the Oncaldera matter.

65. On December 7, 2010, the court in the Oncaldera matter signed an order granting the Hunnicutts a monetary award and Mr. Gooding's attorney fees.

66. On January 18, 2011, the Hunnicutts emailed Mr. Gooding asking a question pertaining to the defamation matter. Complainants' say Mr. Gooding failed to respond to the Hunnicutts request for information.

67. On March 18, 2011, Mr. Gooding replied to an email with the subject line of "status Defamation suit?????" writing, "I am going by the judge's chambers to check on it this morning."

68. The Hunnicutts submitted a bar charge regarding Mr. Gooding's conduct. On March 28, 2011, the State Bar began an investigation.

69. On March 31, April 11, and May 5, 2011, the State Bar mailed letters to Mr. Gooding's address of record asking for a written response. Mr. Gooding failed to provide the requested written response.

70. On September 9, 2011, Mr. Gooding was interviewed by a staff investigator; however the interview was not completed. Mr. Gooding promised to continue the interview on September 12, 2011, at 10:30 a.m. with Mr. Gooding initiating the call. Mr. Gooding failed to call the investigator on September 12, 2011.

71. The staff investigator called Mr. Gooding on his office phone and cell phone on September 13, 14, and 15, 2011. Mr. Gooding failed to call the staff investigator.

72. On September 19, 2011, the staff investigator called Mr. Gooding's home phone and left a message requesting a return call.

73. On November 8, 2011, the staff investigator was able to complete the interview after additional efforts to locate Mr. Gooding were undertaken.

74. Mr. Gooding violated ER 1.3, when he failed to diligently pursue the promised motion for summary judgment in the Oncaldera matter and failed to litigate the defamation matter in a diligent manner.

75. Mr. Gooding violated ER 1.4(a)(4), when he failed to respond to the Hunnicutts' reasonable requests for information.

76. Mr. Gooding violated Rule ER 3.2, when he failed to expedite litigation by failing to timely file a response to the motion to dismiss, by failing to timely file the promised motion for summary judgment in the Oncaldera matter, and by failing to serve the defendant in the defamation matter.

77. Mr. Gooding violated ER 8.1(b), when he knowingly failed to provide the requested written response or complete the investigator's interview in a timely manner.

78. Mr. Gooding violated ER 8.4(c), when he told the Hunnicutts many things that later turned out to be false.

79. Mr. Gooding violated ER 8.4(d), when he failed to serve the defamation lawsuit and the matter was not adjudicated on its merits.

80. Mr. Gooding violated Rule 54(d)(1) and (2), Ariz. R. Sup. Ct., when he refused to cooperate with the State Bar by failing to provide the written response or complete the interview in a timely manner.

81. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4(a)(4), 3.2, 8.1(b), 8.4(c) and (d) and Rule 54(d)(1) and (2), Ariz.R.Sup.Ct.

COUNT THREE

(File No. 11-2125/Jones)

82. On February 22, 2011, Geraldine Solomon ("Ms. Solomon") died. Carolyn Jones ("Mrs. Jones") was named the personal representative ("PR"). Mr. Gooding was hired to probate the matter since Mr. Gooding had performed previous legal work for Ms. Solomon.

83. On March 2, 2011, Mr. Gooding filed an application with the Pima County Superior Court requesting to informally probate the will and appoint Mrs. Jones as PR in *In the Matter of the Estate of Geraldine Powdrill Soloman*, Pima County Superior Court file no. PB20110235.

84. On March 4, 2011, Mr. Gooding filed a pleading indicating Mrs. Jones agreed to the appointment as PR, a verified statement that the PR is not a private fiduciary and will not charge a fee, a statement of appointment of the PR, and lodged a general order to the PR with the court. Mr. Gooding did not file anything else with the court in the matter.

85. On April 14, 2011, Mr. Gooding and the State Bar executed and filed an Agreement for Discipline by Consent in PDJ-2011-9001 whereby the parties agreed to a six month and one day suspension.

86. On April 20 and 21, 2011, Mrs. Jones and Mr. Gooding spoke about the estate's property. This was the last conversation Mrs. Jones had with Mr. Gooding despite numerous phone calls and emails.

87. On April 22, 2011, the Presiding Disciplinary Judge ("PDJ") in PDJ-2011-9001 entered an order accepting the agreement and ruled the effective date of the suspension to be May 22, 2011. Mr. Gooding did not file a motion to withdraw as the PR's attorney or otherwise notify the probate court of his suspension.

88. On June 25, 2011, Mr. Gooding was chastised for his lack of communication, despite Mrs. Jones repeated calls.

89. Subsequently, other counsel was hired and a bar charge was filed regarding Mr. Gooding's conduct.

90. In July 2011, the State Bar began an investigation and requested that Mr. Gooding provide a written response to the bar charge in letters dated July 28, and September 7, 2011. Mr. Gooding received the letters, but did not provide a

written response. Mr. Gooding could not explain why he did not respond other than he was having a difficult time, "figuring out how to get all of this together."

91. On October 4, 5, and 13, 2011, the staff investigator called Mr. Gooding for an interview. Mr. Gooding did not timely respond to the staff investigator's calls; however, Mr. Gooding was eventually interviewed on November 8, 2011.

92. Mr. Gooding violated ER 1.4(a)(1) and (4), when he failed to keep Mrs. Jones informed about the matter or return numerous telephone calls; when Mr. Gooding failed to promptly inform Mrs. Jones about his suspension from the practice of law, thereby precluding Mrs. Jones from making the decision to find subsequent counsel in a timely manner; and when Mr. Gooding failed to respond many times when a response was requested.

93. Mr. Gooding violated ER 8.1(b), when he knowingly failed to provide a written response to the State Bar's request for information and a written response.

94. Mr. Gooding violated Rule 54(d)(1) and (2), Ariz. R. Sup. Ct., when he failed to cooperate with the State Bar's request to provide a written response to the bar charge and when he failed to comply with the State Bar's requests for an interview.

95. Mr. Gooding violated Rule 72(a), Ariz. R. Sup. Ct., when he failed to timely file a motion to withdraw as counsel of record or notify Mrs. Jones of his suspension.

96. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.4(a)(1) and (4), 8.1(b), Rules 54(d)(1) and (2), and Rule 72(a) Ariz.R.Sup.Ct.

COUNT FOUR

(File Nos. 11-2369/State Bar of Arizona, and 11-2412/Qualls)

97. In March 2011, Rudy Qualls ("Mr. Qualls") hired Mr. Gooding to represent his company Qualls construction in an unjust enrichment and breach of contract matter.

98. On March 30, 2011, Mr. Gooding filed a complaint on behalf of Qualls Construction in *Qualls Construction & Design Inc. v. David M. Around, et al.*, Pima County Superior Court file no. C20102580 ("Qualls' matter").

99. In April 2011, Mr. Gooding contacted Mr. Qualls the night before Mr. Qualls's scheduled deposition, informing him for the first time about his deposition the next day.

100. On April 11, 2011, the court conducted a status conference in the Qualls matter. At the conference, the court rescheduled the trial from June 7, 2011, to September 13, 2011.

101. On April 14, 2011, Mr. Gooding and the State Bar executed and filed an Agreement for Discipline by Consent in PDJ-2011-9001 whereby the parties agreed to a six month and one day suspension.

102. On April 22, 2011, the PDJ in PDJ-2011-9001 entered an order accepting the agreement and ruled the effective date of the suspension to be May 22, 2011.

103. On May 19, 2011, counsel for the defendants in the Qualls matter filed a motion for summary judgment.

104. Mr. Gooding did not file a motion to withdraw as counsel of record in the matter due to his suspension nor did he mail the court a letter regarding his suspension.

105. Mr. Gooding failed to notify opposing counsel about the suspension.

106. Mr. Gooding failed to notify Mr. Qualls of his suspension.

107. Mr. Gooding failed to respond to the motion for summary judgment.

108. On July 7, 2011, counsel for the defendants requested that the court grant the unopposed motion for summary judgment.

109. On July 8, 2011, the court granted the defendants' motion for summary judgment.

110. On July 25, 2011, counsel for the defendants filed a notice regarding Mr. Gooding. In the notice, counsel stated he learned of Mr. Gooding's suspension while reading the *Arizona Attorney* magazine. Additionally, counsel wrote, "The undersigned counsel does not believe Mr. Gooding complied with Rule 72(a), Rules of the Supreme Court, as he received no notice of the April 22, 2011 order."

111. On July 26, 2011, the court issued a ruling regarding summary judgment and Mr. Gooding's conduct. Specifically, the court wrote, "A review of the file shows Mr. Gooding provided neither the Court nor opposing counsel notice of the then-pending matter prior to April 22, 2011. He also failed to notify the court and opposing counsel that his license had been suspended after disciplinary action was ultimately taken."

112. The court scheduled a status conference on August 15, 2011 to determine whether the court should let the summary judgment order stand. The court mailed a copy of its order to Mr. Gooding and Mr. Qualls. Ultimately, the

court let stand its summary judgment ruling because no one appeared on the plaintiff's behalf in a subsequent court hearing.

113. The court notified the State Bar regarding Mr. Gooding's conduct and the State Bar began an investigation, and assigned the investigation with 11-2369. The State Bar mailed letters addressed to Mr. Gooding's address of record on August 1, and September 7, 2011, requesting a written response to the bar charge. Mr. Gooding did not provide such a written response.

114. Mr. Qualls submitted a bar charge regarding Mr. Gooding's conduct and the State Bar began an investigation.

115. The State Bar mailed letters addressed to Mr. Gooding's address of record on October 3, and November 1, 2011, requesting a written response to the bar charge. Mr. Gooding did not provide the requested written response.

116. On October 4, 5, and 13, 2011 the staff investigator called Mr. Gooding to conduct an interview regarding this matter. Mr. Gooding did not promptly return those calls.

117. On November 9, 2011, Mr. Gooding was interviewed regarding this matter. During the interview, Mr. Gooding admitted to not notifying the court or opposing counsel in the Qualls matter. Mr. Gooding also admitted to having difficulties in communicating with Mr. Qualls and by the time he reached Mr. Qualls, he already knew about the suspension. Mr. Gooding stated that he believed Mr. Qualls learned of the suspension from the opposing counsel.

118. In the November 9, 2011 interview, Mr. Gooding further admitted to not moving to withdraw as counsel of record. Additionally, Mr. Gooding admitted

he received the State Bar's letters requesting a response to the bar charge and failed to respond.

119. Mr. Gooding violated ER 1.3, when he failed to act in a diligent manner by not withdrawing as attorney of record in the Qualls matter and when he failed to timely and diligently notify Mr. Qualls of his deposition.

120. Mr. Gooding violated ER 1.4(a)(1), when he failed to promptly inform Mr. Qualls about his suspension and he failed to keep Mr. Qualls reasonably informed about the status of the matter.

121. Mr. Gooding violated ER 8.1(b), when he knowingly failed to provide the requested information and a written response to the State Bar.

122. Mr. Gooding violated ER 8.4(d), when his conduct caused an additional burden on the court, the opposing counsel and the opposing party in the Qualls matter.

123. Mr. Gooding violated Rule 54(d)(1) and (2), Ariz. R. Sup. Ct., when he refused to cooperate with the State Bar's request to provide a written response to the bar charge or promptly comply with the State Bar's requests for an interview.

124. Mr. Gooding violated Rule 72, Ariz. R. Sup. Ct., when he failed to timely file a motion to withdraw as counsel of record; and he failed to adequately notify Mr. Qualls, opposing counsel, or the court of his suspension.

125. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4(a)(1), 8.1(b), Rules 54(d)(1) and (2), and Rule 72(a) Ariz.R.Sup.Ct.

COUNT FIVE

(File No. 11-2526/O'Leary)

126. On May 20, 2009, Dolores O'Leary ("Ms. O'Leary") hired Mr. Gooding for representation in a construction default matter and paid him \$500. There was no signed fee agreement. Ms. O'Leary also made two separate payments on invoices that Mr. Gooding billed for a total of \$1,618.80.

127. The representation was to include the investigation and filing of charges against Carrera Custom Homes ("Carrera") regarding construction by Carrera in a lot behind her 26-year-old home which resulted in damage to her house's walls and floors.

128. At the first meeting Ms. O'Leary had with Mr. Gooding, he stated that time was not a factor.

129. On November 6, 2009, Mr. Gooding filed the Complaint in *O'Leary v. Carrera Custom Homes, Inc., et al.*, Pima County Superior Court file no. C20098692.

130. A couple of months later, Mr. Gooding suggested arbitration.

131. The arbitration was set for November 3, 2010. Ms. O'Leary observed that Mr. Gooding did not appear "prepared whatsoever" for the arbitration.

132. At the arbitration, Carrera's lawyer argued that the statute of limitations had run on the matter. The arbitrator found that the statute of limitations ran out in "either Fall 2009 or Fall 2010." The arbitrator informed Ms. O'Leary that if Mr. Gooding had done "a little research," he would have known that the statute of limitation had run.

133. On November 5, 2012, the arbitrator sent a bill to Mr. Gooding for the arbitration. When Ms. O'Leary later called the arbitrator's office to request a copy of her paper work she learned that Mr. Gooding had not paid the bill.

134. Complainant was also under the impression that Mr. Gooding filed a complaint with the Registrar of Contractors ("ROC"). A State Bar staff investigator contacted the ROC and no complaint was filed.

135. Mr. Gooding failed to notify Ms. O'Leary of his suspension. Ms. O'Leary learned of his suspension in July 2011, when she called the State Bar.

136. Ms. O'Leary submitted a bar charge regarding Mr. Gooding's conduct and the State Bar began an investigation.

137. Mr. Gooding was sent a charging letter on August 30, 2011. When he failed to respond, another letter was sent on October 4, 2011. He again failed to respond. A staff investigator was assigned to contact him and was finally able to talk to Mr. Gooding on November 9, 2011.

138. In the November 9, 2011 interview with the staff investigator, Mr. Gooding stated he felt that he communicated adequately with Ms. O'Leary and he accomplished what he was hired to do. In addition, Mr. Gooding stated that he did not notify the court of his suspension because he had difficulty dealing with all of the deadlines imposed by the Court.

139. Further, Mr. Gooding acknowledged that he received the letters from the State Bar requesting a response to the bar charge. Mr. Gooding stated that he does not have a "good reason" for not responding, except that he had difficulty collecting all of the data needed to respond.

140. Mr. Gooding violated ER 1.3, when he filed the complaint after the statute of limitations had run, and when he was hard to reach in order to set up the arbitration.

141. Mr. Gooding violated ER 1.4(a)(1), when he failed to keep Ms. O'Leary informed about the matter, failed to return her phone calls, and failed to discuss the ROC issue with her.

142. Mr. Gooding violated ER 8.1(b), when he knowingly failed to provide the requested written response from the State Bar.

143. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he refused to cooperate with the State Bar's request to provide a written response to the bar charge

144. Mr. Gooding violated Rule 72, Ariz. R. Sup. Ct., when he failed to notify his client, opposing counsel, or the court of his suspension.

145. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4(a)(1), 8.1(b), Rules 54(d)(1) and (2), and Rule 72(a) Ariz.R.Sup.Ct.

COUNT SIX

(File No. 11-2686²/Shinn)

146. Mark L. Shinn ("Mr. Shinn") works for a realty company. Buyers bought a house from Mr. Shinn's client ("the seller"). Issues with the house's walls developed when the buyers started remodeling the house.

147. Mr. Gooding represented the buyers and was threatening to sue.

² File No. 11-2686 is related to file no. 11-2960.

148. In August 2011, Mr. Gooding called Mr. Shinn, to push Mr. Shinn into arbitration.

149. Thereafter, Mr. Shinn learned of Mr. Gooding's suspension.

150. Mr. Gooding left Mr. Shinn a voice message on August 16, 2011, asking for the name of his attorney and indicating who a good arbitrator for the matter would be.

151. In the August 16, 2011, voice message, Mr. Gooding does not indicate that he has been suspended and through this omission, held himself out as the buyer's attorney.

152. Mr. Shinn submitted a bar charge regarding Mr. Gooding's conduct and the State Bar began an investigation.

153. On January 13, 2012, Mr. Gooding was sent a copy of Mr. Shinn's allegations and asked to provide a written response within twenty days. Mr. Gooding failed to respond. On February 16, 2012, a second letter was sent to Mr. Gooding giving him ten days to respond. Mr. Gooding again failed to respond.

154. Mr. Gooding violated Rule 42, Ariz. R. Sup. Ct., ER 8.1(b), when he failed to provide the requested written response to the State Bar.

155. Mr. Gooding violated Rule 31(a) and (b), Ariz. R. Sup. Ct., when he held himself out as a practicing lawyer while suspended.

156. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to provide the requested written response.

157. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), Rules 31(a) and 54(d)(2) Ariz.R.Sup.Ct.

COUNT SEVEN

(File No. 11-2763/State Bar of Arizona)

158. On May 4, 2010, Mr. Gooding filed a complaint on behalf of Crimar Holdings, LTD³. The matter was assigned to Judge Jan Kearney.

159. A trial date was set for September 13, 2011.

160. Mr. Gooding was notified on March 9, 2011, that a pretrial conference was schedule for July 25, 2011.

161. On July 25, 2011, Mr. Gooding failed to appear at the pretrial conference. He had not communicated in any way with the court before the scheduled conference.

162. On July 25, 2011, the court's judicial assistant telephoned Mr. Gooding shortly after the start time of the conference. Mr. Gooding answered the telephone and said that he thought another attorney had substituted in for him on the case. Mr. Gooding failed to mention to the judicial assistant that he was suspended from the practice of law.

163. Shortly thereafter, the court learned that Mr. Gooding had been suspended on May 22, 2011.

164. Judge Kearney ordered Mr. Gooding to appear at an August 8, 2011, hearing to determine if sanctions should be imposed.

165. At the hearing on August 8, 2011, Mr. Gooding acknowledged that he had not provided the court with any notice of his suspended status as required by

³ *Crimar Holdings, Ltd. vs. Taddei Enterprises, et al.*, Pima County Superior Court file no. C-20103538

Rule 72, Ariz. R. Sup. Ct., and had not informed his client, even though a trial date was near at hand and would occur during his period of suspension.

166. As a result, Mr. Gooding's client had to retain other counsel and the hearing date had to be reset.

167. The court's minute entry regarding the August 8, 2011 hearing states in part, "At any time, failure to advise the Court of a revocation or suspension causes significant difficulties from the Court's point of view. But in this case, [Mr. Gooding's] complete failure to advise the Court, opposing counsel, and especially his client, in the face of a looming trial date, gives me [Judge Kearney] a great cause for concern."

168. On August 30, 2011, the State Bar sent Mr. Gooding a copy of the misconduct allegations regarding his conduct in *Crimar v. Taddei* and asked him to respond within twenty days. Mr. Gooding failed to respond. On October 4, 2011, a second letter was sent to Mr. Gooding giving him ten days to respond. Mr. Gooding failed to respond.

169. Mr. Gooding violated ER 8.1(b), when he knowingly failed to respond to the State Bar's request for a written response.

170. Mr. Gooding violated Rule 31(a) and (b), Ariz. R. Sup. Ct., when he held himself out as a practicing lawyer while suspended.

171. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to provide the requested written response and promptly comply with the State Bar's request for an interview.

172. Mr. Gooding violated Rule 72(a) and (b), Ariz. R. Sup. Ct., when he failed to notify the appropriate people/parties that he was suspended May 22, 2011.

173. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), Rules 31(a) and 54(d)(2), and 72(a) and (b), Ariz.R.Sup.Ct.

COUNT EIGHT

(File no. 11-2960⁴/Hannah)

174. Nathan B. Hannah ("Mr. Hannah") represents Theresa Zapotocky ("the seller") in a dispute concerning the sale of a residence to Michael and Melissa Bishop ("the buyers"), who were represented by Mr. Gooding.

175. Mr. Hannah wrote to the seller on July 25, 2011, to inform her that according to a report in the July/August, 2011, issue of the Arizona Attorney, Mr. Gooding had been suspended from the practice of law effective May 22, 2011.

176. On August 18, 2011, Mr. Hannah received a telephone call from Mr. Gooding. During the call, Mr. Gooding stated that the buyers wanted the dispute with the seller to proceed to arbitration and that he would send Mr. Hannah a written request that the arbitration be held under the rules of the Arizona Department of Real Estate. Mr. Gooding failed to inform Mr. Hannah of his suspension from the practice of law.

177. After the telephone call from Mr. Gooding, Mr. Hannah consulted with the firm's "ethics" partner concerning his obligation to report misconduct to the State Bar.

⁴ File No. 11-2960 is related to file no. 11-2686.

178. On August 25, 2011, the seller emailed Mr. Hannah that Mr. Gooding had contacted a potential witness in the dispute between the buyers and the seller. The witness reported this contact to the State Bar.

179. Mr. Hannah submitted a bar charge regarding Mr. Gooding's conduct and the State Bar began an investigation. Mr. Gooding responded only after a warning letter was sent to him.

180. Mr. Gooding violated ER 5.5(a), when he knowingly practiced law while suspended from the practice of law.

181. Mr. Gooding violated Rule 54(d)(2), Ariz.R.Sup.Ct., when he failed to timely provide the requested written response to the State Bar.

182. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 5.5(a) and Rule 54(d)(2), Ariz.R.Sup.Ct.

COUNT NINE

(File No. 11-3628/Nannini)⁵

183. Mr. Gooding was hired on June 29, 2010, to work with Steve L. Nannini's ("Mr. Nannini") current lawyers, Dan O'Connell of O'Connell & Associate, who represented Mr. Nannini and the other beneficiaries in the settlement of his dad's estate, the William Nannini Trust⁶, ("the Trust case").

⁵ Mr. Nannini testified at the Hearing that he was mistaken and does not have a claim for restitution against Respondent. It was not clear if he was withdrawing his charge altogether.

⁶ *In the Matter of the Estate of William M. Nannini*, Pima County Superior Court file no. PB20090990

184. Mr. Gooding was also hired to defend Mr. Nannini against a lawsuit brought by Northern Trust Bank ("NTB")⁷. NTB was the trustee of the William Nannini Trust and at some point Mr. Nannini had borrowed \$300,000.00 from the trust, ("the Note case").

185. In the Trust case, Mr. Nannini signed a fee agreement with Mr. Gooding on August 23, 2010, which Mr. Gooding claims is the authority under which he billed Mr. Nannini an additional \$5,253.50. Mr. Nannini disputes the additional fee.⁸ The fee agreement states that in the event of a dispute over fees, the issue shall be resolved through the State Bar's Fee Arbitration Program. There was no fee agreement in the Note case.

186. Mr. Gooding acknowledged to Mr. Nannini that he had received his pro-rata share of the legal fees paid in the Trust case. Mr. Gooding was paid \$6,720.00 and then demanded an additional \$5,253.50, which Mr. Nannini says is unreasonable and beyond what he is due. Mr. Gooding threatened Mr. Nannini with a civil lawsuit if he didn't pay the outstanding balance.

187. In letter dated June 29, 2011, sent by Mr. Gooding to Mr. Nannini regarding the fee dispute the letter head still contained the "Gooding Law Firm, PLLC" caption even though Mr. Gooding was suspended from the practice of law as of May 22, 2011.

⁷ *Northern Trust v. Steven L. Nannini*, Pima County Superior Court file no. C20103635

⁸ Mr. Nannini appeared telephonically at the Aggravation/Mitigation hearing and stated that after meeting with his accountant he realized he was mistaken about the fees he felt were double-billed. He stated that he has no claim for restitution against Mr. Gooding.

188. Mr. Gooding sent emails to Mr. Nannini on November 14, 2011, and again on December 13, 2011, indicated it was from alangooding@goodinglaw.net, and was signed "Alan E. Gooding, Esq." Mr. Gooding again threatened to file a civil lawsuit to collect the fees he alleged Mr. Nannini still owed.

189. Mr. Nannini submitted a bar charge regarding Mr. Gooding's conduct. In his bar charge Mr. Nannini informed that for a period of over a year, Mr. Gooding caused delay and lacked diligence in performing his duties. Further, Mr. Gooding failed to respond to, "e-mails or phone calls; sometimes for several weeks on issues that were extremely important. In fact, most of the time [Mr. Gooding's] voice mail was "full" and [Mr. Nannini] could not leave a message." In addition Mr. Nannini indicated that Mr. Gooding at some point decided that it was no longer necessary for him to obtain Mr. Nannini's approval in negotiating the settlement of the Estate.

190. The State Bar began an investigation and on November 22, 2011, Mr. Gooding was sent a copy of Mr. Nannini's allegations and asked to respond within twenty days. Mr. Gooding failed to respond.

191. On December 16, 2011, a second letter was sent to Mr. Gooding giving him ten days to respond. Mr. Gooding responded on December 19, 2011.

192. The staff investigator attempted to set up an interview with Mr. Gooding by leaving messages for him on January 4, 6, and 10, 2012. His office number had the following greeting: "You have reached the desk of Alan Gooding with the Gooding Law Firm...."

193. On January 10, 2012, the staff investigator attempted to leave a message on Mr. Gooding's office phone, but the voice mail box was full and would not accept any more messages.

194. On January 31, 2012, staff investigator sent a letter to Mr. Gooding requesting he contact her to set up an interview. Mr. Gooding never responded.

195. Mr. Gooding violated Rule 42, Ariz. R. Sup. Ct., ER 8.1(b), when he knowingly failed to provide a written response to the State Bar until the second warning letter was sent to him. Mr. Gooding then failed to respond to a request for a follow up interview.

196. Mr. Gooding violated Rule 31(a) and (b), Ariz. R. Sup. Ct., when he held himself out as a practicing lawyer while suspended from the practice of law.

197. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to timely respond to the State Bar.

198. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), Rules 31(a) and Rule 54(d)(2), Ariz.R.Sup.Ct.

COUNT TEN

(File No. 11-3909/State Bar of Arizona)

The State Bar received a Minute Entry ("ME") from Judge Gordon's court in *Bank of the West v. Tucson Land & Realty Advisors L.L.C., et al.*, Pima County Superior Court file no. C20109296, dated November 14, 2011.

199. In the ME Judge Gordon noted that Mr. Gooding was suspended and when he asked Mr. Gooding's client if she was aware of the suspension, she responded that she was not.

200. On December 14, 2011, Mr. Gooding was sent a copy of the November 14, 2011 ME and was asked to respond within twenty days. Mr. Gooding failed to respond.

201. On January 13, 2012, a second letter was sent to Mr. Gooding giving him ten days to respond. Mr. Gooding failed to respond.

202. Opposing counsel in C20109296, was unaware of Mr. Gooding's May 22, 2011, suspension. Judge Gordon's office was not notified of Mr. Gooding's suspension.

203. The staff investigator attempted to contact Mr. Gooding on his cell phone and office phone on January 30, 2012. Both numbers indicated that the "service is temporarily unavailable."

204. On January 31, 2012, the staff investigator sent a letter to Mr. Gooding requesting he contact her to set up an interview, but Mr. Gooding never responded.

205. On January 31, 2012, staff investigator emailed Mr. Gooding to set up an interview, but Mr. Gooding never responded.

206. Mr. Gooding violated ER 8.1(b), when he knowingly failed to provide the requested written response to the State Bar.

207. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to timely respond to the State Bar's request for information.

208. Mr. Gooding violated Rule 72(a) and (b), Ariz. R. Sup. Ct., when he failed to notify the appropriate people/parties that he was suspended from the practice of law as of May 22, 2011.

209. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), and Rules 31(a), 54(d)(2) and 72(a) and (b), Ariz.R.Sup.Ct.

Testimony of Witnesses

Testimony of Marcia Valenzuela

Ms. Valenzuela hired Mr. Gooding to file suit against Dorn Homes on behalf of her company, Rock Roofing, and also to assist her with estate planning. She paid Mr. Gooding \$1,620 for the estate planning services. She never received any final documents. Instead she received only drafts that were replete with errors and subsequently never heard back from him. As to the Dorn Homes suit, Ms. Valenzuela agreed to exchange a roof for his home for her deposit on these services. The value of the roof was \$9,550 for the roof, plus \$1,715 for a recover board, for a total of \$11,270. Mr. Gooding and she agreed the providing of the roof was a general retainer for the services Mr. Gooding might provide. Mr. Gooding filed only the complaint and never detailed his hours by billing. He soon ceased responding to her. Ms. Valenzuela engaged another lawyer to assist her. That lawyer (Mr. Corey Larson) discovered that the case was dismissed due to inactivity. He informed her she would have to re-file. Ms. Valenzuela requested her files from Mr. Gooding. He never delivered them. She eventually received them but only after Mr. Larson went to Mr. Gooding's office and demanded them. There was no work product in the files but rather only the information she had provided to Mr. Gooding.

She acknowledged that Mr. Gooding had represented her and her husband in matters before the registrar of contractors. She and Mr. Gooding went to court three times together. She testified she was initially paying Mr. Gooding in cash, but because they were running out of funds they discussed providing the roof as a

retainer for the services he would provide. The exchange of the roof for legal services took place after the registrar matters.

Testimony of Corey Larson

Mr. Larson has been a member of the State Bar of Arizona for 9 years. He represented Ms. Valenzuela and Rock Roofing, LLC in connection with her lawsuit against Dorn Homes. The Valenzuelas hired him to take over the lawsuit when Mr. Gooding stopped responding to their multiple attempts to contact him. Mr. Larson stated that he tried multiple times to contact Mr. Gooding to retrieve files and to replace him as counsel. In the course of becoming engaged he discovered that the matter had been administratively dismissed and that several warnings from the court had been sent to Mr. Gooding. He filled a new complaint. The file he ultimately obtained from Mr. Gooding did not contain any pleadings; it contained only the original client records of approximately 500 pages of documents relating to the underlying construction project.

Mr. Larson is an experienced attorney and has handled over 50 litigation matters involving construction payment disputes. In his opinion the four-page complaint filed by Mr. Gooding was a very basic complaint for money damages, but was general and did not develop specific numbers regarding damages nor contain contract language. When asked for his opinion on the value of the work provided by Mr. Gooding, Mr. Larson stated that an experienced attorney would bill approximately \$1,500 for the services rendered. He does not believe that Respondent provided any value to the Valenzuelas because the work had to be done again, and they had to pay Mr. Larson to obtain the files, draft new pleadings, and do the work.

Testimony of Steven L. Nannini

Mr. Nannini hired Mr. Gooding to assist another lawyer (Dan O'Connell) in a case related to the estate of his father. Mr. Nannini also hired Mr. Gooding to represent him in a separate matter regarding his own trust. Mr. Nannini initially believed that the payments he listed totaling \$4,100 were made for his father's case. He reviewed them with his accountant and in fact those payments were made for his own case. He erred in his letter dated August 9. He does not believe that he has any claim against Mr. Gooding.

Testimony of Delores O'Leary

Mrs. O'Leary hired Mr. Gooding to represent her in a case where a new home that was built behind her home caused drainage problems, damaging her floors and walls. She retained Mr. Gooding to file a lawsuit on her behalf. Ms. O'Leary paid Mr. Gooding \$1,518.80, to do research and file a complaint with the Registrar of Contractors. On Mr. Gooding's advice, however, they proceeded straight to arbitration. Mr. Gooding appeared but was completely unprepared. Ms. O'Leary had hired her own expert witnesses, which she states was the only information presented at the arbitration. Further, she later spoke with Mr. Trachta, the arbitrator, who reviewed her file and advised her that the lawsuit should never have gone forward given that her claim was outside the statute of limitations period. Ms. O'Leary paid Mr. Trachta directly for the fees that had been billed to Mr. Gooding but were never paid. Ms. O'Leary also incurred costs for her witnesses, and was required to pay \$5,000 to defendant's lawyer for the arbitration. The total she seeks in restitution is \$7,918.80.

Mrs. O'Leary acknowledges that Mr. Gooding and she had discussed several different causes of action, and that one approach they discussed was nuisance. Mrs. O'Leary stated that her house was 27 years old, and that they had not experienced these problems until the other house was built. The other house was built in 2005, and according to her expert the problem would have taken several years to surface. She also acknowledges she was very cost conscious and did not want to spend a great deal of money on the suit. She also acknowledged that Mr. Gooding told her of the risk of losing the action. She was insistent that they move forward. Mr. Gooding never forwarded to her the written decision of the arbitrator. She confirmed she paid the \$5,000 payment she was ordered to pay to the opposing side's counsel.

Testimony of Carolyn Jones

Ms. Jones described hiring Mr. Gooding to assist her in her duties as personal representative of the estate of Geraldine Solomon. She confirmed that Exhibit 1 was her response to the State Bar, but wished to correct the \$16,000 amount provided for mortgage payments to \$1,600. That noted, she believes that restitution to the estate should be \$9,072 resulting from four months of additional costs to the estate because of delay, plus \$2,296 for the new attorney she hired to review the case Mr. Gooding left unfinished. Ms. Jones explained that the requested amount consists of mortgage payments of \$1,654 per month, HOA dues of \$284 per month, electricity totaling \$219, gas totaling \$324, and water totaling \$776. The new attorney billing was \$4,487, but the initial bill of \$2,296 was to go through Mr. Gooding's work to determine what occurred. The total due the estate should therefore be \$11,368.

Mr. Gooding failed to send creditor notices which delayed her ability to close the estate, after he repeatedly assured her that the estate would be wound up by the end of June or in early July. He simply stopped responding to her at all. She learned that he had been suspended, but not from him. She hired another attorney who told her creditor notices had not been sent. She believes she should be reimbursed for the mortgage payments made during the delay. The house was subsequently deeded, subject to the mortgage, to the granddaughter who also inherited the residue of the estate. Ms. Jones noted that she believed that Mr. Gooding had handled the previous case for Geraldine Solomon very well, and that he was nice young man and she was confident that he was qualified. She does not know what happened to him that he would then let everybody down so badly.

She acknowledges that as both the residual estate and the house had gone to the granddaughter, there was no resulting loss to the estate when it made the payments. Ms. Jones stated the granddaughter has let the house go to foreclosure.

State Bar Closing Statement

In conclusion, the State Bar noted that Mr. Gooding has not been a participant in the matters before the Bar, making it difficult for the Bar to gather information. This includes the fact that Ms. Miller was not even aware Mr. Gooding would attend the hearing. No explanation has ever been provided as to why Respondent failed his clients and the State Bar. The State Bar recommended disbarment because Mr. Gooding abandoned his clients and caused problems for many people. He failed to notify not only his clients when he went on suspension, but also opposing parties and the courts. Mr. Gooding also has a prior disciplinary offense as an aggravating factor, as well as a pattern of misconduct because of the

number of clients and offenses. Ms. Miller also stated that Mr. Gooding failed to respond to the State Bar investigation and refused to acknowledge the wrongful nature of his conduct. He has still given no reason or explanation as to why the conduct occurred. Mr. Gooding has not attempted to make clients whole prior to this point, and Ms. Miller stated that if restitution is ordered she hopes he will take it seriously. The State Bar found no mitigating factors.

Finally, Ms. Miller noted that although they do not rely that much on proportionality any longer, she has listed three very similar cases in her Prehearing Brief that indicate that disbarment is warranted in these types of cases. She argued based on what he failed to do for his clients, and on his own behalf in his duties to the State Bar and the courts, it appears that he cannot function the way that he should in this setting.

Mr. Gooding's Testimony

Mr. Gooding prepared to give his closing statement, but as he began to speak it became evident that he was going to address the underlying issues. The PDJ determined that in fact Mr. Gooding would be testifying, so he was sworn in.

Mr. Gooding asked the PDJ and panel to consider that for the last three years or so he has been suffering from anxiety and depression. He has tried medications, none of which worked as well as he hoped and additionally they had side effects. Mr. Gooding states that he does not have a complete understanding of what is going on; he recognizes that something has changed and that in the last three years he has not been a good attorney in some instances. In the last week he has begun a new medication (Escitalopram), an SSRI which is hoped will not have the same side effects as other medications he has taken. Mr. Gooding is seeing Nurse

Practitioner Helen Hess in Tucson, whom he states "specializes in this", and that prior to that he had been seeing his general practitioner. In addition, Mr. Gooding has been in counseling for approximately 6 months. A separation from his wife that began in May has been resolved; they are reconciled and working through things.

Mr. Gooding also noted that his younger brother passed away this summer (July 4th), which made dealing with the other issues in his life more difficult. Mr. Gooding is currently not practicing law, and he has no plans in the near future to do so. He has not applied for reinstatement, as he believes that he is not yet in the position to "do what he needs to do." Mr. Gooding noted that in his previous practice he was a general practitioner, and that it was not a good practice for him. He took on too many things with which he was not familiar. He notes he did certain things well, notably real estate transactions and business law. He is currently working as a paralegal on these types of transactions for Dan O'Connell, who was co-counsel on the Nannini case in this complaint. He states that Dan has been a very good mentor to him and is fully informed as to what has occurred.

Mr. Gooding noted that he has learned the wisdom of doing a more limited range of transactions, and being good at those. If he does practice law again he would do so in a law office, probably Mr. O'Connell's, limiting his work to real estate and business transactions. He feels he does those well. If and when he does engage in the practice of law again, it will be when he can get his personal life in order and handle the stress he used to be able to handle very well, and provide a valuable service to clients. He asks the panel to consider those mitigating factors, and that he has no immediate plan to reinstate himself into the practice of law. His suspension is six months but he knows it will take longer than that for him to

recover and seek reinstatement. He hopes to do it in the next five years, but if it takes him longer than that and he does have to retake the bar exam then he will do so.

None of his testimony was supported by any documentation.

III. CONCLUSIONS OF LAW

Mr. Gooding failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Mr. Gooding violated the following: Rule 42, ERs 1.2(a), 1.3, 1.4(a)(1) and (4), 1.8(a), 1.15(d), 3.2, 5.5(a), 8.1(b), 8.4(c), and 8.4(d); and Rules 31(a), 54(d)(1) and (2), and 72(a) and (b), Ariz. R. Sup. Ct.

IV. Sanction and ABA Standards

The only issue for the Hearing Panel to decide is the sanction to be imposed. Pursuant to Rule 58(k), a panel shall consult the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* in determining an appropriate 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. *Standard 3.0; In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). A Hearing Panel also may conduct a proportionality analysis "if appropriate." Rule 58(k), Ariz. R. Sup. Ct.

Duty Violated

Mr. Gooding's conduct violated his duties to his clients, the profession, and the legal system. The most important ethical duties are those obligations which a

lawyer owes to his clients. *Standards*, II. Theoretical Framework. Here, Mr. Gooding's client violations centered on his duty of diligence (4 counts), and communication (5 counts), paralleling his previous discipline. Disturbingly, in the instant matter Mr. Gooding compounded the ethical misconduct by misrepresenting his actions to a client, and violating his duties to the legal system and the profession when he failed to notify of his suspension and did not respond to the State Bar.

Mental State

A lawyer's mental state is reviewed to determine if the ethical lapses were committed intentionally, knowingly, or negligently. Here, Mr. Gooding's mental state was "knowing," as he was aware of his suspended status, the new disciplinary charges, and his obligation to respond to the State Bar. Mr. Gooding also acted knowingly in the underlying charges.

Extent of Injury

Evidence shows that Mr. Gooding caused actual harm to his clients and the legal profession. Examples include the actual harm he caused to Ms. Jones in Count Three, requiring her to pay \$2,296 in duplicate fees to another lawyer to do the work he was paid to do. He also inflicted harm on the legal system by not complying with Rule 72(a). Clients, opposing counsel, and courts were each affected by his failure to notify of his suspension. Cases were delayed, and judicial and legal system resources were wasted because of client's lack of notification of his suspension and his failure to withdraw.

Aggravating/Mitigating Circumstances

The State Bar argues aggravating factors under Standard 9.2 of: (a) prior disciplinary offenses, and that Mr. Gooding is currently suspended; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding; (g) refusal to acknowledge wrongful nature of conduct; (i) substantial experience in the practice of law; and (j) indifference to making restitution.

Mr. Gooding's testimony appears to indicate that *Standard 9.32(c)* personal or emotional problems, is a mitigating factor, as he states he suffers from anxiety and depression and has experienced problems in his personal life. Mr. Gooding offered proof of medication for such concerns in his prior Consent to Discipline, and said that he is currently seeing a Nurse Practitioner and undergoing counseling. However Mr. Gooding did not supply undergirding proof related to these matters.

Standards

It is noted that the *Standards* provide in each case that "absent aggravating or mitigating circumstances," the sanctions provided are "generally appropriate." *Standards, II. Theoretical Framework.* They are designed as guidelines to give the courts a framework, but flexible such that the court may impose the appropriate sanction based on the specific circumstances of each case. *Standards, 1.3.*

Standard 4.41 (Lack of Diligence) is applicable to Mr. Gooding's violations of the duties to his clients, which are ERs 1.2(a), 1.3 and 1.4. This *Standard* provides that disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

In contrast, *Standard* 4.42 provides that suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

The difference between the disbarment and suspension standard under 4.4 primarily rests on the degree of injury that occurred; serious or potentially serious injury is required to apply the disbarment standard.

Standard 4.6 (Lack of Candor) is applicable to Mr. Gooding's violation of ER 8.4(c). *Standard* 4.61 provides that disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client. Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client. *Standard*, 4.62.

Standard 7.0 (Violation of Duties owed as a Professional) is applicable to Mr. Gooding's violation of ERs 5.5 and 8.1(b). *Standard* 7.1 provides that 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. *Standard* 7.2 provides that 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.

Discussion

In this instance, the underlying client matters involve knowing failures to diligently represent clients and communicate regarding the status of their cases. Mr. Gooding's failures were myriad and occurred somewhat contemporaneously with the violations of his previous suspension. In this instance, Mr. Gooding exacerbated the situation by failing to notify his clients, the courts, and opposing counsel of his suspension from the practice of law, and failing to withdraw from cases. Mr. Gooding continued to act as a lawyer in some counts despite his suspension, with an apparent disregard for the disciplinary process. While it appears that Mr. Gooding's continued practice was for clients he already represented prior to his suspension, the record is inadequate to support this conclusion for Counts 6, 8, and 10. What is perfectly clear, however, is that Mr. Gooding continued to represent clients during his suspension, and in a manner that resulted in additional ethical violations.

In addition, Mr. Gooding violated Supreme Court rules when he knowingly failed to respond to State Bar screening in the many complaints. These violations are serious instances of misconduct toward the profession when considered in tandem with his conduct. A Hearing Panel should always concern itself with the reasons why one acts unethically for mitigation. We empathize when human frailties cause ethical blunders. But when one enters an agreement to be suspended and ignores that agreement, any explanations are made shallow in light of the conduct.

Mr. Gooding acknowledges he is not currently able to practice law in the manner required to benefit his clients and meet the standards of the profession. He argues he has continuing issues with anxiety and depression, which he says he is attempting to control via medication and counseling. But he offered no supporting documentation for such statements. Further, Mr. Gooding avers that he has no near-term intention of seeking reinstatement to the active practice of law. He acknowledges that one of his errors was to practice too broadly, and that if he practices again he will confine himself to real estate and business transactions.

The State Bar maintains that the presumptive sanction in this case is disbarment, based on *Standard 4.41*.⁹ The Panel does not agree. *Standards 4.41* and *7.1* require that *serious injury or potentially serious injury* result from the lawyer's unethical conduct. While the record reflects actual injury, no proof of serious injury or potentially serious injury has been established. For instance, no case was made in any count that a client forfeited all rights and remedies or suffered substantial loss of funds because of Mr. Gooding's actions. Therefore the appropriate *Standards* are *4.42* and *7.2*, establishing suspension, and what must be determined is the appropriate length of that suspension.

Here, Mr. Gooding's conduct was aggravated by his previous disciplinary order to stop practicing for six months and one day. He refused to adhere to that order or simply ignored it. His prior actions as an attorney were fraught with the same lack of diligence and non-communication which resulted in the underlying charges in this complaint. Also aggravating the sanction is his complete failure to

⁹ The State Bar's Prehearing Statement erroneously refers to Standard 4.43, Reprimand, however the language is that of 4.41, Disbarment.

respond to State Bar screening. No mitigation was shown apart from Mr. Gooding's alleged continued battle with anxiety and depression.

A Hearing Panel may conduct a proportionality analysis "if appropriate." Rule 58(k). For proportionality purposes, the State Bar offers three cases, each of which resulted in disbarment. The "obligation is to tailor the discipline in each situation to the facts of the case." *Matter of Murray*, 159 Ariz. 280, 283, 767 P.2d 1, 4 (1988). Lawyer discipline is not to punish a lawyer but, rather, to protect the public, the profession, and the administration of justice; deter similar conduct among other lawyers; preserve confidence in the integrity of the Bar; foster confidence in the legal profession and the self-regulatory process; maintain the integrity of the profession in the eyes of the public; and assist, if possible, in the rehabilitation of an errant lawyer. *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004); *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001); *In re Walker*, 200 Ariz. 155, 24 P.3d 602 (2001) (1,4,5); *In re Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990); *In re Hoover*, 161 Ariz. 529, 779 P.2d 1268 (1989); and *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985).

The Panel finds that a three-year suspension is the appropriate sanction in this matter and comports with the purposes of discipline while reflecting the severity of Mr. Gooding's behavior. There being no disbarment, Mr. Gooding's verbal request to brief the cases offered by the State Bar is not required and is denied.

It is troubling that during Mr. Gooding's testimony, he admitted taking on cases outside of his comfort zone and area of expertise despite the multiple problems he had previously admitted. He acknowledged this had also had been a

factor that contributed to a performance that fell below the standard of practice required of an attorney. The Hearing Panel believes that the process used by hospital physician peer review and discipline is instructive here. Specifically, when a hospital peer review committee finds that a physician has engaged in a practice that the physician is not competent in, the hospital may restrict and limit the physician's privileges in that area of practice. Following that example, the Hearing Panel has determined that Mr. Gooding as a term of probation must demonstrate his competence in all areas in which he intends to practice.

Considering the length of this present suspension and the prior suspension he substantively ignored, the panel also orders Mr. Gooding to pass the Arizona Bar Examination prior to being readmitted. Upon Reinstatement, Mr. Gooding shall be placed upon probation for two years subject to conditions described below.

V. Conclusion

In accordance with the above findings of fact and conclusions of law, the Hearing Panel has determined the appropriate sanction based on the facts deemed admitted, the *Standards*, the aggravating factors, and the goals of the attorney discipline system.

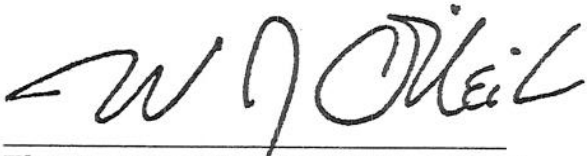
The Hearing Panel now orders as follows:

IT IS ORDERED:

1. Mr. Gooding is suspended from the practice of law for a period of three years, such suspension to be effective immediately.
2. Prior to applying for readmission Mr. Gooding shall successfully pass the Arizona Bar examination.

3. Upon reinstatement Mr. Gooding will be on probation for two years subject to LOMAP and a practice monitor, with other restrictions to be determined at the time of reinstatement. Specific terms and conditions of probation may include restrictions on his area of practice, if deemed appropriate.
4. Respondent shall pay all costs and expenses incurred by the State Bar and the Office of the Presiding Disciplinary Judge in this proceeding.
5. Respondent shall pay restitution of Two Thousand Two Hundred and Ninety Six Dollars (\$2,296.00) to the estate of Geraldine Solomon.

DATED this 29th day of October, 2012.


The Honorable William J. O'Neil
Presiding Disciplinary Judge

CONCURRING:


James M. Marovich
Volunteer Attorney Member


Mark Salem
Volunteer Public Member

Original filed with the Disciplinary Clerk
this 29th day of October, 2012.

Copies of the foregoing mailed
this 29th day of October, 2012, to:

Mr. Alan Gooding
Gooding Law Firm PLLC
3573 E. Sunrise Drive., Ste. 133
Tucson, AZ 85718-3206
Email: alanguooding1@gmail.com

Copy of the foregoing hand-delivered/emailed
this 29th day of October, 2012, to:

Ms. Shauna Miller
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

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

by.



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

Certified this 13th day of June, 2013

By



Disciplinary Clerk
Supreme Court of Arizona

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
NOV 14 2012
FILED
BY _____

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

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

ALAN E. GOODING,
Bar No. 023060

Respondent.

No. PDJ-2012-9070

FINAL JUDGMENT AND ORDER

[File Nos. 11-0421, 11-0976,
11-2125, 11-2369, 11-2412,
11-2526, 11-2686, 11-2763,
11-2960, 11-3628, 11-3909]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, in conjunction with a duly appointed hearing panel, has rendered a decision in the above-captioned matter and the time for appeal has expired.

Accordingly,

IT IS HEREBY ORDERED that Respondent, **ALAN E. GOODING**, is hereby suspended from the practice of law for three (3) years effective immediately, for his conduct in violation of the Arizona Rules of Professional Conduct.

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent shall pay restitution in the amount of \$2,296.00 to the estate of Geraldine Solomon.

IT IS FURTHER ORDERED that upon reinstatement, Respondent shall be placed on probation for a period of two (2) years, with the State Bar's Law Office


Exhibit

5

Management Assistance Program, with terms to include a practice monitor. Any additional terms and conditions shall be determined at the time of reinstatement.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ 2709⁷⁶/₁₀₀. 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 14th day of November, 2012.



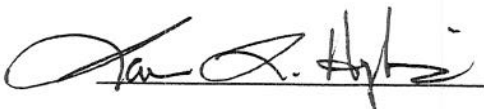
The Honorable William J. O'Neil
Presiding Disciplinary Judge

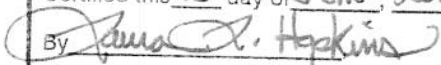
Original filed with the Disciplinary Clerk
this 14th day of November, 2012.

COPY of the foregoing e-mailed/mailed
this 14th day of November, 2012, to:

Shauna R. Miller
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: lro@staff.azbar.org

Alan E. Gooding
Gooding Law Firm, PLLC
3573 East Sunrise Drive, Suite 133
Tucson, AZ 85718-3206
Email: alanguooding1@gmail.com



The foregoing instrument is a full, true, and correct copy of the original on file in this office.
Certified this 18th day of June, 2013
By 
Disciplinary Clerk
Supreme Court of Arizona