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

IN THE MATTER OF	§	
GARY L. LASSEN	§	**CAUSE NO.** 55413
STATE BAR CARD NO. 11969500	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Gary L. Lassen, (hereinafter called "Respondent"), showing as follows:

1. 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.

2. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at 13429 S. 33rd St., Phoenix, Arizona 85044.

3. On or about August 14, 2013, 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 Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent*, PDJ-2013-9068, State Bar No. 11-3770, 12-2382.

4. On or about February 7, 2014, a Report and Order Imposing Sanctions (Exhibit 2) was filed in the Supreme Court of the State of Arizona Before the Office of the Presiding

Disciplinary Judge in a matter styled, *In the Matter of a Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent,* PDJ-2013-9068, State Bar Nos. 11-3770, 12-2382.

5. On or about March 13, 2014, a Final Judgment and Order (Exhibit 3) was filed in the Supreme Court of the State of Arizona Before the Office of the Presiding Disciplinary Judge in a matter styled, *In the Matter of a Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent,* PDJ-2013-9068, State Bar File Nos. 11-3770, 12-2382, that states in pertinent part as follows:

> ...IT IS HEREBY ORDERED that Respondent, Gary L. Lassen, is hereby suspended for from the practice of law for a period of two years effective May 7, 2014, for conduct in violation of his duties and obligations as a lawyer, as disclosed in the Hearing Panel's Report...

6. Respondent appealed the hearing panel's findings and imposition of a two year suspension and on or about September 23, 2014, a Decision Order (Exhibit 4) was entered in the Supreme Court of Arizona in a matter styled, In *the Matter of a Member of the State Bar of Arizona, Gary L. Lassen, Bar No. 005259, Respondent,* Arizona Supreme Court No. SB-14-0012-AP, Office of the Presiding Disciplinary Judge No. PDJ20139068, that states in pertinent part as follows:

> ...With respect to the sanction, the Court finds that a suspension of eighteen months is sufficient to satisfy the purposes of lawyer discipline...

7. In the Decision Order, the Court accepted, with respect to Count One, the panel's determination that Respondent violated ERs 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter]; 1.4(a)(4) [a lawyer shall promptly comply with reasonable requests for information]; and 1.16(d) [upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as. . .refunding any advance payment of a fee that has not been earned]. With respect to Count Two, the Court accepted the panel's determination that Respondent violated ERs 5.5 [(a) a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction]; 8.4(c) [engaging

in conduct involving dishonesty, fraud, deceit or misrepresentation]; and Rule 54(c) [knowing violation of any rule or any order of the court] but rejected other rule violations alleged.

Copies of the Complaint, Report and Order Imposing Sanctions, Final Judgment and Order and Decision are attached hereto as Petitioner's Exhibits 1 through 4, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 through 4 at the time of hearing of this cause.

8. 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 Court of Arizona and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

Rebecca (Beth) Stevens
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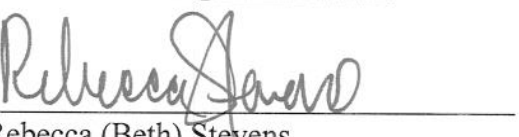

Rebecca (Beth) Stevens
Bar Card No. 24065381
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Gary L. Lassen by personal service.

Gary L. Lassen
13429 S. 33rd St.
Phoenix, Arizona 85044

Rebecca (Beth) Stevens

Effective July 2009

SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES

Effective July 2009

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 MEMBER OF THE STATE BAR OF ARIZONA, **Gary L. Lassen,** **Bar No. 005259,** Respondent.	**PDJ 2013-9068** **COMPLAINT** State Bar No. 11-3770, 12-2382

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. Respondent is a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on April 22, 1978.

2. Effective April 28, 2012, Respondent was suspended for thirty (30) days in SBA Case No. 10-1508 and pursuant to an Agreement for Discipline by Consent. Respondent violated ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, and 8.4(c).

3. Respondent was reinstated to the practice of law in Arizona on June 25, 2012.

COUNT ONE (File no. 11-3770/Hutton)

4. Julia Hutton is the CEO and owner of Orca Communications Unlimited, LLC (Orca), a public relations firm that provides services in the United States and abroad.

Exhibit
1

5. On or about June 8, 2010, Ms. Hutton entered into a contingency fee agreement with Respondent (the Agreement). Respondent agreed to represent Orca relating to a claim against a former employee, Ann Noder, that employee's company and possible third parties.

6. Under the Agreement, Ms. Hutton agreed to pay Respondent as follows: a) approximately forty percent (40%) of the normal hourly rate or $150.00 per hour, plus a fee of twenty-five percent (25%) of the total amount recovered if settled before Respondent filed suit; b) thirty percent (30%) of the total recovery if the case settled before trial or dispositive hearing on a permanent injunction and it resulted in a favorable award; c) twenty-five percent (25%) of the total amount recovered if the matter went to trial.

7. Respondent and the James Marovich Law Firm, with whom Respondent was working on this case, agreed to bill Ms. Hutton at the following rates: for legal services up to $50,000, the reduced fee of $150 per hour; for legal services between $50,000 and $75,000, the reduced fee of $75 per hour; and for legal services between $75,000 and $100,000, the reduced fee of $50 per hour. After $100,000, no hourly fees will be charged. And, additional compensation as follows: an additional twenty-five percent (25%) of any settlement paid to Ms. Hutton or thirty percent (30%) of the total recovery paid to Ms. Hutton if settled prior to a final hearing or trial. Finally, any award of attorney fees will be added to the total award for purposes of determining the contingency amount to be paid to Respondent.

8. The Agreement also provides that Ms. Hutton pay a $50,000 retainer ($40,000 for fees incurred and $10,000 for costs advanced).

9. By letter dated July 28, 2010, and notwithstanding the language of the Agreement, Respondent advised Ms. Hutton that the total retainer to be paid was $40,000.00, which Ms. Hutton was to pay at a rate of $5,000 per month. Respondent also advised that he would bill Ms. Hutton separately for any "other work" performed for Orca on general matters.

10. On August 13, 2010, Respondent filed a Complaint on behalf of Orca with the Maricopa County Superior Court, Case No. CV-2010-023187. The Complaint alleged breach of contract, breach of fiduciary duty and duty of loyalty, breach of covenant of good faith and fair dealing, fraud, tortuous interference with business expectancies, and unfair competition.

11. On September 17, 2010, the defendants filed a motion to dismiss the complaint.

12. By email dated September 22, 2010, Ms. Hutton asked Respondent about the judge assigned to the case. Respondent replied "I do know him and have had good luck in his court, but I don't know if he is still on the take from Snell and Wilmer (just kidding)."

13. In October, Respondent and Ms. Hutton met to discuss an outline of how to proceed with the litigation. By email dated October 20th, Ms. Hutton asked when the outline would be ready. Respondent promised that he would send it out the next day.

14. By email dated November 1, 2010, Ms. Hutton asked about the status of the outline. Respondent replied that he had been working on it for several days and would send it the next day. He did so.

15. By email dated December 20, 2010, Ms. Hutton sought advice from Respondent about pending issues. Respondent did not respond.

16. By email dated December 28, 2010, Ms. Hutton reminded Respondent of her earlier request and asked for clarification regarding billing issues. Respondent did not respond.

17. By email dated January 5, 2011, Ms. Hutton sent Respondent a list of questions to consider in preparing to take the defendants' depositions. She also sought a conference call that day to discuss the depositions and problems with billings. Respondent replied that he would prefer to postpone the call for a few days so that he could "reformat" the questions. The deposition was subsequently postponed due to an alleged scheduling conflict of defendants' counsel.

18. On February 16, 2011, the Court held oral argument on the defendants' motion to dismiss. The Court granted the motion to dismiss all six (6) counts of the complaint. The Court held that Count I (Breach of Contract) and Count III (Good Faith and Fair Dealing) did not state claims upon which an action may be based because the parties' agreement was the equivalent of a lifetime geographically unrestricted non-competition agreement and was, therefore, unenforceable. As to Counts II, V and VI, which asserted common law tort claims arising from the alleged misuse of confidential information, the Court held that those claims were preempted by the Arizona Uniform Trade Secrets Act, A.R.S. § 44-401, *et seq.* The Court granted plaintiff leave to re-plead the fraud claim contained in Count IV only, as a contract claim, on or before March 15, 2011. The Court's minute entry was filed on February 22, 2011. Respondent did not provide

Ms. Hutton with a copy of same until March 15, 2011, when he emailed her a draft amended complaint for review and approval for filing that day.

19. By email dated February 24, 2011, Ms. Hutton asked for the summary of the deposition questions that Respondent had promised to send that day. Respondent replied that he had a "surprise Court hesring [sic] that got set for tomorrow that the Judge just set on Wed" and that he would be working on all of the matters "most all weekend."

20. On March 15, 2011, Respondent filed a First Amended Complaint on behalf of Orca, the last day to do so. Respondent sent a draft of the Amended Complaint seeking Ms. Hutton's comments and signed verification page that afternoon. He advised Ms. Hutton at that time that the Amended Complaint had to be filed "end of day, but we could refile if s.thing [sic] is incorrect, missing, or ws [sic] inadvertently left out. I juiced up the breach and fraud stuff."

21. On July 15, 2011, the Court issued an order dismissing Orca's "original" complaint and awarding the defendants' attorney fees in the amount of $22,413.50, plus interest. Respondent did not provide the Ms. Hutton with a copy of this order until July 28, 2011.

22. By email dated July 28, 2011, Ms. Hutton asked about the updated status report on the case that Respondent had previously promised to provide. In response, Respondent's assistant emailed a copy of the July 15th order with an apology for the delay, stating that she had been on vacation. Respondent followed up with a letter the next day transmitting the same document without any explanation or discussion.

23. By email dated July 29, 2011, Ms. Hutton requested that Respondent send her the complete billing records. Respondent did not do so.

24. By email dated August 15, 2011, Ms. Hutton again requested the entire billing history of the representation. Respondent replied that he was sending out bills that date. Ms. Hutton reminded Respondent that she had requested the entire billing records and not a new invoice. Respondent did not do so.

25. By email dated August 17, 2011, Ms. Hutton requested copies of all invoices from June 2010. Respondent responded stating that he was facing "a mountain of work" and that he would send the invoices sometime over the next two (2) days.

26. By minute entry filed August 26th, the Court dismissed the First Amended Complaint. Respondent did not advise Ms. Hutton of the ruling until September 20th. The Court noted that the First Amended Complaint contained "mere conclusions of law or unwarranted deductions." Further, that the contract expressly left a material issue to be decided and therefore no contract was formed and no breach could have occurred.

27. By email dated August 27, 2011, Respondent advised Ms. Hutton that he blamed the adverse July 15th ruling on the Judge and his decision to delay the argument on pending motions. Respondent stated that he believed an appeal would be "very winnable."

28. By email dated August 29, 2011, Respondent sent Ms. Hutton invoices from December 31, 2010 through July 31, 2011. Ms. Hutton responded and again requested copies of all invoices from the commencement of the representation, June 2010.

29. By email dated September 6, 2011, Respondent sent Ms. Hutton copies of past invoices, more than a month after they were requested. The invoices were incorrectly dated.

30. On September 15, 2011, defendants filed a Motion for an Award of Attorneys' Fees Re: First Amended Complaint.

31. By letter dated September 20, 2011, Respondent advised Ms. Hutton that he had received the August 26th minute entry dismissing the First Amended Complaint.

32. By email dated November 9, 2011, Respondent advised Ms. Hutton that he had not received a ruling on the pending motion for attorneys' fees, but that once he did, a notice of appeal had to be filed within thirty (30) days. He stated that he would handle the appeal for $25,000 plus costs that would not exceed $1,000.

33. By minute entry filed January 4, 2012, the Court granted the defendants' motion for attorneys' fees relating to the First Amended Complaint in the amount of $10,291.50 in fees and costs of $229.00.

34. On January 6, 2012, Respondent filed a motion to withdraw and permit substitution of counsel on behalf of plaintiff, Orca.

35. On January 17, 2012, the Superior Court entered a final judgment for attorneys' fees and costs in favor of the defendants in the total amount of $32,934.00 plus interest for attorneys' fees and costs.

36. Also on that date, the Court entered an order permitting Respondent to withdraw as legal counsel and to permit the substitution of David B. Earl.

37. On February 12, 2012, Attorney Earl filed a notice of appeal on behalf of plaintiff, Orca.

38. By letter dated June 15, 2012, Ms. Hutton requested the return of all unused funds and an accounting of all costs and attorneys' fees. According to Ms. Hutton, she had paid Respondent a retainer of $40,000 for attorney fees and $10,000 for costs.

39. Respondent states that he accepted the case for a $50,000 retainer that was "earned upon receipt," and, that $10,000 of that amount was to be a retainer. Respondent "concede[s]" that the terms of the fee agreement are ambiguous (e.g., the use of the term "retainer" and the failure to include the terms "earned upon receipt.") Respondent urges that the resolution of this issue should be through fee arbitration.

40. By email dated October 10, 2012, Respondent stated that he would provide Bar Counsel with an "appendix" of additional information in response to the bar charge by October 26, 2012. Respondent did not do so.

41. Orca's appeal from the adverse ruling in the underlying case is pending in the Arizona Court of Appeals, Division One, 1 CA-CV 12-0183 and is currently under advisement.

42. Respondent's time entries were incorrect and he billed Ms. Hutton for services that he did not provide or that were duplicative of time for which Attorney Marovich billed. Time entries for June 24th and 25th of 2010, July 12th and 27th, August 3rd and 13th, September 6th, 22nd, and 23re of 2010, are incorrect. And, there are multiple charges on invoice numbers 2588, 2558, 2568, 2576, and 2583,

which are not supported by the Court's docket or Respondent's response to the bar charge in this case.

43. Respondent violated ER 1.3, which provides that a lawyer shall act with reasonable diligence and promptness in representing a client. During the course of the representation Respondent did not act diligently by, among other things, promptly preparing and filing the First Amended Complaint, having left it for the day it was due to obtain the client's input and approval. The First Amended Complaint was subsequently dismissed, in part, because Respondent had not plead sufficient facts.

44. Respondent violated ERs 1.4(a)(3) and (4), which provide that a lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Respondent did not keep Ms. Hutton reasonably informed of the status of the matter by, among other things, failing to promptly advise Ms. Hutton of rulings on pending motions and to provide status updates when he promised to do so.

45. Respondent violated ER 1.5(b), which provides that a lawyer shall not collect an unreasonable fee or an unreasonable amount for expenses. For example, a review of the Respondent's invoices reflects that there were numerous errors and corrections made to them throughout the course of the representation. Ms. Hutton has identified time entries and invoices that contain false or duplicative entries.

46. Respondent violated ER 1.16, which provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . refunding any advance payment of a fee that has not been earned. Respondent retained all of the fees and costs paid by

Ms. Hutton, but failed to provide her with a full accounting despite being asked to do so on numerous occasions. Ms. Hutton has disputed the accuracy of the invoices and the amounts billed by Respondent during the representation.

47. Respondent violated ER 3.1, which provides that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law. Respondent prepared and filed an original complaint and a first amended complaint, both of which were dismissed by the Court as having no basis in fact or law, and for which the Court awarded attorneys fees to the defendants.

48. Respondent violated ER 8.4(d), which provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Respondent prepared and filed an original complaint and a first amended complaint, both of which were dismissed by the Court as having no basis in fact or law, and for which the Court awarded attorneys fees to the defendants.

COUNT TWO (File no. 12-2382/Washington)

49. Earl J. Washington and his wife lodged complaints against the City of Tempe Parks and Recreation Department for racial discrimination and harassment stemming from mistreatment they claim to have experienced between August 2011 and January 2012.

50. During their interaction with Respondent, Mr. Washington and his wife often spoke for each other in email communications. For clarity and brevity's sake, they are referred to collectively herein as "Mr. Washington."

51. On April 9, 2012, Mr. Washington met with Respondent and "expressed an interest in exploring courses of action" against the City of Tempe. Mr. Washington sought not only damages for alleged racial discrimination, but also the removal of an employee of the City. According to Mr. Washington, although Respondent expressed that he was eager to help, plans to meet in late April and early May were delayed because Respondent stated that he had been busy with family health issues and an argument in the 9th Circuit Court of Appeals.

52. On April 16th and 24th, Mr. Washington called Respondent who apologized for not having called, expressed interest in the case and promised to research the legal issues.

53. Respondent was suspended for thirty (30) days effective April 28, 2012 in SBA File No. 10-1508. He was reinstated effective June 25, 2012.

54. Respondent did not inform Mr. Washington of his suspension and continued with his representation.

55. By email dated May 1, 2012, Respondent advised Mr. Washington to expect to hear from him later that week with an analysis of possible courses of action to consider taking against the City of Tempe and its Department of Parks and Recreation.

56. By email dated May 9, 2012, Respondent replied to Mr. Washington's request to establish the terms of representation and suggested meeting the following week.

57. On May 24, 2012, Mr. Washington met with Respondent and gave Respondent a check for $1,000, which Respondent cashed on that date. According to Mr. Washington, Respondent promised to draft records requests and to submit a notice of claim to the City of Tempe by June 1st.

58. By email dated June 8, 2012, Mr. Washington sought a status update on the drafts of the letters.

59. By email dated June 10, 2012, Respondent advised that he expected to send out the draft to Mr. Washington the next day.

60. By email dated June 11, 2012, Respondent advised Mr. Washington that he was working on the following documents: a public records request; a status of internal investigation and/or action request; and a notice of claim for damages.

61. By email dated June 14, 2012, Respondent advised Mr. Washington that he was preparing a public records request and asked what documents Mr. Washington wanted to obtain in addition to the internal communications that Respondent was going to request.

62. By email dated June 16, 2012, Mr. Washington responded to Respondent's request. A few minutes later, Respondent replied that he would draft the public records request and that on June 18th, he would send to the Mr. Washington the list of documents being requested along with drafts of other letters that he was preparing.

63. By letter emailed on June 18, 2012, Respondent advised Mr. Washington that he had not completed the drafts and that he would not be able to do so until the next day.

64. By email dated June 20, 2012, Respondent advised Mr. Washington that his "schedule now has allowed me to address your matter(s)." He stated that "the letter" had been dictated and that he was working on the notice of claim.

65. By email dated June 21, 2012, Respondent advised Mr. Washington that a draft public records request was "coming your way"; a separate inquiry into the HR investigation would come the next day along with the draft letter to the Community Relations Department. He stated that he was still working on the notice of claim.

66. By email dated June 24, 2012, Mr. Washington provided comments to the draft request for public records. Respondent did not reply until June 26th at which time he stated that he had been suffering from food poisoning, but was working on the matter.

67. By email dated June 27, 2012, Respondent advised Mr. Washington that the letters had "all been dictated," and that he looked forward to meeting on July 2, 2012.

68. By email dated June 29, 2012, Respondent provided Mr. Washington with a first draft of the notice of claim that he intended to send out on July 2, 2012.

69. On July 3, 2012, Respondent sent a public records request to the City of Tempe.

70. By email dated July 19, 2012, Respondent advised Mr. Washington that the City of Tempe had produced a disc with documents that his office was scanning to email to him.

71. By letter emailed on July 23, 2012, Respondent sent Mr. Washington a copy of the records produced by the City of Tempe.

72. By email dated July 27, 2012, Mr. Washington followed up with Respondent regarding a telephone conversation that they had had the day before. Mr. Washington provided a detailed list of additional documents to request from the City of Tempe.

73. By email dated July 30, 2012, Respondent advised Mr. Washington that he had received additional documents from the City of Tempe, which he was having scanned and emailed to Mr. Washington.

74. By email dated August 1, 2012, Respondent advised Mr. Washington that he recommended sending four documents, two of which he had already dictated.

75. By email dated August 6, 2012, Respondent advised Mr. Washington that the Tempe Deputy City attorney had agreed to meet with him and promised to create an agenda for the meeting with the Mr. Washington's input.

76. On August 15, 2012, Respondent met with Tempe Deputy City Attorney, Judi Baumann. However, despite repeated requests, Respondent failed to provide Mr. Washington with an outline of what was discussed and/or correspondence from the City of Tempe to substantiate that the meeting took place.

77. By email dated August 22, 2012, Mr. Washington confirmed his understanding that he would be receiving a summary memo from the Respondent regarding the meeting.

78. By email dated August 23, 2012, Respondent advised Mr. Washington that he would deliver a draft agenda and other "implementation items" that Respondent wanted to submit "asap."

79. By email dated August 26, 2012, Mr. Washington expressed concern regarding the time limits to take legal action and asked Respondent to identify them. Mr. Washington stated that he would watch for the drafts, although it was unclear what they were. Mr. Washington also asked again for any email exchanges with the City Attorney's office regarding the meeting that was held.

80. By email dated August 27, 2012, Respondent stated that he had been tied up in Court matters but that he had dictated a first draft of an unidentified document. He further stated that he would send Mr. Washington an engagement letter, too.

81. On August 28, 2012, Mr. Washington called Respondent to ask again about the outcome of the meeting that Respondent held with the Deputy City Attorney.

82. By letter emailed August 29, 2012, Respondent identified three avenues by which the Mr. Washington could seek relief, and advised the Mr. Washington that they would have to address costs and a formal fee agreement. The letter did not identify any statute of limitations deadlines or set forth a rate at which fees/costs would be charged.

83. On September 5, 2012, Mr. Washington filed a written bar charge with the State Bar. By that time, they had sought other legal advice and believed that the statute of limitations had likely run and they would not be able to proceed against the City of Tempe.

84. By email to Mr. Washington dated September 26, 2012, Respondent claimed that he was unaware that Mr. Washington sought the firing of a city employee and monetary damages before the telephone call of August 28th. He

claimed that he had "earlier agreed to and did provided [sic] for you the request for public records and met with the city attorney. i [sic] also provided a rough draft of a notice of claim for discussion purposes I agreed to do that for a flat fee even though my time expended on that and research exceeded that figure many times over." He further stated that because he had not received a response to his letter of August 29th, he was concerned about "how and where to go from here." He then advised that if Mr. Washington wanted to sue the City then Mr. Washington had to "file a claim before November 13 or pursue a Section 1981 claim." Finally, he stated Mr. Washington should be prepared to enter into a fee agreement with whomever he chose to work with.

85. The September 26th email is not consistent with the communication between the parties during the course of the representation regarding the scope and object of the representation.

86. There is no evidence that Respondent confirmed in writing the scope of the representation of the fees and costs to be paid by the Mr. Washington at the inception of the representation.

87. Respondent violated ER 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client. During the course of the representation Respondent, among other things, failed to send a notice of claim to the City of Tempe despite repeated promises that he would do so and failed to request additional public records from the City.

88. Respondent violated ERs 1.4(a)(3) and (4), which state that a lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Among other things,

Respondent did not keep Mr. Washington reasonably informed of the status of the matter, including the deadline for filing a notice of claim against the City of Tempe. Nor did he respond to Mr. Washington's reasonable requests for information for, among other things, the substance of the meeting between Respondent and the City Attorney and the true status of documents that Respondent had agreed to prepare for the Mr. Washington.

89. Respondent violated ER 1.5(b), which states that the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing. There is no evidence that Respondent ever communicated to Mr. Washington, in writing, the scope of the representation or the fees/expenses to be paid by the client.

90. Respondent violated ER 1.16, which states that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . refunding any advance payment of a fee that has not been earned. Respondent retained the $1,000 paid by Mr. Washington, however he did not provide the services for which he was retained. Additionally, he accepted the retainer while he was suspended from the practice of law.

91. Respondent violated ER 3.2, which states that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Respondent failed to produce written work-product when promised to the Mr. Washington and failed to promptly file a notice of claim with the City of Tempe as promised, thereby causing potential or actual harm to Mr. Washington.

92. Respondent violated ER 5.5(a), which states that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. During his period of suspension from the practice of law in Arizona, Respondent accepted a retainer from Mr. Washington; cashed the retainer check; and agreed to prepare various demand letters and public records requests, as well as to send a notice of claim to the City.

93. Respondent violated ER 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent led the Mr. Washington to believe that he could take on the legal representation when in fact, Respondent was suspended from the practice of law at the inception of the representation and until he was reinstated effective June 25, 2012.

94. Respondent violated Rule 54(c), Ariz. R. Sup. Ct., which states that grounds for discipline of members include a knowing violation of any rule or any order of the court. Respondent practiced law in Arizona during the period of his suspension from the practice of law and in violation of the order of the Arizona Supreme Court.

DATED this 14th day of August, 2013.

STATE BAR OF ARIZONA

Stacy L. Shuman

Stacy L. Shuman
Staff Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 14th day of August, 2013.

by: Samantha Slade

SLS:

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

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN,** **Bar No. 005259** Respondent.	Nos. 11-3770 and 12-2382 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed these matters on April 12, 2013, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Reports of Investigation and Recommendation.

By a vote of 8-0-1[1], the Committee finds probable cause exists to file a complaint against Respondent in File Nos. 11-3770 and 12-2382.

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

Parties may not file motions for reconsideration of this Order.

DATED this 15 day of April, 2013.

Lawrence F. Winthrop

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

Original filed this 15th day
of April, 2013, with:

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

[1] Committee member William Friedl did not participate in this matter.

Copy mailed this 17th day
of April, 2013, to:

Gary L. Lassen
Law Office of Gary L. Lassen, PLC
2141 East Broadway Road, Suite 215
Tempe, Arizona 85282-1931
Respondent

Copy emailed this 17th day
of April, 2013, to:

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

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

by: Diane C. Hellen

IN THE

SUPREME COURT OF THE STATE OF ARIZONA

BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE

1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN,** **Bar No. 005259** Respondent.	**PDJ-2013-9068** **REPORT AND ORDER IMPOSING SANCTIONS** [State Bar Nos. 11-3770 and 12-2382] **FILED FEBRUARY 7, 2014**

On December 18 and 19, 2013, the Hearing Panel ("Panel"), composed of Susan J. Burnell, a public member, Sandra E. Hunter, an attorney member, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a two day hearing pursuant to Rule 58(j), Ariz. R. Sup. Ct. Craig D. Henley appeared on behalf of the State Bar of Arizona ("State Bar"). James J. Belanger and Scott M. Bennett appeared on behalf of Mr. Lassen. Rule 615 of the Arizona Rules of Evidence, the witness exclusion rule, was invoked. [1] The Panel carefully considered the Complaint, Answer, the State Bar's Pre-hearing Statement, testimony including that of Mr. Lassen, and admitted exhibits. The Panel now issues the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz. R. Sup. Ct.

I. SANCTION IMPOSED:

[1] Consideration was given to sworn testimony of Julia Hutton, Alice Giannola, and Earl Washington.

Exhibit 2

RESPONDENT IS SUSPENDED FOR TWO YEARS AND UPON REINSTATEMENT, TWO YEARS OF PROBATION IMPOSED. RESTITION AND COSTS OF THESE DISCIPLINARY PROCEEDINGS ORDERED.

II. BACKGROUND AND PROCEDURAL HISTORY

Respondent, a lawyer licensed to practice law in the state of Arizona, was suspended on April 28, 2012 for thirty (30) days after violating ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, and 8.4(c). See Exhibits 144, 145. He was reinstated to the practice of law in Arizona on June 25, 2012. See Exhibit 146.

An Order of Probable Cause was filed on April 15, 2013. The State Bar filed its complaint on August 14, 2013. Respondent filed his Answer on September 19, 2013. An initial case management conference was held on October 1, 2013. By concurrence of the parties, firm hearing dates were set for November 25-26, 2013. The parties were directed to file a joint prehearing statement. Each party was ordered to file within that prehearing statement a final list of exhibits to be used at trial for any purpose and a list of witnesses intended to be used by each party during trial. It was ordered that "No witness shall be used at the trial other than those timely disclosed and listed, except for good cause."

An expedited status conference was held in this matter on November 1, 2013 at the request of Mr. Lassen. Karen Clark, *Adams & Clark,* specially appeared with Mr. Lassen for the limited purpose of the status conference. Ms. Clark requested a short continuance and two additional weeks to submit the Joint Prehearing Statement. Ms. Clark acknowledged on the record that the joint prehearing statement was known to be due that day and acknowledged that she had received the State Bar's portion of that statement. She requested two additional weeks to

submit their Joint Prehearing Statement. The hearing was continued until December 18-19, 2013.

Because Mr. Lassen would not cooperate in the preparing of the joint prehearing statement, the State Bar unilaterally filed its Prehearing Statement on November 15, 2013. Respondent filed an *untimely* prehearing statement on November 26, 2013. Mr. Lassen chose not to file his prehearing statement *pro se* until November 26, 2013. He was given until December 10, 2013 to give good cause for why his witnesses and exhibits should not be stricken. It is undisputed that the witnesses and exhibits in his joint prehearing statement were substantially different from his disclosure. For reasons stated, the joint prehearing statement was stricken by order of the PDJ on December 2, 2013, and the listed witnesses and exhibits of Mr. Lassen were excluded except those also listed by the State Bar. By Order of the PDJ filed December 16, 2013, both parties' pre-hearing memorandums were stricken.

The two count Complaint alleged violations of the following Arizona Rules of Professional Conduct: ER 1.3, ER 1.4(a)(3) and (4), ER 1.5(b), ER 1.16, ER 3.1, ER 3.2, ER 5.5(a), ER 8.4(c) and (d). The Complaint also alleged Mr. Lassen violated Rule 54(c) Ariz. R. Sup. Ct.

FINDINGS OF FACT

COUNT ONE (File no. 11-3770/Hutton)

Julia Hutton is the CEO and owner of Orca Communications Unlimited, LLC (Orca), a public relations firm that provides services in the United States and abroad. See Hutton Testimony; see also Exhibit 2, 3. Ms. Hutton entered into a contingency fee agreement with Respondent (the Agreement) for representation in claims against a former employee and others. *Id.*; see also Exhibit 21, 23 and 24. The Agreement set

out a billing schedule. *Id.* Respondent's billing was plagued with inaccuracies and incomplete accountings throughout the representation. *See* Exhibit 51, 74, 75 and 76; *see also* Giannola Testimony.

Respondent filed a complaint on behalf of Orca alleging breach of contract, breach of fiduciary duty and duty of loyalty, breach of covenant of good faith and fair dealing, fraud, tortuous interference with business expectancies, and unfair competition. *See* Exhibit 2. The defendants filed a motion to dismiss the complaint. *See* Exhibit 1. Respondent and Ms. Hutton met about a month later to discuss an outline of how to proceed with the litigation. Ms. Hutton requested the outline on two occasions after the meeting and Respondent promised both times to send it the following day. *See* Exhibit 55; *see also* Hutton and Giannola Testimony. He finally did so after Ms. Hutton's second request. *Id*. Respondent also failed to respond to various requests from Ms. Hutton regarding the representation and billing. *See* Exhibit 57; *see also* Hutton and Giannola Testimony.

Following oral argument, the Court granted the motion to dismiss all six counts in the complaint but gave plaintiff leave to re-plead the fraud claim as a contract claim by March 15, 2011. After dismissal, defendant's counsel notified Respondent that they considered the claims meritless and intended to request attorney's fees and costs if Respondent pursued them. *See* Exhibit 11. In response, Respondent told opposing counsel that he asked his clients to "seriously consider" a settlement offer. *See* Exhibits 12, 13, 14 and 15; see also Hutton Testimony. However, Respondent never discussed with his clients the possibility of settling the matter or the defendant's assertions that the claims were meritless. *See* Exhibits 12, 13, 14 and 15; see also Hutton Testimony.

The Court filed the oral argument minute entry on February 22, 2011. *See* Exhibit 7. Respondent did not provide Ms. Hutton a copy of the Court's minute entry or the First Amended Complaint until the day the pleading was due, on March 15, 2011. As such, Ms. Hutton had only a few hours to review the documents for accuracy and thoroughness before she had to sign the pleading and return it to Respondent for filing. *See* Exhibit 8; see also Exhibit 66. The Court dismissed the First Amended Complaint by minute entry filed August 26, noting that it contained "mere conclusions of law or unwarranted deductions." *See* Exhibit 9. Respondent did not notify Ms. Hutton of the dismissal until September 20. *See* Exhibit 59. Respondent also failed to provide Ms. Hutton the Court's July 15, 2011 order dismissing Orca's "original" complaint and awarding the defendants' attorney fees until July 28, 2011. *See* Exhibits 70 and 72. Furthermore, the order was sent with no explanation and only after Ms. Hutton requested an updated status report that Respondent had previously promised to send. *See* Exhibit 71 and 72.

As a result of the dismissal of the First Amended Complaint, defendants filed another motion for attorneys' fees. *See* Exhibit 10. Almost two months later, Respondent advised Ms. Hutton that the motion for fees was still pending, and that a notice of appeal would be due within thirty days after a ruling on the motion. He offered to handle the appeal for a specified cost. However, two days after the Court granted the defendants' motion for fees, Respondent filed a motion to withdraw as counsel. *See* Exhibit 26, 28 and 77.

After Respondent's withdrawal as counsel, Ms. Hutton requested the return of all unused funds and an accounting of all costs and attorneys' fees. *See* Exhibit 46. A dispute arose regarding the accounting of a Ten Thousand Dollar prepaid fee for costs.

See Lassen, Hutton and Giannola Testimony. Respondent argued that the Ten Thousand Dollar amount was to be a retainer and that the terms of the Agreement were ambiguous. He urged resolution of the issue through fee arbitration, and stated that he would provide Bar Counsel with an "appendix" of additional information regarding the matter. He failed to do so. *See* Exhibit 48.

COUNT TWO (File no. 12-2382/Washington)

Respondent was suspended from the practice of law on April 28, 2012 and reinstated on June 25, 2012. Earl J. Washington and his wife sought legal advice regarding complaints against the City of Tempe Parks and Recreation Department for racial discrimination and harassment. *See* Washington and Lassen Testimony. On April 9, 2012, Mr. Washington met with Respondent to discuss the possibility of recovering damages and the removal of a City employee. *See* Exhibit 92; *see also* Washington and Lassen Testimony. Respondent expressed interest in representing Mr. Washington in the matter and promised to research the legal issues. *See* Exhibit 92; *see also* Washington Testimony.

On May 1, 2012, Respondent advised Mr. Washington that he would provide an analysis of possible courses of action against the City of Tempe within a week. *See* Exhibit 93 and 134; *see also* Washington Testimony. Mr. Washington provided Respondent a check for $1,000 and requested establishing terms of the representation. Respondent agreed to perform records requests and to submit a notice of claim to the City of Tempe by June 1, but there is no record that representation terms were ever established. *See* Exhibit 97 and 134; *see also* Washington and Lassen Testimony. After failing to meet the June 1 date promised, Mr. Washington asked for a status update. Respondent informed Mr. Washington on June 11 that he was working on a

public records request, a status of internal investigation and/or action request, and a notice of claim for damages. *See* Exhibit 100; *see also* Washington Testimony. Following several more communication exchanges and failures by Respondent to provide documents to Mr. Washington by dates promised, Respondent finally sent the items promised. Respondent admitted to sending certain correspondence to Mr. Washington on Respondent's legal letterhead.

Respondent apparently arranged a meeting with the Tempe Deputy City attorney and agreed to meet with Mr. Washington beforehand to create an agenda for the meeting. *See* Exhibits 117 and 118. It is unclear whether such an agenda was ever created. Nonetheless, after the alleged meeting with the City attorney, and despite repeated requests, Respondent failed to provide Mr. Washington with a summary of the meeting or any documentation substantiating that it indeed took place. Nearly two weeks after the meeting supposedly took place, Respondent sent Mr. Washington three options for seeking relief and stated that costs and a formal fee agreement would be necessary before moving forward. However, Respondent did not identify any statute of limitations deadlines or set forth a rate at which fees/costs would be charged. *See* Exhibit 123.

On September 5, 2012, Mr. Washington filed a written bar charge with the State Bar after learning from other legal counsel that the statute of limitations had likely run on their claims against the City of Tempe. *See* Exhibit 91; *see also* Washington Testimony. Following the bar charge, Respondent emailed Mr. Washington claiming disagreements about the scope and object of the representation. For example, contrary to prior documented communications between the parties, Respondent claimed it was not until the end of the representation that he became aware that Mr.

Washington sought the firing of a city employee or monetary damages. These disagreements are the result of Respondent's failure to establish a fee agreement or to confirm in writing the scope of the representation at the inception of the representation. *See* Washington Testimony.

At no time did Mr. Lassen ever inform Mr. Washington that he had entered a consent agreement for discipline that would result in the suspension of his law license. At no time did Mr. Lassen ever inform Mr. Washington of his pending or actual suspension from the practice of law. When Mr. Lassen met with Mr. Washington and later Mr. and Mrs. Washington after his suspension began, the name of Mr. Lassen's law firm was listed in the lobby of the office complex and Mr. Lassen as an attorney was painted on his office entrance. At all times Mr. Washington believed Mr. Lassen was a licensed attorney.

We find the statements of Mr. Lassen to Mr. Washington were designed to leave the impression that he was actively practicing law during a time in which he was suspended. Regardless of whether or not Mr. Lassen practiced law at that time his statements alluded to, and such comments could only lead one to conclude that he was actively engaged in the practice of law in multiple other matters at that time. Those statements included his May 9, 2012, statement "I would like to get together, but I have a major argument in the 9th circuit Court of Appeals on Monday." *See* Exhibit 94.

There were multiple occasions on which he misled Mr. Washington. Mr. Lassen in his testimony acknowledged that he considered Mr. Washington to be a client at the time of their first meeting in April, 2012. He never sent him a written notice of his suspension in compliance with Supreme Court Rule 72. On May 1, 2012, he wrote Mr. Washington telling him he could expect from him an analysis of possible courses of

action to consider. However, he testified he was not working on that analysis. *See* Exhibit 93. Another example is that on June 11, 2012, Mr. Lassen informed his client he was working on three separate pieces of correspondence for him. *See* Exhibit 100. However, he testified he was not working on those documents. Mr. Lassen was untruthful to his client and we find he was intentionally misleading.

IV. CONCLUSIONS OF LAW AND DISCUSSION OF DECISION

A. Count One (Hutton)

The Panel finds clear and convincing evidence that Mr. Lassen violated the ethical rules detailed below and as alleged in paragraphs 43-48 of Count One of the Complaint.

ER 1.3

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.3, requiring a lawyer to provide act with reasonable diligence and promptness in representing a client. During the course of the representation Respondent did not act diligently by, among other things, promptly preparing and filing the First Amended Complaint, having left it for the day it was due to obtain the client's input and approval. The First Amended Complaint was subsequently dismissed, in part, because Respondent had not pled sufficient facts.

ER 1.4

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.4(a)(3) and (4), which provide that a lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Respondent did not keep Ms. Hutton reasonably informed of the status of the matter by, among other things, failing to promptly advise Ms.

Hutton of rulings on pending motions and to provide status updates when he promised to do so.

ER 1.5

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.5, which provides that a lawyer shall not collect an unreasonable fee or an unreasonable amount for expenses. For example, a review of the Respondent's invoices reflects that there were numerous errors and corrections made to them throughout the course of the representation. Ms. Hutton has identified time entries and invoices that contain false or duplicative entries. Charging a client twice and falsely, clearly amount to an unreasonable fee.

ER 1.16

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.16, which provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, . . . and refunding any advance payment of a fee that has not been earned. Mr. Lassen negotiated a fee arrangement for an appeal which he told Ms. Hutton would be due thirty days after the Court's ruling on defendant's motion for fees. However, two days after the ruling, Mr. Lassen moved to withdraw as counsel, leaving Ms. Hutton with little time to retain new counsel and file her appeal. Respondent also retained all of the fees and costs paid by Ms. Hutton, but failed to provide her with a full accounting despite being asked to do so on numerous occasions. Ms. Hutton has disputed the accuracy of the invoices and the amounts billed by Respondent.

ER 3.1

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 3.1, which provides that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law. Respondent prepared and filed an original complaint and a first amended complaint, both of which were dismissed by the Court as having no basis in fact or law, and for which the Court awarded attorneys fees to the defendants.

ER 8.4(d)

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 8.4(d), which provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Respondent prepared and filed an original complaint and a first amended complaint, both of which were dismissed by the Court as having no basis in fact or law, and for which the Court awarded attorneys fees to the defendants.

B. Count Two (Washington)

The Panel finds clear and convincing evidence that Mr. Lassen violated the ethical rules detailed below and as alleged in paragraphs 87-94 of Count Two of the Complaint.

ER 1.3

Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client. During the course of the representation Respondent, among

other things, failed to send a notice of claim to the City of Tempe despite repeated promises that he would do so and failed to request additional public records from the City.

ER 1.4

Panel finds clear and convincing evidence that Mr. Lassen violated ERs 1.4(a)(3) and (4), which state that a lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Among other things, Respondent did not keep Mr. Washington reasonably informed of the status of the matter, including the deadline for filing a notice of claim against the City of Tempe. Nor did he respond to Mr. Washington's reasonable requests for information for, among other things, the substance of the meeting between Respondent and the City Attorney and the true status of documents that Respondent had agreed to prepare for the Mr. Washington.

ER 1.5

Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.5, which states that the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing. There is no evidence that Respondent ever communicated to Mr. Washington, in writing, the scope of the representation or the fees/expenses to be paid by the client. Respondent also collected an unreasonable fee for legal services as he accepted the representation and practiced law during a period of suspension.

ER 1.16

Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.16, which states that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . refunding any advance payment of a fee that has not been earned. Respondent retained the $1,000 paid by Mr. Washington, however he did not provide the services for which he was retained. Additionally, he accepted the retainer while he was suspended from the practice of law.

ER 3.2

Panel finds clear and convincing evidence that Mr. Lassen violated ER 3.2, which states that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Respondent failed to produce written work-product when promised to Mr. Washington and failed to promptly file a notice of claim with the City of Tempe as promised, thereby causing potential and actual harm to Mr. Washington.

ER 5.5

Panel finds clear and convincing evidence that Mr. Lassen violated ER 5.5(a), which states that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. During his period of suspension from the practice of law in Arizona, Respondent accepted a retainer from Mr. Washington; cashed the retainer check; and agreed to prepare various demand letters and public records requests, as well as to send a notice of claim to the City.

ER 8.4

Panel finds clear and convincing evidence that Mr. Lassen violated ER 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent led the Mr. Washington to believe that he could take on the legal representation when in fact, Respondent was suspended from the practice of law at the inception of the representation and until he was reinstated effective June 25, 2012.

Rule 54(c)

Panel finds clear and convincing evidence that Mr. Lassen violated Rule 54(c), Ariz. R. Sup. Ct., which states that grounds for discipline of members include a knowing violation of any rule or any order of the court. Respondent practiced law in Arizona during the period of his suspension from the practice of law and in violation of the order of the Arizona Supreme Court.

V. SANCTIONS

In determining an appropriate sanction, the Panel considered the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") as a guideline. Rule 58(k), Ariz. R. Sup. Ct. The appropriate sanction turns on the unique facts and circumstances of each case. *In re Wolfram*, 174 Ariz. 49, 59, 847 P.2d 94, 104 (1993).

Analysis under the ABA *Standards*

Generally, when weighing what sanction to impose, the Panel considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004). *See also Standard* 3.0.

Although the *Standards* do not account for multiple charges of lawyer misconduct, the sanction imposed should at least be consistent with the sanction for the most serious misconduct that has been found. *Theoretical Framework*, p. 7. Consideration is also given to the degree of harm caused by the misconduct. *Matter of Scholl*, 200 Ariz. 222, 224-225, 25, P.3d 710 (2001).

In these matters, Mr. Lassen knowingly violated his duties owed to the legal system, his former clients, and as a professional.

Standard 4.4, Lack of Diligence, is applicable to Respondent's violations of ERs 1.3 and 1.4. *Standard* 4.42 provides:

> 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.

Mr. Lassen violated ER 1.3 by knowingly failing to promptly prepare and file the First Amended Complaint in Count One (the Hutton matter). ER 1.3 was also violated when Mr. Lassen knowingly failed to send a notice of claim to the City of Tempe, and when he knowingly failed to request additional public records from the City in Count Two (the Washington matter). Additionally, Mr. Lassen violated ER 1.4 by knowingly failing to provide Ms. Hutton with notice and advice throughout the representation regarding Court rulings, and by knowingly failing to inform Mr. Washington that he failed to send a notice of claim to the City of Tempe, failing to request additional public records from the City, and failing to timely respond to Mr. Washington's requests.

Standard 4.6, Lack of Candor is applicable to Respondent's violations of ERs 1.5(b), 8.4(c) and Rule 54(c). *Standard* 4.62 provides:

> Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client.

Mr. Lassen's billing records in Count One contained several errors and corrections, including entries that were knowingly false or duplicative in violation of ER 1.5. Furthermore, in Count Two Mr. Lassen knowingly failed to provide written rates of fees, violating ER 1.5(b), he misrepresented his ability to undertake the representation raising ER 8.4(c) violations, and knowingly practiced law while suspended in violation of ER 5.5.

Standard 6.2, Abuse of the Legal Process is applicable to Mr. Lassen's violations of ERs 3.1, 3.2, and 8.4(d). *Standard* 6.22 provides:

> Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

ERs 3.1 and 8.4(d) were violated when Mr. Lassen knowingly filed meritless complaints, causing injury to his former clients. A violation of ER 3.2 occurred when Mr. Lassen knowingly failed to both provide Mr. Washington with the requested work product and to timely file a notice of claim.

Standard 7.0, Violation of Duties Owed as a Professional is applicable to Mr. Lassen's violations of ERs 1.16(d) and 5.5(a). *Standard* 7.2 provides:

> Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Mr. Lassen knowingly failed to provide Ms. Hutton with an accurate accounting of all fees and failed to return any unearned fees, violating ER 1.16. Mr. Lassen received payment for legal services from Mr. Washington while he knew he was suspended and then failed to perform the legal services. The few legal services Mr. Lassen did

provide Mr. Washington were in violation of ER 5.5 because he was suspended during that time.

Given the facts of this matter and upon consideration of the *Standards* applied to Respondent's most serious misconduct, the Panel determined that the presumptive sanction is suspension. Mr. Lassen violated duties owed to his clients, the legal system and his duties as a professional. There was both actual injury to the clients and potential injury to the courts and legal profession. Mr. Lassen's mental state was knowing, which includes the requisite mental state for violations of ER 8.4(c) and Rule 54(c).

***Standard* 9.0, Aggravating and Mitigating Factors**

In attorney discipline proceedings, aggravating factors need only be supported by reasonable evidence. *In re Matter of Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). The Panel finds the evidence supports the existence of the following aggravating factors: 9.22(a) prior disciplinary offense, 9.22(b) dishonest or selfish motive, 9.22(c) a pattern of misconduct, 9.22(d) multiple offenses, 9.22(g) refusal to acknowledge wrongful nature of conduct, 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution.

Mr. Lassen's disciplinary history is as follows:

Pursuant to an Agreement for Discipline by Consent, a 30 day suspension effective April 28, 2012, was imposed in PDJ 2011-9079 for violating ERs 1.3, 1.4(a), 1.4(b), 1.5(b), 2.1, 8.1 and 8.4(c). These prior violations are similar violations to the instant matter and further support the aggravating factor of 9.22(c) pattern of misconduct. By order of the PDJ, Mr. Lassen was reinstated without objection by the State Bar effective June 25, 2012. In addition,

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

No evidence of mitigation was offered by M. Lassen or the State Bar. However, the 2012 Agreement for Discipline by Consent[2] reflects that Mr. Lassen was experiencing personal or emotional problems as a result of a conviction for extreme DUI. He was also being treated for depression. Lastly, he had recently opened a practice as a sole practitioner.

V. PROPORTIONALITY

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

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *See In re Peasley,* 208 Ariz. 27, 35, ¶ 33, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 41, 61,

[2] Judicial notice was taken of the prior Agreement as it was not an exhibit in this matter.

90 P.3d at 778 (citing *In re Alcorn,* 202 Ariz. 62, 76,¶ 49, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In *In Re Wagner*, SB-5-0174-D, Wagner was disbarred. Wagner engaged in the unauthorized practice of law while summarily suspended for failure to comply with her mandatory continuing legal education requirements. Wagner appeared in court representing a father in a child-dependency case. Wagner also failed to comply with a court order regarding the preparation of a joint case management plan and failed to respond to an order to show cause or appear at the show cause hearing. Wagner also failed to cooperate with the State Bar's investigation. Wagner violated E.R.s. 1.4, 3.2, 3.4, 5.5, 8.1, and 8.4(d), and Rules 53(c), 53(d), and 53(f). Aggravating factors included *Standards*: 9.22(c) (pattern of misconduct), 9.22(e) (bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency), 9.22(g) (refusal to acknowledge wrongful nature of conduct), 9.22(h) (vulnerability of victim), and 9.22(j) (indifference to making restitution). The sole mitigating factor was *Standard* 9.32(k) (imposition of other penalties or sanctions).

In *In Re Green*, SB-08-0027-D, Green accepted an agreement for a two-year suspension, two years of probation, and fee arbitration arising out of eleven counts. Green failed to adequately communicate and diligently represent clients, failed to advise clients, the courts, and opposing counsel of an impending disciplinary suspension, and practiced law while he was suspended. Green violated E.R.s 1.2, 1.3, 1.4, 1.5, 1.8, 1.15, 3.2, 5.5, 8.4(c), 8.4(d), and Rules 31(b) and 72(a). Aggravating factors included *Standards*: 9.22(a) (prior disciplinary offenses), 9.22(b) (dishonest or selfish motive), 9.22(c) (pattern of misconduct), 9.22(d)

(multiple offenses), and 9.22(i) (substantial experience in the practice of law). Mitigating factors included *Standards*: 9.32(c) (personal or emotional problems), 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude toward proceedings), 9.32(g) (character or reputation), 9.32(l) (remorse), and 9.32(k) (imposition of other penalties or sanctions).

In *In Re Wahl*, SB-08-0017-D, Wahl was suspended for six months and one day and ordered to complete 15 hours of continuing legal education. Wahl practiced law while he was placed on administrative suspension for failure to comply with his mandatory continuing legal education requirements, including by filing one pleading while suspended and appearing in court. Wahl violated E.R.s 5.5, 8.1(b), 8.4(c) and (d), and Rule 53(f). Aggravating factors included *Standards*: 9.22(d) (multiple offenses), 9.22(e) (bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency), and 9.32(i) (substantial experience in the practice of law). The sole mitigating factor was *Standard* 9.32(a) (absence of a prior disciplinary record).

This case is similar to the above cases in that they all involve, among other things, the unauthorized practice of law. The above cases are distinguishable, however, in that there were mitigating factor(s). In the instant case, there are no mitigating factors in the record that are established by clear and convincing evidence.

VI. CONCLUSION

The Panel has weighed the facts and circumstances in this matter and has considered the applicable *Standards* including the aggravating and mitigating factors.

IT IS ORDERED Mr. Lassen is suspended from the practice of law for a period of two (2) years effective thirty (30) days from the date of this Report and Order.

IT IS FURTHER ORDERED that Mr. Lassen shall pay restitution to the following individuals in the following amounts:

RESTITUTION

Julia Hutton and/or Orca Communications Unlimited, LLC	$9,044.04
Earl and Martha Washington	$1,000.00

IT IS FURTHER ORDERED that upon reinstatement, Mr. Lassen shall be placed on two years of probation with LOMAP.

IT IS FURTHER ORDERED that Mr. Lassen shall obtain a MAP assessment prior to filing any application for reinstatement.

IT IS FURTHER ORDERED that Mr. Lassen shall pay costs associated with these disciplinary proceedings.

A final judgment and order will follow.

DATED this 7th day of February, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING

Susan J. Burnell

Susan J. Burnell, Volunteer Public Member

Sandra E. Hunter

Sandra E. Hunter, Volunteer Attorney Member

Original filed with the Disciplinary Clerk

of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 7th day of February, 2014.

Copies of the foregoing mailed/emailed
this 7th day of February, 2014, to:

Craig D. Henley
Senior Bar Counsel
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4201 North 24th Street, Suite 100
Phoenix, AZ 85016-6266
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Attorneys for Respondent

Sandra Montoya
Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: LRO@staff.azbar.org

by: MSmith

The foregoing instrument is a full, true, and correct copy of the original on file in this office.
Certified this 31 day of July 2014
By _____ Disciplinary Clerk
Supreme Court of Arizona

IN THE

SUPREME COURT OF THE STATE OF ARIZONA

BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE

1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **GARY L. LASSEN,** **Bar No. 005259** Respondent.	**PDJ-2013-9068** [State Bar File Nos. 11-3770, 12-2382] **FINAL JUDGMENT AND ORDER** **FILED MARCH 13, 2014**

This matter having come on for hearing before the Hearing Panel of the Supreme Court of Arizona, it having duly rendered its decision; a Notice of Appeal having been filed and an Order Denying Motion for Stay, But Extending Commencement of Suspension having been filed on March 7, 2014, accordingly,

IT IS HEREBY ORDERED that Respondent, **GARY L. LASSEN**, is suspended from the practice of law for a period of two years effective **May 7, 2014**, for conduct in violation of his duties and obligations as a lawyer, as disclosed in the Hearing Panel's Report.

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

IT IS FURTHER ORDERED that Mr. Lassen shall pay restitution in the following amounts to the following individuals:

Restitution

Julia Hutton and/or Orca Communications Unlimited, LLC	$9,044.04
Earl and Martha Washington	$1,000.00

IT IS FURTHER ORDERED that upon reinstatement, Mr. Lassen shall be placed on probation for a period of two (2) years with the State Bar Law Office Management Assistance Program. Specific terms and conditions of probation shall be determined at the time of reinstatement.

IT IS FURTHER ORDERED that Mr. Lassen shall obtain a Member Assistance Program assessment prior to filing any application for reinstatement.

IT IS FURTHER ORDERED that Mr. Lassen pay those costs and expenses awarded to the State Bar of Arizona in the amount of $2,028.66. 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 13th day of March, 2014.

William J. O'Neil

The Honorable William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
this 13th day of March, 2013.

COPY of the foregoing e-mailed/mailed
this 13th day of March, 2013, to:

Craig D. Henley
State Bar of Arizona
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Sandra Montoya
Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6288

by: MSmith

The foregoing instrument is a full, true, and correct copy of the original on file in this office.
Certified this 31 day of July 2014
By Michelle Smith
actng Disciplinary Clerk
Supreme Court of Arizona

SUPREME COURT OF ARIZONA

In the Matter of a Member of the State Bar of Arizona	)	Arizona Supreme Court No. SB-14-0012-AP
GARY L. LASSEN, Attorney No. 5259	)	Office of the Presiding Disciplinary Judge No. PDJ20139068
Respondent.	)	
	)	**FILED 9/23/2014**

DECISION ORDER

Pursuant to Rule 59, Rules of the Supreme Court, Respondent Gary L. Lassen appealed the hearing panel's findings and imposition of a two year suspension. The Court has considered the parties' briefs and the record in this manner. With respect to Count One, the Court accepts the panel's determination that Lassen violated ERs 1.4(a)(3) and (4) and 1.16(d). We reject the panel's determination that Lassen violated ERs 1.3, 1.5, 3.1, and 8.4(d). We also reject the finding that he violated ER 1.16 by giving the client "little time to retain new counsel and file her appeal."

With respect to Count Two, the Court accepts that panel's determination that Lassen violated ERs 5.5 and 8.4(c), and Rule 54(c). We reject the panel's determination that Lassen violated ERs 1.3, 1.4(a)(3) and (4), 1.5, 1.16, and 3.2.

With respect to the sanction, the Court finds that a suspension of eighteen months is sufficient to satisfy the purposes of lawyer discipline. The Court accepts the orders of restitution and the imposition of costs and expenses.

IT IS ORDERED affirming the panel's determinations as set forth in this order and modifying the sanction to reflect an eighteen (18) month suspension.

DATED this 23rd day of September, 2014.

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

ATTEST _____
Janet Johnson, Clerk of the Supreme Court
State of Arizona

By _____ Deputy

SCOTT BALES
Chief Justice

TO:
Gary L Lassen
Craig D Henley
Jennifer Albright
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Mary Pieper
Netz Tuvera
Lexis Nexis