BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA **BRYAN JAMES BLEHM,** **Bar No. 023891** **Respondent.**	**PDJ 2023-9096** **DECISION AND ORDER IMPOSING SANCTIONS** (State Bar Nos. 23-1165, 23-1985) **FILED JUNE 7, 2024**

PROCEDURAL HISTORY

The State Bar of Arizona filed a two-count Complaint against Respondent Bryan James Blehm ("Respondent") on December 21, 2023. On April 30, 2024, the Presiding Disciplinary Judge ("PDJ") granted the State Bar's Motion for Summary Judgment on Count One in part, concluding that, as a matter of law, Respondent violated ER 3.1, ER 3.3(a)(1), ER 8.4(c), and ER 8.4(d). The State Bar thereafter advised it would not pursue the remaining violation alleged in Count One (ER 1.3) and also moved to dismiss Count Two of the Complaint.

On May 9, 2024, the PDJ issued an order dismissing Count Two and converting the previously set evidentiary hearing on the merits to an aggravation/mitigation hearing regarding the Count One violations for May 21, 2024, at 10:00 a.m.

Bar Counsel Hunter F. Perlmeter and Kelly A. Goldstein were present on behalf of the State Bar at the May 21, 2024 hearing. Respondent did not appear.[1] The hearing proceeded in his absence. A hearing panel comprised of PDJ Margaret H. Downie, attorney member George A. Riemer, and public member Marsha Morgan Sitterley considered information and argument presented by Bar Counsel. Exhibits 1-4 were received into evidence.

FINDINGS OF FACT

The hearing panel does not restate the factual findings set forth in the April 30, 2024 ruling granting partial summary judgment but incorporates those facts by reference. Generally speaking, Respondent represented gubernatorial candidate Kari Lake in

[1] In the initial case management order filed February 1, 2024, the parties were directed to submit all communications and filings to the following email address: officepdj@courts.az.gov. Respondent, though, emailed bar counsel and a PDJ staff member on medical leave at 8:35 p.m. on Sunday, May 19, 2024, stating:

> I need to depart for Colorado tomorrow. Will not be able to attend in person. My apologies but can appear via zoom.

The PDJ was unaware of this email communication until the State Bar forwarded it to PDJ staff the day before the hearing. Respondent was subsequently advised he must file a motion if he was requesting any modification of the scheduled in-person hearing. He did not do so. According to Bar Counsel, Respondent had previously refused to agree to participate in a Zoom hearing – an option the PDJ had offered if both sides agreed and so advised the Disciplinary Clerk by May 14, 2024.

connection with a petition for review filed in the Arizona Supreme Court that sought to overturn rulings by the Superior Court and Court of Appeals.

Count One of the State Bar's Complaint arises out of the Supreme Court's May 4, 2023 order sanctioning Respondent for making "unequivocally false" representations in his filings with that court. The court imposed a monetary sanction of $2,000.00, explaining, in pertinent part:

> In her Complaint, Lake set forth colorable claims, including ballot chain-of-custody claims, that were rejected following an evidentiary hearing in the trial court, and she duly but unsuccessfully (except for the laches issue) challenged those rulings on appeal. However, she has repeatedly asserted that it is an "undisputed" fact that 35,563 ballots were added or "injected" at Runbeck, the third-party vendor. Not only is that allegation strongly disputed by the other parties, this Court concluded and expressly stated that the assertion was unsupported by the record, and nothing in Lake's Motion for Leave to file a motion for reconsideration provides reason to revisit that issue. Thus, asserting that the alleged fact is "undisputed" is false; yet Lake continues to make that assertion in her Motion for Leave.
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> Lake's Petition for Review stated that it was an "undisputed fact that 35,563 unaccounted for ballots were added to the total number of ballots at a third party processing facility." In her Opposition to Motion for Sanctions and Motion for Leave, she repeats this contention, stating that "[t]he record indisputably reflects at least 35,563 Election Day early ballots, for which there is no record of delivery to Runbeck, were added at Runbeck, . . ." As the Court of Appeals observed, Lake's argument was focused on one exhibit that included an estimate of the number of early ballot packets based on the number of trays and a different exhibit showing a precise count. Although Lake may have permissibly argued that an inference could be made that some ballots were added, there is no evidence that 35,563 ballots were and, more to the point here, this was certainly disputed by the Respondents. The representation that this was an "undisputed fact" is therefore unequivocally false.

Because Lake's attorney has made false factual statements to the Court, we conclude that the extraordinary remedy of a sanction under ARCAP 25 is appropriate.

CONCLUSIONS OF LAW

Respondent's conduct in Count One violated Rule 42, Ariz. R. Sup. Ct., ER 3.1 (a lawyer shall not assert or controvert an issue unless there is a good faith basis in law and fact for doing so that is not frivolous), ER 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made), ER 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and ER 8.4(d) (conduct prejudicial to the administration of justice).

SANCTION DISCUSSION

The State Bar asks that Respondent be suspended from the practice of law for six months and one day. A suspension of that length would require Respondent to go through reinstatement proceedings pursuant to Rule 65, Ariz. R. Sup. Ct., before practicing law in Arizona again.

Sanctions imposed against lawyers "shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* and, if appropriate, a proportionality analysis." Rule 58(k), Ariz. R. Sup. Ct. In fashioning a sanction, the hearing 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. *See In re Scholl*, 200 Ariz. 222, 224 (2001).

Respondent violated core ethical duties owed to the legal system and to the profession. "Attorney candor and honesty form the bulwark of our judicial system." *In re Ireland*, 146 Ariz. 340, 343 (1985). "The system cannot function as intended if attorneys, sworn officers of the court, can lie to or mislead judges in the guise of serving their clients. 'Zealous advocacy' has limits. It clearly does not justify ethical breaches." *In re Fee*, 182 Ariz. 597, 601 (1995).

In terms of harm, Respondent's misrepresentations needlessly expanded the proceedings in the Arizona Supreme Court. And any time an attorney attempts to mislead a judicial tribunal, it brings disrepute to and fosters mistrust of the legal profession.

The following ABA Standards are most relevant to the ethical violations at issue in these proceedings:

> 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
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> 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

Based on these ABA Standards, the presumptive sanction is suspension. To determine whether the presumptive sanction should be increased or decreased, the hearing panel next considers applicable aggravating and mitigating factors, which need only be established by reasonable evidence. *In re Abrams*, 227 Ariz. 248, 252 (2011).

The following five aggravating factors are supported by the record:

- 9.22(b) dishonest or selfish motive
- 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[2]
- 9.22(g) refusal to acknowledge wrongful nature of conduct
- 9.22(i) substantial experience in the practice of law

[2] Respondent filed a frivolous counterclaim that was stricken on the State Bar's motion. Rule 47(a), Ariz. R. Sup. Ct., identifies the permissible pleadings in a lawyer disciplinary proceeding: a complaint, an answer, an amended complaint, and an answer to an amended complaint. Absent leave, no other pleadings may be filed. A counterclaim, of course, is a pleading.

The hearing panel does not consider Respondent's failure to attend the May 21, 2024 hearing as an aggravating factor under ABA Standard 9.22(e). To be sure, Respondent waived his right to be heard in mitigation and respond to the State Bar's arguments and requests. But no rule or order mandated his presence. Demonstrated contempt for the discipline process is not synonymous with "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency."

The State Bar urges the hearing panel to also adopt the aggravating factor of "pattern of misconduct." The commission of multiple offenses, though, does not necessarily constitute a "pattern of misconduct." *In re Alexander*, 232 Ariz. 1, 15 (2013). The Arizona Supreme Court "has found patterns when a lawyer had a prior disciplinary record concerning similar misconduct, and a lawyer engaged in misconduct involving multiple parties in different matters that often occurred over an extended period of time." *Id*. Prior decisions demonstrate that the "pattern of misconduct" aggravator "applies to lawyers who repeatedly engage in ethical misconduct in different contexts." *Id*.

Respondent did not present any mitigating evidence. The State Bar, though, appropriately proffered two mitigating factors for the hearing panel's consideration:

- 9.32(a) absence of a prior disciplinary record
- 9.32(k) imposition of other penalties or sanctions (i.e., the monetary sanction imposed by the Arizona Supreme Court)

A lengthy law practice with no disciplinary history is often a relatively weighty factor in mitigation. *See In re Owens*, 182 Ariz. 121, 127 (1995). Lack of prior discipline, though, carries less mitigating weight when, as here, the respondent lawyer refuses to acknowledge the wrongful nature of his or her conduct. *See, e.g.*, *In re Shannon*, 179 Ariz. 52, 74 (1994) ("Respondent's failure to comprehend what was apparent to 14 people disturbs this court because Respondent is likely to repeat that which he fails to

understand."); *In re Bemis*, 189 Ariz. 119, 122-23 (1997) (acknowledging lack of prior discipline but expressing concern the respondent lawyer "apparently still fails to recognize the wrongful nature of his conduct."). Respondent has steadfastly refused to acknowledge *any* misconduct or even negligent missteps. As such, the hearing panel accords less weight to this factor than it might otherwise.

The aggravating factors substantially outweigh the mitigating factors. There is thus no principled basis upon which to impose less than the presumptive sanction under the ABA Standards. The question then becomes the appropriate length of Respondent's suspension.

Rule 58(k), Ariz. R. Sup. Ct., contemplates a proportionality review "if appropriate" when devising a sanction. Proportionality review, though, is "an 'imperfect process' that often provides little guidance." *In re Phillips*, 226 Ariz. 112, 119 (2010). Ultimately, discipline "must be tailored for the individual case; neither perfection nor absolute uniformity can be achieved." *Shannon*, 179 Ariz. at 72.

The PDJ directed the parties to address proportionality. The State Bar did so. Respondent did not. Several discipline cases were briefed by the State Bar and discussed at the aggravation/mitigation hearing. None offer meaningful guidance due to material differences in variables such as mental state, aggravating and mitigating factors, pervasiveness of harm, and remorse. Without a truly analogous case to rely on, the

hearing panel instead focuses on the recognized goals of the attorney discipline process in setting the length of Respondent's suspension.

The power to assess discipline "imposes a concomitant responsibility to pay special care to the purposes served by such discipline." *In re Rivkind*, 164 Ariz. 154, 157 (1990). The objective of the attorney regulatory system "is not to punish the lawyer, but to protect the public and deter similar conduct by other lawyers," *id.*, and to "instill public confidence in the Bar's integrity." *Phillips*, 226 Ariz. at 117.

A lawyer who is suspended for more than six months must apply for reinstatement and undergo a rigorous investigative process and evidentiary hearing. Among other things, such a reinstatement applicant must prove his or her rehabilitation by clear and convincing evidence – meaning, in part, that he or she has overcome the "weaknesses that produced [the] earlier misconduct." *In re Robbins,* 172 Ariz. 255, 256 (1992). A lawyer suspended for six months or less, on the other hand, may attain reinstatement by complying with Rule 72, Ariz. R. Sup. Ct., and filing an affidavit – a less onerous and more expeditious process. *See* Rule 64(e)(2), Ariz. R. Sup. Ct.

Is a long-term suspension necessary here to protect the public, maintain the integrity of the profession in the eyes of the public, and deter Respondent and other attorneys from engaging in similar misconduct? The State Bar's concern that Respondent will engage in similar misconduct in the future is not unreasonable and finds some

support in the record. On the other hand, this is Respondent's first disciplinary offense, and the misrepresentations at issue were so blatantly obvious there was little chance the Arizona Supreme Court would be misled by them.

Time will tell whether Respondent will conform his future conduct to the Rules of Professional Conduct. Had he appeared for the aggravation/mitigation hearing, the hearing panel would be better equipped to make this determination. Ultimately, though, the hearing panel concludes that a long-term suspension is excessive for a first offense that, while serious, involved relatively isolated and easily detectable misstatements. Should Respondent engage in future ethical misconduct, though, a harsher sanction may well be warranted.

CONCLUSION

Based on the foregoing, the hearing panel orders as follows:

1. Respondent Bryan James Blehm is suspended from the practice of law in Arizona for 60 days, effective 30 days from the date of this order.
2. Respondent shall fully comply with the obligations set forth in Rule 72, Ariz. R. Sup. Ct. He may not be reinstated without proof of such compliance. *See* Rule 72(f), Ariz. R. Sup. Ct.

3. Upon reinstatement, Respondent shall be placed on probation for one year and shall execute standard terms of probation with the State Bar that include, but are not limited to, the following:

    - Continuing Legal Education (CLE): In addition to mandatory continuing legal education requirements, during his term of probation, Respondent shall obtain five additional CLE hours in the area of ethics/professional responsibility – preferably regarding litigation conduct and advocacy -- at programs approved by Bar Counsel (which approval shall not be unreasonably withheld). Respondent is responsible for the costs associated with the CLE attendance and shall provide proof of his compliance in the manner directed by the State Bar.
    - Respondent shall commit no further violations of the Rules of Professional Conduct or Rules of the Supreme Court of Arizona.

4. Respondent shall pay the State Bar's costs and expenses incurred in these proceedings.

DATED this 7th day of June, 2024.

/s/signature on file
Margaret H. Downie, Presiding Disciplinary Judge

/s/ signature on file
George A. Riemer, Attorney Member

/s/ signature on file
Marsha Morgan Sitterley, Public Member

Copy of the foregoing emailed
this 7th day of June, 2024, to:

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by: SHunt