

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

ANDREA ELIZABETH MOUSER,
Bar No. 023967

Respondent.

PDJ-2014-9101

**AMENDED FINAL JUDGMENT
AND ORDER**

[State Bar File No. 14-0644]

FILED JULY 24, 2015

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

IT IS HEREBY ORDERED Respondent **ANDREA ELIZABETH MOUSER**, is suspended from the practice of law for six (6) months and one (1) day effective thirty (30) days from the date of the Decision and Order Imposing Sanctions, for conduct in violation of her duties and obligations as a lawyer as disclosed in the Hearing Panel's Decision and Order Imposing Sanctions filed June 29, 2015.

IT IS FURTHER ORDERED Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$4,674.34.

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

DATED this 24th day of July, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 24th day of July, 2015.

Nicole S. Kasetta
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: Iro@staff.azbar.org

Robert Brewster Van Wyck
Goldman & Zwillinger, PLLC
7047 East Greenway Parkway, Suite 150
Scottsdale, AZ 85254-8109
Email: rvanwyck@gzlawoffice.com
Counsel for Respondent

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: Iro@staff.azbar.org

by: JAlbright

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

ANDREA ELIZABETH MOUSER,

Bar No. 023967

Respondent.

No. PDJ-2014-9101

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar No. 14-0644]

FILED: JUNE 29, 2015

On May 14, 2015 the Hearing Panel ("Panel"), composed of Betty J. Davies, volunteer public member, Teri Rowe, volunteer attorney member, and Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a one (1) day hearing under Rule 58(j), Ariz. R. Sup. Ct. Nicole S. Kasetta appeared on behalf of the State Bar of Arizona ("State Bar"). Robert Brewster Van Wyck ("Mr. Van Wyck") appeared on behalf of Respondent, Andrea Elizabeth Mouser ("Ms. Mouser").

The Panel carefully considered the Complaint, Answer, Joint Pre-Hearing Statement, Respondent's Pre-Trial Memorandum, the State Bar's Pre-Trial Memorandum, admitted exhibits, and testimony. The Panel now issues the following "Decisions and Order Imposing Sanctions," under Rule 58(k), Ariz. R. Sup. Ct.

I. SANCTION IMPOSED:

SUSPENSION FOR A PERIOD OF SIX (6) MONTHS AND ONE (1) DAY AND

COSTS OF THESE DISCIPLINARY HEARINGS.

II. BACKGROUND AND PROCEDURAL HISTORY

The single count complaint arose out of Ms. Mouser's actions during collection efforts arising out of a judgment issued against her. A Probable Cause Order was

issued on November 24, 2014 and the State Bar filed its complaint on December 15, 2014, alleging the following violations of three (3) different Ethical Rules (“ERs”) and one (1) Arizona Supreme Court Rule: 3.3(a) (candor to the court); 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); 8.4(d) (conduct prejudicial to the administration of justice); and Rule 54(d), Ariz. R. Sup. Ct. (knowingly violating a court order). Ms. Mouser filed her answer on January 15, 2015, entering no admission to charges alleged but admitted ER 8.4(d) may be implicated in hindsight. [Response to State Bar’s Complaint, ¶ 41.] Ms. Mouser claimed no judgment was made for attorney’s fees in the arbitration hearing, denied Ms. Mouser solely owned and managed S-Corp, Silver Spoons, PLLC (“Silver Spoons”) or that Silver Spoons employed her, and stated she was only required to produce “documents evidencing assets held **personally** by [Ms. Mouser].” [Response to State Bar’s Complaint, ¶ 2-3, 11 (emphasis in original)]

An initial case management conference was held on January 29, 2015, resulting in the setting of a hearing on April 9-10, 2015. Standard written scheduling orders were issued controlling the subsequent course of action by the PDJ. On February 25, 2015, the PDJ signed an Order granting Ms. Mouser’s Motion to Extend Time to Serve Initial Disclosure Statements to March 2, 2015.

At a later telephonic case management conference held March 31, 2015, the parties agreed to reset the hearing for May 14, 2015, with the matter to be held in a single day and hold an additional telephonic conference on April 10, 2015. Joseph E. Collins was present to testify at the May 14 hearing. There is no record of objection to C. Robert Collins being unavailable to testify at the reset hearing.

On March 13, 2015, the parties submitted their Joint Pre-Hearing Statement. On April 9, 2015, Ms. Mouser submitted her Notice of Filing Exhibits. The parties agreed to admit all evidence with the hopes of expediting the disciplinary hearing process.

A rescheduled telephonic conference was held on April 13, 2015. At the rescheduled telephonic conference, the PDJ confirmed the date of the hearing for May 14, 2015 and *sua sponte* sealed the telephonic record under Rule 70, Ariz. R. Sup. Ct.

On May 4, 2015, the Notice of Assignment of Panel Members was filed assigning the matter to the following members: Teri Rowe, an attorney member; and Betty J. Davies, a public member. A hearing before the Panel was set for May 14, 2015 and was scheduled for one (1) day. On May 5, 2015, the PDJ issued Orders Re: Final Case Management Conference to confirm the date of the hearing before the Panel and remind parties of deadlines, sealed records, and subsequent course of action following the hearing.

On May 6, 2015, Ms. Mouser filed her Trial Memorandum denying she: (1) knowingly violated a court order in violation of Rule 54(c), Ariz. R. Sup. Ct.; (2) knowingly made misrepresentations to a judge in violation of ERs 3.3(a) and 8.4(c); and (3) conducted herself in a manner that caused prejudice to the administration of justice in violation of ER 8.4(d). [Respondent Trial Memorandum] Ms. Mouser contended she never knowingly made any misrepresentation nor knowingly disobeyed a court order. Ms. Mouser felt her conduct—at worst—could be considered negligent, which would only implicate ER 8.4(d). Ms. Mouser asserted that should she be found negligent the appropriate baseline sanction would be admonition.

Further, Ms. Mouser stated that “[a]t worst, based on her prior sanction of reprimand, a reprimand with probation may be found.” [Id., p. 2.]

The State Bar asserted suspension for a period of six (6) months and one (1) day was the appropriate sanction in this matter for Ms. Mouser’s perceived unethical actions as well as her lack of candor to the courts.

III. FINDINGS OF FACT

Ms. Mouser was licensed to practice law in the State of Arizona on October 20, 2005. [Joint Pre-Hearing Statement, p. 1.] Ms. Mouser had faced prior disciplinary sanctions and was on probation during the period of the matter at issue.¹ [Exhibits 47-49.]

On March 16, 2010, U.S. Americom contracted with Ms. Mouser and the professional limited liability corporation, Mouser Law Group, PLLC,—Ms. Mouser’s law firm at the time—for the rental of office printer and copier equipment. [Exhibit 6, SBA000043.] After a failure to pay on the contract, US Americom repossessed the office equipment on or about December 15, 2011. [Id., SBA000044.] The law firm of Collins & Collins LP (“Collins”) represented U.S. Americom in its recovery of damages from the breach of contract. Ms. Mouser and Mouser Law Group, PLLC, were sued in Superior Court on January 13, 2012, by Collins on behalf of U.S. Americom Business Systems, Inc., d/b/a Future Digital Imaging (“US Americom”) for breach of contract for rental of office equipment. [Admitted ¶ 1 of Complaint.]

¹ Agreement for Discipline by Consent filed on December 15, 2011 and accepted on January 9, 2012. The PDJ issued a Notice of Successful Completion of Probation on March 6, 2014. [Exhibit 60.]

On September 14, 2012, the parties came before James E. Shively (“Arbitrator”) assigned to resolve the contract dispute. On October 15, 2012, the arbitration award was filed with the Superior Court in favor of US Americom for: \$6,188.71 under the terms of the contract; \$339.00 for costs associated with filing fees and service of process; and \$7,000.00 for reasonable attorney fees.² [Exhibit 6.] There is no record of an appeal—timely or otherwise—of this award by Ms. Mouser or any other party connected to Ms. Mouser or any law firm associated with Ms. Mouser.

On January 14, 2013, Collins moved for Judgment on Arbitration Award against Ms. Mouser and her law firm on behalf of US Americom. [Exhibit 8.] On February 14, 2013, a Judgment on Arbitration Award (“Judgment”) for the entire arbitration award of \$13,527.71 was signed by Judge McVey. [Exhibit 9.] On March 11, 2013, Collins sent a letter to Ms. Mouser to collect on the judgment and announce collection proceedings. [Exhibit 10.]

On June 20, 2013, Collins applied for a Writ of Garnishment (Earnings) against Ms. Mouser. [Exhibit 11.] The garnishee listed was Mouser & Schmillen, PLLC. [Id.] On July 2, 2013, Ms. Mouser’s partner, Mr. James Robert Schmillen (“Mr. Schmillen”) returned the Garnishee’s Answer Form, stating Ms. Mouser was a “manager/member of the corporation with no financial interest in the property.” [Exhibit 12, SBA000072.] On July 12, 2013, Collins filed an Objection to the Answer of Mouser & Schmillen, PLLC. [Exhibit 15.] On August 12, 2013, Mr. Schmillen filed a Response to Objection to Answer of Mouser & Schmillen, PLLC stating that the only members are James R. Schmillen, PLLC and Silver Spoons, PLLC. [Exhibit 15, SBA000078.] On

² Total arbitration award in the amount of \$13,527.71.

August 20, 2013, Collins filed a Withdrawal of Request for Hearing against Mouser & Schmillen, PLLC. [Exhibit 17.]

On August 19, 2013, Collins applied for a Writ of Garnishment (Earnings) against Ms. Mouser to collect on the arbitration award with Judge LeClaire. [Exhibit 16.] The garnishee listed was Ms. Mouser's solely owned and managed S-Corp, Silver Spoons, PLLC. [Id.] On September 2, 2013, a Certificate of Service was filed certifying delivery of the Application for Writ of Garnishment having been made by process server on August 26, 2013. Ms. Mouser was personally served with the writ as statutory agent for Silver Spoons on August 26, 2013. [Exhibit 18.] Despite knowing of the writ, Ms. Mouser failed to file a response.

On October 7, 2013, Collins filed a Petition for Contempt on Garnishment ordering Ms. Mouser to show cause for failing to respond to the Garnishee's Answer form delivered on August 26, 2013. [Exhibit 19.] On August 30, 2013, the Garnishee's Answer form and Garnishee's Nonexempt Earnings Statement were filed with service of the form listed as "unknown date" and that Ms. Mouser was "not paid through the company listed as garnishee." [Exhibit 20, SBA000091-93; Exhibit 21.] Ms. Mouser testified to having filled out the Garnishee's Answer forms and filing them with the court. The State Bar points to transfers between Silver Spoons and Ms. Mouser's personal Bank of America ("BOA") account in the amount of roughly \$55,000 between January and November of 2013. [Exhibit 62, SBA000509.] Further, Ms. Mouser noted in her Response to Objection to the Answer of the Garnishee funds are paid out of Silver Spoons to Ms. Mouser, but only as the business expenses allow. [Exhibit 33, SBA000151, ¶4.]

During inquiry into the Request for Hearing on Garnishment, Ms. Mouser testified to the court she was never provided a final order of the arbitration award or notified of the arbitration award before the correspondence sent to her by Collins. [Exhibit 22; Andrea Mouser Testimony, 14:37:00.] This testimony is in direct conflict with other statements by Ms. Mouser where she testified the award announced in arbitration differed from what was provided in the Judgment on Arbitration Award.³ [Id., 14:39:00.] The Panel does not believe Ms. Mouser was first made aware of the arbitration award by the correspondences from Collins. Ms. Mouser was denied her Request for Hearing on Garnishment as it was not made within the required (10) ten business days of receiving the Garnishee's Answer and there was no finding of good cause for such extensive delay.⁴ [Exhibit 27.]

On November 4, 2013, Ms. Mouser was issued an order to appear before Commissioner John R. Doody on November 13, 2013 to produce information related to the garnishment proceedings. [Exhibit 23.] Ms. Mouser was ordered to produce "[a]ny and all . . . tax returns . . . with all attachments and schedules . . . for each of the last three (3) tax years." [Id., SBA000099.] Ms. Mouser was ordered to produce "[a]ny and all documents related to any checking account, savings plan, savings account, in which you have an interest [and a]ny and all documents related to any financial accounts held by [Ms. Mouser] or upon which [her] name appears or into which [Ms. Mouser] have placed money or negotiable instruments in any foreign

³ Objection raised and testimony stricken in regard to hearsay as to what Robert Collins said to Ms. Mouser during the arbitration award, but Ms. Mouser was there to get a first impression of the award that was given which is what she is disputing in her testimony.

⁴ Ms. Mouser made her request 65 days after Garnishee's Answer Form was delivered on August 26, 2013, as shown through courier log or 58 days after Certificate of Service issued on September 2, 2013.

country or state in the United States [as well as c]opies of all titles to real property you own in the United States ... [c]opies of all titles to personal and real property [and c]opies of any trust documents.” [Exhibit 23, SBA000099.]

On November 7, 2013, Ms. Mouser submitted an Expedited Motion to Continue Garnishment Objection Hearing due to a schedule conflict involving a different case before Judge Hoffman.⁵ [Exhibit 25.] Commissioner Doody denied the motion on November 12, 2013 and notified Ms. Mouser to take initiative in announcing her scheduling concerns to Judge Hoffman’s staff so they could properly inform Commissioner Doody’s staff of any delay in completing the matter before Judge Hoffman. [Exhibit 26.] On November 13, 2013, the objection of Ms. Mouser to the judgment relating to Garnishee Silver Spoons, PLLC was denied. [Exhibit 27.]

On or about November 13, 2013, an offer to settle for \$7,188.71 was made to Collins with a check—dated November 13, 2013—for \$3,000 as first payment. [Exhibit 53, SBA000386.] Collins refused this offer to settle for \$6,000.00 less than that of the Judgment on Arbitration Award. [*Compare, Id., SBA000387, with, Exhibit 9.*] Ms. Mouser testified that the check presented to Collins would be paid out of the Silver Spoons account and not from her personal account. [Andrea Mouser Testimony, 15:18:45.] Ms. Mouser testified there were attorney’s fees in dispute and offered a settlement for \$1,000 more than the arbitration award. [*Id., 14:55:00; See Exhibit 53, SBA000387.*] However the Judgment on Arbitration Award was final and all offers made by Ms. Mouser were for less than this finalized award and the only

⁵ Ms. Mouser cited the case to run from 1:30-4:30 p.m. before Judge Hoffman. Upon further inquiry, Commissioner Doody discovered—in Judge Hoffman’s minute entry—the original time allotted for this case to run to 3:30 p.m. with a different matter being heard by Judge Hoffman from 3:30-4:00 p.m. [Exhibit 26, SBA000105.]

pending requests for attorney's fees were related to proceedings regarding Ms. Mouser's continued failure to pay that judgment.

The Commissioner ordered a continuing of the Judgment Debtor Exam to December 3, 2013 at Collins' office. [Exhibit 27.] At this continued Judgment Debtor Exam Ms. Mouser could only produce documents for the 2010 taxable year as she had not yet filed for the 2011 or 2012 taxable years. [Exhibit 29.] In her debtor's deposition, she swore she had not hired an accountant to do them yet. [Id., SBA000121-122, Lines 25-3.]

During the court scheduled debtor's exam, Ms. Mouser failed to provide the accounts which she had an interest in or which her name appeared as ordered by Commissioner Doody. Ms. Mouser insisted she was not required to provide business account information she had acknowledged having signatory rights to or sole ownership of. [Id., SBA000119.] Ms. Mouser produced her personal Bank of America ("BOA") account statements for 2013, but no information for Silver Spoons.

Ms. Mouser admitted to having signatory rights to six or eight accounts, yet only provided statements for her personal BOA account that showed transfers of money into this account from those other accounts. [Id.] Specifically, Ms. Mouser admitted to receiving money from Silver Spoons and being the sole member/owner of Silver Spoons. [Id.] Ms. Mouser admitted to having an interest in Silver Spoons, and refused to provide information related to those accounts—in violation of the order by Commissioner Doody—because those were not her personal accounts and instructed Collins to "address it with the court." [Id., SBA000122-127; See also Exhibit 32, SBA000140, ¶ 9.]

This Panel finds inconsistencies with Ms. Mouser's stance on Silver Spoons as the November 13, 2013 check presented to Collins would have been paid out of the Silver Spoons account and not Ms. Mouser's personal BOA account. The Panel finds the failure to present statements for the Silver Spoons account a conscious and intentional act by Ms. Mouser.

On December 18, 2013, Collins filed a Motion to Compel and Request for a Warrant with the court to obtain the documents not produced and to issue an Order to Show Cause against Ms. Mouser to show why she should not be held in contempt of court for failing to provide bank statements and other financial documents. [Exhibit 30.] On the same day, Collins filed an Objection to the Answer of the Garnishee—under the A.R.S. § 12-1598 definition of "earnings"—citing responses by Ms. Mouser related to Silver Spoons, PLLC in the Judgment Debtor's Exam. [Exhibit 31.]

Ms. Mouser admitted to knowing of A.R.S. §12-1598(4) from the garnishment forms she had filled out, but testified that while also acting as attorney for Silver Spoons, she did not read the statute and instead relied on the purported legal advice of her CPA. That CPA did not testify and we give no weight to such testimony. Even if this were true, the fact she knew of this provision makes the Panel suspicious of her subsequent behavior. The Panel finds the evidence clear and convincing Ms. Mouser either knew the law and ignored her obligations or tried to avoid knowing the law clearly presented to her in the garnishment forms. It may be possible Ms. Mouser sought a more favorable definition from her CPA to further put off court ordered payments in her attempts to settle the arbitration award at a reduced amount. Regardless, her action or inaction was done with a purpose and intent. The Panel finds either position untenable and not acceptable. Regardless, the Panel noted that

Ms. Mouser admitting to having known about the statute, intentionally failed to try to determine the validity, scope, meaning, or application of the law when responding to the garnishment forms.

Ms. Mouser submitted requested K-1's for 2011 and 2012 to Collins on or about January 8, 2014.⁶ [Exhibit 32.] On January 13, 2014, Ms. Mouser filed a Response to Motion to Compel and Response to Request for Warrant. [Id.] Ms. Mouser again denied having a financial interest in Silver Spoons yet admitted to the account being "able to pay [Ms. Mouser] via distributions if appropriate." [Id., SBA000140, ¶ 9, 11.] Ms. Mouser filed a Response to Objection to the Answer of the Garnishee claiming there was no income to be reported from the business accounts and the income was of no relevance to the initial order to produce documents. [Exhibit 33.]

On February 27, 2014, Commissioner Doody found Ms. Mouser to be in contempt of court for failing to produce the ordered documents. [Exhibit 34.] Further, Ms. Mouser was held in contempt of court for submitting false statements to the court in the answer of garnishee for Silver Spoons. [Id.] The court found there to be two false statements made to the court: (1) Ms. Mouser falsely denied she was employed by Silver Spoons; and (2) Ms. Mouser falsely denied Silver Spoons will owe "earnings" to her within 60 days when she practiced law and money was placed into Silver Spoons by Mouser & Schmillen. [Id.] In her testimony before us, Ms. Mouser denied having been admonished by the court. This only furthers the underlying concerns of the Panel that Ms. Mouser is indifferent or heedless to the full gravity of the accusations against her. [Andrea Mouser Testimony, 13:29:00; See Exhibit 1,

⁶ K-1's for 2011 and 2012 were provided to Collins roughly 36 days after Judgment Debtor Exam held on December 3, 2013.

SBA000003 (Ms. Mouser claiming she was never admonished by the court); *cf* Exhibit 34, SBA000154 (Commissioner Doody finding Ms. Mouser in contempt of court).] Ultimately, Ms. Mouser was given an opportunity to purge her contempt by complying with the requested production of all documents under the original court order for production of documents. [Exhibit 34.]

On March 17, 2014, Ms. Mouser filed a Verified Response to Motion to Compel Pursuant to Minute Entry Dated February 28, 2014, to purge her contempt charges. [Exhibit 36.] On March 19, 2014, Ms. Mouser submitted a Supplement to the above Verified Response to provide the remaining account information for Silver Spoons.⁷ [Exhibit 37.]

On March 26, 2014, Collins filed a Motion to Set Conditions of Purge for Civil Contempt and for Criminal Contempt with a request for incarceration. [Exhibit 38.] Collins discovered that Silver Spoons held large sums of money through the collections process, prompting the request for a finding of criminal contempt.⁸ [Id.] Citing numerous violations of Rule 11 of the Arizona Rules of Civil Procedure for false claims made in court submitted pleadings, Collins contended Ms. Mouser caused

⁷ Ms. Mouser submitted May through December 2012 statements along with January, November, and December 2013 statements missing from original Verified Response to Motion to Compel Pursuant to Minute Entry Dated February 28, 2014.

⁸ The Panel noted the bank account totals presented in the Motion were not reflective of what was available to Ms. Mouser. The Panel is uncertain as to why the arbitration award was not considered an office expense that would be paid out of Silver Spoons as a business operating expense. This expense would seem to fall squarely within the type of capitalization Ms. Mouser claimed to have occurred each month out of the individual partnership S-Corp accounts. Had the office equipment operated as intended, the monthly expense would have been a part of the partnership's shared overhead costs and not one borne solely by Ms. Mouser. However, Mouser Law Group was the initial contracting party, not Mr. Schmillen nor the Schmillen & Mouser firm and her partner would not be expected to take on other liability from the prior law firm.

undue delay and expenses in satisfying her obligation to make payment on the initial arbitration award. [Id.] Collins sought to have Ms. Mouser incarcerated for civil and criminal contempt.⁹ [Id.] On the same day, Collins filed a Response to Motion to Quash Subpoena Duce Tecum and Motion for Protective Order to maintain ability to seek additional relief by preventing a protective order from being issued in favor for Ms. Mouser. [Exhibit 39.]

On April 16, 2014, Ms. Mouser filed a Response to Motion to Set Conditions of Purge for Civil Contempt and for Criminal Contempt stating, “[Collins] stipulated that the disclosure of documents would purge the current contempt order of the court.” [Exhibit 40, SBA000185.] Ms. Mouser contended any additional remedy—for civil or criminal contempt—should not be afforded to Collins. [Id.] Ms. Mouser asserted criminal contempt should not be imposed because her actions fell short of the “willful” standard required under A.R.S. §12-861. On April 29, 2014, Collins filed a Reply to Response to Motion to Set Conditions of Purge for Civil Contempt and for Criminal Contempt. [Exhibit 41.] Collins stated Ms. Mouser had made promises to make payment on the full arbitration award, but had never made such payments. [Id.] Collins admitted to having received an email from Ms. Mouser about making payment, but noted there had been no payment made and claimed the email to be “just another lie from Ms. Mouser” to use the email as evidence in later proceedings. [Id., SBA000219, ¶ 4; Joseph Collins Testimony, 10:15:30.]

⁹ Collins sought incarceration of Ms. Mouser for civil contempt until payment of the judgment on arbitration award was made. Collins sought incarceration of Ms. Mouser and a sentence of not less than 30 days to be imposed for committing criminal contempt along with a \$20,000 fine to be paid to US Americom for her fraudulent actions. [Exhibit 38.] Motion for criminal contempt was never heard by the court. [Joseph Collins Testimony, 10:17:00.]

On May 15, 2014, Commissioner Doody ordered an evidentiary hearing, granting Collins an opportunity to prove civil and criminal contempt allegations before the court. [Exhibit 42.] Commissioner Doody put Collins and US Americom and Ms. Mouser on notice that their filed motions would be scrutinized for any violations for filing false claims causing undue delay under Arizona Rules of Civil Procedure Rule 11 and/or A.R.S. §12-349. [Id.] Additionally, the court ordered Ms. Mouser to provide a verified, itemized accounting of all funds paid out of Silver Spoons and a verified, itemized accounting of the manner Ms. Mouser disposed of those funds paid to her, her spouse, or any third party on their account. [Id.]

On June 6, 2014, Ms. Mouser filed a Verified Accounting of Funds Paid from Silver Spoons to Named Defendants. [Exhibit 43.] Further, the court ordered Ms. Mouser and Silver Spoons to refrain from payment or disbursement of any further funds to Ms. Mouser, her spouse, or any third party on their account until such payment or disbursement was approved by the court. [Id.]

On June 10, 2014, Ms. Mouser filed a Notice of Settlement and Stipulated Agreement to Vacate/Reset Trial Date for June 11, 2014. [Exhibit 44.] The parties agreed Ms. Mouser would pay Collins in two installments: (1) first payment for \$3,000.00 payable by June 10, 2014; and (2) second payment for \$10,821.13 payable by July 31, 2014. [Id.] On September 19, 2014, a Joint Motion to Dismiss Case and Enter Order Re: Satisfaction of Judgment was filed certifying that both payments were timely made under the June 10, 2014 Notice of Settlement.¹⁰ [Exhibit

¹⁰ \$293.42 above the amount in arbitration award from February 14, 2013. Amount is reflective of inflation over the period of non-payment by Ms. Mouser. [Joseph Collins Testimony, 10:24:30.]

45.] On October 3, 2014, Judge Thomas L. LeClaire granted the parties' Joint Motion to Dismiss Case and Enter Order Re: Satisfaction of Judgment. [Exhibit 46.]

IV. CONCLUSIONS OF LAW AND DISCUSSION OF THE DECISION

The *American Bar Association Standards for Imposing Lawyer Discipline* ("ABA Standards") are a "useful tool in determining the proper sanction" to be imposed on a lawyer found in violation of the Ethical Rules. *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). We give consideration to the following factors: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the misconduct; and (4) the existence of aggravating and mitigating factors. *ABA Standards Standard 3.0, In re Peasley*, 208 Ariz. 27, 32, 90 P.3d 764, 769 (2004). A lawyer's misconduct may violate a duty owed to a client, the public, the legal system, or the profession. *Commentary, ABA Standards Standard 3.0, See also ABA Standards Theoretical Framework*. When disciplinary proceedings are brought against lawyers alleged to have engaged in ethical misconduct, the State Bar must prove misconduct by clear and convincing evidence. *Commentary, ABA Standards Standard 1.3*.

DUTY VIOLATED

The Panel considered the charges alleged by the State Bar in its single count complaint and finds clear and convincing evidence Ms. Mouser violated ERs 3.3(a), 8.4(c), 8.4(d), and Arizona Supreme Court Rule 54(c).

- **ER 3.3 (Candor toward the tribunal)**

Arizona Supreme Court Rule 42, specifically, ER 3.3 provides "[a] lawyer shall not knowingly: (1) 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 to the tribunal by the

lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false.” Comment 2 to ER 3.3 states, “[t]his Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process.” Ms. Mouser violated ER 3.3(a) (1) and (3) when she presented false information relating to the garnishment proceedings, both in her pleadings filed and in her arguments before Judge Doody. Further, Ms. Mouser made continued false statements under oath during the debtor’s exam and in her deposition. Specifically, Ms. Mouser made a knowing misrepresentation under oath during her depositions on her responses to the Garnishee’s Answer forms and what was to be produced for the debtor’s exam. Ms. Mouser stated she first knew she was wrong in her answers to the Garnishee’s Answer form when she was before Judge Doody. [Andrea Mouser Testimony, 14:19:30.] She continued to represent her stance she was not owed monies by Silver Spoons and she had presented all bank statements ordered for the debtor’s exam. [See Exhibit 50.] Therefore, Ms. Mouser knowingly violated ER 3.3(a) and “undermined the integrity of the adjudicative process” by failing to present truthful statements.

- **ER 8.4 (Misconduct)**

ER 8.4(c) provides “[i]t is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” The Restatement (Third) of the Law Governing Lawyers points to this “catchall” ethical rule in stating that:

Such provisions are written broadly both to cover a wide array of offensive lawyer conduct and to prevent attempted technical manipulation of a rule stated more narrowly. On the other hand, the breadth of such provisions creates the risk that a charge using only such language would fail to give fair warning of the nature of the charges to a lawyer respondent ... and that subjective and idiosyncratic considerations could influence a hearing panel or reviewing court in resolving a charge based only on it.

In re Alcorn, 202 Ariz. 62, 73-74, 41 P.3d 600, 611-12 (2002) (citing 1 Restatement (Third) of the Law Govering Lawyers § 5 cmt. c. (2000)).

Ms. Mouser plainly misrepresented facts relating to the garnishment of Silver Spoons in her Garnishee's Answer forms. Ms. Mouser claimed to not have a financial interest in Silver Spoons when she was the sole owner, manager and member and the entity paid her out of partnership distributions. [See by example, Exhibit 29, SBA000122-129.] She further misrepresented the scope of the order to produce documents from those she had a financial interest to those assets she held personally. The Panel finds several repeated misrepresentations to the court and under oath, including potential misrepresentations in her testimony before us. Regarding the Silver Spoons accounts, she testified before us, "I did not refuse to produce them." [Andrea Mouser Testimony, 11:50:30 and 11:48:20.] We find her multiple sworn statements in her debtor's examination to be to the contrary.

In that examination, she was asked how often she took a distribution from Silver Spoons and answered that it depended on the month. She was then asked how often she received distributions in various months and testified repeatedly, "I don't know." She finally swore she would have to look at the associated accounts and books for every month. She swore she had possession of those books and accounts but refused to produce them, because in her sole opinion, purportedly without having read a statute or reviewed the law on garnishments she held the

entirely speculative opinion: "Because they have nothing to do with your inquiry."

[Exhibit 29, SBA000126-127.]

Earlier in that deposition she was asked,

Q. Are you going to provide the bank accounts which we talked about before that you have an interest in, other than the ones were for your personal account?

A. That's my only account. The rest are businesses, so no.

[Exhibit 29 SBA000122, lines 16-20.]

Even in her pleading to the Superior Court, she certified:

Defendant refused to disclosure business banking accounts for which she does not hold a financial interest, as these are accounts of an operating businesses (sic) (a consulting company and a law firm) with regular expenses and these are not income to Defendant.

[Exhibit 32, SBA000140, ¶ 9.]

Even her testimony regarding Silver Spoons in that deposition was consistently misleading:

Q. But you have an interest in those other accounts, don't you?

A. I have an interest to the extent that I can take a dividend and/or draw. There are many months that I don't have an interest personally in the funds in that account at all. So it's completely dependent upon whether or not I'm allowed to take a dividend from that company that month.

[Exhibit 29, SBA000122-23, lines 21-3.]

Misconduct involving dishonesty may be generally found under ER 8.4(c), but "may be more specifically identified by reference to ER 3.3(a)(1)." *Alcorn*, 202 Ariz. at 73, 41 P.3d at 611. Therefore, the Panel finds Ms. Mouser violated ER 8.4(c).

ER 8.4(d) provides "[i]t is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice." ER 8.4(d) is more than

implicated because it requires no mental state other than negligence. *In re Clark*, 207 Ariz. 414, 418, 87 P.3d 827, 831 (2004).

The Panel finds Ms. Mouser violated ER 8.4(d). These violations caused prejudice to US Americom in obtaining payment on a valid judgment and caused the court system to hear issues related to collection on that judgment. It is clear to the Panel Ms. Mouser was dishonest intending to increase the cost for US Americom and delay payment to circumvent paying the judgment. Her responsive letter to the State Bar demonstrates her deceptive behavior is continuing. [Exhibit 2.] While we find Ms. Mouser violated 8.4(d) intentionally, it was violated whether or not she did so knowingly.

- **Supreme Court Rule 54 (Grounds for Discipline)**

Arizona Supreme Court Rule 54(c) provides: "Grounds for discipline of members and non-members include [a] knowing violation of any rule or any order of the court." *A Lawyer's Creed of Professionalism of the State Bar of Arizona* ("*Lawyer's Creed*") commands that "with respect to opposing parties and their counsel [an attorney] will comply with all reasonable discovery requests."¹¹ Ms. Mouser failed to conduct herself under the *Lawyer's Creed* by refusing to produce documents for bank accounts by twisting the scope and meaning of the court order to avoid disclosure of these documents. When her interpretation of the court order was denied Ms. Mouser placed blame on "the Court not understanding the business structure of the way that

¹¹ "I will at all times faithfully and diligently adhere to the rules of professional responsibility and a lawyer's creed of professionalism of the State Bar of Arizona." *Oath of Admission*, State Bar of Arizona.

it was set up” to reinforce the claim that the Silver Spoons account did not produce income for her. [Exhibit 50, SBA000339, lines 18-19.]

Ms. Mouser deemed bank statements and financial documents ordered to be produced by the court for the debtor’s exam were “vastly different than the documents listed in the petition for contempt.” [Id., SBA000340, lines 9-10.] Ms. Mouser contended there were two lists for production of documents—an initial list for the debtor’s exam and a clarified list after the Motion to Compel was filed—where the clarified list was deemed “drastically different from the list that [Collins] had [her] bring with [her] to the deposition.” [Id., SBA000344, lines 24-25.] Ms. Mouser had admitted categories 3 and 5—the categories being disputed heavily through the garnishment hearings and depositions—were the same in both lists for production orders even though she previously proclaimed these “lists [weren’t] even remotely the same.”¹² [Id., SBA000345-346.] Ms. Mouser noted the difference between these lists was that the motion to compel list added “including all six accounts to which she is a signatory.” [Id., SBA000347, lines 13-14.] However, this additional language was included by Collins in the request to the court in its ordering of Ms. Mouser to produce the required documents and was not presented as a list Ms. Mouser had failed to follow. [Exhibit 30, SBA000133.] Ms. Mouser failed to fulfill her ethical duties in refusing to comply in good faith with the first order to produce bank statements and financial documents. The Panel finds that the requested change by Collins was to avoid further arguing by Ms. Mouser over semantics and to expedite an already delayed payment process.

¹² Document production lists from Exhibit 23, SBA000099 and Exhibit 30, SBA000131-132 were found to be identical with the exception of Exhibit 23 being numerically listed and Exhibit 30 being alphabetically listed.

The Panel finds Ms. Mouser violated the Ethical Rules when she: dishonestly presented false information to the courts about her earnings in the Garnishee's Answer forms in violation of ERs 3.3(a) and 8.4(c), misrepresented material facts related to the garnishment proceedings in violation of ERs 3.3(a) and 8.4(c), and knowingly violated an order to produce bank statements and financial documents for the debtor's exam in violation of Rule 54(c), Ariz. R. Sup. Ct. Further, the Panel finds her misconduct caused prejudice to the administration of justice in violation of ER 8.4(d) by needlessly delaying the payment of the arbitration award.

MENTAL STATE

Ms. Mouser relied on one Arizona Supreme Court case and a prior disciplinary hearing to support her position she did not knowingly misrepresent claims before the court and did not knowingly disobey a court order.¹³ Further, Ms. Mouser claims there is insufficient evidence to make a clear and convincing showing she acted in any capacity beyond mere negligence.

Ms. Mouser argued that *In re Non-Member of State Bar of Arizona, Van Dox*, 214 Ariz. 300, 152 P.3d 1183 (2007), establishes the actions by Ms. Mouser were not knowing violations of the Ethical Rules. That case involved an attorney—licensed to practice in Florida and Virginia—charged with the unauthorized practice of law in Arizona. The attorney had explained to her clients she was not licensed to practice law and could not represent them in a court of law, but could act as a mediator in a real estate transaction dispute. She oversaw mediation proceedings—where she represented the sellers—which did not settle the dispute. The buyers in the dispute

¹³ Ms. Mouser cited numerous cases as guidelines for the "knowing" standard, but only provided comparative analysis for the two cases referenced. [Respondent's Trial Memorandum.]

filed a complaint with the State Bar against Van Dox for the unauthorized practice of law, even though they were not prejudiced by the proceedings, having realized a monetary gain on the ultimate sale of the property in dispute.

The facts in *Van Dox* are distinguished from the facts before us. First, Ms. Mouser caused actual injury to US Americom and Collins by her deceptive actions. She claimed she had no ownership interest in Silver Spoons throughout the collection proceedings. Second, Ms. Mouser's behavior was not limited to a single "isolated incident" of unethical behavior. Finally, Ms. Mouser had been sanctioned by the PDJ and completed required programs specifically aimed at preventing future ethical violations.

ER 1.0(f) states that "knowingly," "known," or "knows" denotes actual knowledge of the fact in question and a person's knowledge may be inferred from circumstances. The *ABA Standards* define "knowledge" as "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." *ABA Standards* Definitions. The *ABA Standards* define "intent" as "the conscious objective or purpose to accomplish a particular result." *Id.*

The *Van Dox* case furthered the analysis of the *ABA Standards* for a finding that an attorney acted with a knowing mental state when violating the Ethical Rules by stating "[the ABA] definition clarifies that merely knowing one performs particular actions is not the same as consciously intending by those actions to engage in unethical conduct." *Van Dox*, 214 Ariz. at 305, 152 P.3d at 1188. "(T)he knowledge required for setting a higher sanction for professional misconduct is 'knowledge that

[respondent] may have been violating an ethical rule.” *Id.*, quoting *In re Levine*, 174 Ariz. 146, 171, 847 P.2d 1093, 1118 (1993).

Unlike *Van Dox* where the material facts relied upon were deemed inconclusive and lacking sufficiency to find a knowing violation, the State Bar has shown there is more than just an “isolated instance of negligence that [was] a violation of a duty owed as a professional,” but numerous instances causing “actual or potential injury to a client, the public, or the legal system.” *Van Dox*, 214 Ariz. at 306, 152 P.3d at 1189. Ms. Mouser continued to defy court orders for production of financial documents because she claimed the court order only required her to produce “documents evidencing assets held **personally**.” [Answer to State Bar Complaint, ¶ 11 (emphasis in original).] Her claim she relied on her CPA to do the legal research to answer the garnishment offers her no safe harbor. But there was no testimony from any CPA and any attempts to offer such hearsay would have been entirely unreliable. Even if that reliance was true, we find she intentionally cast a blind eye at the orders served upon her.

Ms. Mouser testified her assertion differed from the actual order requiring her to produce documents she had a financial interest. [Exhibit 50, SBA000321, line 13, Testimony of Andrea Mouser on 5/14/15, 13:20:00-47.] The Panel finds Ms. Mouser was knowingly, if not intentionally deceptive to avoid disclosure of her complete financial records pointing to continued and repeated misconduct that went beyond an “isolated instance of negligence.” *Van Dox*, 214 Ariz. at 306, 152 P.3d at 1189.

Ms. Mouser also cited that *In the Matter of Non-Member of the State Bar of Arizona Suzanne Baffa, Respondent*, Ariz. Sup. Ct. No. SB-06-0159-M (Feb. 12, 2007), establishes only clear and knowing misrepresentations to a judge were

grounds for revoking an attorney's license. Ms. Mouser expressed this case is distinguished from hers in that she never made "significant and obvious knowing misrepresentations designed to mislead" Judge LeClaire or Commissioner Doody. [Trial Memorandum, p. 10.] The Panel disagrees with Ms. Mouser's position and found her representations to be self-serving with disregard for the obvious nature of claims made.

The Panel acknowledges a higher standard beyond mere negligence must be found because "[h]olding otherwise would support an allegation in every case that, because lawyers are expected to be familiar with the Rules of Professional Conduct, they 'should have known' of their infractions, thereby effectively reducing the actual knowledge requirement to a nullity." *In re Tocco*, 194 Ariz. 453, 457, 984 P.2d 539, 543 (1999). The Panel finds Ms. Mouser was familiar with Ethical Rules—as she had completed programs dealing with professional ethics—which should be considered when assessing her behavior. The Panel finds Ms. Mouser went beyond negligence in her misconduct and acted with actual knowledge of: the court orders to produce bank statements and financial documents, the statute governing the garnishment proceedings, and the existence of the final judgment on the arbitration award.

The Panel contends Ms. Mouser did not act in good faith when she violated the Ethical Rules out of accordance with her duty to the legal profession. The commentary to ER 8.4 states a "lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists." Further, the commentary points to ER 1.2(d) in assessing a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law. While Ms. Mouser has asserted she acted in good faith in the manner

she handled all claims made before the court and in her pleadings, the Panel disagrees noting:

Although “good faith argument” is not a self-defining term, it has come to mean an argument that responsible lawyers would regard as being seriously arguable. Adoption of this standard does not mean that a lawyer's state of mind is irrelevant, for due process concerns dictate that a lawyer not be punished unless his conduct is knowing, and therefore culpable. On the other hand, an objective standard assumes that a genuinely frivolous claim will be known to be frivolous by most lawyers. Indeed, the definition of “knowing” set forth in the Terminology section of the Model Rules states that knowledge “may be inferred from the circumstances.” In many cases, therefore, it will be possible to “infer from the circumstances” of a frivolous litigation maneuver that the lawyer had actual knowledge of its frivolous character.

Levine, 174 Ariz. at 154, 847 P.2d at 1101 (*reinstatement granted*, 176 Ariz. 535, 863 P.2d 254), *citing* Geoffrey C. Hazard, Jr., & W. William Hodes, *The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct* 331 (Student Ed. 1985).

While Ms. Mouser contended she should have known better, it is the finding of this Panel that the facts presented before us show she simply refused to know better. The Panel is at ease with this assertion because Ms. Mouser testified to having known about the Arizona statute that defined “earnings” when filling out the Garnishee’s Answer forms. Ms. Mouser knew of the statute provisions that would apply in determining the definition of “earnings” through the garnishment process and did not try to look up the statute before filling out the garnishment forms. [Andrea Mouser Testimony, 11:28:00.] Further, Ms. Mouser disregarded clear and obvious court orders to avoid disclosure of financial documents.

The Panel finds any good faith efforts claimed by Ms. Mouser to be lacking in credibility. Her willful ignorance goes beyond reasonable diligence of a prudent attorney and ventures into the misconduct the Ethical Rules seeks to prevent. Repeatedly, Ms. Mouser has shown her evasive nature—whether in her pleadings or testimony—to direct and obvious questions. Ms. Mouser attempted to claim her responses in the Garnishee’s Answer form resulted from “tax semantics” because “who you work for is a tax issue.” [Andrea Mouser Testimony, 11:15:30-45.] We note Ms. Mouser placed blame on Commissioner Doody for “not understand[ing] the tax structure [or] the lists.” [Exhibit 50, SBA000349, lines 5-6.] Ms. Mouser testified the first time she was aware she was wrong about her understanding of “earnings” for the garnishment paperwork was when she was before Commissioner Doody and that she should have disclosed her financial information. [Andrea Mouser Testimony, 14:20:00.] The Panel notes the inconsistency of this testimony when presented with her prior assertion there was no filing of a motion to reconsider because she did not wish to go before Commissioner Doody to “reiterate [these issues] and have him get more confused.” [Exhibit 50, SBA000349, lines 7-8.] The Panel finds her claim not a matter of ethical semantics, but a false statement made with “conscious awareness of [its] nature or attendant circumstances” to the court. *ABA Standards* Definitions (definition of “knowing”). The Panel finds Ms. Mouser acted knowing she was violating an ethical duty. Further, the Panel considered Ms. Mouser may have acted with “the conscious objective or purpose to accomplish a particular result” to intentionally drive up the cost for the plaintiff by her deceptive practices.

INJURY

The Panel finds that Ms. Mouser's misconduct caused actual and potential injury. The *ABA Standards* define "injury" as harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. Whether a lawyer's actions caused harm is a question of fact. *Van Dox*, 214 Ariz. at 305, 152 P.3d at 1188. The *ABA Standards* note that the level of injury can range from "serious" injury to "little or no" injury, while a reference to "injury" alone indicates any level of injury greater than "little or no" injury. *ABA Standards* Definitions. A "potential injury" is the harm to a client, the public, the legal system or the profession reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Id.*

The manner in which Ms. Mouser evaded direct court orders is a factor when assessing the injury caused by the misconduct. Had Ms. Mouser come forward and sought to properly clarify her responses to the Garnishee's Answer forms there may have been a different reception to her later explanations for such responses. Ms. Mouser seemed to assume she knew better than the court even though she never tried to review the statutes when filling out the Garnishee's Answer forms.

Ms. Mouser admitted she could not pay the arbitration award in a single payment and purportedly had to borrow money to make the eventual payment. However, this does not mitigate her misconduct which produced actual or potential injury. The time, money, and effort exerted by the parties before us is undue for such a simple matter already decided.¹⁴ Ms. Mouser minimally tried to communicate

¹⁴ US Americom and Collins suffered financially based on the idea that money available at the present time is worth more than the same amount in the future due to its potential earning capacity. Collins was only able to recover the attorney's fees from the arbitration award and

with the court and opposing counsel after arbitration had been decided and settled. The Panel finds there to be a failure in Ms. Mouser's ethical duties and a lacking of moral rectitude in her handling of court orders that directly caused actual injury. The Panel finds there was potential injury because, among other injuries, there was delay and an increased cost of litigation. Had there never been an intervening threat of being held in contempt of court, the Panel is concerned this judgment would have continued to be delayed through her deceptive practices and neither paid in full nor part.

Ms. Mouser claimed there were additional pending requests for attorney's fees and had offered Collins \$1,000 over what had been awarded. [Id. at 14:55:00; See Exhibit 53, SBA000387.] In reality, this amount offered was \$6,000 less than what had been ordered in the Judgment on Arbitration Award. Any pending requests for additional attorney's fees resulted from subsequent proceedings—caused by Ms. Mouser's failure or refusal to pay the arbitration award—to collect on that finalized award. The Panel notes Ms. Mouser lost her opportunity to challenge the Judgment on Arbitration Award when she failed to respond within the ten (10) day period required. Her refusal to acknowledge the award was without merit.

DISCUSSION

Having considered the testimony and exhibits, the Panel finds the State Bar has shown, by clear and convincing evidence, knowing if not intentionally dishonest

has exerted additional time and money which will not be compensated. US Americom has suffered financial harm from not recovering on the judgment of the arbitration award in a timely manner.

misconduct by Ms. Mouser. The Panel was not persuaded by Ms. Mouser's evasive and inconsistent testimony.

Maintaining the public's faith in the profession requires maintaining the professional integrity of the judicial system. The misconduct by Ms. Mouser will require imposition of sanctions conducive and just to her culpable mental state and injury caused by her misconduct.

PRESUMPTIVE SANCTIONS

The Panel looks to the *ABA Standards* to determine the presumptive sanctions. Standard 6.1 applies for a violation of ER 3.3; Standard 5.1 applies for a violation of ER 8.4(c); Standard 6.0 applies for a violation of ER 8.4(d); and Standard 6.22 applies for a violation of Rule 54(c), Ariz. R. Sup. Ct.

The *ABA Standards* state suspension is appropriate when a lawyer knows false statements or documents are being submitted to the court or material information is improperly being withheld which causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *ABA Standards Standard 6.12*. The Commentary to *ABA Standard 6.12* states, "[s]uspension is appropriate when a lawyer has not acted with intent to deceive the court, but when he knows that material information is being withheld and does not inform the court, with the result that there is injury or potential injury to a party, or an adverse or potentially adverse effect on the legal proceeding."

The public expects lawyers to abide by the legal rules of substance and procedure which affect the administration of justice. Lawyers must always operate within the bounds of the law and cannot create or use false evidence or make a false statement of material fact. *ABA Standards Standard 6.0*. Offenses involving

dishonesty or serious interference with the administration of justice are in that category. *Commentary, ABA Standards Standard 5.12.* A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligations. *Id.* Standard 6.22 provides “suspension is appropriate when a lawyer knowingly violated 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.”

AGGRAVATION AND MITIGATION

Each disciplinary case involves unique facts and circumstances. In striving for fair disciplinary sanctions, consideration must be given to the facts pertaining to the professional misconduct and to any aggravating or mitigating factors. *Commentary, ABA Standards Standard 9.1.* The Panel determined the following aggravating factors are supported by the record:

- **9.22(a) (prior disciplinary offense)** Ms. Mouser was reprimanded and given a two (2) year probation effective December 15, 2011, for violating ERs 1.3, 1.4, 1.5, 1.9, 1.15, 1.16, 8.4(d), and Rule 43, Ariz. R. Sup. Ct. Additionally, Ms., Mouser was ordered to participate in MAP, LOMAP, Fee Arbitration, and TAEEP during her probation. Further, the court stipulated that Ms. Mouser was to pay restitution for \$2,500 to the complainant, Stephen Danford, in conjunction to a loan made by Mr. Danford. Ms. Mouser was found to have acted negligently in violation of her duty to the legal system when representing a client for a child visitation rights issue stemming from an alleged molestation charge in Oklahoma. Ms. Mouser was found to have failed to properly communicate with her client regarding the case as it progressed due

to an automobile accident in February 2010. Shortly after the client complained about the time that had passed since representation began with no motion being filed, Ms. Mouser told her client she could not represent him in the alleged molestation as it was a criminal matter to be tried in Oklahoma. Ms. Sandra Slayton—the new attorney handling the case—could not obtain the withheld retainer fee until after a final billing was completed. The final billing showed Ms. Mouser had billed the client for work after she had notified the client she would no longer be representing him. [Exhibits 47-49.]

- **9.22(b) (dishonest or selfish motive)** We find Ms. Mouser engaged in repeated acts of dishonest misconduct. Ms. Mouser was the sole owner and manager of Silver Spoons, which dispersed funds via written check or electronic transfer into her personal bank accounts. Even though she knew of these transfers and controlled the transfers into her personal account, she made statements to the court she had no income from Silver Spoons. Further, Ms. Mouser misrepresented on these forms she would not be owed any money within a 60 day period and was found to have received transfers from Silver Spoons into her personal BOA account while the judgment was attempting to be collected.
- **9.22(c) (pattern of misconduct)** Ms. Mouser’s prior misconduct involved dishonesty resulting in similar prejudice to the administration of justice. Ms. Mouser’s self-serving behavior undergirds her repeated misconduct.
- **9.22(f) (submission of false evidence, false statements, or other deceptive practices during the disciplinary process)** The Panel considered the testimony of Ms. Mouser and finds weight should be given to

the evasive nature of her answers that were deceptive or bordered on deception. Ms. Mouser continued to deny that the lists for production in the debtor's exam were virtually identical. She testified that the categories of documents to be produced in the debtor's exam in the original Order and the Motion to Compel matched in both documents. [Andrea Mouser Testimony, 13:20:35-45.] When asked another time if the lists were drastically different—as she had presented to the courts in her Response to the Motion to Compel—Ms. Mouser stated that “I think it's a different list . . . I think it adds quite a bit . . . it's different.” [Id. at 13:22:15-30.] Ms. Mouser swore these contradictory statements in her testimony despite being confronted with clear evidence.

- **9.22(g) (refusal to acknowledge wrongful nature of conduct)** The Panel finds Ms. Mouser continually refused to acknowledge the wrongful nature of her conduct.

The Panel determined that the following mitigating factors are supported by the record:

- **9.32(c) (personal and emotional problems)** Ms. Mouser had been sanctioned for abuse of controlled substances and is still undergoing treatment for her addiction. This recovery will be a lifelong process requiring constant attention and continued support. It is our hope she continues to overcome this. Ms. Mouser has expressed the tremendous stress that comes from being an attorney in a small or solo practice combined with attending school for a graduate degree on top of raising a young child. Further, Ms. Mouser

experienced additional stress from the annulment of her marriage to Mr. David Soto finalized earlier this year.

- **9.32(I) (remorse)** Ms. Mouser admitted that “looking back in hindsight” she should have better handled the issue before it got to a point where her misconduct is being tried before the Panel. However, the Panel gives minimal weight to such stated remorse expressed by Ms. Mouser. We carefully observed Ms. Mouser throughout the hearing and carefully weighed her reactions and statements. Ms. Mouser expressed she truly wished that after the deposition her and Collins had just talked and decided what needed to be disclosed, because the settlement “ended in the same result of judgment.” [Andrea Mouser Testimony, 14:23:50-14:24:15.] Ms. Mouser openly admitted her remorse was—at least in part—due to not paying below the award granted by the Arbitrator.

V. CONCLUSION

The object of lawyer discipline is to protect the public, the legal profession, the administration of justice, and to deter other attorneys from engaging in unprofessional conduct. *Van Dox*, 214 Ariz. at 303, 152 P.3d at 1186; *Peasley*, 208 Ariz. at 38, 90 P.3d at 775. Attorney discipline is not intended to punish the offending attorney, although the sanctions imposed may have that incidental effect. *Id.* The Panel finds Ms. Mouser committed professional misconduct by violating ERs 3.3(a), 8.4(c), 8.4(d), and Rule 54, Ariz. R. Sup. Ct.

The State Bar requested suspension for six (6) months and one (1) day as the sanction for Ms. Mouser’s unethical actions and her lack of candor to the courts. Based on the facts, conclusions of law, and application of the *ABA Standards*,

including both aggravating and mitigating factors, the Panel agreed with this assessment, but would have carefully considered a longer suspension period had it been requested by the State Bar.¹⁵ Accordingly,

IT IS ORDERED that Ms. Mouser is suspended from the practice of law effective thirty days from this Decision and Order. Ms. Mouser shall remain suspended until the court enters an order reinstating her to the practice of law in Arizona or upon order of the presiding disciplinary judge under Rule 64(e)(2)(B). Rule 60(a)(2), Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED that Ms. Mouser shall pay costs and expenses in this matter under Rule 60(b), Ariz. R. Sup. Ct.

A final judgment and order will follow.

DATED this 29th day of June, 2015

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Betty J. Davies

Betty J. Davies, Volunteer Public Member

Teri Rowe

Teri Rowe, Volunteer Attorney Member

¹⁵ Although proportionality analysis is not required, the Panel notes *Office of Disciplinary Counsel v. Grigsby*, 493 Pa. 194, 425 A.2d 730 (1981). In the *Grigsby* case an attorney was disbarred for knowingly filing false pleadings in conjunction with garnishment proceedings stemming from an unsatisfied judgment. The attorney claimed in a sworn pleading to not have an interest in the bank accounts being garnished because the funds belonged to clients, yet continued to receive money from the account by writing himself checks from said account. The Supreme Court of Pennsylvania decided disbarment would best fit the "egregious species of dishonesty" even though the Disciplinary Board had recommended suspension for a period of one (1) year. In dissenting opinions, Justice Roberts and O'Brien felt the Disciplinary Board's recommended suspension fell short of the violation committed and would have suspended the respondent for a period of three (3) years.

Copies of the foregoing mailed/emailed
this 29th day of June, 2015.

Nicole S. Kasetta
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

Counsel for Respondent
Robert Brewster Van Wyck
Goldman & Zwilling, PLLC
7047 East Greenway Parkway, Suite 150
Scottsdale, AZ 85254-8109
Email: rvanwyck@gzlawoffice.com

by: JAlbright

Nicole S Kasetta, Bar No. 025244
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7250
Email: LRO@staff.azbar.org

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

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

**ANDREA ELIZABETH MOUSER,
Bar No. 023967,**

Respondent.

PDJ 2014-_____

COMPLAINT

State Bar No. 14-0644

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 20, 2005.

COUNT ONE (File no. 14-0644/Collins)

2. On January 13, 2012, Collins & Collins LP (referred to herein collectively as "Collins") filed a complaint against Respondent and her law firm on behalf of Collins' client ("Plaintiff"). The complaint alleged breach of a contract for the rental of office equipment.

3. The parties subsequently arbitrated the matter, the arbitrator entered an award in favor of the Plaintiff in the amount of approximately \$13,000, and the court entered a judgment confirming the same.

4. On June 20, 2013, Collins filed an application for a writ of garnishment directed to Respondent's law firm.

5. The court issued the writ and Respondent's firm responded to it by stating that no money was owed to Respondent.

6. On July 12, 2013, Collins filed an objection to this answer stating that Respondent is employed by her firm and that "[m]oney is owed or will be owed from" the firm to Respondent.

7. In August of 2013, Collins filed an application for a writ of garnishment directed to Silver Spoons, PLLC ("Silver Spoons"), stating that Silver Spoons employs Respondent.

8. The court issued the writ and Respondent filed an answer to the writ on behalf of Silver Spoons. Respondent wrote that she was never employed by Silver Spoons and further wrote: "not paid through company listed as garnishee."

9. On the same date, Respondent also requested a hearing on the garnishment.

10. The court set a hearing for November 13, 2013.

11. On November 4, 2013, the court ordered Respondent to submit to a debtor's exam on November 13, 2013, and to produce the following documents at the debtor's exam: tax returns for the last three years, insurance policies, any documents relating to any accounts in which Respondent has an interest, documents showing her income, and documents relating to financial accounts held by Respondent or which Respondent has deposited money.

12. On November 13, 2013, the court held the hearing on Respondent's garnishment objection.

13. During the hearing, Respondent argued that the writ should be quashed because Silver Spoons was not her employer. Respondent admitted, however, that she was the sole member of Silver Spoons.

14. The court refused to quash the writ.

15. The court also adjourned the debtor's exam until December 3, 2013 and ordered Respondent to disclose and produce "any documents or property that have any relationship to" Respondent.

16. The parties stipulated that Respondent would produce the documents on the date of the debtor's exam.

17. On December 3, 2013, Collins deposed Respondent.

18. During the deposition, Respondent testified that she only produced her tax returns for 2010 because she had not yet filed her 2011 and 2012 tax returns.

19. Respondent further testified that she does not have K-1s from her law firm, and then refused to provide the law firm partnership agreement to Collins because "it has nothing to do with my wages or my property."

20. Respondent also testified about how she is paid through her law firm. She testified that she is paid "through a draw dependent upon whether or not there is [sic] funds to draw after capitalization." She testified that a check is written to Silver Spoons and that she is the only member of Silver Spoons. Respondent explained that Silver Spoons pays her through distributions, has an account at Bank of America, and that she has signing rights on this account.

21. During the deposition, Collins asked Respondent the following: "In your answer to the garnishment, you said that there are no monies that are owed

from you by Silver Spoons. How often do you receive monies from Silver . . . Spoons?"

22. Respondent responded: "I don't get paid from them. I take distributions as the month allows. So if my need for capital expenses does not exceed what comes into the business, I'm able to take a distribution. If my need for capital expenses does not exceed it, then I don't take a distribution. But I am never paid by them."

23. Collins then asked Respondent to produce the "books and accounts" for Silver Spoons, but Respondent refused and testified that "they have nothing to do with your inquiry."

24. Respondent further testified that "[t]here are several accounts at Bank of America" but that she personally only has one account and that the remaining accounts are "business accounts associated with the firm." Respondent explained that she did not provide copies of the other accounts because they are not her personal accounts but business accounts for which she has "signing rights."

25. On December 18, 2013, Collins filed a Motion to Compel and Request for Warrant requesting that Respondent be held in contempt for failing to produce all her tax returns, all documents relating to any bank accounts that she is a signatory on, and her partnership agreement for her firm.

26. On January 13, 2014, Respondent filed a response opposing the motion.

27. On February 27, 2014, the court held a hearing on Collins' motion.

28. During the hearing, Collins made the following arguments: (a) Silver Spoons wrote in its answer to the writ that no earnings would be paid to Respondent

and this is untrue based on Respondent's testimony in her debtor's exam; and (b) Respondent failed to produce records relating to Silver Spoons, her partnership agreement with her firm, and documentation relating to bank accounts in which she has an interest.

29. During the hearing, Respondent argued that Silver Spoons is no longer paying her money. Respondent informed the court that she was winding up her law practice to become a full-time student.

30. The court asked Respondent when the last time Silver Spoons paid her and she stated two to three months ago. The court observed that this payment occurred while the case was pending.

31. The court then informed Respondent that Collins' document production request sought all documents regarding any financial accounts held by her or in which her name appears and that placing an entity, Silver Spoons, between the payments she received from her firm does not absolve her obligation to produce responsive documents.

32. The court informed Respondent: "I am not happy. This is ridiculous. You know better. You are not some sort of pro se We shouldn't even be here today on this."

33. During the hearing, the court referenced Silver Spoons' answer to the writ and observed that it states that Silver Spoons does not pay Respondent. The court concluded: "That's not true And, it's signed by you [Respondent]."

34. The court also concluded that Respondent should have produced the documents relating to Silver Spoons and the law firm, that the court previously ordered her to do this, and that she disobeyed the court's order.

35. The court then stated: "I'm finding you in contempt."

36. The court explained the Silver Spoons answer to the writ was wrong, that Respondent has since received money from Silver Spoons, that Collins' client did not receive any of it, and "that was wrong."

37. The court further stated: "That was a violation of a court order, and if I just let people skate on that, what message does that send to people on whether court orders need to be obeyed or not."

38. The court entered a minute entry on the same date, memorializing the above and its contempt finding.

39. In its minute entry, the court wrote: "The evidence produced in connection with today's hearing . . . shows that . . . [Respondent] caused her law firm to pay money to Silver Spoons. . . who then would pay the money to . . . [Respondent] personally. Based on the evidence, the Court finds that Silver Spoon's financial records fell squarely within . . . [the categories of documents that the court ordered Respondent to produce], and that by failing and refusing to produce any documents responsive to the requests . . . with respect to Silver Spoons, . . . [Respondent] is in contempt of Court. The Court also finds . . . [Respondent] in contempt for submitting false statements to the court in the answer of garnishee for Silver Spoons That pleading was signed by . . . [Respondent] under oath. First, the answer falsely denied that . . . [Respondent] was employed by Silver Spoons That answer is contradicted by the fact that Silver Spoons exists solely as a conduit to funnel earnings from . . . [Respondent's] law firm to . . . [Respondent] personally. . . . Second, the answer falsely denied that Silver Spoons

will owe "earnings" to . . . [Respondent] within the next 60 days, as here, . . . [Respondent's] earnings come from her law practice"

40. In its minute entry, the court further wrote that Respondent could purge her contempt by producing all documents requested in Complainant's motion by March 17, 2014 and by filing a verified response regarding the same.

41. Respondent filed the verified response.

42. On March 26, 2014, however, Collins filed a Motion to Set Conditions of Purge for Civil Contempt and For Criminal Contempt.

43. In this motion, Collins wrote the he reviewed the records produced by Respondent and that the records "show that from the date of garnishment to January 2014 which is the period for which . . . [Respondent] has produced records, those records show that . . . [Respondent] placed into her personal account the sum of \$205,287.72. Allowing for the payment of expenses for her business. . . , . . . [Respondent] was paid more than \$137,000 as profit from her work . . . ; these funds were available for . . . [Respondent's] personal expenses and for satisfaction of Plaintiff's judgment. . . . Had Defendant Silver Spoons . . . properly answered, the judgment would have been fully satisfied, but was not because of the fraudulent actions of. . . [Respondent]."

44. On April 16, 2014, Respondent filed her response to Collins' motion stating that the civil contempt was already purged when she produced the documents by March 17, 2014.

45. In her response, Respondent also argued that she has contacted Collins about payment arrangements, and that Collins is mistaken when he implies that the funds in Silver Spoons' bank account are funds available to Respondent. Instead,

Respondent explained: “[T]he funds that are deposited into the Silver Spoons account are utilized for business expenses of the firm. . . .”

46. Respondent further argued that the only funds paid to her are evidenced in bank statements that she already produced to Collins. Finally, Respondent wrote that the \$137,000 referenced in Collins’ motion are “Client funds paid to the business, which are in turn, used to capitalize the firm and Silver Spoons. . . .”

47. Regarding payment arrangements, Respondent attached an email dated March 25, 2014 from her to Collins stating: “I will be making a payment on the judgment on Monday from withheld funds. To whom should the check be made out to?”

48. On April 29, 2014, Collins filed a reply in support of the contempt motion stating that Respondent lied to the court because “she has not made payment arrangements. Nor has any payment been made on this judgment. She promised payment and never made it. I am sure she did so in order to have the email. This is just another lie from . . . [Respondent].”

49. On May 14, 2014, the court scheduled an evidentiary hearing relating to Collins’ March 26, 2014 contempt motion.

50. On June 10, 2014, however, Respondent and Collins advised the court that they had settled the matter.

51. After the above matter settled, Respondent informed the State Bar of the settlement and that Collins “has chosen to withdraw his claim (as it will no longer be addressed by the Court) of ‘untruthful statements’ being made. . . .”

52. In contrast to Respondent's assertion, Collins still maintains that Respondent made untruthful statements to the Court. Collins also maintains that Respondent made a misrepresentation to the court in her April 16, 2014 response to the contempt motion by attaching an email stating that she would make a payment because Respondent never made such payment until they settled the matter.

53. Respondent's conduct in this count violated Rule 42, ERs 3.3, 8.4(c), 8.4(d), Ariz. R. Sup. Ct., and Rule 54(c), Ariz. R. Sup. Ct.

DATED this 15th day of December, 2014.

STATE BAR OF ARIZONA



Nicole S. Kaseta
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 15th day of December, 2014

by: Jeckie Daenster
NSK/jld