

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**MARK HYATT TYNAN
Bar No. 006212,**

Respondent.

PDJ 2022-9084

FINAL JUDGMENT AND ORDER

(State Bar No. 22-0025)

FILED FEBRUARY 6, 2023

The hearing panel rendered its Decision and Order Imposing Sanctions on January 6, 2023. No timely appeal was filed.

IT IS ORDERED that **MARK HYATT TYNAN, Bar No. 006212**, is suspended from the practice of law in Arizona for six months and one day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the hearing panel's decision. If Respondent is reinstated, he shall be subject to any terms of probation ordered in the reinstatement proceedings.

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

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$2,000.00 within 30 days. There are no costs or expenses incurred by the office of the Presiding Disciplinary Judge in these proceedings.

DATED this 6th day of February, 2023.

Margaret H. Downie

Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing emailed
this 6th day of February, 2023 to:

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

**MARK HYATT TYNAN,
Bar No. 006212**

Respondent

PDJ 2022-9084

**DECISION AND ORDER
IMPOSING SANCTIONS**

(State Bar No. 22-0025)

FILED JANUARY 6, 2023

The State Bar of Arizona filed a complaint against Respondent Mark Hyatt Tynan on October 24, 2022. On October 26, 2022, the complaint was served on Mr. Tynan by certified, delivery-restricted mail, as well as by regular first-class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. A notice of default issued on November 28, 2022 due to Mr. Tynan's failure to file an answer or otherwise defend. Mr. Tynan did not remedy the deficiency, and default was entered on December 13, 2022. On that same date, notice of a January 3, 2023 aggravation/mitigation hearing was sent to all parties.

The January 3, 2023 aggravation/mitigation hearing was conducted via Zoom. Mr. Tynan appeared and presented testimony and argument on his own behalf. Senior Bar Counsel Craig D. Henley represented the State Bar and presented argument, as well as exhibits 1-13, which were received into evidence. The hearing panel members were Presiding Disciplinary Judge Margaret H. Downie, attorney member Stephen Weiss, and public member Howard Weiske.

Due to Mr. Tynan's default, the factual allegations of the complaint have been deemed admitted.

FINDINGS OF FACT

1. Respondent was admitted to the State Bar of Arizona on May 10, 1980.
2. The State Bar received an insufficient funds notice regarding Respondent's client trust account (IOLTA account).
3. On December 23, 2021, Respondent made online transfers of \$500.00 and \$1,600.00 from the IOLTA account when the balance was <\$24.00>. The bank paid the transfers and charged two \$35.00 overdraft fees, leaving the account with a negative balance of <\$2,194.00>.
4. The State Bar's Trust Account Examiner sent Respondent a copy of the overdraft notice and requested an explanation of the overdraft, as well as copies of trust account-related records Respondent is required to keep.
5. Respondent stated that the reported incident involved cashier's checks that were later determined to be fraudulent. Respondent explained that he agreed to assist an individual he believed to be trustworthy by depositing the checks into his IOLTA account and later disbursing the funds. Respondent stated that the parties involved in the transaction needed a third-party to facilitate the disbursement.

6. When asked to produce the relevant IOLTA account records, Respondent sought to avoid production by stating it would be burdensome to comply. Respondent also stated that the requested records would only show disbursements from his IOLTA account to his operating account.

7. When reminded that the requested documents must be maintained and produced under the Rules of the Supreme Court of Arizona, Respondent stated that the documents were maintained but requested the maximum extension of time available. Respondent was granted a twenty-day extension to February 15, 2022.

8. On February 15, 2022, Respondent requested and received an additional extension of time to February 18, 2022, citing health issues related to COVID-19.

9. On February 21, 2022, Respondent provided the State Bar with an incomplete production of documents.

10. As part of his response to the State Bar, Respondent stated that the overdraft was the result of fraud, claiming, in pertinent part:

Regarding the bad checks, I received them for distribution to someone known to me. From the deposit I was asked to make a distribution, which I did.

11. Respondent admitted depositing the two checks totaling \$3,450.00 into the IOLTA account on December 22, 2021. The two checks purported to be official Renasant Bank checks remitted by "Jimmy Hawkins." Respondent later transferred the funds to his operating account, leading to the insufficient funds notification.

12. After receiving an insufficient funds notice, Respondent made a corrective deposit on December 27, 2021.

13. The funds and related disbursement were not related to legal services or to Respondent's representation of a client.

14. Respondent failed to provide a full IOLTA accounting as requested by the State Bar.

15. Despite asserting that the requested IOLTA documents were available, Respondent failed to provide adequate duplicate deposit records identifying the matters for which funds were deposited, the individual client ledgers, the general ledger, or the mandatory three-way reconciliations.

16. Respondent described a \$2,000.00 deposit at the beginning of the subject month as a monthly retainer, which he asserted without supporting documentation, "[t]echnically I do not have to place this in trust."

17. Based on the foregoing, a total of \$10,550.00 was processed through the IOLTA account and disbursed to Respondent's operating account. The Trust Account Examiner was unable to reconcile by matter nineteen disbursements totaling \$10,550.00.

18. On July 1, 2022, the Trust Account Examiner sent Respondent a request for additional information. Respondent failed to timely comply.

19. On July 14, 2022, the Trust Account Examiner sent Respondent a non-response notice by regular mail and email, requesting a response by July 25, 2022.

20. Respondent apologized for missing the prior deadline, stating he was not ignoring the matter but overlooked the request due to health issues. Respondent also stated he might need another extension of time but would keep the Trust Account Examiner posted.

21. The State Bar received no further information from Respondent regarding his IOLTA account.

22. On August 12, 2022, the Trust Account Examiner unsuccessfully attempted to reach Respondent by telephone. The call went unanswered, and the voice mailbox was not set up for messages.

CONCLUSIONS OF LAW

Rule 43(d)(3), Ariz. R. Sup. Ct., establishes a rebuttable presumption that a lawyer failed to properly safeguard client or third party funds or property if he or she “fails to maintain trust account records required by this rule and ER 1.15, or fails to provide trust account records to the state bar upon request or as ordered by a panelist, a hearing officer, the commission or the court.” The presumption established by Rule 43(d)(3) was not rebutted in this case. The hearing panel finds by clear and convincing evidence that Mr. Tynan violated Rule 42, Ariz. R. Sup. Ct., ERs 1.15(a), 1.15(b), 8.1(a), Rule 43(b)(1)(A), Rule

43(b)(1)(C), Rule 43(b)(2)(A), Rule 43(b)(2)(B), Rule 43(b)(2)(C), Rule 43(b)(2)(D), and Rule 54(d)(2).

SANCTIONS DISCUSSION

The State Bar asks that Mr. Tynan be suspended for six months and one day. “Sanctions imposed against lawyers . . . shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* (ABA Standards) and, if appropriate, a proportionality analysis.” Rule 58(k), Ariz. R. Sup. Ct. In fashioning a sanction, the hearing panel considers: (1) the duty violated; (2) the lawyer’s mental state; (3) the actual or potential injury caused by the lawyer’s misconduct; and (4) the existence of aggravating or mitigating factors. Standard 3.0. “We do not consider the nature of the lawyer’s practice, the effect on the lawyer’s livelihood, or the level of pain inflicted [on the lawyer] when determining the appropriate sanction.” *In re Scholl*, 200 Ariz. 222, 224 (2001). *See also In re Shannon*, 179 Ariz. 52, 71 (1994) (effect of disciplinary sanctions on a respondent lawyer’s practice and livelihood is not a mitigating factor).

Mr. Tynan violated duties owed to the profession, clients, and the public. He did not comply with rules and regulations regarding his IOLTA account, and he misused his trust account by utilizing it as a clearinghouse for disbursements unrelated to legal services or his representation of a client. Moreover, Mr. Tynan failed to cooperate with the State Bar by providing requested information regarding his IOLTA account, despite

promises to do so. His trust account had a negative balance even before the two disbursements at issue in these proceedings were made. The failure to provide the Trust Account Examiner with the requested information (and which the supreme court's rules require to be maintained) prevents us from concluding that this was an isolated occurrence or that no harm ensued.

ABA Standard 7.2 states:

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.

Suspension, then, is the presumptive sanction. We next consider aggravating and mitigating factors, both of which must be supported by reasonable evidence. *In re Abrams*, 227 Ariz. 248, 252 (2011).

The State Bar established the following three aggravating factors:

9.22(a) prior disciplinary offenses:

- PDJ 2017-9045-PV (2017): Respondent's probation was extended due to his failure to comply with his terms of probation in SB 14-3563.
- SB14-3563 (2015): Respondent was admonished and placed on probation for one year for violating ER 5.5.
- SB 08-0058 (05-1452, 05-1601, 06-1190 and 07-0052): Censure with probation for violation of ERs 1.2, 1.3, 1.4, 8.1(b) and Rule 53(f), Ariz. R. Sup. Ct.
- SB 04-0503: Informal Reprimand with probation for violations of ERs 5.5, 8.4(a), (c), and (d).

- SB 04-0010: Informal Reprimand with probation for violations of ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2 and 8.4.

Prior discipline is an aggravating factor that weighs heavily against an attorney in a disciplinary proceeding. *In re Brady*, 186 Ariz. 370, 375 (1996).

9.22(e) obstruction of the disciplinary proceedings by intentionally failing to comply with the State Bar’s requests for information. Failure to cooperate with the State Bar “demonstrates a disregard for the Rules of Professional Conduct and borders on contempt for the legal system.” *In re Galusha*, 164 Ariz. 503, 505 (1990); *see also In re Pappas*, 159 Ariz. 516, 527 (1988) (“Failure to cooperate with disciplinary authorities is a significant aggravating factor.”).

9.22(i) substantial experience in the practice of law. Mr. Tynan has been practicing law in Arizona since 1980.

In terms of mitigating evidence, Mr. Tynan testified that he has been experiencing health problems. He did not, however, provide the State Bar or the hearing panel with any documentation regarding his medical problems and the effect, if any, on his conduct in the instant matter. “Physical disability is a mitigating factor only if there is a direct causal connection between the physical disability and the misconduct.” *In re Peasley*, 208 Ariz. 27, 40 (2004).

The aggravating factors support the imposition of a sufficiently lengthy suspension that Mr. Tynan will be required to apply for reinstatement pursuant to Rule 65, Ariz. R. Sup. Ct., should he wish to again practice law in Arizona.

CONCLUSION

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

- a) Respondent is suspended from the practice of law in Arizona for six months and one day, effective 30 days from the date of this order.
- b) Respondent shall pay the costs and expenses incurred by the State Bar in these proceedings.
- c) If Respondent is reinstated, he shall be subject to any terms of probation ordered in the reinstatement proceedings

A final judgment and order will be entered at a later date.

DATED this 6th day of January, 2023.

/s/ signature on file

Margaret H. Downie, Presiding Disciplinary Judge

/s/ signature on file

Stephen Weiss, Attorney Member

/s/ signature on file

Howard Weiske, Public Member

Copy of the foregoing emailed
this 6th day of January, 2023 to:

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by: SHunt