BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **ANDREW MANKOWSKI,** Bar No. 016637, RESPONDENT.	)	Nos. 05-0675, 05-1026, 05-1211, 05-1345, 05-1990 **HEARING OFFICER'S REPORT AND RECOMMENDATION**

I. PROCEDURAL HISTORY

Matters # 05-0675, 05-1026, 05-1211, and 05-1345

On December 7, 2005, State Bar of Arizona ("State Bar") Probable Cause Panelist Daniel J. McAuliffe, filed a Probable Cause Order, finding probable cause existed to issue a Complaint against Respondent Andrew Mankowski ("Respondent") for violations of Rule 42, Ariz. R. S. Ct., including but not limited to violations of ER's 1.16(d), 8.1(a,b), 8.4(c), and Rule 53(d,f), Ariz.R.S.Ct. On December 27, 2005, the State Bar filed a Complaint against Respondent alleging:

Count One: Matter # 05-0675: Mr. Mankowski represented Freddie Freeman in a divorce proceeding where he failed to act with reasonable diligence, failed to communicate adequately with his client, charged her unreasonable fees, failed to expedite her litigation, was dishonest, failed to furnish new counsel the client's file, and failed to respond to bar discipline, and his conduct was prejudicial to the administration of justice.

Count Two: Matter # 05-1026: Mr. Mankowski represented Mr. Rebilas in two cases, a criminal one and an immigration one, where he failed to act with reasonable

diligence, failed to communicate adequately with his client, charged him an unreasonable fee, failed to safeguard his interests upon termination of representation, was dishonest, and failed to respond to bar discipline, and his conduct was prejudicial to the administration of justice.

Count Three: Matter # 05-1211: Mr. Mankowski represented Mr. Kaurin in an employment termination proceeding where he failed to act with reasonable diligence, failed to communicate adequately with his client, charged her unreasonable fees, was dishonest, failed to safeguard his interests upon termination of representation, and failed to respond to bar discipline, and his conduct was prejudicial to the administration of justice.

Count Four: Matter # 05-1345: Mr. Mankowski represented Ms. Weyant in a bankruptcy matter where he failed to act with reasonable diligence, failed to communicate adequately with his client, failed to safeguard her interests upon termination of representation, and failed to respond to bar discipline, and his conduct was prejudicial to the administration of justice.

The State Bar served the Complaint on Respondent by mail on December 30, 2005. When Respondent failed to answer the Complaint timely, the Disciplinary Clerk filed a Notice of Default on January 24, 2006.

On February 8, 2006, Respondent belatedly filed his *pro se* Answer. With no objection from the State Bar, that late Answer was allowed to stand. The State Bar filed its Notice of Intent to Use Prior Discipline on February 24, 2006. That pleading gave notice of using a prior Order of Probation (including MAP and LOMAP, as well as fee arbitration) in matter #04-0211, as well as a prior Judgment and Order issued by the Disciplinary Commission that suspended Mr. Mankowski from practice for six months in matters #03-0310, 03-0703, 03-0871, 03-1350, 03-1445, 03-1739, 03-1367, 03-1369, 04-0135, and 04-0328.

An initial Case Management Conference was held on March 6, 2006, where standard scheduling orders were entered.

The matter was assigned to Stanley Lerner for Settlement Conference. The settlement conference had to be continued (due to Mr. Mankowski's travel arrangements from Florida) to April 10, 2006. Once it was held, the parties advanced toward settlement, but were unable to complete an agreeable resolution of the case. Part of the problem with resolution was that the State Bar was going to charge yet another matter against Mr. Mankowski, *i.e.*, matter #05-1990.

Matter # 05-1990

On April 21, 2006, State Bar of Arizona ("State Bar") Probable Cause Panelist Richard T. Platt filed a Probable Cause Order, finding probable cause existed to issue a Complaint against Respondent Andrew Mankowski ("Respondent") for violations of Rule 42, Ariz. R. S. Ct., including but not limited to violations of ER's 5.5 and Rule 31(c), Ariz.R.S.Ct. On April 24, 2006, the State Bar filed a Complaint against Respondent alleging that, while under a suspension from practice, Respondent provided legal representation to his parents, Henryk and Irena Mankowski, regarding an automobile accident claim in California.

The State Bar served the Complaint on Respondent by mail on April 26, 2006. When Respondent failed to answer the Complaint timely, the Disciplinary Clerk filed a Notice of Default on May 24, 2006.

All Pending Matters Combined

As the time for the hearing in the first four matters approached, the parties communicated with the undersigned Hearing Officer their intention to resolve the matter short of a contested hearing. On May 19, 2006, they filed a joint Tender of Admissions and Agreement for Discipline by Consent, as well as a Joint Memorandum in Support of Agreement for Discipline. At the same time, the Parties asked this officer to consider accepting the new filing (matter #05-1990) in addition to the existing matters before her, and resolve all the pending matters at once. At the next teleconference with parties, this

Hearing Officer agreed to take on the new matter. On June 5, 2006, matter #05-1990 was officially transferred to this officer.

In the interim, the original four matters continued toward resolution. A teleconference with the parties was held on May 2, 2006 to discuss their proposed resolution. The Hearing Officer, frankly, expressed skepticism at the proposed resolution (as being too lenient). The parties therefore suggested that the Hearing Officer conduct a brief hearing wherein they could present evidence in support of their Agreement for Discipline. That was granted, and on May 25, 2006, Respondent provided the Hearing Officer documentation filed with his response to the State Bar. The following day, May 26, 2006, a hearing was conducted where Respondent testified and the parties advanced evidence and argument in favor of their joint agreement. It was noted that this evidence would also support the agreement as to the new filing, Matter # 05-1990. Thereafter, this Hearing officer was satisfied as to the propriety of the Agreement for Discipline.

II. FINDINGS OF FACT

1. By agreement, I find that at all times relevant to this proceeding, Respondent was an attorney licensed to practice in Arizona, having been admitted to practice on October 24, 1996. He was first admitted to practice in another jurisdiction in 1993.

2. By agreement, I find that on March 23, 2005, the Arizona Supreme Court suspended Respondent from the practice of law, to be effective thirty days from that date. As of the date of this Report, Respondent remains suspended.

3. By agreement, I find that after the State Bar commenced an investigation as to all these matters (except # 05-1099); Bar Counsel sent charging letters to Respondent, requesting that he respond to the charges in the named violations by August 31, 2005.

4. By admission of Respondent, I find that in response, Respondent faxed and mailed a letter to the State Bar dated September 25, 2005, asking for at least a two-week extension because he had been out of state for several weeks and had just learned of

"several bar inquiries" pending. The letter did not provide any substantive information responsive to the inquiry from Bar Counsel.

5. By agreement, I find that no further response was received by the State Bar. On October 25, 2005, Bar Counsel wrote to Respondent indicating that he would need to respond by November 8, 2005.

6. By admission of Respondent, the State Bar did not receive Respondent's response. Although Respondent's claims that he had mailed the State Bar a response on November 1, 2005,[1] and the State Bar claims it never received that response, resolving this dispute is not necessary to the findings. Instead, I accept Respondent's admission that he failed to respond timely to a lawful demand for information from a disciplinary authority, in violation of ER 8.1(b) and Rule 53(f), Ariz.R.S.Ct., premised on his untimely failure to respond initially to the State Bar's demand that was due August 31, 2005.

File # 05-0675, Complainant Freeman

7. By agreement, I find that Freddie L. Freeman hired and paid Respondent to represent her in divorce and bankruptcy proceedings.

8. By admission of the State Bar, I find that Respondent performed substantial services reference the divorce case in a timely manner for Ms. Freeman, and communicated with her as best he could – given that he was closing down his law office – so did not violate ER's 1.3, 1.4, 3.2, or 8.4(d). I further find that that admission is factually supported by the testimony of Respondent at the Hearing as well as the documentation he submitted as Hearing Exhibits regarding the Freeman matter, reflecting a successful outcome in the Family Court proceedings.

9. By admission of the State Bar, I find that Respondent did not charge Ms. Freeman an excessive fee for the divorce case; additionally, I find that he returned the fee

[1] Nonetheless, I note that Respondent produced letter(s) representing mailing of September 30, 2005, to the State Bar, responding to the allegations. They are included in his Hearing Exhibits.

in full to Ms. Freeman for any bankruptcy undertakings when he closed his practice and could not pursue her bankruptcy. Consequently, Respondent did not violate ER 1.5.

10. By admission of the State Bar, I also find that it did not prove by clear and convincing evidence that Respondent possessed the requisite "knowing" state of mind necessary to establish a violation of ER 8.4(c) or the "intentional" state of mind necessary to establish a violation of Rule 53(d).

File # 05-1026, Complainant Rebilas

11. By agreement, I find that Mr. and Mrs. Rebilas hired Respondent to represent Mr. Rebilas in a criminal case and an immigration case.

12. By admission of Respondent, I find that Mrs. Rebilas paid Respondent $9,000 for his representation in the criminal case and $7,500 for his representation in the immigration case.

13. By admission of the State Bar, I find that Respondent performed substantial services in a timely manner for Mr. Rebilas, and communicated with Mr. and Mrs. Rebilas as best he could – given that Mr. Rebilas was incarcerated and Respondent was closing down his law office – so did not violate ER's 1.3, 1.4, 1.16, 3.2, or 8.4(d). I further find that this admission is supported (minimally, but sufficiently) by the testimony of Respondent at the hearing and the Hearing Exhibits he submitted. I note that those exhibits do not reflect that he *prevailed* in the immigration case; they do reflect that there was no basis for post-conviction relief in the criminal matter, but not that Respondent performed that work.[2]

14. I do not make any findings as to whether an excessive fee was charged pursuant to ER 1.5. Instead, I accept the binding fee arbitration agreement between parties to resolve the Rebilas fee dispute in that forum.

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[2] The minute entry in the criminal matter shows instead that a Petition for Post-Conviction Relief had been filed by Rick Poster of Philips & Associates, and that the Court had ruled on it, turning it down. What Respondent was retained to do, then, for his criminal defendant client, seems to be an open question. Nonetheless, it is better addressed in the agreed-upon fee arbitration context than here.

15. By admission of the State Bar, I also find that it did not prove by clear and convincing evidence that Respondent possessed the requisite "knowing" state of mind necessary to establish a violation of ER 8.4(c) or the "intentional" state of mind necessary to establish a violation of Rule 53(d).

File # 05-1211, Complainant Kaurin

16. By agreement, I find that Mr. Kaurin retained Respondent to represent him in a employment termination dispute.

17. By admission of the State Bar, I find that Respondent performed substantial services in a timely manner for Mr. Kaurin, completed the services he was retained to do, and communicated with Mr. Kaurin as best he could – given that Respondent was closing down his law office – so did not violate ER's 1.3, 1.4, 1.16, 3.2, or 8.4(d). I further find that that admission is strongly supported by fact, to wit: the court minute entry from the hearing that was in the Hearing Exhibits, as well as by the testimony of Respondent here.

18. By admission of the State Bar, I find that Respondent did not charge Mr. Kaurin an excessive fee, so did not violate ER 1.5.

19. By admission of the State Bar, I also find that the State Bar did not prove by clear and convincing evidence that Respondent possessed the requisite "knowing" state of mind necessary to establish a violation of ER 8.4(c) or the "intentional" state of mind necessary to establish a violation of Rule 53(d).

File # 05-1345, Complainant Weyant

20. By agreement, I find that Ms. Weyant retained Respondent to represent her in a bankruptcy matter

21. By admission of the State Bar, I find that Respondent performed substantial services (regarding other cases he represented her on) in a timely manner for Ms. Weyant, and communicated with Ms. Weyant as best he could – given that Respondent was closing down his law office – so did not violate ER's 1.3, 1.4, 1.16, 3.2, or 8.4(d). I also find that

Respondent did not file any bankruptcy petition, but did advise Ms. Weyant, at no charge, about filing bankruptcy later. I further find that this admission is supported in fact by the testimony of Respondent at the hearing, specifically that while Ms. Weyant's personal injury lawsuit was pending, it was unadvisable for Respondent to initiate a bankruptcy proceeding.

22. By admission of the State Bar, I find that Respondent did not charge Ms. Weyant any fee, so did not violate ER 1.5.

23. By admission of the State Bar, I also find that the State Bar did not prove by clear and convincing evidence that Respondent possessed the requisite "knowing" state of mind necessary to establish a violation of ER 8.4(c) or the "intentional" state of mind necessary to establish a violation of Rule 53(d).

File # 05-1990, Complainant Crotty

24. By agreement, I find that Respondent was suspended from the practice of law by Order of the Supreme Court, effective April 23, 2005.

25. By admission of Respondent, I find that during this period of suspension, he provided legal representation to his parents in negotiating an automobile accident they had had in California, in violation of ER 5.5 and Rule 31(c), Ariz.R.S.Ct.

26. By admission of the State Bar, I find that it did not prove by clear and convincing evidence that Respondent possessed the requisite "intentional" state of mind necessary to establish this violation. But by admission of Respondent, I do find that he acted with a mental state of "knowingly" engaging in the unauthorized practice of law when he negotiated and communicated with the insurance company on behalf of his parents. I further find that that admission is supported in fact by Respondent's testimony at the hearing.

CONCLUSIONS OF LAW

1. The State Bar bears the burden to prove by clear and convincing evidence a violation of ER's 1.3, 1.4, 1.5, 1.16(d), 5.5, 8.1(a,b), & 8.4(c,d), and Rules 31(c) & 53(d,f),

Ariz.R.S.Ct. It therefore must prove that it is highly probable that its allegations in the Complaint are true.

2. I have found that the State Bar failed to meet that burden concerning the lion's share of its allegations against Respondent, as discussed above. In fact (as to files # 05-0675, 05-1026, 05-1211, & 05-1345), I find that Respondent only violated ER 8.1(b) and Rule 53(f), Ariz.R.S.Ct., due to his failure to respond timely to a lawful demand for information from a disciplinary authority; this is based on his untimely failure to respond by August 31, 2005 to the State Bar's demand for information.[3]

3. As to the one-count Complaint filed this spring (file # 05-1990), I find that Respondent knowingly practiced law (after having been suspended from that practice) in some of his dealings with the Hartford Insurance company on behalf of his parents. Consequently, I find that he violated ER 5.5 and Rule 31(c), Ariz.R.S.Ct.

4. Finally in file # 05-1026, I withhold any finding as to excessive fee, alleged as a violation of ER 1.5, because the parties have agreed to refer the matter to fee arbitration.

IV. RECOMMENDATION

A. ABA *Standards*

Both substantive ethical violations that I have found Respondent violated (unauthorized practice of law and failure to cooperate with Bar investigation) are subsumed under the ABA *Standard* 7.0, Violations of Duties Owed to the Profession. *Standard* 7.0 notes that the such offenses usually do not result in actual injuries to clients or participants in the justice system, and indeed there appears to be little injury and only potential injury in these consolidated cases. *Standard* 7.2 recommends Suspension when a

[3] There are good reasons why this rule requiring cooperation and response to bar investigations exists. Had Respondent timely responded to the complaining letters, it appears that the State Bar would not have pursued all the charges against him; indeed, the State Bar now acknowledges that they do not have sufficient evidence to overcome his reasonable and usually well corroborated evidence of adequate representation of these complainants. If Respondent had made a timely response, then much of the formal disciplinary action here could have been avoided from the start.

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." Note that *Standard* 7.2 applies when an attorney only "knowingly" violates the rule, as opposed to "intentionally" violating its proscriptions; because I found that Respondent's conduct was a "knowing" (rather than "intentional") violation, application of *Standard* 7.2 appears appropriate.

B. Aggravating and Mitigating Factors

This Hearing Officer then considered aggravating and mitigating factors in this case, pursuant to *Standards* 9.2 and 9.3, respectively. This Hearing Officer found the following four factors are present in aggravation:

Prior Disciplinary Offenses: Respondent had been previously found in violation of ER 8.1 and Rules 53(d,f), Ariz.R.S.Ct., in Supreme Court case no. SB-05-002-D. *Standard* § 9.22(a) provides that such prior disciplinary offenses constitutes aggravation.

Pattern of Misconduct: Respondent engaged in a pattern of failing to respond timely and adequately to State Bar investigations of these complaining reports. He did not respond timely as originally requested. Belatedly, he asked for an additional two weeks to respond, then still had not respond within that time frame. Additionally, after he had been served the two formal Complaints constituting the five files consolidated in this cause, Respondent failed to timely file his Answers; this resulted in the Clerk issuing a Notice of Default in both cases. *Standard* § 9.22(c) provides that such a pattern of non-responsive conduct constitutes aggravation.

Multiple Offenses: Respondent has been found in violation of his duty to respond to Bar disciplinary inquiries in each of four cases (files # 05-0675, 05-1026, 05-1211, & 05-1345), as well as his duty to refrain from practicing law when suspended by the Supreme Court in another case (file # 05-1990). *Standard* § 9.22(d) provides that multiple offenses constitute aggravation.

Substantial Practice of Law: Respondent has practiced law continuously (until April of 2005) since 1993, for a total of twelve years. *Standard* § 9.22(i) provides that engaging in these ethical violations, when he had already had the benefit of a substantial experience in the practice of law, constitutes aggravation.

This Hearing Officer also found the following four factors in mitigation:[4]

Absence of Dishonest or Selfish Motive: There was no selfish or dishonest motive proven for the violations that the State Bar proved against Respondent. Indeed, there was credible and undisputed evidence adduced that his unauthorized practice of law was benevolent and done free of charge (since he was representing his parents). *Standard* § 9.32(b) provides that lack of any dishonest or selfish motive for the errant conduct constitutes mitigation.

Personal Problems: Respondent produced substantial and uncontested evidence at the Hearing concerning the problems his parents and wife were having, and his preoccupation with caring for them while trying to attend to his overly busy practice. This reasonably contributed to his committing these offenses. *Standard* § 9.32(c) provides that when a lawyer's personal problems lead to the offensive conduct, that constitutes mitigation.

Remorse: Respondent expressed considerable remorse over the violations during the Hearing. His remorse appeared credible to this hearing officer and the State Bar; furthermore, it was corroborated by his correction of errant conduct after the charges had been brought to his attention. *Standard* § 9.32(l) provides that remorse for unethical behavior constitutes mitigation.

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[4] The parties had agreed that Respondent's conduct should be mitigated by his "full and free disclosure to a disciplinary board or cooperative attitude toward proceedings," in accordance with *Standard* § 9.32(e). This Hearing Officer does *not* concur in that, and does not find that Respondent's conduct throughout the entire investigation rises to the level of mitigation. At best, it avoids becoming aggravation. Nonetheless, this Hearing Officer finds a non-ABA mitigating factor in its place.

Self-Imposed Sanction: Respondent imposed sanctions (effectively) upon himself already. He was suspended from practice for six months and one day, effective April 23, 2005; he thus was entitled to reapply for admission to practice as of October 24, 2005. Due to his difficult family, personal, and financial circumstances, he never applied for reinstatement when authorized to do so. Thus, he effectively extended his suspension from practice by not seeking reinstatement for over seven additional months. He will still have to undergo the rigors of applying for reinstatement which could take many more months yet in the future. This Hearing Officer recognizes that it is unlikely that Respondent would have been sanctioned for more than one year suspension, given his prior ethical violations and the present findings of unethical conduct. Therefore, his self-imposed extension of his suspension may be construed as an alternative sanction, a means of self-regulation of his professional behavior. This Officer can consider non-ABA mitigating factors when deciding the appropriate sanction to impose on Respondent. *In re Peasley*, 208 Ariz. 27, 39, 90 P.3d 764, 776 (2004). I find that his self-imposed extension of his suspension from the practice of law constitutes such a non-ABA mitigating factor.

C. Proportionality Analysis

The Supreme Court has held that in order to achieve proportionality when imposing discipline, it must be tailored to the individual facts of the case in order to achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983); *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993). Moreover, an appropriate sanction for unethical conduct should comport with similar sanctions given for similar conduct in other cases. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994). Sanctions in the settled cases for conduct similar to Respondent's violations here range from censure to one year's suspension.

In *In re Axford*, Arizona Supreme Court No. SB-02-0115-D, 2002 Ariz. LEXIS 189 (2002), Ms. Axford received a one-year Suspension from the practice of law due to practicing while she had been suspended for disciplinary and administrative reasons, in

violation of ER 3.4(c), 5.5(c), ER 8.4(d), and Rule 51(e,f,k), Ariz.R.S.Ct. She was also found to have knowingly failed to cooperate with and respond to the Bar's investigation, in violation of ER 8.1(b) and Rule 51(h,i), Ariz.R.S.Ct. Six aggravating factors were found, including three found here (prior discipline, pattern of misconduct, and substantial experience in the practice of law), and three not present here (dishonest or selfish motive, bad faith obstruction of the disciplinary process, and refusal to acknowledge the wrongful nature of her conduct). There was only one mitigating factor found, *i.e.*, personal or emotional problems – and it was also a mitigator here.

In *In re Bayless*, Arizona Supreme Court No. SB-04-0053-D, Disciplinary Commission No. 02-2156 (2004), Mr. Bayless received a Censure for negligently engaging in the unauthorized practice of law when he failed to seek reinstatement after a thirty-day Suspension. Two aggravating factors were found (which are also present here): substantial experience in the practice of law, and prior discipline; two mitigating factors were also found (one of which is found here): absence of a dishonest or selfish motive, and full and free disclosure.

In *Matter of Clark*, Arizona Supreme Court No. SB-05-0027-D, Disciplinary Commission No. 03-1455 (2004), Mr. Clark received a six-month Suspension for knowingly engaging in the unauthorized practice of law while on a three-year disciplinary suspension. His conduct was found to fall between *Axford* and *Bayless*, and though he did it "knowingly," his violation was limited to a single instance of an appearance in an administrative proceeding. Aggravating factors included prior discipline, substantial experience in the practice of law (both present here), as well as refusal to acknowledge the wrongful nature of his acts. Unlike the present case, there were no mitigating factors found.

In a case that is closely on-point to Respondent's, *In re Hansen*, Arizona Supreme Court No. SB-05-0020-D, Disciplinary Commission No. 03-1463 (2005), Mr. Hansen received a six-month Suspension for engaging in the unauthorized practice of law while on

six-month and eighteen-month disciplinary suspensions. His conduct was found to be negligent, and fairly circumspect (involving reviewing the terms of a corporate dissolution to ensure that it accurately reflected factual matters). Even though Mr. Hansen had not held himself out to be acting as a lawyer in that capacity, he violated ER 5.5. Two aggravating factors were found (which were also present in this case): substantial experience in the practice of law, and prior discipline. Four mitigating factors were found (three of which were also present here): absence of selfish or dishonest motive, personal or emotional problems, remorse, and full and free disclosure to the disciplinary board.

D. Discussion of Appropriate Sanction

The purpose of attorney discipline is not to punish the lawyer, but to protect the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). It is also the object of lawyer discipline to protect the public, the profession, and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Another purpose attorney discipline serves is to instill public confidence in the bar's integrity. *Matter of Horwitz,* 180 Ariz. 20, 29, 881 P,2d 352, 361 (1994). In selecting the fitting attorney disciplinary sanction, it is appropriate to consider the facts of the case, the ABA *Standards,* and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994). I have considered all these factors.

When the parties first proposed the agreed-upon resolution to this Hearing Officer, I was *very* skeptical that it would be acceptable. Given Respondent's prior discipline history and numerous allegations that such unethical conduct was continuing, without knowing more, it appeared too lenient. The Hearing and submitted documentation, however, alleviated this Hearing Officer's concerns that Respondent had been continuing to injure clients or pose a serious potential threat of injury to clients. It appears, then, that he had learned from the on-going disciplinary proceedings that led to his original

suspension. Hopefully he will learn from this proceeding to give equal attention to the Bar investigations.

Upon consideration of the facts, the agreement between parties, application of the *Standards*, including aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer recommends the following:

1. Respondent shall receive a Suspension from the practice of law for six months, to start retroactively on April 23, 2005 and run concurrently with his Suspension in his Supreme Court case No. SB-05-002-D.

2. Upon reinstatement, Respondent shall be placed on probation for a period of two years, with terms to be determined at the time of reinstatement, but to include participation in fee arbitration as to file # 05-1026.

3. Respondent shall pay the costs and expenses incurred in these disciplinary proceedings, pursuant to Rule 60(b), Ariz. R. S. Ct.

Dated this 28th day of July, 2006.

Donna Lee Elm/cs
Donna Lee Elm
Hearing Officer 6N

Original filed with the Disciplinary Clerk
this 28 th day of July, 2006.

Copies of the foregoing mailed
this 28 th day of July, 2006, to:

Andrew Mankowski
PO Box 11611
Glendale, AZ 85318
Respondent

Loren J. Braud
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016
Bar Counsel

By: Christina Lobb