

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

FILED

FEB 27 2009

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY

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

TIM D. COKER,
Bar No. 007022

RESPONDENT.

No. 08-0630, 08-1379

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

1. This matter came before this Hearing Officer as a result of a direct file of a Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline By Consent and a Tender of Admissions, both of which were filed on December 17, 2008. The matter was assigned to this Hearing Officer on December 19, 2008. An Initial Case Management Conference was held on January 5, 2009. A hearing on the agreement was held on January 27, 2009.

FINDINGS OF FACT

2. At all times relevant hereto, Respondent was a lawyer licensed to practice law in the State of Arizona, having first been admitted on October 17, 1981.¹

COUNT ONE (File No. 08-0630)

3. Respondent while representing his client Rose Esson ("Ms. Esson") in a bankruptcy matter entered into a business transaction with Ms. Esson in which Respondent did not comply with requirements to advise the client to seek the advice of independent

¹ The facts are found in the Tender of Admissions and Joint Memorandum in Support of the Tender unless a specific reference to the hearing transcript is made.

counsel [ER 1.8(a)] and Respondent did not obtain Ms. Esson's informed consent to his role in the business transaction. (Transcript of Hearing "TR" 13:11)

4. In March 2007, Ms. Esson retained Respondent to represent her in filing for Chapter 13 bankruptcy.
5. While Respondent represented Ms. Esson in the bankruptcy, he agreed to also act as her real estate agent in the sale of property co-owned by Ms. Esson in Phoenix, Arizona ("Phoenix Property").
6. In reference to paragraph 5, above, Respondent and Ms. Esson entered into a written contract for Respondent to act as Ms. Esson's listing agent in selling the Phoenix property.
7. Per the contract, Respondent was to receive a 5% commission from the sale of the Phoenix property. The contract provided that three of the five points would be paid to the buyer's broker. In the hearing Respondent stated that he was attempting to be paid for his legal services in the bankruptcy matter by collecting a commission on the sale of the Phoenix property. Respondent expected to realize approximately \$2000 to \$3000 as a commission. Respondent testified that he did not expect to be able to collect from Ms. Esson a fee for his services even if the Trustee in Bankruptcy had authorized the fee. (TR 10:10) Respondent also clarified that his plan was for Ms. Esson to acquire enough money from the sale of the Phoenix property to pay her past due mortgage payments on the Holbrook property and thereby avoid foreclosure on that property. (TR 17:10)
8. In entering into the business transaction with Ms. Esson to sell her property, Respondent did not fully comply with the requirement of ER 1.8(a) in that he did not

advise Ms. Esson in writing to seek the advice of independent counsel, and he did not obtain Ms. Esson's written informed consent to his role in the transaction including whether he was legally representing her in the transaction.

9. On or about May 9, 2007 Ms. Esson entered into a Residential Real Estate contract for the sale of the Phoenix property. However, Ms. Esson ultimately declined to proceed with the sale of the property.
10. Ms. Esson's bankruptcy case was dismissed by the court on July 6, 2007 and her Holbrook property was thereafter scheduled for a Trustee sale. Respondent testified that the initial purpose for filing the Chapter 13 bankruptcy was to forestall foreclosure on the Holbrook property. (TR 6:15, 8:11) Although Respondent had several times argued for the bankruptcy case to remain pending, he did not resist the Trustee's Notice of Dismissal. He did not inform his client of his decision not to resist the dismissal. He therefore effectively terminated his representation of his client without her knowledge.
11. Subsequently, Respondent loaned approximately \$14,000 to Ms. Esson to help Ms. Esson avoid the pending foreclosure on her home in Holbrook, Arizona ("Holbrook property"). Ms. Esson was able to wire most of the \$14,000 to her mortgage company. (TR 18:9) The Holbrook property was not sold at foreclosure sale in July, 2007. Respondent testified that he expected to be paid back from the proceeds of the sale of the Phoenix property. (TR 17:11) The sale of the Phoenix property never occurred. Approximately nine months later the Holbrook property was sold at foreclosure sale. Therefore Respondent's loan to his client forestalled the foreclosure by nine months. (TR 19:5)

12. On or about July 18, 2007, Respondent had Ms. Esson quitclaim to him all rights to the Holbrook property. At the hearing Respondent acknowledged that after the quitclaim deed he held title to the Holbrook property subject to Ms. Esson's first mortgage. (TR 19:20)
13. On or about July 18, 2007, Respondent signed an Agreement to Reconvey, wherein he promised to convey the rights to the Holbrook property back to Ms. Esson if she paid him \$15,000 plus 8% interest per annum. Respondent testified that in addition to the loan, he paid Ms. Esson's filing fee in the bankruptcy court matter and a fee for her to take a credit advice course. Neither Respondent nor Ms. Esson retained any interest in the Holbrook property after the foreclosure sale. No evidence was introduced at the hearing that Ms. Esson ever repaid Respondent any money on the loan.
14. As to the business transactions listed in paragraphs 11 through 13 above, Respondent failed to comply with the requirements of ER 1.8(a).
15. Respondent paid nearly \$13,000 to Ms. Esson's mortgage lender on the eve of the foreclosure sale solely to prevent Ms. Esson and her mother from losing their home. Respondent expected that the \$15,000 (see paragraph 13) would repay him for the mortgage reinstatement, his advanced costs in the bankruptcy, and about one-third of the agreed bankruptcy fee. It was anticipated that Ms. Esson would get the money to re-pay him from the sale of her property.

16. On or about July 23, 2007, Respondent prepared a notice indicating cancellation of the Phoenix property's real estate listing agreement at Ms. Esson's request in order for her to hire a new realtor.
17. Respondent did not notify Ms. Esson that he was terminating his representation in the bankruptcy case. She received notice from the court that the case was dismissed. (TR 50:21)

COUNT TWO (File No. 08-1379)

18. In November 2007 Respondent was involved in a one vehicle accident that led to his arrest for driving under the influence.
19. The Maricopa County Sheriff's Deputy responding to the accident performed a search of Respondent's car and found cocaine, various narcotic drugs and marijuana.
20. On or about June 5, 2008, a direct complaint was filed in Maricopa County Superior Court charging Respondent with Possession of Narcotic Drugs (cocaine) a class 4 felony, Possession of Marijuana a class 6 felony, Possession of Narcotic Drugs (Oxycodone) a class 4 felony, Possession of Narcotic Drugs (Hydrocodone) a class 4 felony and Possession of Dangerous Drugs (Alprazolam) a class 4 felony.
21. Respondent asserted that he had a prescription for the Hydrocodone, and also a prescription for Flexoril, which he believed to cover the charge regarding Alprazolam.
22. Respondent entered into a plea agreement whereby he pled guilty to one count of Possession of Drug Paraphernalia, a class 6 undesignated felony, in exchange for dismissal of all other charges.

23. On or about September 3, 2008, Respondent was sentenced on the above criminal charge. Respondent's sentence was suspended and he was placed on one year of probation with fines and treatment. Respondent's fine was \$2200. As a condition of probation he testified he was ordered to attend group counseling. The cost of the forty counseling sessions was \$1400. He paid \$1500 for a psychiatric assessment with Dr. Carlos Jones in December 2007. He has engaged in therapy with psychologist Dr. Bill Graf for at least 32 sessions at a cost of \$150 per session. (TR 61:21, 62:18, 64:25, 79:18-25)
24. Respondent committed a criminal act that reflects adversely on his trustworthiness or fitness as a lawyer in other respects.
25. Respondent engaged in conduct that is prejudicial to the administration of justice.

CONCLUSIONS OF LAW

26. The Hearing Officer finds that there is clear and convincing evidence that Respondent engaged in representation involving conflicts of interest and entered into business transactions with a client, including acquiring an ownership interest adverse to the client without complying with the rules. This conduct is in violation of Rule 42, Ariz.R.Sup.Ct., ER 1.7(a) [Concurrent Conflicts of Interest], 1.8(a) [Business Transactions with Clients] and 1.8 (e) [Providing Financial Assistance to Client], and 1.16 [Terminating Representation].
27. The Hearing Officer finds that there is clear and convincing evidence that Respondent engaged in criminal conduct that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects and that this conduct is prejudicial to the

administration of justice. This conduct is in violation of ERs 8.4(b) [Criminal Act] and 8.4(d) [Conduct prejudicial to the administration of justice]. At the hearing the parties agreed that the Tender and Joint Memorandum contained a mistake in listing ER 1.15 (d) as having been violated. (TR 58:15)

CONDITIONAL ADMISSIONS

COUNT ONE (File No. 08-0630)

28. Respondent conditionally admitted that he engaged in representation involving concurrent conflicts of interest and entered into business transactions with a client and knowingly acquired an ownership interest adverse to the client without complying with the rules. Respondent conditionally admitted that he provided financial assistance to a client, failed to provide notice to or obtain permission from the bankruptcy court prior to terminating the representation, and failed to protect the client's interest upon terminating the representation.
29. Respondent conditionally admitted that his conduct as described in this count violated Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1.7(a), 1.8(a) and (e), and 1.16.

COUNT TWO (File No. 08-1379)

30. Respondent conditionally admitted that he engaged in criminal conduct as set forth above.
31. Respondent conditionally admitted that his conduct as described in this count violated Rule 42, Ariz.R.Sup.Ct., specifically, ERs 8.4(b) and 8.4(d).

RESTITUTION

COUNT ONE (File No. 08-0630)

32. Restitution is not appropriate since Ms. Esson did not pay any legal fees for services.

She did not pay any filing fee in the Chapter 13 bankruptcy case. The actions of Respondent did not cause her to lose the Holbrook property. She was unable to pay on her first mortgage. Her interest was extinguished by the foreclosure sale of the Holbrook property in 2008. She received a loan of approximately \$14,000 from Respondent which forestalled foreclosure on the Holbrook property in July, 2007. She did not repay any of the loan proceeds. (TR 20:19) Even if she had not signed a quitclaim deed to Respondent on the Holbrook property in exchange for the loan from Respondent, she would have lost the Holbrook property in the July, 2007 foreclosure sale. The loan allowed her to continue to live in the Holbrook property for another nine months.

ABA STANDARDS

33. ABA Standards provide that four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; (4) the existence of aggravating and mitigating factors.

THE DUTY VIOLATED

34. Respondent violated his duty to his client in Count One by engaging in representation involving concurrent conflicts of interest and entering into business transactions with his client and acquiring an ownership interest adverse to his client without complying with ER 1.8 (a). Respondent did not advise his client of her right to seek the advice of

independent counsel and he did not obtain her informed consent to these transactions in writing. Respondent violated his duty to the public and to the legal profession in Count Two by engaging in illegal conduct.

THE LAWYER'S MENTAL STATE

35. Respondent knowingly engaged in representation involving concurrent conflicts of interest and knowingly entered into business transactions with his client without following the requirements of the ethical rules, ER 1.8 (a). Respondent knowingly possessed drug paraphernalia as evidenced by his plea of guilty to that charge in *State v. Coker*, Maricopa County Superior Court case number CR 2008-134497. Therefore he knowingly committed a criminal act that reflects adversely on his fitness as a lawyer in other respects, ER 8.4 (b) and he engaged in conduct that is prejudicial to the administration of justice, ER 8.4 (d).

THE INJURY CAUSED

36. The client in Count One was not actually injured by the conduct of Respondent. She decided not to sell the Phoenix property. According to Respondent's testimony Ms. Esson thought she could get a higher sale price for the house than Respondent was able to get her by acting as her real estate agent. (TR 17:14) She decided not to go through with a sale transaction that was pending. She wanted to list the Phoenix property with a different agent. Respondent testified that the real estate market then turned sharply downward and Ms. Esson could not sell the Phoenix property. (TR 17:18) The potential for injury in this situation was that Respondent was trying to make an attorney fee out of a real estate commission. Although there is no evidence that Respondent as Ms. Esson's realtor advised her against selling the property at

lower sales prices (because the size of his commission was a percentage of the sales price) this conflict of interest is at least one of the potential injuries the hearing officer finds in this situation.

37. In Count Two the public's perception of lawyers and the public's confidence in attorneys as officers of the court is damaged when a lawyer commits a criminal offense, especially an offense involving drugs.² Respondent testified that his drug problem was a part of a co-dependency issue. (TR 21:23, 24:4) He said he tried too hard to help Ms. Esson "win" her goal of keeping the Holbrook property. He did not want to "fail" in solving her problem. He candidly admitted that he did not play by the rules. (TR 30:7) He now attributes his conduct to a desire to please the client and to win her approval. He says he has learned that this stems from a lack of self-esteem. Fortunately when he was driving under the influence of drugs in November 2007 his one vehicle accident did not involve an injury to anyone. The potential for injury was great. He could have killed or seriously injured himself and others while driving under the influence of drugs. He testified that he still must serve a day in jail on the misdemeanor DUI conviction from the Fountain Hills Justice Court. (TR 57:10)

APPLICABLE STANDARDS

38. Standard 4.32 indicates that suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. Standard 5.12 states that suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 (fraud,

² An undesignated felony offense is not a felony for Bar disciplinary purposes until it is designated as a felony. *Matter of Beren* 178 Ariz. 400, 874 P.2d 320 (1994)

misrepresentation, false swearing, sale or distribution of controlled substances, intentional killing of another) and that seriously adversely reflects on the lawyer's fitness to practice law.

AGGRAVATING AND MITIGATING FACTORS

Aggravating Factors

39. *Standard 9.22(a)*: Prior Discipline. Respondent received a Censure in March 2002 for violations of ERs 3.1 bringing a non-meritorious claim, and 8.2(a) making a statement with reckless disregard as to its truth or falsity, and 8.4(d) engaging in conduct that is prejudicial to the administration of justice. All three ERs were violated by one act. Respondent represented a client in a family court matter in about 2002. The client showed Respondent a ruling by a judge in Superior Court of Maricopa County and some recommendations of Guardians Ad Litem ("GAL") in her case where the court removed the custody of her child from her. The client also showed Respondent records of the judge and the GALs that reflected that each one had paid off their respective home mortgages at the time of the ruling. Respondent filed a document in court that he admitted could be read to allege (at his client's wishes) that the judge and the GAL had been bribed. Instead the individuals involved had taken advantage of a sharp reduction in the interest rates for home mortgages and had refinanced their homes. (TR 67:17) In 1996 Respondent received an informal reprimand when while defending a criminal defendant he told the court that the offense allegedly occurred in Coconino County (to acquire an advantage for his client) when his client had told him that the client did not know whether he was in Gila or Coconino County when the offense occurred. A police officer overheard

Respondent's conversation with his client in the courthouse. (TR 73:20) The reprimand was for violating ERs 8.4(c) engaging in conduct involving dishonesty or misrepresentation and 8.4(d) engaging in conduct that is prejudicial to the administration of justice.

Standard 9.22(d): Multiple offenses. This discipline case involves two separate unrelated matters, making this an applicable factor.

Standard 9.22(i): Substantial experience in the practice of law. Respondent has been an attorney since 1981.

Standard 9.22(k): Illegal conduct. Respondent was convicted of Possession of Drug Paraphernalia in *State v. Coker*, Maricopa County Superior Court case number CR 2008-134497.

Mitigating Factors:

40. *Standard 9.32(e):* Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Respondent has been forthcoming throughout the investigative stage of these proceedings and has participated in negotiations that resulted in an agreement for discipline. Respondent's testimony at the hearing reflected his understanding that his conduct was wrong. (TR 21:23)
41. *Standard 9.32(i):* Imposition of other penalties or sanctions. Respondent was sentenced to probation and fined in the criminal matter.

PROPORTIONALITY REVIEW

42. To have an effective system of professional sanctions there must be internal consistency and it is appropriate to examine sanctions imposed in cases that are

factually similar. *In re Peasley*, 208 Ariz. 27, 33, 90 P.3d 764, 772 (2002). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* 208 Ariz. at 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983).

43. The most serious instance of misconduct in this case involves Respondent's commission of a criminal act. Respondent knowingly violated his duty to the public by engaging in illegal conduct and knowingly violated his duty to the legal system by failing to operate within the bounds of the law.
44. *In re Gallego* SB-08-0016-D (2008) involved an attorney licensed since 1991. The criminal defense attorney had over 15 years of experience. He was representing a client for first degree murder. The client was found guilty and sentenced to life in prison. The attorney admitted using cocaine prior to and during the murder trial. The defendant filed a petition for post conviction. The court found that the defendant received ineffective assistance of counsel because of the attorney's drug usage. The court granted the defendant a new trial. When questioned, the attorney lied to the court when he said he had not used cocaine after 2000. In fact he had used cocaine from 2001 through July 2006. The commission found that the attorney had committed a criminal act that reflected adversely on his honesty and his fitness as a lawyer in other respects.
45. The respondent in *Gallego* was given a one-year suspension followed by two years of probation and required participation in LOMAP and MAP contracts. Aggravating factors included a pattern of misconduct, submission of false evidence, substantial

experience in the practice of law, failure to make restitution, and illegal conduct.

Mitigating factors included absence of a prior disciplinary record (one informal reprimand in August 2000), absence of dishonest motive, personal or emotional problems, chemical dependency, remorse and remoteness of prior offense.

46. *In re Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990), involved an attorney who was suspended for two years and placed on two years probation after his conviction for attempted possession of cocaine a class 5 felony. The Supreme Court stated that the fact that Respondent's drug usage did not harm his clients "...weighs very heavily in our decision. Courts have uniformly paid careful consideration to the effect of substance abuse on an attorney's professional practice." *Id.* 164 Ariz. at 158. In the instant case Respondent testified that his codependency caused him to use poor judgment. He was trying to increase his self-esteem by pleasing his clients and getting them to like him. There is no evidence that his drug usage harmed his clients.
47. *In re Keefe*, SB-92-0047-D (1992) resulted in a six-month suspension and two years of probation for a DUI and driving on a suspended license conviction. The attorney had been convicted of a felony DUI and was sentenced to four months in prison followed by probation. In both *Rivkind* and *Keefe* there was no history of prior disciplinary problems. Both *Rivkind* and *Keefe* cooperated with the Bar as did the Respondent in the instant matter.
48. *In re Wasson* SB-05-0079-D (2005) involved in attorney who received a two year suspension and two years probation with MAP terms for two separate aggravated DUI convictions. *In re Politi* SB-00-0106-D resulted in the attorney being suspended for two years and receiving two years probation. In that case the respondent pled

guilty to a misdemeanor DUI and later to an aggravated DUI, a felony. The attorney also represented two opposing parties in the same lawsuit, advising one against the other.

49. In *In re Zavala*, SB-07-0004-D Zavala reached an agreement to receive a one year suspension and two years probation with MAP terms. He violated Rule 42, Ariz.R.Sup.Ct., ER 8.4(b) and Rule 53(h). Zavala had pled guilty to two counts of Possession of Drug Paraphernalia, Class 6 undesignated felonies. The aggravating factors included a pattern of misconduct *Standard* 9.22(c), substantial experience in the practice of law *Standard* 9.22(i), and illegal conduct *Standard* 9.22(k). Eight mitigating factors included absence of prior disciplinary record *Standard* 9.32(a), absence of a dishonest or selfish motive *Standard* 9.32(b), personal or emotional problems *Standard* 9.32(c), full and free disclosure to disciplinary board or cooperative attitude toward proceedings *Standard* 9.32(e), character and reputation *Standard* 9.32(g), mental disability or chemical dependency including alcoholism or drug abuse *Standard* 9.32(i), imposition of other penalties or sanctions *Standard* 9.32(k), and remorse *Standard* 9.32(l).
50. In this case Respondent engaged in business dealings with his client and on a separate occasion violated the law by possessing illegal drugs. The Supreme Court has held that the objective of disciplinary proceedings is not to punish the attorney, but to “protect the public, the profession and the administration of justice...” *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1996)).

51. Respondent did not obtain his client's written consent to his business relationship with the client. Respondent did not inform the client of her right to seek the advice of independent counsel on the subject of respondent's business relationship with the client. However, respondent did not conduct any of his business dealings without the knowledge and consent of his client. (TR 34:9) Although this transparency does not excuse his conduct it places his actions in a clearer perspective. He was motivated to obtain a fee by being his client's real estate agent on the Phoenix property. Respondent was also motivated to help his client avoid foreclosure on the home in which she lived with her mother in the Holbrook property.
52. The record does not show that the client in this case was prejudiced by Respondent's conduct in becoming a real estate agent or in handling the bankruptcy matter. The bankruptcy would not have prevented the eventual foreclosure on the Holbrook property. Respondent spent more than \$14,000 and received a quitclaim deed on the Holbrook property. The deed proved to be worthless when, in 2008, the holder of the first mortgage foreclosed.
53. The criminal acts in November 2007 were apparently caused by Respondent's use of illegal drugs. Although Respondent has not submitted medical evidence that he is suffering from a chemical dependency he openly admitted that he had been using drugs. He also testified that he is recovering from addiction and co-dependency. The incident of driving while under the influence of drugs which ended in a one vehicle accident and in the search of his vehicle revealing cocaine, narcotic drugs and marijuana lends credence to Respondent's testimony of a chemical dependency.

54. The Hearing Officer was impressed with Respondent's testimony when Respondent recognized that he was attempting to rationalize his conduct with his client in this matter. (TR 21:23 – 22:16) Several times in the hearing Respondent tried to explain his motives in helping his client. However after the explanations he testified that his attempts at rationalization were not valid. The Respondent did not provide evidence from healthcare professionals of his course of treatment for dependency. However his insight into his lack of good judgment in dealing with the client and in becoming a drug user is circumstantial evidence to this hearing officer that in fact Respondent has engaged in group counseling, a psychiatric assessment, and numerous sessions with a psychologist.

55. After weighing the aggravating and mitigating factors the Hearing Officer does not conclude a deviation from the ABA Standard of suspension is appropriate. In 2002 Respondent used poor judgment in a family court matter for which he received a censure. The 1996 informal reprimand, another example of poor judgment by respondent, was 11 years before the actions in the instant case. In both matters the clients were not prejudiced, nor did they lose money.

RECOMMENDATION

56. The State Bar and Respondent submit that the following disciplinary sanction is appropriate, and this Hearing Officer concurs

- 1.) Respondent shall be suspended for one (1) year;
- 2.) Respondent shall be placed on probation for a period of two years, under the following terms and conditions:

a. Probation period will commence upon the entry of an order of reinstatement and will conclude two (2) years from the date that all parties have signed the "Terms and Conditions of Probation."

b. Respondent shall contact the Director of the State Bar's Member Assistance Program (MAP) within 30 days of the date of the order of reinstatement.

c. Respondent shall submit to a MAP assessment.

d. The director of MAP shall develop "Terms and Conditions of Probation" based on the assessment and terms shall be incorporated herein by reference.

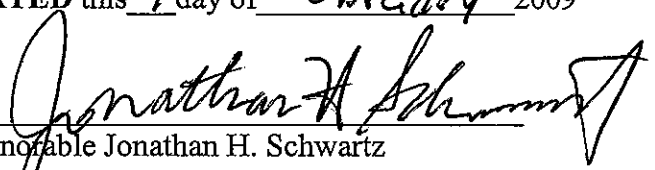
e. Respondent shall comply with any other terms and conditions deemed appropriate at the time of the reinstatement proceedings, which shall be incorporated herein by reference.

f. Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other rules of the Supreme Court of Arizona.

g. If Respondent fails to comply with any of the foregoing conditions and the State Bar receives information about non-compliance, bar counsel shall file with the Probable Cause Panelist a Notice of Non-compliance. The Probable Cause Panelist may refer the matter to a hearing officer to conduct a hearing at the earliest applicable date, but in no event later than 30 days after receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing conditions, the burden of proof shall be on the state bar to prove noncompliance by clear and convincing evidence.

3.) Respondent shall pay costs incurred by the State Bar in connection with these proceedings. And itemized statement of costs and expenses submitted with the tender of agreement indicated \$600 in costs as of December 8, 2008. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court and the Disciplinary Clerk's office in this matter.

DATED this 27th day of February, 2009


Honorable Jonathan H. Schwartz
Hearing Officer 6S

Original filed with the Disciplinary Clerk
this 27th day of February, 2009.

Copy of the foregoing mailed
this 3rd day of March, 2009, to:

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