

FILED
 NOV 19 2003
 HEARING OFFICER OF THE
 SUPREME COURT OF ARIZONA
 BY *[Signature]*

BEFORE A HEARING OFFICER

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IN THE MATTER OF A MEMBER) No. 03-0245
 OF THE STATE BAR OF ARIZONA,)
)
MICHAEL B. MORRISON,) **HEARING OFFICER'S REPORT**
Bar No. 007650) **AND RECOMMENDATION**
)
)
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)
 Respondent.) (Assigned to Hearing Officer 9Z
) Stephen L. Weiss)

PROCEDURAL HISTORY

At all times relevant, Respondent Michael B. Morrison ("Respondent") was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on December 17, 1982. On May 14, 2003 the State Bar of Arizona ("State Bar") filed a Probable Cause Order. On May 28, 2003, the State Bar of Arizona filed a Complaint against Respondent. A Notice of Default was entered on July 21, 2003. Respondent filed an untimely answer on August 12, 2003. On August 18, 2003, I scheduled a telephonic scheduling conference for August 21, 2003. Respondent did not participate in the scheduling conference. On September 4, 2003 the State Bar filed an Amended Complaint against Respondent. The Amended Complaint contained no new allegations, but

1 merely provided the correct dates for some of the events which gave rise to this
2 matter.

3
4 Respondent never provided the State Bar with a Disclosure Statement
5 pursuant to Rule 26.1 *Ariz.R.C.P.* Respondent did not appear at the settlement
6 conference. The address and telephone number on Respondent's Answer were
7 not valid.¹ All documents mailed to Respondent subsequent to the original
8 Complaint were returned as undeliverable.
9

10 The State Bar made multiple efforts to contact Respondent, including
11 sending an investigator to locate him. All these efforts were unsuccessful. Based
12 on Respondent's failure to participate in the disciplinary proceedings, the State
13 Bar filed a motion to strike the answer, and for an entry of default against
14 Respondent.
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16 On October 20, 2003, I granted the State Bar's motion to strike the answer,
17 and default was entered against Respondent. The allegations of the complaint
18 having been deemed admitted, I heard evidence on aggravation/mitigation on
19 October 21, 2003, the date on which the full hearing was to have taken place.
20 Respondent again failed to appear. At the aggravation/mitigation hearing, the
21
22

23
24 ¹ On October 29, 2003 Respondent filed a Notice of Change of Address of Respondent, in
25 which he provided the same invalid mailing address he had previously provided.(!)

1 State Bar recommended the sanction of a suspension of at least six (6) months
2 and (1) day.

3
4 **FINDINGS OF FACT**

5 **COUNT ONE (File No. 03-0245)**

6 Respondent represented the defendant in Pinal County Superior Court case
7 *State v. Masum J. Vijan*, Cause Number CR200200612. On January 27, 2003,
8 Respondent was scheduled to appear at a Pre-Trial Conference/Status Conference
9 in the *State v. Vijan* case. Respondent failed to appear at the time set for the
10 conference and at 3:25 p.m. called the Court to inform them that he had overslept
11 but would appear 5:00 p.m. with his client. Based on Respondent's
12 representations, and at the request of the victim who was present, the Court
13 waited until 5:00 p.m. for Respondent and the client to appear. Respondent failed
14 to appear or call the Court prior to 5:00 p.m. and the Court issued a warrant for
15 the client's arrest. The Court also set an Order to Show Cause Hearing to
16 determine whether Respondent should be held in contempt.
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20 At 5:04 p.m., Respondent left a telephone message with the Court advising
21 that he would be unable to make it to Court that day. Respondent also sent, via
22 facsimile, a handwritten Motion to Continue and put the time down as 4:55 p.m.
23 when, in fact, Respondent sent the motion at 5:01 p.m. In the motion,
24 Respondent claimed he had overslept, as he did not feel well.
25

1 On January 28, 2003, Court staff telephoned Respondent. Respondent
2 requested that the warrant issued against his client be quashed. At the Court's
3 direction, Respondent was told to appear for the hearing promptly at 1:15 p.m.
4 Respondent showed up at 2:00 p.m., blaming his tardiness on mechanical
5 problems with his automobile. A hearing was set for February 18, 2003 to
6 determine if Respondent should be sanctioned for his failure to appear before the
7 Court. At the February 18, 2003, the Court sanctioned Respondent \$250.00 for
8 his failure to appear at the hearings in a timely manner. The sanction was to be
9 paid to a non-profit charitable organization. The Court thereafter referred the
10 matter to the State Bar for investigation.
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14 By letter dated February 19, 2003, bar counsel notified Respondent of the
15 charges against him in File Number 03-0245 and requested that he provide a
16 written response within twenty days of the date of the letter. By letter dated
17 March 11, 2003, Respondent requested an extension to answer the complaint in
18 File Number 03-0245. The extension was granted and Respondent's response was
19 due on April 10, 2003. Respondent failed to file a response by the extended due
20 date.
21

22
23 By letter dated April 21, 2003, bar counsel again wrote Respondent and
24 advised that he had failed to file a written response to the charges in File Number
25

1 03-0245 and requested that Respondent do so within ten days of the date of the
2 letter. Respondent again failed to provide any response.

3
4 **COUNT TWO (Prior Discipline)**

5 Respondent has previously been sanctioned for violations of the Rules of
6 Professional Conduct. Specifically, in File Number 01-1134, Respondent was
7 censured by order filed on September 12, 2002 for violating ER 5.5.

8
9 **CONCLUSIONS OF LAW**

10 The facts as deemed admitted above establish that Respondent violated the
11 Rules of Professional Conduct as follows:

12 By failing to act with reasonable diligence and promptness in the
13 representation of his client Masum James Vijan in Cause Number CR200200612,
14 Respondent violated ER 1.3.

15
16 By knowingly making false statements of material fact or law to a tribunal
17 regarding his failure to appear before the court in Cause Number CR200200612,
18 Respondent violated ER 3.3.

19
20 By engaging in conduct involving dishonesty, fraud, deceit or
21 misrepresentation in Cause Number CR200200612, Respondent violated
22 ER 8.4(c).

23
24 By engaging in conduct prejudicial to the administration of justice in Cause
25 Number CR200200612, Respondent violated ER 8.4(d).

1 By knowingly failing to respond to a lawful demand for information from a
2 disciplinary authority in State Bar File Number 03-0245, Respondent violated
3 ER 8.1(b).
4

5 By failing to furnish information to an inquiry or request from bar counsel
6 in State Bar File Number 03-0245, Respondent violated Rule 51(h).

7 By refusing to cooperate with officials and staff of the State Bar acting in
8 the course of their duties in State Bar File Number 03-0245, Respondent violated
9 Rule 51(i), Ariz.R.S. Ct.
10

11 ABA STANDARDS

12 In determining the appropriate sanction, it is proper to consider both the
13 American Bar Association's *Standards for Imposing Lawyer Sanctions*
14 ("*Standards*") and Arizona case law. The *Standards* provide guidance with
15 respect to the appropriate range of sanctions in this matter. The Court and
16 Commission consider the *Standards* a suitable guideline. *In re Rivkind*, 164 Ariz.
17 154, 157, 791 P.2d 1037, 1040 (1999); *In re Kaplan*, 179 Ariz. 177, 877 P.2d 274
18 (1994).
19
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21 In determining the appropriate sanction, it is proper to consider the duty
22 violated, the lawyer's mental state, the actual or potential injury caused by the
23 misconduct, and the existence of aggravating and mitigating factors. *Matter of*
24 *Tarlitz*, 163 Ariz. 548, 789 P.2d 1049 (1990), ABA Standard 3.0.
25

1 Given the conduct in this matter, it is appropriate to consider *Standard 4.4*.
2 Specifically, suspension is generally appropriate when a lawyer knowingly fails
3 to perform services for a client and causes injury or potential injury to a client.
4 *Standard 4.42(a)*. Here, Respondent knew or should have known that his failure
5 to appear in court on behalf of his client could result in his client being subject to
6 an arrest warrant. Thus, the presumptive sanction in this case is suspension.
7

8 After determining the presumptive sanction, it is appropriate to evaluate
9 factors enumerated in the *Standards* which would justify an increase or a decrease
10 in the presumptive sanction.
11

12 There are multiple aggravating factors in this case:

13 9.22(a) prior disciplinary offenses; in File Number 01-1134, Respondent
14 received a censure for violating ER 5.5.
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16 9.22(b) dishonest or selfish motive; Respondent made misrepresentations
17 to the Court in an attempt to excuse his failure to appear and thus avoid being
18 sanctioned.
19

20 9.22(d) multiple offenses; Respondent failed to take seriously his
21 obligation to appear on behalf of his client, and then failed to take seriously his
22 obligation to respond to either the State Bar or the Hearing Officer in a timely
23 manner.
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1 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally
2 failing to comply with rules or orders of the disciplinary agency; Respondent
3 failed to participate in the disciplinary process in any meaningful way, resulting
4 in the unnecessary expenditure of State Bar resources.
5

6 9.22(g) refusal to acknowledge wrongful nature of conduct; by failing to
7 participate in the disciplinary process, Respondent has failed to admit the
8 wrongful nature of his conduct.
9

10 9.22(i) substantial experience in the practice of law; Respondent was first
11 admitted to the State Bar of Arizona in 1982.
12

13 No other aggravating factors are found; there are no applicable mitigating
14 factors which should be considered in this matter.
15

16 PROPORTIONALITY

17 The next step is to review the applicable case law. To have an effective
18 system of professional sanctions, there must be internal consistency, and it is
19 appropriate to examine sanctions imposed in cases that are factually similar. *In re*
20 *Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994), (citing *In re Wines*, 135
21 Ariz. 203, 207 (1983)). However, the discipline in each case must be tailored to
22 the individual case, as neither perfection nor absolute uniformity can be achieved.
23 *Matter of Riley*, 142 Ariz. 604, 615 (1984).
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1 The sanctions imposed in cases involving somewhat similar factual
2 situations have ranged from censure to disbarment. *Compare Matter of Curtis,*
3 184 Ariz. 256, 265, 908 P.2d 472, 481 (1995) (censure); *Matter of Giles,* 178
4 Ariz. 146, 871 P.2d 693 (1994) (90 day suspension when Respondent allowed
5 litigation to be dismissed through lack of diligence, and failed to communicate
6 with client); *Matter of Peartree,* 180 Ariz. 518, 885 P.2d 1083 (1994)
7 (Respondent disbarred where he failed to take any actions to enforce judgment,
8 failed to communicate with clients, and failed to cooperate with the State Bar).
9 There are four (4) recent cases which are particularly instructive with respect to
10 this type of misconduct.
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14 In *Matter of Rogers,* SB-00-0050-D, the attorney was sanctioned for
15 multiple ethical violations, including taking fees before they were earned and
16 failing to cooperate with the State Bar. Respondent had previously been
17 suspended for 90 days in a separate matter. The Supreme Court suspended the
18 Respondent for one (1) year.
19

20 In *Matter of Weidner,* SB-03-0016-D, the attorney abandoned a client,
21 failed to respond to the State Bar and defaulted in the formal proceedings.
22 Weidner was suspended for six (6) months and one (1) day. The Commission
23 determined that reinstatement was appropriate because Respondent's conduct
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1 indicated a chronic problem(s) that justified requiring him to prove his fitness to
2 return to the practice of law.

3
4 In *Matter of Hart*, SB-03-0104-D, the attorney engaged in the practice of
5 law while suspended, failed to respond to the State Bar during the screening
6 investigation and defaulted in the formal proceedings. The Hearing Officer
7 recommended a six (6) month suspension. The Disciplinary Commission
8 determined that while a six (6) month suspension was proportional, a thirty (30)
9 day suspension was more appropriate, given that Hart had no prior discipline in
10 over thirty (30) years of practice.

11
12 In *Matter of Marchosky*, SB-01-0174-D, the attorney engaged in conduct
13 which encompassed 46 separate rule violations. In deciding disbarment was the
14 appropriate sanction, the Hearing Officer and the Disciplinary Commission
15 determined that Marchosky knowingly converted client property and caused
16 injury or potential injury to a client. Marchosky's conduct was much more
17 egregious than that of the Respondent in the instant case, in that Marchosky
18 harmed multiple clients and converted client funds.

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21 Where, as here, suspension is the presumptive sanction, and the attorney
22 fails to participate in the disciplinary proceedings, a suspension of at least six (6)
23 months and one (1) day is warranted to protect the public.
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1 I believe the Respondent's conduct in this case is similar to the
2 Respondent's conduct in *Weidner* and that the same sanction should be imposed.

3
4 **RECOMMENDATION**

5 The purpose of lawyer discipline is not to punish the lawyer, but to protect
6 the public and deter future misconduct. *In re Wines*, 135 Ariz. 203, 660 P. 2d 454
7 (1983) and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993). It is also the
8 objective of lawyer discipline to protect the public, the profession and the
9 administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985).
10 Yet another purpose is to instill public confidence in the bar's integrity. *Matter*
11 *of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).
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14 In imposing discipline, it is appropriate to consider the facts of the case, the
15 American Bar Association's *Standards for Imposing Lawyer Sanctions*
16 (*"Standards"*) and the proportionality of the discipline imposed in analogous
17 cases. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
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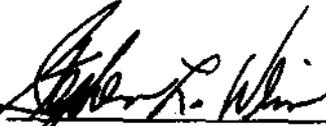
19 Upon consideration of the facts, application of the Standards, including
20 aggravating and mitigating factors, and application of a proportionality analysis,
21 I recommend the following:

- 22
- 23 1. Respondent shall be suspended for at least six (6) months and one (1)
24 day.
 - 25 2. No restitution is applicable in this case.

1 3. Respondent shall pay the costs and expenses incurred in these
2 disciplinary proceedings.

3 DATED this 18th day of November, 2003.
4

5 STATE BAR OF ARIZONA

6 
7

8 Stephen L. Weiss
9 Hearing Officer 9Z

10 Original mailed to the Disciplinary
11 Clerk on the 18th day of November,
12 2003.

13 Copy of the foregoing mailed
14 this 18th day of November, 2003, to:

15 Michael B. Morrison
16 P. O. Box 97400
17 Phoenix, Arizona 85060-7400
18 Respondent

19 Yvonne R. Hunter
20 Settlement Officer 8P
21 P. O. Box 5399, MS 9988
22 Phoenix, Arizona 85072-3999

23 Robert A. Clancy, Jr.
24 Staff Bar Counsel
25 State Bar of Arizona
111 West Monroe, Suite 1800
Phoenix, Arizona 85003-7250

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By: Carol A. Reed