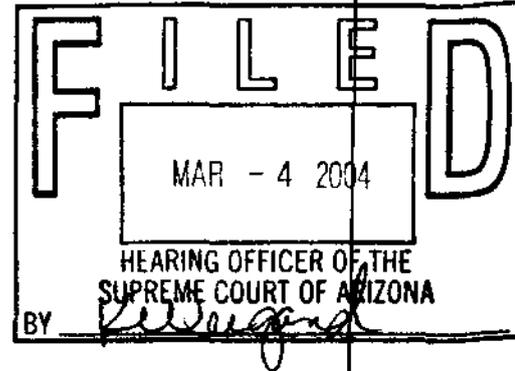


1 Stephen L. Weiss
2 P.O. Box 36940
3 Phoenix, Arizona 85067
4 State Bar No. 1792
5 Hearing Officer 9Z



6 **BEFORE A HEARING OFFICER**

7 IN THE MATTER OF A MEMBER) No. 03-0779
8 OF THE STATE BAR OF ARIZONA,)
9 MICHAEL B. MORRISON,) **HEARING OFFICER'S**
10 **Bar No. 007650**) **REPORT AND**
11) **RECOMMENDATION**
12)
13)
14 Respondent.) (Assigned to Hearing Officer 9Z
Stephen L. Weiss)

15 **PROCEDURAL HISTORY**

16
17 On September 30, 2003, the State Bar of Arizona ("State Bar") filed a
18 Complaint against Respondent in this matter. A Notice of Default was entered on
19 October 31, 2003. Default was entered on November 28, 2003.

20
21 On December 3, 2003, the State Bar of Arizona requested an
22 aggravation/mitigation hearing, which was set for 1:30 p.m. on December 17,
23 2003. On December 10, 2003, Respondent filed a Request for Mitigation
24
25

1 Hearing and a "Confirmation of Law Office Mailing and E-Mail Addresses, and
2 Notice of Telephone Number."¹

3
4 At 1:23 p.m. on the date of the aggravation/mitigation hearing, Respondent
5 faxed a "Motion to Set Aside Default; and Motion to Continue the
6 Mitigation/Aggravation Hearing" (sic) to the Disciplinary Clerk's Office. The
7 hearing began at 1:38 p.m. Respondent appeared at the hearing at approximately
8 1:55 p.m. After the testimony of the Complainant was taken, I kept the hearing
9 open in order to allow Respondent to file a supplement to his Motion to Set Aside
10 Default. Respondent was to file his supplement by December 29, 2003.

11
12 On December 29, Respondent filed a Motion to Enlarge Time to file his
13 supplemental pleading. I denied the motion, and the continued aggravation/
14 mitigation hearing took place on January 15, 2003. Respondent testified himself
15 and presented the testimony of Scott Allen of the Maricopa County Legal
16 Defender's Office. At the close of the hearing, Respondent was allowed to
17 provide me with copies of relevant case law on the issue of what would be an
18 appropriate sanction, and to file a motion on the issue of whether I should defer
19 making a recommendation in this matter. I agreed to January 23, 2004 deadline
20 for so doing. Respondent did not mail me anything until January 28, 2004.
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¹This was the same invalid address he had already provided.

1 Accordingly, I advised the Respondent that I would not consider his late
2 pleading.²

3
4 **FINDINGS OF FACT**

5 **COUNT ONE (File No. 03-0779)**

6 At all times relevant, Respondent Michael B. Morrison ("Respondent")
7 was an attorney licensed to practice law in the State of Arizona, having been
8 admitted to practice in Arizona on December 17, 1982. In 2001, Wilfred Klingsat
9 retained Respondent to represent his corporation, Nina Holdings, Inc., in a
10 lawsuit against Scottsdale Resort and Spa Partners, LP and Griffin Scottsdale
11 Holdings, Inc. Mr. Klingsat provided Respondent with documents, letters, and
12 photographs relevant to the lawsuit. During the beginning of the litigation, Mr.
13 Klingsat contacted Respondent several times to ascertain the status of the lawsuit.
14 Respondent advised Mr. Klingsat that he was waiting for the judge to set a trial
15 date.
16
17

18 Mr. Klingsat's lawsuit was dismissed with prejudice on January 17, 2003
19 due to Respondent's failure to comply with orders pertaining to filing a Rule 26.1
20 disclosure statement. In the three (3) months prior to his filing of the complaint,
21 Mr. Klingsat attempted to contact Respondent, first to determine the status of the
22 case, then to request return of his file. Respondent did not return any of Mr.
23
24
25

²The Respondent did not mail copies of any cases.

1 Klingsat's telephone calls or e-mailed messages. Respondent has not returned
2 Mr. Klingsat's file.

3 As a result of Respondent's misconduct, Mr. Klingsat sustained damages
4 of at least \$9,200; \$1,000 in legal fees paid and at least \$8,200 for the value of the
5 claim lost.
6

7 On April 23, 2003, Mr. Klingsat filed a complaint against Respondent with
8 the State Bar of Arizona. On May 2, 2003, the State Bar of Arizona sent
9 Respondent notification of the complaint and requested a response. On June 4,
10 2003, the State Bar of Arizona sent Respondent a letter reminding him of his
11 responsibility to comply with requests for information from the State Bar of
12 Arizona. Respondent never provided a response to the State Bar of Arizona.
13
14

15 Respondent testified himself, told us about himself and his family and
16 expressed remorse.

17 Respondent also offered the testimony of Scott Allen with respect to
18 mitigating factor 9.32(g), character or reputation. Mr. Allen testified that he had
19 only worked on one case with Respondent, and that was in 1986. In the 17 years
20 Mr. Allen has known Respondent, they have spoken only 2-3 times a year
21 regarding cases and have never interacted socially.
22
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1 By engaging in conduct involving dishonesty, fraud, deceit or
2 misrepresentation, Respondent violated ER 8.4(c).

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

5 By failing to furnish information to an inquiry or request from bar
6 counsel in State Bar File Number 03-0245, Respondent violated
7 Rule 51(h).
8

9 ABA STANDARDS

10 In determining the appropriate sanction, it is proper to consider both the
11 American Bar Association's *Standards for Imposing Lawyer Sanctions*
12 ("*Standards*") and Arizona case law. The *Standards* provide guidance with
13 respect to the appropriate range of sanctions in this matter. The Court and
14 Commission consider the *Standards* a suitable guideline. *In re Rivkind*, 164 Ariz.
15 154, 157, 791 P.2d 1037, 1040 (1999); *In re Kaplan*, 179 Ariz. 177, 877 P.2d 274
16 (1994).
17
18
19

20 In determining the appropriate sanction, it is proper to consider the duty
21 violated, the lawyer's mental state, the actual or potential injury caused by the
22 misconduct, and the existence of aggravating and mitigating factors. *Matter of*
23 *Tarlitz*, 163 Ariz. 548, 789 P.2d 1049 (1990), ABA Standard 3.0.
24
25

1 Given the conduct in this matter, it is appropriate to consider *Standard 4.4*.
2 Specifically, disbarment is generally appropriate when a lawyer knowingly fails
3 to perform services for a client and causes serious or potentially serious injury to
4 a client, or engages in a pattern of neglect with respect to client matters and
5 causes serious or potentially serious injury to a client. *Standard 4.41(a) &(b)*.
6 Suspension is generally appropriate when a lawyer knowingly fails to perform
7 services for a client and causes injury or potential injury to a client. *Standard*
8 *4.42(a)*.
9

11 Here, Respondent knew or should have known that his failure to comply
12 with the Court ordered disclosure would result in Mr. Klingsat's case being
13 dismissed. Thus, disbarment is the presumptive sanction.
14

15 After determining the presumptive sanction, it is appropriate to evaluate
16 factors enumerated in the *Standards* which would justify an increase or a decrease
17 in the presumptive sanction.
18

19 There are multiple aggravating factors in this case:

20 9.22(a) - prior disciplinary offenses: In File Number 01-1134, Respondent
21 received a censure for violating ER 5.5. In File Number 03-0245, a six month
22 and a day suspension has been recommended.
23
24
25

1 9.22(b) - dishonest or selfish motive: Respondent made misrepresentations
2 to the Court by filing a false Motion to Set and Certificate of Readiness in an
3 attempt to prevent the case from being dismissed due to his neglect.
4

5 9.22(d) - multiple offenses: Respondent failed to take seriously his
6 obligation to act on behalf of his client, Mr. Klingsat, and then failed to take
7 seriously his obligation to respond to either the State Bar or the undersigned in a
8 timely manner.
9

10 9.22(e) - bad faith obstruction of the disciplinary proceeding by
11 intentionally failing to comply with rules or orders of the disciplinary agency:
12 Respondent failed to participate in the disciplinary process in any meaningful
13 way, resulting in the unnecessary expenditure of State Bar resources.
14

15 9.22(g) - refusal to acknowledge wrongful nature of conduct: By failing to
16 participate in the disciplinary process, Respondent failed to admit the wrongful
17 nature of his conduct.
18

19 9.22(i) - substantial experience in the practice of law: Respondent was first
20 admitted to the State Bar of Arizona in 1982.
21

22 One (1) mitigating factor may be present in this case:

23 9.32(l) - remorse: At the aggravation/mitigation hearing, Respondent
24 expressed remorse at having caused his client's case to be dismissed with
25 prejudice.

1 As the aggravating factors clearly outweigh the mitigating factors in this
2 case, no reduction in the presumptive sanction is warranted.

3 **PROPORTIONALITY**
4

5 The next step is to review the applicable case law. To have an effective
6 system of professional sanctions, there must be internal consistency, and it is
7 appropriate to examine sanctions imposed in cases that are factually similar. *In re*
8 *Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994), (citing *In re Wines*, 135
9 Ariz. 203, 207 (1983)). However, the discipline in each case must be tailored to
10 the individual case, as neither perfection nor absolute uniformity can be achieved.
11 *Matter of Riley*, 142 Ariz. 604, 615 (1984).
12

13 The case law involving somewhat similar factual situations is instructive.
14 In *Matter of McGuire*, SB-99-0029-D (1999), the lawyer was the subject of a four
15 count complaint alleging that he did not adequately communicate with his clients,
16 failed to prepare necessary documents, abandoned the clients, and in at least two
17 instances failed to return unearned retainers and personal property belonging to
18 the clients. In the investigation of these matters, McGuire failed to cooperate
19 with the State Bar. In aggravation of the misconduct the Commission agreed that
20 the matter involved multiple offenses and the lawyer engaged in the bad faith
21 obstruction of the disciplinary process by failing to respond to the State Bar in its
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1 investigation. McGuire's lack of a prior disciplinary history was considered in
2 mitigation of the misconduct. The lawyer was suspended for two years.

3
4 In *Matter of McCarthy*, SB-01-0121-D (2001), the lawyer was the subject
5 of a three-count complaint alleging his failure to communicate with his clients, a
6 failure to act with reasonable diligence and the failure to respond to the State Bar
7 in its investigation of the matter. McCarthy was suspended for two years for his
8 misconduct. Three factors were considered in aggravation: a pattern of
9 misconduct, multiple offenses and bad faith obstruction of the disciplinary
10 process. McCarthy had no prior disciplinary record which was considered in
11 mitigation.
12

13
14 In *Matter of McFadden*, SB00-0072-D (2000), the lawyer was suspended
15 for a period of two years for his failure to perform services for which he was
16 retained. McFadden failed to communicate with his clients and failed to respond
17 to their repeated inquiries. McFadden also failed to return unearned retainers.
18 McFadden also failed to respond to the State Bar in its investigation of that
19 matter. There were three factors considered in aggravation of the misconduct:
20 multiple offenses, bad faith obstruction of the disciplinary process and substantial
21 experience in the practice of law. McFadden had no prior disciplinary record
22 which was considered in mitigation.
23
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1 The case law cited indicates that in the absence of prior discipline,
2 Respondent's misconduct in this case alone warrants a suspension of at least two
3 years. Given Respondent's prior censure in File Number 01-1134, and my
4 recommendation of a six month and a day suspension in File Number 03-0245, I
5 believe a five year suspension is appropriate in this case.
6

7 **RECOMMENDATION**
8

9 The purpose of lawyer discipline is not to punish the lawyer, but to protect
10 the public³ and deter future misconduct. *In re Wines*, 135 Ariz. 203, 660 P.2d
11 454 (1983) and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993). It is also the
12 objective of lawyer discipline to protect the public, the profession and the
13 administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985).
14 Yet another purpose is to instill public confidence in the bar's integrity. *Matter of*
15 *Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).
16

17 In imposing discipline, it is appropriate to consider the facts of the case, the
18 American Bar Association's *Standards for Imposing Lawyer Sanctions*
19 (*"Standards"*) and the proportionality of the discipline imposed in analogous
20 cases. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
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25 ³It appears that the Respondent has a litigation practice. Since he demonstrated repeatedly during these proceedings that he has difficulty meeting deadlines, it is apparent that any of his clients who have matters in litigation are at serious risk.

1 Based on the nature of Respondent's conduct, the *Standards*, and the
2 applicable case law, it is clear that Respondent's conduct warrants a substantial
3 suspension. Therefore, I recommend that Respondent be suspended for five years,
4 that he pay restitution in the amount of \$9,200 to his former client, Wilfred
5 Klingsat, and that he be ordered to pay the costs incurred by the State Bar of
6 Arizona.
7

8 DATED this 1st day of March, 2004.
9

10 STATE BAR OF ARIZONA

11 

12 Stephen L. Weiss
13 Hearing Officer

14 Original mailed to the Disciplinary
15 Clerk this 1st day of March, 2004 to:

16 1501 W. Washington, Suite 104
17 Phoenix, Arizona 85007-3231

18 Copy of the foregoing was mailed
19 this 1st day of March, 2004, to:

20 Michael B. Morrison
21 P. O. Box 97400
22 Phoenix, Arizona 85060-7400
23 Respondent

24 Robert A. Clancy, Jr.
25 Staff Bar Counsel
State Bar of Arizona
111 West Monroe, Suite 1800
Phoenix, Arizona 85003-1742

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Lawyer Regulation Records Manager
State Bar of Arizona
111 West Monroe, Suite 1800
Phoenix, Arizona 85003

Charles R. Reed
