

**FILED**

OCT 03 2005

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *[Signature]*

**BEFORE A HEARING OFFICER**

**OF THE SUPREME COURT OF ARIZONA**

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

STEPHEN ALIKES, )  
Bar No. 001749 )

RESPONDENT. )

Nos. 04-0130, 04-0186, 04-0199

**HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

This is a proceeding involving a 79-year-old Arizona attorney who has moved out of state and ceased practicing law, in part because of deteriorating health, since the date of the conduct giving rise to this matter. Probable Cause Orders were filed on August 13, 2004 and November 19, 2004. The State Bar filed a four-count complaint on December 30, 2004, which complaint was served by mail on January 3, 2005. After Respondent failed to file an Answer, the Disciplinary Clerk entered a default on February 25, 2005.

Subsequent to the default, the State Bar filed on March 28, 2005 a Motion to Amend Complaint and a Motion to Continue/Vacate the aggravation/mitigation hearing, then set for March 31. These Motions were denied, subject to vacation of the order of default. On March 30, 2005, the State Bar filed its Motion to Set Aside Default Judgment. The Motion was granted on March 31, 2005. The State

Bar then filed a Revised Motion to Amend Complaint on April 8, 2005. This Motion was granted and the First Amended Complaint was subsequently filed on May 10, 2005 and served by mail on May 11, 2005. Respondent again did not answer, and default was entered on June 22, 2005.

Because a default was entered, no settlement conference was scheduled. An aggravation/mitigation hearing was held on August 2, 2005; Respondent did not appear. On August 23, 2005, Respondent sent a letter to the Hearing Officer and Bar counsel, stating that he had moved out of state and been unable to attend the hearing because of his medical condition, and offering his recollection of the relevant events. The Hearing Officer has chosen to treat the letter as part of the record.

## **FINDINGS OF FACT**

### **COUNT ONE**

1. At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted on May 26, 1965. Respondent resigned in good standing on March 16, 1994 and was reinstated on August 22, 1996.

2. Beginning around 2001, Respondent began to represent debtors in simple bankruptcy cases. Prior to that time, Respondent had been retired from a lengthy career as a real estate attorney.

3. Respondent leased office space at 500 E. Thomas Road in Phoenix, Arizona, to meet with bankruptcy clients. Respondent became acquainted with Matt and Ron Harris who also had office space at the same location.

4. At the time of the events in this complaint, Ron Harris was a disbarred lawyer, and an uncertified document preparer. Ron Harris had previously been convicted of federal crimes related to embezzling funds from clients in other states, and had been sentenced to prison time. After his release from prison, Ron Harris moved to Arizona, and opened an office in Phoenix. Matt Harris is Ron Harris' son, and an uncertified document preparer. Both Matt and Ron Harris had been enjoined by the bankruptcy court from preparing any bankruptcy documents until they obtained the necessary certification.

5. At the time of the events relevant to this proceeding, Ron and Matt Harris were working as Bankruptcy petition preparers in offices located at 500 E. Thomas Road in Phoenix, Arizona. They operated their business under several trade names.

6. Matt Harris told Respondent that he was in the process of obtaining his document preparer certification and proposed a business arrangement under which Respondent and the Harrises would work together on cases until the Harrises obtained their certification.

7. According to the arrangement, the Harrises continued to meet with clients in their offices, and prepare the documents. Instead of listing their own names as document preparers on the debtors' bankruptcy papers, the Harrises listed the Respondent's name as counsel for the debtors. Respondent was aware of that practice.

8. After the debtors' bankruptcy papers were completed, the Harrises would file them electronically with the Court using Respondent's EFC password. Unfortunately, the Harrises would sometimes fail to file the required documents in a timely fashion, and, as a result, certain debtors' cases would be dismissed by the Court. If that happened, the Harrises would usually file the required documents, along with a motion requesting that the case be reinstated.

9. The Harrises had extensive responsibilities under the arrangement. The Harrises met with the clients, retained the clients, collected the fees, and prepared and filed the documents, and maintained the client files. Respondent was paid a flat fee per case for his involvement in signing the documents and appearing at the creditor's meeting.

10. Generally, Respondent would meet the individual debtor for the first time at the debtor's scheduled 341 meeting, where he would appear as the debtor's counsel.

11. Debtors were charged approximately \$475 to \$590 per case by the Harrises, who set the fees. Of that amount \$200 went to the Harrises for the document preparers fee, \$200 went to the court for a filing fee, and the remaining \$75 to \$190 went to Respondent for his fee.

12. The required attorney, document preparer, and compensation disclosures on the Petitions, Statements, and Schedules, and 2016 Statements filed in all of the cases were false. In all of the cases filed since August of 2003 when the Harrises and Respondent entered into their arrangement, the Petitions, Statement of Financial Affairs, and Schedules of Assets and Liabilities fail to disclose that the Harrises provided any services as bankruptcy petition preparers. In fact, in every one of these cases, the BPP Certifications are left blank, leaving all those who reviewed the bankruptcy papers to believe that there was no bankruptcy petition preparer involved in the case, and that Respondent met with the debtors and prepared and filed their documents.

13. Similarly, the "Disclosure of Compensation of Attorney for Debtor" (the 2016 Statement) filed in each debtor's case contains gross misrepresentations regarding the compensation paid to Respondent. The 2016 Statements specifically assert that Respondent has received \$475 to \$585 and that he had not agreed to share any of his compensation with anyone else. That statement was false.

14. The arrangement apparently began in August of 2003. The arrangement lasted only until approximately October or November of 2003, at which time the U.S. Trustee's Office began proceedings against the Harrises regarding their bankruptcy practice. Respondent contends that he cancelled his arrangement with the Harrises immediately upon learning of the problems. Respondent advised the Harrises to contact any clients whose case had not yet been filed, and return their fees.

15. During the time period that Respondent was associated with the Harrises, there were approximately 65 cases filed under Respondent's name that were prepared by the Harrises.

16. During the time that Respondent was involved with his arrangement with the Harrises, as described above, Respondent did not adequately supervise the Harrises.

17. During the time that Respondent was involved with his arrangement with the Harrises, as described above, Respondent assisted in the unauthorized practice of law by the Harrises.

18. During the time that Respondent was involved with his arrangement with the Harrises, as described above, Respondent failed to comply with ER 1.5. Respondent did not explain the fees to the clients. Respondent did not set the fees, and had no control over how much fees the Harrises charged the clients. The

clients were not informed as to the amount of fees that Respondent would be receiving.

**COUNT TWO (File No. 04-0130)**

20. On or about October 2, 2003, Julissa Barnal met with Matthew Harris in his office in order to begin a bankruptcy proceeding.

21. Ms. Barnal paid Mr. Harris \$490 for the bankruptcy, which included a \$200 filing fee.

22. Mr. Harris informed Ms. Barnal that he was acting as a paralegal for Respondent, who would be her attorney.

23. Ms. Barnal never spoke with Respondent and never met with Respondent.

24. Respondent did not perform any work on behalf of Ms. Barnal.

25. Upon information and belief, Respondent never received any funds in connection with representation of Ms. Barnal.

26. Respondent violated one or more of the Rules of Professional Conduct as follows: Respondent failed to adequately supervise non-lawyer assistant; Respondent assisted in the unauthorized practice of law.

**COUNT THREE (File No. 04-0186)**

28. On or about October 28, 2003, Maria Hernandez met with either Matt Harris or Ron Harris in their offices in order to begin a bankruptcy proceeding.

29. Ms. Hernandez paid the Harrises \$575 for the bankruptcy, which included a \$200 filing fee.

30. Either Matt or Ron Harris informed Ms. Hernandez that he was acting as a paralegal for Respondent, who would be her attorney.

31. Ms. Hernandez never spoke with Respondent and never met with Respondent.

32. Respondent did not perform any work on behalf of Ms. Hernandez.

33. Upon information and belief, Respondent never received any funds in connection with representation of Ms. Hernandez.

34. Respondent violated one or more of the Rules of Professional Conduct as follows: Respondent failed to adequately supervise non-lawyer assistant; Respondent assisted in the unauthorized practice of law.

#### **COUNT FOUR (File No. 04-0199)**

36. On or about October 22, 2003, Christopher Davis met with Matt Harris in his office in order to begin a bankruptcy proceeding.

37. Mr. Davis paid the Harrises \$575 for the bankruptcy, which included a \$200 filing fee.

38. Matt Harris informed Mr. Davis that he was acting as a paralegal for Respondent, who would be her attorney.

39. Mr. Davis never spoke with Respondent and never met with Respondent.

40. Respondent did not perform any work on behalf of Mr. Davis.

41. Upon information and belief, Respondent never received any funds in connection with representation of Mr. Davis.

42. Respondent violated one or more of the Rules of Professional Conduct as follows: Respondent failed to adequately supervise non-lawyer assistant; Respondent assisted in the unauthorized practice of law.

In addition to the facts deemed admitted in the complaint, as set forth above, there was additional evidence presented at the hearing, by way of witness testimony and exhibits. Renee Sandler Shamblin, an attorney with the U.S. Trustee's Office testified. Much of her testimony supported the facts already deemed admitted by way of default. She also provided testimony regarding restitution issues, and harm caused by Respondent's misconduct.

1. Renee Sandler Shamblin in an attorney for the U.S. Trustee's Office. (Tr. 28). In that capacity, she was involved in an investigation and prosecution of Matt and Ron Harris. (Tr. 29).

2. Ms. Shamblin testified that the investigation centered on Matt and Ron Harris' business as bankruptcy petition preparers, and the Harris' use of

Respondent to cover for them, as they had been enjoined from acting as document preparers. (Tr. 29).

3. The investigation revealed that Respondent had entered into a business arrangement with the Harrises under which the Harrises obtained the clients, met with the clients, and received payment from the clients. The Harrises prepared and filed the clients' pleadings under Respondent's name, using his electronic court filing password to file the documents. Respondent first met with clients at the debtor's meeting of creditors. (Tr. 3).

4. After Ms. Shamblin approached Respondent about the situation, he agreed to terminate his relationship with the Harrises. (Tr. 33). Respondent, at the request of the trustee's office, executed an affidavit detailing his involvement with the Harrises. (Tr. 33). That affidavit was admitted into evidence as Exhibit 2. The affidavit was executed in 1993, and contains a list of clients that Respondent was involved with, as well as the amount of fees that those clients paid to the Harrises. (Ex. 2).

5. Ms. Shamblin testified that Respondent also initially entered into a stipulation with the U.S. Trustee's office concerning ceasing his relationship with the Harrises. As part of the stipulation, Respondent agreed to file appropriate papers to get cases reinstated for debtors who had their cases dismissed. He was also required not to use the Harris' services. Respondent was to obtain a new

electronic court filing password, since the Harrises had his old password. (Tr. 34-35). However, after the stipulation was filed, and was awaiting court approval, the trustee's office learned that Respondent had given his new ECF password to the Harrises, and was still attempting to work with them to correct the old cases. (Tr. 35). At that time, the trustee's office elected to abandon the stipulation. (Tr. 36). Ultimately, the trustee's office took no action against Respondent, other than to report his misconduct to the State Bar, as it felt that they were limited by the bankruptcy code to pursuing only non-attorneys. (Tr. 32).

6. The trustee's office obtained a permanent injunction against the Harrises based in part on the Harrises arrangement with Respondent. (Tr. 31). A copy of that injunction was admitted into evidence as Exhibit 1. Named as co-defendants in the case were other document preparers who had entered similar arrangements with the Harrises after Respondent terminated his relationship with them. The named co-defendants were Cassandra Bruce and a business named ProTax and Securities. (Tr. 29-30).

7. As part of the permanent injunction against the Harrises, the court also ordered that the Harrises disgorge any fees received from the affected clients. (Tr. 31, Ex. 1). The Harrises have not complied with that order, according to Ms. Shamblin.

8. In addition to the permanent injunction, the Harrises were also criminally prosecuted for their actions. Both the Harrises entered into plea agreements and were convicted of felonies. Copies of the convictions were admitted into evidence as Exhibit 3. Matt Harris was placed on probation with a six-month jail term. Ron Harris was sentenced to a prison term of three and one-half years. Both Harrises were ordered to pay restitution. However, the criminal prosecution centered on only a limited number of client matters.

9. Ms. Shamblin testified that the permanent injunction against the Harrises did not resolve the trustee's office's complaint against the co-defendants in that matter, Cassandra Bruce and ProTax. Ms. Shamblin testified that her office had negotiated settlements with those two defendants under which they have agreed to provide 100% refunds to the 179 debtor customers who were identified in the complaint. As of the date of the hearing, the settlement had not yet been approved, but Ms. Shamblin expected it to be approved by the court as no objections to the settlement had been filed. (Tr. 40-41). (The Agreement was approved on August 4 by U.S. Bankruptcy Judge Redfield Baum, according to bankruptcy court records.) The settlement called for Ms. Bruce and ProTax to provide refunds even to clients of Respondent. (Tr. 41). A copy of the settlement was admitted into evidence as Exhibit 4. The exhibit contains a restitution chart showing the amount of refund due each client, and indicating which clients were

Respondent's. (Ex. 4). Ms. Shamblin testified that the amounts listed in the chart came from either the clients, or from court documents (Tr. 43). The chart attached to the stipulation contains additional client names that were not included in the earlier affidavit executed by Respondent in 1993. (Tr. 45). The additional names were the result of continued investigation by the trustee's office. (Tr. 45).

10. Exhibit 5, which was admitted into evidence, is a restitution chart showing all clients involved in Respondent's arrangement with the Harrises, and the amount of fees paid by each. The total fees paid to Respondent and the Harrises were \$20,280.

11. Ms. Shamblin testified that Respondent's caused substantial harm to the clients. (Tr. 48-49). Although some clients did obtain a successful discharge of their debts, others had their cases dismissed because of errors in the paperwork. During the period of dismissal, some debtors had their cars reposed and another debtor lost her home. The debtors were unable to contact Respondent (Tr. 49).

### **CONCLUSIONS OF LAW**

This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz. R. S. Ct., specifically:

**COUNT ONE:** Respondent's conduct as described in this count violates Rule 42, Ariz.R.S.Ct., specifically, ER 1.3, ER 3.3, ER 5.3, ER 5.5, ER 1.5, and ER 8.4(c) and (d).

**COUNT TWO:** Respondent's conduct as described in this count violates Rule 42, Ariz.R.S.Ct., specifically, ER 5.3 and ER 5.5

**COUNT THREE:** Respondent's conduct as described in this count violates Rule 42, Ariz.R.S.Ct., specifically, ER 5.3 and ER 5.5.

### **ABA STANDARDS**

The Standards provide guidance with respect to an appropriate sanction in this matter. The Supreme Court and the Disciplinary Commission are consistent in utilizing the Standards to determine appropriate sanctions for attorney discipline. In re Kaplan, 179 Ariz. 175, 877 P.2d 274 (1994). The Standards provide that four factors should be considered in determining the sanction: the duty violated; the lawyer's mental state; the actual or potential injury; and aggravating the mitigating factors. Also, according to the Standards, and In re Cassalia, 173 Ariz. 372, 843 P.2d 654 (1992), where there are multiple acts of misconduct, the Respondent should receive one sanction that is consistent with the most serious instance of misconduct, and the other acts should be considered as aggravating factors.

In this matter, Respondent's most serious misconduct occurred in Respondent's assisting the unauthorized practice of law, and in allowing false statements to be submitted to the court.

The standard most applicable to assisting the unauthorized practice of law is Standard 7.0, dealing with Violations of Duties Owed to the Profession. Standard 7.2 states: “Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system.” Respondent’s conduct in assisting Harris in the unauthorized practice of law was knowing. He was aware that they were non-lawyers. Ms. Shamblin’s testimony confirms that Respondent’s conduct caused injury to both Respondent’s clients and to the legal system.

The standard most applicable to allowing false statements to be submitted to the court is Standard 6.0 concerning violations of duties owed to the legal system. Specifically, Standard 6.12 states that suspension is generally appropriate when “a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.”

Based on the foregoing, suspension is the presumptive sanction in this matter. Using suspension as the presumptive sanction in this matter, the next step in the analysis under the Standards is consideration of aggravating the mitigating circumstances.

A review of Standard 9.22 indicates the following aggravating factors are present:

9.22(b): dishonest or selfish motive: The uncontested facts of this case indicate that Respondent acted in these matters to benefit himself. He was paid for each of the cases that he allowed the Harrises to file. There was no evidence that his actions were undertaken to benefit the clients.

9.22(c) and (d): pattern of misconduct and multiple offenses: This case involved Respondent's misconduct in a series of matters involving numerous clients;

9.22(h): vulnerability of victim: Ms. Shamblin testified that many of the clients affected by Respondent's misconduct were vulnerable in that they were persons of limited means (Tr. 49); and

9.22(i): substantial experience in the practice of law: Respondent was admitted to practice in Arizona in 1965.

A review of Standard 9.32 indicates the following mitigating factors are present:

9.32(a): absence of a prior disciplinary record: Respondent has been admitted to practice since 1965 with no prior disciplinary history;

9.32 (c) personal or emotional problems/(h) physical or emotional problems: Respondent is an elderly man, suffering from macular degeneration and heart disease, who lives on a modest income that is relevant to the restitution issue.

From the record before the Hearing Officer, there is insufficient evidence to support a finding of any additional mitigating factors in this case.

Based on the foregoing, as there are numerous aggravating factors and at most three mitigating factors, there is no reason to deviate from the presumptive sanction of suspension in this case.

#### **CASE LAW**

The decisions of the Supreme Court of Arizona and the recommendations of the Disciplinary Commission in factually and procedurally similar discipline cases support the proposition that suspension is an appropriate and proportional sanction.

There are several prior disciplinary cases involving similar factual situations. In Matter of Taylor, SB-01-0115-D (2001), the respondent was suspended for three years for misconduct similar to that in the present case. In that case, the lawyer entered into an agreement with People's Services, a document preparation firm that was principally controlled by a disbarred lawyer/convicted felon, to assist in bankruptcy cases. The lawyer often met with clients and reviewed their cases only moments before the creditor's meetings. The lawyer

allowed non-lawyers to meet with potential clients, and to prepare pleadings without supervision. The lawyer also shared legal fees with non-lawyers, and caused false pleadings to be filed. Like the Respondent in the present case, Mr. Taylor had no prior discipline history.

In Matter of Scott, SB-99-0011-D (1999), the lawyer was also suspended for three years for misconduct similar to that in the present case. In that case, Mr. Scott was hired to represent fourteen clients in bankruptcy or dissolution matters. Mr. Scott never met with the clients, and all contact between the clients and Respondent's office were with non-lawyer assistants. Documents in several of the cases were prepared incorrectly or incompletely, and Respondent failed to appear at some of the hearings. Like the Respondent in the present case, Mr. Scott had no prior discipline history.

### **RESTITUTION**

The issue of restitution was discussed at length during the aggravation/mitigation hearing. The Harrises were ordered as part of the permanent injunction to disgorge their fees in all cases, including the cases in which Respondent was involved. However, they have not paid restitution. Their co-defendants, Cassandra Bruce and ProTax Securities, are to refund fees as part of their agreement, including fees that were paid in Respondent's cases. Ms. Shamblin testified at the aggravation and mitigation hearing that she expected the

agreement to be finalized; the bankruptcy court docket confirms that the agreement was approved by U.S. Bankruptcy Judge Redfield Baum on August 4, 2005.

The Bar asked that Respondent be ordered to pay restitution totaling \$20,280, with payments to be made to Bruce and Pro-Tax, if they had first made restitution to Respondent's former clients pursuant to the proposed settlement with the United States Trustee, or to individual clients if such clients had not been compensated by Bruce or Pro-Tax.

### **PROPORTIONALITY REVIEW**

The Supreme Court has held in order to achieve proportionality when imposing discipline, the discipline in each situation 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) and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993).

### **RECOMMENDATION**

The purpose of lawyer 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 objective 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). Yet another purpose is to instill public confidence in the bar's integrity. Matter of Horwitz, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's Standards for Imposing Lawyer Sanctions ("Standards") and the discipline imposed in analogous cases. Matter of Bowen, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

The Star Bar has requested that Respondent be suspended for a period of at least six months, preferably three years, and ordered to pay \$20,280 in restitution (again, either to clients or to other parties who have agreed to provide restitution to such clients). Respondent, by letter, has indicated that he does not oppose suspension, but that a restitution order would cause extreme financial hardship on Respondent and his 75-year-old wife, who subsist on gross monthly income totaling \$2,840. That hardship is especially relevant here, whether any restitution order against Respondent apparently would benefit not Respondent's former clients, but other parties involved in unauthorized practice of law.

Upon consideration of the facts, application of the Standards, including aggravating and mitigation factors, and a proportionally analysis, this Hearing Officer recommends the following:

1. Respondent shall be suspended from the practice of law for a period of three years.

2. Respondent shall be required to seek reinstatement, should he desire to resume the practice of law, at the end of the period of suspension. Any reinstatement should be conditioned upon Respondent making restitution to any former clients not, as of that date, provided restitution by Bruce, Pro-Tax, or the Harrises.

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

DATED this 3<sup>rd</sup> day of October, 2005.

  
\_\_\_\_\_  
Christopher D. Thomas  
Hearing Officer 8Z

Original filed with the Disciplinary Clerk  
this 3<sup>rd</sup> day of October, 2005.

Copy of the foregoing mailed  
this 3<sup>rd</sup> day of October, 2005, to:

Stephen Alikes  
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and

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by: William