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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 SUSPENDED) | Nos. 03-1240, 03-2251, 04-1833 |
| MEMBER OF THE STATE BAR OF) | 04-2081, 05-0120 |
| ARIZONA,) | |
|) | |
| SEAN M. COE,) | |
| Bar No. 016150) | HEARING OFFICER'S REPORT |
|) | |
| RESPONDENT.) | |

PROCEDURAL HISTORY

A Complaint was filed on July 7, 2005. Respondent did not file an answer; therefore, the Disciplinary Clerk filed an Entry of Default on August 31, 2005. An aggravation/mitigation hearing was held on October 5, 2005. The State Bar filed Proposed Findings of Fact and Conclusions of Law on October 31, 2005.

At the aggravation/mitigation hearing, the State Bar introduced evidence that Respondent had actual notice of the complaint. The State Bar served it by certified and regular first-class mail to his address of record, 17752 S. Placita de Laton, Sahuarita, Arizona 85629-9749. The State Bar also forwarded a copy of the complaint to an alternate address for Respondent: 520 E. Main Street, Flushing, Michigan 48433. It is bar counsel's belief that the alternate address is the address for Respondent's parents and Respondent has been receiving some mail sent to the alternate address. [TR 5:11-25; Exhibits 1 and 2]

1 Bar counsel in this matter spoke with Respondent in September 2005. Bar
2 counsel located a telephone number for the Michigan address, and left a message
3 for Respondent regarding his pending discipline matters. Several days later,
4 Respondent called bar counsel. This was the first time bar counsel spoke with
5 Respondent about his disciplinary matters. Respondent stated that since
6 approximately May 2005, he had been in an in-patient substance abuse program
7 in Michigan, and he was currently in an outpatient substance abuse program.
8 Respondent stated that his address of record with the State Bar was still current,
9 and that he had received correspondence regarding his disciplinary matters.
10 Respondent stated that the address in Michigan was his parents' address, and he
11 had received some correspondence that was sent to the address. Bar counsel
12 informed Respondent of the October 5, 2005 aggravation/mitigation hearing, and
13 encouraged Respondent to contact the Disciplinary Clerk regarding his
14 participation in the hearing if he chose to participate. Respondent failed to
15 participate at the aggravation/mitigation hearing.

20 FINDINGS OF FACT

21 The facts listed below are set forth in the State Bar's Complaint and
22 pursuant to Rule 57(d) Ariz. R. S. Ct. are deemed admitted by default.
23
24
25

1 1. Respondent was an attorney licensed to practice law in the State of
2 Arizona, having been admitted to practice in Arizona on October 21, 1995.

3
4 [Complaint ¶1]

5 2. On December 17, 2004, the State Bar of Arizona "Board of Governors"
6 summarily suspended Respondent from the practice of law for non-compliance
7 with the mandatory continuing legal education ("MCLE") requirements.

8
9 [Complaint ¶2] The State Bar of Arizona ("State Bar") reinstated Respondent on
10 February 2, 2005. [Id.]

11 3. On April 15, 2005, the Board of Governors summarily suspended
12 Respondent from the practice of law for non-compliance with the MCLE
13 requirements. The State Bar reinstated Respondent on April 22, 2005.

14
15 [Complaint ¶3]

16 4. On June 29, 2005, upon motion by the State Bar, pursuant to Rule 61,
17 Arizona Rules of the Supreme Court, the Arizona Supreme Court suspended
18 Respondent from the practice of law for engaging in conduct, the continuation of
19 which will result in substantial harm, loss or damage to the public, the legal
20 profession or the administration of justice. [Complaint ¶4]

21
22
23 **COUNT ONE (File No. 03-1240)**

24 5. On or about June 22, 2002, Respondent hired Unique Imports, an
25 automobile broker, to broker a deal for a 1999 BMW 328i for Respondent's

1 personal use. [Complaint ¶5; Ex. 1] Michael Aussie is the general manager of
2 Unique Imports. [Id.]

3
4 6. Pursuant to the agreement, Respondent was to pay Unique Imports \$2,000
5 for its services. [Complaint ¶6; Ex. 1]

6
7 7. On or about June 22, 2002, Respondent issued a check in the amount of
8 \$2,000 to Unique Imports as payment for its services. [Complaint ¶7; Ex. 1] Two
9 days later, Unique Imports' bank notified it that Respondent placed a "stop
10 payment" request on the check. [Id.] When Mr. Aussie called Respondent about
11 the stop payment request, Respondent told him that the bank had made a mistake,
12 and he would take care of it. [Id.]

13
14 8. On or about July 19, 2002, Mr. Aussie flew to Las Vegas, Nevada to
15 secure the car that Respondent had requested. [Complaint ¶8; Ex. 1]

16
17 9. Respondent never submitted payment for Unique Imports' services.
18 [Complaint ¶9; Ex. 1]

19
20 10. Unique Imports filed suit against Respondent in the Pima County
21 Justice Court. [Complaint ¶10; Ex. 1] According to Mr. Aussie, Respondent
22 evaded service of the complaint for approximately two months. [Id.]

23
24 11. On or about May 8, 2003, Respondent answered the complaint;
25 however, he failed to serve Unique Imports' attorney with a copy of his answer.
[Complaint ¶11; Ex. 1]

1 12. Mr. Aussie submitted a Bar charge against Respondent on or about July
2 3, 2003, regarding the above-mentioned misconduct. [Complaint ¶12; Ex. 1]

3
4 13. On or about October 5, 2003, the State Bar sent a letter to Respondent
5 requesting that he contact Mr. Aussie and address the matter outside of the lawyer
6 regulation system. Despite the State Bar's request, Respondent failed to contact Mr.
7 Aussie to address the issue. [Complaint ¶13; Ex. 5]

8
9 14. On or about January 5, 2005, the State Bar sent a letter to Respondent
10 requesting that he submit a written response to the Bar charge filed by Mr. Aussie
11 within 20 days of the date of the letter. [Complaint ¶14; Ex. 9]

12 15. Respondent failed to submit a response to the Bar charge. [Complaint
13 ¶15]

14
15 16. On or about February 23, 2005, the State Bar sent a third letter to
16 Respondent requesting that he formally respond to the Bar charge. [Complaint ¶16;
17 Ex. 10]

18
19 17. Respondent has not provided a response to the Bar charge. [Complaint
20 ¶17]

21 18. Respondent violated one or more of the Rules of Professional Conduct
22 as follows: [Complaint ¶18] Respondent engaged in conduct prejudicial to the
23 administration of justice; failed to cooperate with the State Bar's investigation;
24 and failed to furnish information requested by bar counsel. [Id.]
25

1 19. Respondent's conduct as described in this count violated Rule 42, Ariz.
2 R. S. Ct., specifically, ER 8.1(b) & ER 8.4(d), and Rule 53(d) & (f), Ariz. R. S.
3 Ct.
4

5 **COUNT TWO (File No. 03-2251)**

6 20. On October 6, 2004, the Probable Cause Panelist of the State Bar of
7 Arizona (the "Panelist") issued an Order of Informal Reprimand and placed
8 Respondent on probation for a period of two years for violations of Ethical Rules
9 1.3, 3.2, 3.4(c), & 8.4(d), and Rule 53(c), Ariz. R. S. Ct., arising from: 1)
10 Respondent's failure to effectively communicate with clients and neglecting to
11 fully perform his professional duties while under contract with the Indigent
12 Defense Coordinator for Cochise County; and 2) Respondent's failure to attend
13 court hearings in several scheduled superior court hearings without providing
14 adequate notice to the court, causing the hearings to be rescheduled. [Complaint
15 ¶20; Ex. 15]
16
17
18

19 21. On October 20, 2004, the Panelist issued a First Amended Order of
20 Informal Reprimand, Probation and Costs ("First Amended Order"), which
21 modified some of the terms of Respondent's probation. [Complaint ¶21; Ex. 14]
22

23 22. On October 21, 2004, the State Bar sent the First Amended Order to
24 Respondent by regular and certified mail. [Complaint ¶22; Ex. 14]
25

1 23. The First Amended Order sent by certified mail was returned as
2 "unclaimed." [Complaint ¶23]

3
4 24. Respondent failed to contest the First Amended Order. [Complaint ¶24]

5 25. Because Respondent failed to contest the First Amended Order within
6 the time allowed, it automatically became effective, and Respondent was required
7 to comply with it. [Complaint ¶25]

8
9 26. On November 16, 2004, the State Bar sent Respondent a letter notifying
10 him of the requirement to comply with the First Amended Order. [Complaint
11 ¶26]

12 27. The terms of Respondent's probation included the requirement that he
13 contact the Law Office Management Assistance Program ("LOMAP") to
14 complete a LOMAP assessment of his office practices. [Complaint ¶27; Ex. 14]

15
16 28. On January 27, 2005, after numerous attempts by the LOMAP staff to
17 contact Respondent, Tracy Ward, a LOMAP staff member, made an appointment
18 to meet Respondent in Pima County. [Complaint ¶28]

19
20 29. Ms. Ward traveled to Pima County to meet with Respondent on the date
21 scheduled. [Complaint ¶29] Respondent, however, did not appear at the meeting.

22 [Id.]
23
24
25

1 30. Respondent never contacted LOMAP or Ms. Ward about his failure to
2 appear for the appointment, and he made no effort to reschedule the appointment.

3 [Complaint ¶30]
4

5 31. Ms. Ward later learned that on December 17, 2004, the State Bar Board
6 of Governors summarily suspended Respondent for failing to comply with MCLE
7 requirements. [Complaint ¶31] Ms. Ward sent Respondent a letter stating that
8 she could not complete a LOMAP assessment because he was currently
9 suspended for failure to comply with MCLE requirements. [Id.] Ms. Ward
10 requested that Respondent contact her to complete the LOMAP assessment once
11 the State Bar reinstated him. [Id.] The State Bar reinstated Respondent on
12 February 2, 2005; however, he has not made any attempt to contact Ms. Ward to
13 complete the assessment. [Id.]
14
15

16 32. On March 23, 2005, Bar counsel filed a Notice of Non-Compliance
17 With Panelist's Order ("Notice of Non-Compliance"). [Complaint ¶32]
18

19 33. Bar counsel sent Respondent a copy of the Notice of Non-
20 Compliance by regular and certified mail. [Complaint ¶33] The certified letter
21 was returned, marked "refused." [Id.]
22

23 34. On April 1, 2005, the Panelist signed an Order to Respondent
24 directing Respondent to file a response to the Notice of Non-Compliance within
25 fifteen days. [Complaint ¶34]

1 35. Respondent did not file a response to the Notice of Non-Compliance.

2 [Complaint ¶35]

3
4 36. Respondent violated one or more of the Rules of Professional Conduct
5 as follows: Respondent violated a condition of probation; failed to cooperate
6 with the State Bar's investigation; and failed to furnish information requested by
7 Bar counsel. [Complaint ¶36]

8
9 37. Respondent's conduct as described in this count violated Rule 53(d), (e)
10 & (f), Ariz. R. S. Ct.

11 **COUNT THREE (File No. 04-1833)**

12
13 38. On August 11, 2004, the Pima County Superior Court appointed
14 attorney David Basham to represent an indigent client charged with conspiracy to
15 possess, sell, and transport marijuana in a criminal matter. [Complaint ¶38; Ex.
16 17]

17
18 39. On the same date, the Pima County Superior Court appointed
19 Respondent to represent a co-defendant in the same criminal case. [Complaint
20 ¶39; Ex. 17]

21
22 40. On October 4, 2004, Mr. Basham met with his client in jail. [Complaint
23 ¶40; Ex. 17] At the meeting, Mr. Basham's client told Mr. Basham that Respondent
24 had come to see him in jail on four separate occasions regarding the criminal case.

25 [Id.]

1 41. After the meeting, Mr. Basham sent a letter to Respondent requesting that
2 he refrain from meeting with Mr. Basham's client. [Complaint ¶41; Ex. 17]

3
4 42. In a letter to Mr. Basham dated October 5, 2004, Respondent asserted that
5 he met with Mr. Basham's client on four occasions at the request of the client and
6 his family. [Complaint ¶42; Ex. 17]

7 43. Respondent further stated that two of the meetings occurred prior to Mr.
8 Basham's appointment, and he arranged the two other meetings with attorneys
9 whom the client expressed an interest in retaining. [Complaint ¶43; Ex. 17]
10 Respondent also stated that Mr. Basham's client stated that Mr. Basham had been
11 abusive to him and had encouraged the client to cooperate with the government.
12

13 [Id.]

14
15 44. On October 12, 2004, Mr. Basham filed a court motion requesting a status
16 conference and an order restricting Respondent's access to his client. [Complaint
17 ¶44; ex. 17]

18
19 45. On October 14, 2004, Mr. Basham and a paralegal met with the client to
20 discuss the motion. [Complaint ¶45; Ex. 17] At the meeting, Mr. Basham's client
21 became upset and began to yell because he was still incarcerated while many of the
22 other defendants in the case were out of custody on bail. [Id.] Mr. Basham tried to
23 inform his client that his situation was more complex, but the client continued to
24
25

1 yell and threaten Mr. Basham. [Id.] Mr. Basham terminated the meeting because of
2 his client's agitated state. [Id.]

3
4 46. Mr. Basham later filed a motion to withdraw from the case, which the
5 court granted. [Complaint ¶46; Ex. 17]

6 47. Respondent's interference led to Mr. Basham's withdrawal in the case.
7 [Complaint ¶47]

8
9 48. On or about October 28, 2004, Mr. Basham filed a Bar charge against
10 Respondent due to Respondent's inappropriate actions in the case. [Complaint ¶48]

11 49. On December 7, 2004, the State Bar sent a letter to Respondent
12 requesting that he respond to the Bar charge. [Complaint ¶49; Ex. 18]

13
14 50. Respondent failed to submit a response to the Bar charge as requested.
15 [Complaint ¶50]

16 51. On January 4, 2005, the State Bar sent a second letter to Respondent
17 requesting a response to the Bar charge. [Complaint ¶51; Ex. 20]

18
19 52. On January 10, 2005, Respondent faxed a letter to the State Bar
20 authorizing it to discuss the matter with a paralegal support service with which
21 Respondent was working, and requested that the State Bar fax another copy of the
22 Bar charge to him. [Complaint ¶52; Ex. 21] Respondent stated that he would then
23 respond. [Id.]
24
25

1 53. On January 14, 2005, the State Bar provided another copy of the
2 charges to Respondent's paralegal service. [Complaint ¶53; Ex. 22]

3 54. Respondent failed to respond to the Bar charge as requested.
4 [Complaint ¶54]

5 55. Respondent violated one or more of the Rules of Professional Conduct
6 as follows: Respondent communicated with a person represented by counsel
7 without his counsel's consent; Respondent engaged in conduct prejudicial to the
8 administration of justice; Respondent failed to cooperate with the State Bar's
9 investigation; and Respondent failed to furnish information requested by Bar
10 counsel. [Complaint ¶55]

11 56. Respondent's conduct as described in this count violated Rule 42, Ariz.
12 R. S. Ct., specifically, ER 4.2, & ER 8.4 (d), and Rule 53(d) & (f), Ariz. R. S. Ct.

13
14 **COUNT FOUR (File No. 04-2081)**

15 57. On or about December 14, 2004, Pima County Superior Court Judge
16 Virginia C. Kelly forwarded to the State Bar a copy of a letter dated November
17 20, 2004, that she received from Naomi Redhouse, one of Respondent's clients.
18 [Complaint ¶57 Ex. 28]

19 58. In her letter, Ms. Redhouse stated that: a) she had been incarcerated in
20 the Pima County Jail for four months; b) her family retained Respondent to
21 represent her in her criminal case; and c) despite repeated attempts to contact
22
23
24
25

1 Respondent, she had not been able to speak with him about her case for
2 approximately one month. [Complaint ¶58; Ex. 28]

3
4 59. Ms. Redhouse expressed concern because Respondent had not provided
5 her with any documentation or information regarding the charges against her as
6 she requested. [Complaint ¶59; Ex. 28]

7
8 60. Judge Kelly held a status hearing on December 3, 2004, and Respondent
9 failed to appear. [Complaint ¶60; Ex. 28]

10
11 61. Judge Kelly rescheduled the hearing for December 6, 2004. [Complaint
12 ¶61; Ex. 28]

13
14 62. Judge Kelly's staff attempted to call Respondent to notify him of the
15 rescheduled hearing; however, they could not reach him and had to leave a
16 voicemail message on his office phone. [Complaint ¶62; Ex. 28] Judge Kelly's
17 staff also faxed a copy of the minute entry from the December 3, 2004 hearing to
18 his office. [Id.]

19
20 63. Respondent failed to appear at the December 6, 2004 hearing.
21 [Complaint ¶63; Ex. 28]

22
23 64. At the December 6, 2004 hearing, Ms. Redhouse testified that she had
24 not had any contact with Respondent since October 18, 2004, and that he had not
25 provided her with a copy of the plea bargain allegedly offered by the State, or a
copy of the original police report as she had requested. [Complaint ¶64; Ex. 28]

1 65. Judge Kelly found it necessary to remove Respondent as attorney of
2 record for Ms. Redhouse and appointed a public defender to represent Ms.
3 Redhouse. [Complaint ¶65; Ex. 28]
4

5 66. Judge Kelly set an Order to Show Cause hearing for Respondent to
6 appear and show cause why he should not be held in contempt of court for failing
7 to appear at the hearings. [Complaint ¶66; Ex. 28]
8

9 67. On December 13, 2004, Judge Kelly held the Order to Show Cause
10 hearing. [Complaint ¶67; Ex. 29]
11

12 68. At the hearing, Respondent stated that he failed to appear at the
13 December 3, 2004 hearing because he was in another hearing on a separate
14 matter, and he failed to obtain coverage. [Complaint ¶68; Ex. 33]
15

16 69. Regarding the December 6, 2004 hearing, Respondent testified that his
17 fax machine was out of paper on that day and he did not learn of the rescheduled
18 hearing until December 7, 2004. [Complaint ¶69; Ex. 33]
19

20 70. Respondent further testified that he did not get the voicemail messages
21 left by Judge Kelly's staff because he left his two cell phones in his car while the
22 car was in the shop for repairs. [Complaint ¶70; Ex. 33] According to
23 Respondent, he did not get his car back until after the hearing. [Id.]
24

25 71. Respondent contended that Ms. Redhouse had not paid him; therefore,
he was not getting paid for work that he was not doing. [Complaint ¶71; Ex. 33]

1 Respondent also stated that he was preparing a motion to withdraw from Ms.
2 Redhouse's case. [Id.]

3
4 72. On December 14, 2005, Judge Kelly ruled that Respondent's actions
5 were careless but not willful; therefore, she did not find him in contempt.
6 [Complaint ¶72; Ex. 33]

7
8 73. On January 24, 2005, the State Bar sent a letter to Respondent
9 requesting that he file a response to the charges raised by Judge Kelly.
10 [Complaint ¶73; Ex. 31]

11 74. Respondent failed to submit a response. [Complaint ¶74]

12
13 75. On March 8, 2005, the State Bar sent a second letter to Respondent
14 requesting that he file a response to the charges in this matter. [Complaint ¶75;
15 Ex. 34]

16
17 76. Bar counsel notified Respondent that failing to cooperate with a
18 disciplinary investigation was grounds, in itself, for discipline. [Id.]

19 77. Respondent again failed to respond to the charges. [Complaint ¶77]

20
21 78. Respondent violated one or more of the Rules of Professional Conduct
22 as follows: Respondent failed to provide competent representation to Ms.
23 Redhouse; Respondent failed to act with reasonable diligence and promptness
24 while representing Ms. Redhouse; Respondent failed to keep Ms. Redhouse
25 reasonably informed about the status of her case and promptly comply with her

1 reasonable requests for information; Respondent engaged in conduct prejudicial
2 to the administration of justice; Respondent willfully violated a rule and/or order
3 of a court in this state; Respondent failed to cooperate with the State Bar's
4 investigation; and Respondent failed to furnish information requested by Bar
5 counsel. [Complaint ¶78]
6

7 79. Respondent's conduct as described in this count violated Rule 42, Ariz.
8 R. S. Ct., specifically, ER 1.1, ER 1.3, ER 1.4(a)(3) & (4), & ER 8.4(d), and Rule
9 53(c), (d) & (f), Ariz. R. S. Ct.
10

11 ***COUNT FIVE (File No. 05-0120)***

12 80. On or about January 21, 2005, Respondent attempted to contact Pima
13 County Sheriff's Detective Karen Couture regarding a case that she was
14 investigating. [Complaint ¶80; Ex. 38]
15

16 81. Detective Couture was unavailable, and Respondent left a voicemail
17 message on her office phone and faxed her a letter indicating that he represented
18 the defendant in the above-mentioned case and that he wanted to discuss the case
19 with her. [Complaint ¶81; Ex. 38]
20

21 82. When Detective Couture returned Respondent's call on January 24,
22 2005, Respondent was rude and asked questions that she felt were inappropriate.
23 [Complaint ¶82; Ex. 38]
24
25

1 83. During the conversation, Respondent provided Detective Couture with a
2 telephone number where he could be reached to set up a future meeting.

3 [Complaint ¶83; Ex. 38]
4

5 84. Detective Couture learned that the telephone number was incorrect
6 when she attempted to call Respondent to set up the meeting. [Complaint ¶84;
7 Ex. 38]
8

9 85. Detective Couture became suspicious about Respondent due to his
10 demeanor and the incorrect telephone number. [Complaint ¶85; Ex. 38]
11

12 86. Detective Couture contacted the State Bar to inquire about
13 Respondent's status. [Complaint ¶86; Ex. 38]
14

15 87. Detective Couture learned that Respondent had been suspended from
16 the practice of law on December 17, 2004, and had not been reinstated.
17 [Complaint ¶87; Ex. 38]
18

19 88. By letter dated January 4, 2005, the State Bar notified Respondent that
20 on December 17, 2004, the Board of Governors approved his name for summary
21 suspension for non-compliance with the MCLE requirements. [Complaint ¶88]
22

23 89. On February 15, 2005, Bar counsel forwarded Detective Couture's Bar
24 charge to Respondent at his address on file with the State Bar and requested a
25 response within 20 days. [Complaint ¶89; Ex. 41]

1 90. Respondent failed to respond to the Bar charge as requested.

2 [Complaint ¶90]

3
4 91. On March 15, 2005, Bar counsel sent a second letter to Respondent
5 requesting a response to the Bar charge. [Complaint ¶91; Ex. 43]

6 92. Respondent failed to respond as requested. [Complaint ¶92]

7
8 93. To date, Respondent has not submitted a response to the Bar charge or
9 otherwise contacted Bar counsel regarding the case. [Complaint ¶93]

10 94. Bar counsel requested that the State Bar Staff Investigator investigate
11 whether Respondent represented any clients during his suspension. [Complaint
12 ¶94]

13
14 95. After an investigation, the Staff Investigator identified at least twenty-
15 six criminal cases in which Respondent made an appearance, filed a court
16 document, or otherwise represented a client between January 4, 2005 and
17 February 2, 2005. [Complaint ¶95; Ex. 57 & 61]

18 96. For example:

19
20 a. On January 6, 2005, Respondent made a court appearance in *Arizona v.*
21 *Holt*, Pima Case No. CR2004-3730;

22
23 b. On January 10, 2005, Respondent represented Dolores Mercedes Leon
24 at her Change of Plea/Sentencing hearing in *Arizona v. Leon*, Pima County Case
25 No. CR2004-2758;

1 c. On January 11, 2005, Respondent represented Tanya A. Sharpe at a
2 Case Management/Review hearing in *Arizona v. Sharpe*, Pima County Case No.
3 CR2004-3692;
4

5 d. On January 11, 2005, the Pima County Superior Court appointed
6 Respondent to represent Frank L. Policicchio in *Arizona v. Policicchio*, Pima
7 County Case No. CR2004-4648;
8

9 e. On January 24, 2005, Respondent represented Michael Lavon Hinton
10 at his Change of Plea hearing in *Arizona v. Hinton*, Pima County Case No.
11 CR2004-3993. [Complaint ¶96; Ex. 57 & 61]
12

13 97. Respondent did not notify his clients, opposing counsel, or the courts
14 that he was suspended during this time, as required by Rule 72, Ariz. R. S. Ct.
15 [Complaint ¶97]
16

17 98. On January 14, 2005, Respondent wrote a letter to the State Bar
18 requesting that he be reinstated. [Complaint ¶98; Ex. 55]
19

20 99. Respondent included his Affidavit of Compliance with Rule 45, a
21 Certificate of Attendance at a CLE program, and a check to the State Bar for
22 \$375. [Complaint ¶99; Ex. 55]
23

24 100. On February 2, 2005, the State Bar reinstated Respondent.
25 [Complaint ¶100] The State Bar also refunded \$175 to Respondent in the belief
that Respondent had submitted an overpayment. [Id.]

1 101. The State Bar later learned that the bank refused to honor
2 Respondent's check because of insufficient funds in Respondent's account.

3 [Complaint ¶101]
4

5 102. On March 4, 2005, the State Bar notified Respondent that the Board
6 of Governors would suspend him at their next regularly scheduled meeting unless
7 he provided a payment of \$375. [Complaint ¶102]
8

9 103. Respondent failed to provide the payment, and on April 15, 2005,
10 the Board of Governors summarily suspended Respondent for failure to comply
11 with the MCLE requirements. [Complaint ¶103]
12

13 104. The State Bar notified Respondent of his suspension by letter dated
14 April 19, 2005. [Complaint ¶104]

15 105. By letter dated April 22, 2005, the State Bar notified Respondent of
16 his reinstatement after receiving satisfactory payment of the \$375—\$200 for the
17 reinstatement fee and \$175 for repayment of the inaccurate refund to Respondent.
18

19 [Complaint ¶105]

20 106. Respondent violated one or more of the Rules of Professional
21 Conduct as follows: Respondent continued to practice law in this state while
22 suspended by the State Bar and the Arizona Supreme Court; Respondent engaged
23 in conduct involving dishonesty, fraud, deceit, or misrepresentation; Respondent
24 engaged in conduct prejudicial to the administration of justice; Respondent
25

1 willfully violated a rule and/or order of a court in this state; Respondent failed to
2 cooperate with the State Bar's investigation; and Respondent failed to furnish
3 information requested by Bar counsel. [Complaint ¶106]
4

5 107. Respondent's conduct as described in this count violated Rule 42,
6 Ariz. R. S. Ct., specifically, ER 5.5(a), & ER 8.4(c) & (d), Rule 31(b), and Rule
7 53(c), (d), & (f), Ariz. R. S. Ct.
8

9 **CONCLUSIONS OF LAW**

10 **Count One (File No. 03-1240)**

11 1. Respondent's conduct in evading service in a lawsuit was prejudicial
12 to the administration of justice, thus violating ER 8.4(d), Ariz. R. S. Ct.
13

14 2. By knowingly failing to respond to the State Bar's lawful demand for
15 information, Respondent violated ER 8.1(b), Rule 42, Ariz. R. S. Ct., and Rule
16 53(d) and (f), Ariz. R. S. Ct.
17

18 **Count Two (File No. 03-2251)**

19 3. By violating a condition of his probation, i.e., contacting the State
20 Bar's LOMAP program to complete a LOMAP assessment of his office practices,
21 Respondent violated Rule 53(f), Ariz. R. S. Ct.
22

23 4. By failing to communicate with Ms. Bell, Respondent violated ER
24 1.4, Rule 42, Ariz. R. S. Ct.
25

1 5. By refusing to cooperate with officials and staff of the State Bar, a
2 hearing officer or the commission in the course of that person's duties,
3 Respondent violated Rule 53(d), Ariz. R. S. Ct.
4

5 6. By failing to respond to a lawful demand for information from the
6 State Bar, Respondent violated ER 8.1(b), Rule 42, Ariz. R. S. Ct., and Rule
7 53(f), Ariz. R. S. Ct.
8

9 **Count Three (File No. 04-1833)**

10 7. By communicating with a party that he knew to be represented by
11 counsel about the subject of the representation without authorization from the
12 party's counsel, Respondent violated ERs 4.2 & 8.4(d), Rule 42, Ariz. R. S. Ct.
13

14 8. By failing to respond to a lawful demand for information from the
15 State Bar, Respondent violated Rule 53(d) and (f), Ariz. R. S. Ct.
16

17 **Count Four (File No. 04-2081)**

18 9. By failing to provide competent representation to Ms. Redhouse,
19 Respondent violated ER 1.1, Rule 42, Ariz. R. S. Ct.
20

21 10. By failing to act with reasonable diligence and promptness while
22 representing Ms. Redhouse, Respondent violated ER 1.3, Rule 42, Ariz. R. S. Ct.
23

24 11. By failing to communicate with Ms. Redhouse, Respondent violated
25 ER 1.4, Rule 42, Ariz. R. S. Ct.

1 12. Respondent's conduct in this matter, in failing to adequately and
2 diligently represent Ms. Redhouse and by failing to appear at two court hearings,
3 was prejudicial to the administration of justice in violation of ER 8.4(d), Rule 42,
4 Ariz. R. S. Ct.
5

6 13. By failing to respond to a lawful demand for information from the
7 State Bar, Respondent violated Rule 53(d) and (f), Ariz. R. S. Ct.
8

9 **Count Five (File No. 05-0120)**

10 14. By continuing to practice law at a time when he was summarily
11 suspended from the practice of law, Respondent violated Rule 31(b), Ariz. R. S.
12 Ct. and ERs 5.5 and 8.4(c) &(d), Rule 42, Ariz. R. S. Ct.
13

14 15. By failing to respond to a lawful demand for information from the
15 State Bar, Respondent violated Rule 53(d) and (f), Ariz. R. S. Ct.
16

17 **ABA STANDARDS**

18 The ABA *Standards* list the following factors to consider in imposing the
19 appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the
20 actual or potential injury caused by the lawyer's misconduct, and (4) the
21 existence of aggravating or mitigating circumstances. *ABA Standard 3.0.*
22

23 According to the ABA *Standards* and *In re Cassalia*, 173 Ariz. 372, 843
24 P.2d 654 (1992), where there are multiple acts of misconduct, a lawyer should
25 receive one sanction consistent with the most serious instance of misconduct, and

1 the other acts should be considered as aggravating factors. Respondent's most
2 serious acts of misconduct are his failure to comply with the terms of his
3 probation and his continued practice of law while on summary suspension.
4

5 A review of ABA *Standard 7.0* (Violations of Duties Owed as a
6 Professional) indicates that suspension is the presumptive sanction for
7 Respondent's misconduct. *Standard 7.2* specifically provides:

8
9 Suspension is generally appropriate when a lawyer
10 knowingly engages in conduct that is a violation of a duty
11 owed as a professional, and causes injury or potential injury
12 to a client, the public, or the legal system.

13 Respondent knowingly engaged in the unauthorized practice of law. The
14 record reflects that the State Bar notified Respondent on January 4, 2004, that the
15 Board of Governors summarily suspended him for his failure to comply with the
16 MCLE requirements. The State Bar mailed the letter to Respondent's address on
17 record with its membership department. Despite having notice of his suspension,
18 Respondent continued to practice in at least twenty-six cases during his period of
19 suspension. Furthermore, there is no evidence to suggest that Respondent
20 notified his clients, co-counsel, opposing counsel, or the courts in which he had
21 pending matters of his suspension pursuant to Rule 72, Ariz. R. S. Ct.
22

23 AGGRAVATING AND MITIGATING FACTORS

24 This Hearing Officer then considered aggravating and mitigating factors in
25 this case, pursuant to *Standards 9.22* and *9.32*, respectively.

1 ***In re Woltman*, 178 Ariz. 548; 875 P.2d 781 (1994):** In a twenty-five count
2 complaint, alleging misconduct involving twenty-four separate client matters,
3
4 Woltman was found to converted client funds, failed to perform work for which
5 he was retained and for which he accepted retainers, failed to pursue clients'
6 cases with diligence and competence, and continued to practice law while on
7 interim suspension. Woltman failed to respond to the formal complaint, and the
8 facts were deemed admitted. Woltman also did not participate in the
9 aggravation/mitigation hearing, nor did he object to the hearing officer's report,
10 although he received notice of the opportunity to participate and object. The
11 hearing officer found violations of Rule 42, Ariz.R.S.Ct., specifically, ERs 1.1,
12 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, 3.3, 3.4, 4.2, 4.4, 5.5, 8.1, 8.4, Rule 41(g),
13 Ariz.R.S.Ct., Rule 51(e), (f), (h), & (i), Ariz.R.S.Ct.¹, and Rule 63, Ariz.R.S.Ct.
14
15 The hearing officer found five aggravating factors (multiple offenses, a pattern of
16 misconduct, dishonest or selfish motive, failure to cooperate with or participate in
17 the disciplinary process, vulnerability of the victims, and indifference to making
18 restitution). No mitigating factors were found. Woltman was disbarred.

21 ***In re Brown*, SB-02-0049-D (2002):** Nine of the twelve counts against
22 Brown involved the unauthorized practice of law. The unauthorized practice of
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24

25 ¹ Rule 51, Ariz. R. S. Ct. corresponds with current Rule 53, Ariz. R. S. Ct.

1 law charge involved approximately thirty cases, and Brown was also found to
2 have failed to obey court orders and to notify clients of his suspension. In five of
3 the nine unauthorized practice of law counts, Respondent made representations
4 about his status to practice. The hearing officer found Brown failed to timely
5 appeal an arbitration award and respond to a motion to dismiss and communicate
6 with his clients in a separate matter. Furthermore, Brown failed to respond or
7 cooperate with the State Bar's investigation. The hearing officer found additional
8 violations of ERs 1.1, 1.2, 1.3, 1.4, 3.3, 3.4, 5.5, 8.1, 8.4, and Rules 51 & 63,
9 Ariz.R.S.Ct. The hearing officer found seven aggravating factors (prior
10 disciplinary offenses, dishonest or selfish motive, a pattern of misconduct,
11 multiple offenses, bad faith obstruction of the disciplinary proceeding by
12 intentionally failing to comply with rules or orders of the disciplinary agency,
13 refusal to acknowledge wrongful nature of conduct, and substantial experience in
14 the practice of law), and no mitigating factors. Brown was **disbarred**.

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19 *In re Anderson, SB-02-0006-D (2002):* Anderson was suspended from the
20 practice of law 1997, for failure to comply with the MCLE requirements. Despite
21 his suspension, Anderson made "client" referrals without informing those that he
22 was referring clients to that he was suspended. Additionally, Anderson admitted
23 to representing individuals in negotiations with insurance companies to settle
24 personal injury cases. The hearing officer found that Anderson knowingly
25

1 practiced law while suspended. The hearing officer cited four aggravating factors
2 (dishonest or selfish motive, pattern of misconduct, refusal to acknowledge
3 wrongful nature of conduct, and substantial experience in the practice of law),
4 and one mitigating factor (absence of prior disciplinary record). Anderson was
5
6 disbarred.

7 *In re Turley*, SB-04-0089-D (2002): The Arizona Supreme Court
8
9 suspended Turley from the practice of law for a period of one year beginning on
10 June 12, 2002. In count one, during the period of suspension, Turley admitted
11 that he sent a letter to a company on behalf of a client. The letter identified
12 Turley as "Esquire," and he referred to his client in the letter. In count two,
13
14 Turley filed and caused to be served, on behalf of a client, a complaint for
15 recovery for injuries she sustained in an automobile accident. Turley failed to
16 adequately communicate with the client, and she terminated the representation.
17
18 The client repeatedly requested Turley to return the file and personal documents
19 to her; however, Turley delayed in doing so. The case had been dismissed for
20 lack of prosecution prior to the client's termination of Turley. The hearing officer
21 also found that Turley had failed to cooperate with the State Bar's investigation
22 and that he had prior discipline. Turley admitted to violations of ERs 1.2, 1.3,
23 1.4, 1.16, 3.2, 5.5, 7.1, 7.5, 8.4, as well as Rules 31(b), 33(c), 53(a), & (c), 63(d),
24 and 64(c), Ariz.R.S.Ct. The hearing officer found three aggravating factors (prior
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1 disciplinary offenses, multiple offenses, and substantial experience in the practice
2 of law), and two mitigating factors (absence of dishonest or selfish motive and
3 full and free disclosure to disciplinary board or cooperative attitude toward
4 proceedings). Turley was suspended for a period of two years.

6 *In re Vice*, SB-02-0007-D (2002): The Arizona Supreme Court had
7 previously suspended Vice for six months. Included with the suspension was a
8 term of probation of one year. As a term of his probation, Vice was ordered to
9 enroll in MAP prior to reinstatement. Vice entered into a MAP contract pursuant
10 the Supreme Court's order, but he failed to comply with its terms claiming that
11 the cost was prohibitive and that he was misled about the costs. The State Bar
12 attempted to resolve the matter, but Vice refused to cooperate alleging breach of
13 contract. The State Bar filed a notice of non-compliance against Vice. The
14 hearing officer found violations of Rules 51(f)(violation of any disciplinary rule
15 or order constitutes misconduct and grounds for discipline) & (j)(violation of a
16 condition of a probation imposed during disciplinary proceedings constitutes
17 misconduct and grounds for discipline). Vice's period of suspension was
18 increased from six months to one year.

22 *In re Clark*, SB-05-0027-D (2005): In 2001, the Arizona Supreme Court
23 suspended Clark for a period of three years. In 2002, Clark was approached by a
24 long-time client regarding a problem with his driver's license. The client's
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1 license had been suspended for the client's failure to attend traffic school.
2 Despite his suspension, Clark represented the client at a Motor Vehicle
3 Department hearing. Clark also provided legal advice to the client regarding his
4 driver's license suspension. The hearing officer found that Clark violated ER 5.5,
5 Ariz.R.S.Ct. The hearing officer found three aggravating factors (prior
6 disciplinary offenses, substantial experience in the practice of law, and refusal to
7 acknowledge the wrongful nature of his conduct). No mitigating factors were
8 found. Clark was suspended for six months.
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11 In this case a two-year suspension is appropriate. Respondent knowingly
12 continued to practice while suspended. During his period of suspension,
13 Respondent represented clients in at least twenty-six cases and did not inform his
14 clients, co-counsel, opposing counsel, or the courts in which he appeared that he
15 was suspended. Additionally, Respondent knowingly violated a condition of his
16 probation.
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19 RECOMMENDATION

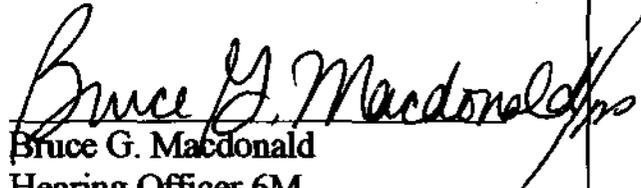
20 The purpose of lawyer discipline is not to punish the lawyer, but to protect
21 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
22 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
23 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
24 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
25

1 the bar's integrity *Matter of Horwitz*. 180 Ariz. 20, 29, 881 P.2d 352, 361
2
3 the American Bar Association's *Standards for Imposing Lawyer Sanctions*
4 ("Standards") and the proportionality of discipline imposed in analogous cases.
5
6 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
7

8
9 Upon consideration of the facts, application of the *Standards*, including
10 aggravating and mitigating factors, and a proportionality analysis, this Hearing
11 Officer recommends the following:

- 12 1. Respondent shall be suspended for a period of two years.
- 13
14 2. Upon reinstatement, Respondent shall be placed on probation for a
15 period of two years with terms and conditions to be determined at the time of
16 reinstatement proceedings.
- 17
18 3. Respondent shall pay the costs and expenses incurred in this
19 disciplinary proceeding.

20 DATED this 22nd day of November 2005.

21
22 
23 Bruce G. Macdonald
24 Hearing Officer 6M

25 Original filed with the Disciplinary Clerk
this 22nd day of November, 2005.

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Copy of the foregoing was mailed
this 22nd day of November, 2005, to:

Sean M. Coe
Respondent
17752 South Placita de Laton
Sahuarita, AZ 85629-9749

and

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