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OCT 27 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 SUSPENDED) Nos. 04-2160, 05-0093, 05-0188
MEMBER OF THE STATE BAR OF)
ARIZONA,)
)
STEWART P. HOOVER,)
Bar No. 015807) **HEARING OFFICER'S REPORT**
)
RESPONDENT.)

PROCEDURAL HISTORY

A Probable Cause Order was filed on February 17, 2005. A Complaint was filed on May 2, 2005. Respondent did not file an answer; therefore, the Disciplinary Clerk filed an Entry of Default on June 28, 2005. An aggravation/mitigation hearing was held on August 2, 2005. The State Bar filed Proposed Findings of Fact and Conclusions of Law on September 12, 2005. This is the second of two Complaints filed against Respondent, the first of which resulted in disbarment.

FINDINGS OF FACT

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

File No. 04-2160

1
2 1. Kelly Perkins ("Ms. Perkins") hired Respondent to pursue a personal
3 injury claim, which resulted in Respondent filing a lawsuit on her behalf in
4 Maricopa County case no. CV2002-014560, "CV2002-014560."
5

6 2. Ms. Perkins reports that in February 2004, Respondent stopped
7 returning her phone calls.

8 3. Respondent then failed to appear for a pretrial hearing on April 21.
9 2004 in Ms. Perkins' case, CV2002-014560.
10

11 4. Respondent finally contacted Ms. Perkins in May 2004 and met with
12 her indicating that he had a death in the family.

13 5. In June 2004, Respondent met again with Ms. Perkins and advised her
14 to settle the case for an amount she found unsatisfactory. However, Ms. Perkins
15 agreed to settle after Respondent told her she had no better than a 50/50 chance of
16 winning and would be responsible for the other side's costs of \$100,000 if she
17 lost.
18

19 6. Then Respondent disappeared again and failed to appear for a status
20 conference in Ms. Perkins' case, CV2002-014560, on August 20, 2004. Opposing
21 counsel filed a motion to enforce the settlement and then a motion to dismiss.
22

23 7. Ms. Perkins has retained other counsel, but has not been able to find
24 Respondent to retrieve her file and essential records for the case.
25

1 8. Bar counsel sent Respondent a charging letter on January 14, 2005,
2 requesting Respondent address his alleged violations of Ariz.R.Sup.Ct. 42, ERs
3 1.2 (scope of representation), 1.3 (diligence), 1.4 (communications), 1.15
4 (safekeeping property), 1.16 (declining or withdrawing from representation), 3.2
5 (expediting litigation) and 8.4(d) (misconduct involving prejudice to the
6 administration of justice).
7

8
9 9. As of the date of the Complaint, Respondent failed to respond to the
10 State Bar concerning this matter or any other.

11 10. An Order of Probable Cause was issued on February 17, 2005.

12 **Additional facts proven at hearing by clear and convincing evidence:**

13
14 11. The State Bar offered Hr.Ex. 1, 2, 3, and 4, in support of the allegations
15 in the Complaint and the same were admitted into evidence. [Hr.Tr. 9:3 -10:9;
16 Hr.Tr. 13:14 - 15]
17

18 12. Ms. Perkins hired Respondent to pursue a claim against St. Luke's
19 Behavioral Health Center on behalf of her 12-year-old mentally retarded son based
20 on sexual abuse of the child while the child was in treatment at St. Luke's
21 Behavioral Health Center. [Hr.Tr.14:6-15:18]
22

23 13. Ms. Perkins entered into a contingent fee agreement with Respondent
24 but Respondent failed to memorialize the same with a signed, written agreement.
25 [Hr.Tr.15:8-18]

1 14. Ms. Perkins authorized Respondent to respond to a \$25,000 settlement
2 offer and to discuss settlement with the defendants. The result was a purported
3 settlement of \$41,000 that Ms. Perkins maintains she did not authorize and which
4 was not approved by the Probate Court. [Hr.Tr. 17:2-18:7; 25:1-15]
5

6 15. When Respondent abandoned Ms. Perkins' and her son's case against
7 St. Luke's Behavioral Health Center she obtained other counsel, who at the time of
8 the aggravation-mitigation hearing, contesting in the Probate Court the settlement
9 of CV2002-014560. [Hr.Tr. 17:24-18:7; 19:18-20:2]
10

11 **File No. 05-0093**

12 16. Cassandra Bruce ("Ms. Bruce") hired Respondent in March 2003, to
13 represent her regarding issues in Bankruptcy Court and the Legal Document
14 Preparer Program.
15

16 17. Ms. Bruce set up a payment schedule with Respondent to pay him fees
17 bi-weekly, which as of November 2004, amounted to \$5,000.00.
18

19 18. Ms. Bruce never received a billing statement from Respondent.
20 Between March and September 2004, she had several telephone conversations and
21 met with Respondent twice.

22 19. Respondent failed to send Ms. Bruce paperwork sent to him by the
23 Bankruptcy Court or the Legal Document Preparer Program.
24
25

1 20. On November 22, 2004, Ms. Bruce was to appear at 10:00 a.m. to
2 respond to formal charges before the Board of Legal Document Preparers.
3 Despite reasonable notice, Respondent failed to appear at this scheduled hearing.
4

5 21. Ms. Bruce testified that a representative of the Legal Document
6 Preparers Program told her that he tried Respondent's cell phone number prior to
7 the hearing and the "mail box" was full.
8

9 22. Ms. Linda Grau of the Legal Document Preparer Program also
10 attempted to call Respondent's office telephone number listed with the State Bar,
11 but the number was disconnected.
12

13 23. Ms. Bruce testified that she is in jeopardy of having her Document
14 Preparer's Certification permanently revoked and that the consequences of that
15 action will be serious for her.¹
16

17 24. On January 26, 2005, Bar counsel sent a letter to Respondent at his
18 address of record and an alternate post office box that a State Bar investigator
19 identified as appearing to be in Respondent's name, demanding: a response to the
20 charge within seven (7) days; requesting Respondent's address under
21 Ariz.R.Sup.Ct. 42, and that Respondent provide an explanation of his conduct
22 with respect to alleged violations of ERs 1.2 (Scope of Representation and
23

24
25 ¹ Ms. Bruce testified at the aggravation/mitigation hearing that as a result of the hearing in
which she represented herself when Respondent failed to appear, she in fact lost her license as a
document preparer. [Hr.Tr. 40:3-8]

1 Allocation of Authority between Client and Lawyer), 1.3 (Diligence), 1.4
2 (Communications), 3.2 (Expediting Litigation), 1.15 (Safekeeping Property), and
3 8.4(d) (Misconduct-prejudicial to the administration of justice).

4
5 25. In connection with the State Bar's attempts to communicate with
6 Respondent concerning a pending formal matter and other investigations, a State
7 Bar investigator was successful in locating an address where Respondent and his
8 wife apparently lived with Respondent's father-in-law. However, the father-in-
9 law indicated to the State Bar's investigator at that time that he and Respondent's
10 wife had not seen Respondent in several weeks. Copies of State Bar
11 communications and pleadings were delivered to the Respondent's father-in-law
12 with a request he give the documents to Respondent.
13
14

15 26. As of the date of the Complaint Respondent failed to respond to the
16 State Bar's requests for a response to the charge in this Count.

17
18 27. An Order of Probable Cause was entered herein on March 28, 2005.

19 **Additional facts proven at hearing by clear and convincing evidence:**

20 28. The State Bar offered Hr. Ex. 5, 6, 7, and 8 which were accepted into
21 evidence and support the allegations of the complaint. [Hr.Tr. 10:16 -11:23;
22 Hr.Tr. 13:14 - 15]

23
24 29. In connection with the testimony of Ms. Bruce, Hr.Ex. 15, 16, 17, and
25 18 were admitted into evidence. [Hr.Ex. 15 at Hr.Tr. 35:22 -37:2; Hr.Ex. 16 at

1 Hr.Tr. 40:9 – 42:5; Hr.Ex. 17 at Hr.Tr. 42:8 –43:10; Hr.Ex. 18 at Hr.Tr. 33:20 –
2 34:14]

3
4 30. In addition, the State Bar submitted “Exhibit 19,” by filing the same as
5 a Supplement to the Record on September 1, 2005. Consistent with her testimony,
6 Hr.Ex. 19 consists of facsimile copies of canceled checks issued in June 2004 by
7 Ms. Bruce to Respondent. [Hrg.Tr. 53:18 – 54:2]

8
9 31. Ms. Bruce paid Respondent a total of \$5,000 for representation.
10 [Hr.Ex. 15 and 19; Hr.Tr. 35:15-3]

11 32. Respondent failed to provide Ms. Bruce with a billing statement as he
12 promised. [Hr.Tr. 35:6-14]

13
14 33. Ms. Bruce left a message for Respondent notifying him of a hearing to
15 be held before the Legal Document Preparer Program, but Respondent failed to
16 appear and could not be reached by representatives of the Legal Document
17 Preparer Program. [Hr.Tr. 38:13-40:8]

18
19 34. Respondent abandoned his Bruce's case and she incurred a total of \$56
20 in fees for stopping payment on two checks she sent to Respondent as installments
21 on her legal fee. [Hr.Tr. 40:9-42:3; Hr.Ex. 16]

22
23 35. After Respondent abandoned her, Ms. Bruce represented herself at the
24 hearing before the Legal Document Preparer Program. As a result of the hearing
25 Ms Bruce lost her license as a document preparer. [Hr.Tr. 39:6-40:8]

File No. 05-0188

1
2 36. On or about January 24, 2005, the Maricopa County Superior Court
3 entered an order removing Respondent as counsel for the plaintiff, Lorie Crader-
4 Borgards,² in Maricopa County case no. CV2004-09779 for abandoning his client.
5

6 37. The Court gave Ms. Crader-Borgards 90 days to retain other counsel.
7 Ms. Crader-Borgards testified that the Court told her that a call was placed to
8 Respondent's former partner, Don Yearin, who confirmed: that Mr. Hoover had
9 disappeared and that Mr. Yearin did not have Ms. Crader-Borgards' file.
10

11 38. The charging letter in this matter was sent to Respondent on February
12 3, 2005, addressed to Respondent's address of record with the State Bar and an
13 alternative post office box, that a State Bar investigator identified as being held in
14 Respondent's name. In the charging letter, Respondent was asked to respond to
15 and address ERs 1.2 (Scope of Representation), 1.3 (Diligence), 1.4
16 (Communications), 1.16 (Declining or Withdrawing from Representation), 3.2
17 (Expediting Litigation) and 8.4(d) (Conduct Prejudicial to the Administration of
18 Justice).
19
20

21 39. As of the date of the Complaint in this matter Respondent failed to
22 respond to the State Bar's requests for a response to the charges in this count.
23

24 40. An Order of Probable Cause issued on March 4, 2005.

25

² Ms. Crader-Borgards was known as Laurie Crader during the pendency of Maricopa County case number CV2004-09779 and was referred to in the State Bar's complaint as such.

1 **Additional facts proven at hearing by clear and convincing evidence:**

2 41. The State Bar offered Hr.Ex. 9, 10, 11, 12, and 13 which were admitted
3 into evidence and support the charges alleged in the Complaint. [Hr.Tr. 11:24 -
4 13:15]

5
6 42. The client, Ms. Crader-Borgards, hired Respondent to pursue a medical
7 malpractice claim against Plaza Healthcare based on the death of her previous
8 husband who was also the father of her four-year-old son. [Hr.Tr. 54:24-60:10]

9
10 43. After Respondent abandoned the case, Ms. Crader-Borgards did not
11 believe she could re-file the lawsuit and in this regard, at the time of the
12 aggravation/mitigation hearing had not consulted with other counsel. [Hr.Tr.
13 60:19-61:8]

14
15 44. Respondent failed to return Ms. Crader-Borgards' file that contains
16 material information and documentation related to the claim of medical
17 malpractice. [Hr.Tr. 61:14-63:9]

18 **CONCLUSIONS OF LAW**

19
20 45. The allegations and conclusions of law set forth in the State Bar's
21 Complaint, deemed admitted by virtue of Respondent's default, include
22 conclusions regarding Respondent's conduct as described in this Count, including
23 failing to consult with a client concerning a representation, failing to diligently
24 pursue the matter, failing to communicated with the client concerning the matter,
25

1 failing to safeguard the client's property, failing to withdraw from a representation
2 properly by taking steps to safeguard the client's interests, failing to expedite
3 litigation in the interests of his client, all of which violated Ariz.R.Sup.Ct 42,
4 including ERs 1.2, 1.3, 1.4, 1.15, 1.16, 3.2. In addition, Respondent entered into a
5 contingent fee agreement with Ms. Perkins without the required writing signed by
6 the client in violation of ER 1.5(c).
7

8
9 46. Further, by failing to provide a current address to the State Bar
10 Respondent violated Ariz.R.Sup.Ct. 32(c)(3.) and when Respondent failed to
11 respond to the State Bar, Respondent violated Ariz.R.Sup.Ct. 42, ER 8.1(b) and
12 Rules 53(d) and (f).
13

14 47. Respondent's conduct in all the foregoing respects constitutes conduct
15 prejudicial to the administration of justice in violation of Ariz.R.Sup.Ct. 42, ER
16 8.4(d).
17

18 48. Respondent's conduct as described in this Count, including failing to
19 consult with a client concerning a representation, failing to diligently pursue the
20 matter, failing to communicated with the client concerning the matter, failing to
21 safeguard the client's property by failing to return the client's file, by failing to
22 expedite litigation in the interests of his client violated Ariz.R.Sup.Ct. 42,
23 including ERs 1.2, 1.3, 1.4, 1.15, and 3.2 respectively.
24
25

1 actual or potential injury caused by the lawyer's misconduct, and (4) the
2 existence of aggravating or mitigating circumstances. *ABA Standard 3.0*.

3
4 According to the *ABA Standards and In re Cassalia*, 173 Ariz. 372, 843
5 P.2d 654 (1992), where there are multiple acts of misconduct, a lawyer should
6 receive one sanction consistent with the most serious instance of misconduct, and
7 the other acts should be considered as aggravating factors. Respondent engaged
8 in a pattern of a knowing failure to diligently represent clients and communicate
9 with his clients. The most serious misconduct in this case is Respondent's pattern
10 of neglect of clients and his failure to communicate, which actually effected either
11 the outcome of the matters for which Respondent was engaged or which resulted
12 in the transfer of money to the Respondent for which the client did not receive
13 value.
14
15

16 A review of *ABA Standard 4.0 (Violations of Duties Owed to Clients)*
17 indicates that disbarment is the presumptive sanction for Respondent's
18 misconduct. *Standard 4.41 (Lack of Diligence)* specifically provides:
19

20 Disbarment is generally appropriate when:

- 21 (a) a lawyer abandons the practice and causes serious or
22 potentially serious injury to a client; or
- 23 (b) a lawyer knowingly fails to perform services for a client
24 and causes serious or potentially serious injury to a
25 client; or
- (c) a lawyer engages in a pattern of neglect with respect to
client matters and causes serious or potentially serious
injury to a client.

1 The State Bar believes that *Standard 4.41* applies because as attorney of
2 record in active Superior Court cases in file nos. 04-2160 and 05-0188,
3 Respondent should have known that his conduct would work on abandonment of
4 the clients. Further, in both files, the record shows Respondent had personal
5 communications with the clients and made representations about moving forward
6 their cases just prior to abandoning the client. Further, in undertaking the
7 representation of Ms. Bruce before the Arizona Supreme Court Legal Document
8 Preparer Program in file 05-0093, Respondent had knowledge of the proceedings
9 involving Ms. Bruce, cashed checks for fees, and despite these circumstances, he
10 ceased communication with Ms. Bruce and ceased participation in the client's
11 matter.
12
13
14

15 The ABA *Standards* do make distinctions between various levels of actual
16 or potential injury for purposes of determining an appropriate sanction. Generally
17 disbarment is reserved for cases of "serious or potentially serious injury" whereas
18 suspension is generally considered appropriate where the misconduct results in
19 "injury or potential injury." For example, ABA *Standard 4.41* provides for
20 disbarment when a lawyer's lack of diligence causes "serious or potentially
21 serious injury to a client" whereas ABA *Standard 4.42* provides for suspension
22 when the lawyers lack of diligence causes "injury or potential injury to a client."
23
24
25

1 The Commentary to ABA *Standard* 4.41 sites as an example of "serious
2 injury" the case of *The Florida Bar v. Lehman*, 417 So. 2d 648 (Fla. 1982), in
3 which one client's statute limitations ran, and many of 450 abandoned clients
4 never recovered the money they paid to the lawyer as fees. ABA *Standards* at
5 page 32, Commentary to 4.41. In contrast, the commentary to ABA Standard
6 4.42 cites cases in which one client suffered a default judgment which forced her
7 to settle and pay a second lawyer, and two cases in which the clients suffered the
8 loss of the fee. ABA *Standards* at page 33, Commentary to 4.42

11 The State Bar concedes that it did not introduce evidence at the aggravation
12 mitigation hearing sufficient to prove by clear and convincing evidence the "case
13 within the case" and the degree of related "actual injury" with regard to the claims
14 that may or may not have been lost by the clients in any of the three counts.
15 However, the State Bar asserts that the loss of important rights by a client without
16 a "day in court" that results from a lawyer's abandonment of the client is
17 inherently a serious injury.
18

20 Further, the State Bar asserts it did provide clear and convincing evidence
21 of "serious potential injury" to all three clients. In file 04-2160, Ms. Perkins and
22 her son may be stuck with a settlement of very serious and potentially valuable
23 claims without an opportunity to prove the true value of those claims. In file 05-
24 0093, Ms. Bruce suffered a serious injury in the loss of her document preparer
25

1 certificate and whether or not she had a meritorious defense in the case does not
2 negate the potential for "serious injury" that is inherent in Respondent's
3 abandonment of the representation. If Respondent abandoned a client with a
4 meritorious defense and the client thereby lost a document preparer certificate,
5 which would be serious actual injury. In file 05-0188, Ms. Crader-Borgards and
6 her four-year-old son may have lost the opportunity to pursue a wrongful
7 death/medical malpractice claim of significant potential value.
8
9

10 AGGRAVATING AND MITIGATING FACTORS

11 This Hearing Officer then considered aggravating and mitigating factors in
12 this case, pursuant to *Standards* 9.22 and 9.32, respectively.
13

14 This Hearing Officer found five applicable aggravating factors in this
15 matter, not the least of which was the Disciplinary Commissions earlier
16 disbarment of Respondent:

- 17 (a) prior disciplinary offenses;
- 18
- 19 (c) a pattern of misconduct;
- 20 (d) multiple offenses;
- 21 (h) vulnerability of victim; and,
- 22 (i) substantial experience in the practice of law.
- 23

24 This Hearing Officer did not find any mitigating factors present because
25 none was offered.

1 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary
2 proceeding and 9.22(i) substantial experience in the practice of law were found.
3 In addition, the hearing officer found a "knowing" mental state and "actual
4 injury."

6 *In re Apker*, SB-04-0094-D, DC No. 02-1106 (Arizona Supreme Court,
7 08/16/04 By Judgment) (Disbarment after default): Respondent was retained by a
8 mortgage company to close the sale of real estate property. Respondent failed to
9 record the client's deed or mortgage and failed to have a title insurance policy
10 issued. Respondent further failed to respond and cooperate with the State Bar's
11 investigation. ERs 1.1, 1.2, 1.3, 1.4, 8.1(b), 8.4(c), 8.4(d) and SCR's 31(c), 53(d)
12 and (f). Conduct deemed admitted by default. No factors were found in
13 mitigation, and in aggravation factors found included 9.22(a) prior disciplinary
14 offenses (six month and one day suspension in Supreme Court Case No. SB-03-
15 0029-D, (Arizona, 08/23/03)), 9.22(b) dishonest or selfish motive, 9.22(c) pattern
16 of misconduct, 9.22(e) bad faith obstruction of the disciplinary proceeding,
17 9.22(g) refusal to acknowledge wrongful nature of conduct, 9.22(h) vulnerability
18 of the victim, 9.22(i) substantial experience in the practice of law and 9.22(j)
19 indifference to making restitution. The hearing officer also found a knowing
20 mental state and serious injury.
21
22
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1 In *In re Brady*, 186 Ariz. 370, 923 P.2d 836 (1996) the lawyer was
2 disbarred after he abandoned cases of several clients. Mr. Brady violated ERs 1.1
3 (competence), 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.15 (safekeeping
4 property), 1.16 (declining or terminating representation), 3.3 (candor toward the
5 tribunal), 8.1 (bar admission and disciplinary matters), and 8.4 (misconduct).
6 Applicable aggravating factors included a prior disciplinary history and failure to
7 cooperate with the State Bar. No mitigating factors were found. Respondent
8 appeared and participated in some, but not all phases of the disciplinary
9 proceeding.
10 proceeding.

11 RECOMMENDATION

12 The purpose of lawyer discipline is not to punish the lawyer, but to protect
13 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
14 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
15 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
16 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
17 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
18 (1994).
19 (1994).

20 In imposing discipline, it is appropriate to consider the facts of each case,
21 the American Bar Association's *Standards for Imposing Lawyer Sanctions*
22
23
24
25

1 ("Standards") and the proportionality of discipline imposed in analogous cases.
2 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

3
4 Upon consideration of the facts, application of the *Standards*, including
5 aggravating and mitigating factors, and a proportionality analysis, this Hearing
6 Officer recommends the following:

- 7
8 1. Respondent shall be disbarred.
9
10 2. Respondent shall pay restitution in the amount of \$5,056 to Ms. Bruce.
11
12 3. Respondent shall pay the costs and expenses incurred in this
13 disciplinary proceeding.

14 DATED this 27th day of October, 2005.

15 *Stanley R. Lerner*
16 Stanley R. Lerner
17 Hearing Officer 7V

18 Original filed with the Disciplinary Clerk
19 this 27th day of October, 2005.

20 Copy of the foregoing was mailed
21 this 27th day of October, 2005, to:

22 Stewart P. Hoover
23 Respondent
24 6607 North Scottsdale Road, Suite H-102
25 Scottsdale, AZ 85250-4421

and

1 Stewart P. Hoover
2 Respondent
3 P.O. Box 26328
4 Phoenix, AZ 85068

5 and

6 Stewart P. Hoover
7 Respondent
8 15443 North First Street
9 Phoenix, AZ 85022

10 Loren J. Braud
11 Senior Bar Counsel
12 State Bar of Arizona
13 4201 North 24th Street, Suite 200
14 Phoenix, AZ 85016-6288

15 by: Williams

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