

FILED
JUL 20 2005
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: *William*

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF AN INACTIVE) File Nos. 04-0293, 04-0381, 04-0385,
MEMBER OF THE STATE BAR OF) 04-0424, 04-0540, 04-0550, 04-0640,
ARIZONA,) 04-0641, 04-0647, 04-0748
)
KATHLEEN D. MASTERS,) **HEARING OFFICER'S REPORT**
Bar No. 005003)
)
RESPONDENT.)

PROCEDURAL HISTORY

On December 30, 2004, the State Bar filed its formal complaint against respondent in the above-captioned file numbers. On February 2, 2005, a notice of default was filed. Respondent failed to appear or to otherwise defend and on February 25, 2005, an entry of default was filed. Pursuant to Rule 57(d), Arizona Rules of the Supreme Court ("Ariz.R.S.Ct."), Respondent is deemed to have admitted the allegations contained in the State Bar's complaint. Accordingly, Respondent is deemed to have admitted all of the violations as alleged in the complaint and the only issue is the determination of an appropriate sanction.

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Respondent was admitted to practice in Arizona on October 8, 1977.

COUNT ONE (04-0293)
(Bradley)

1
2
3 2. Michael Bradley ("Mr. Bradley") is the president of Safeguard
4 Security and Communications, Inc. ("Safeguard").

5 3. Respondent sent a demand letter to Simply Delicious Sandwiches,
6 Inc. alleging that Mr. Bradley's company was Respondent's client and that Simply
7 Delicious had violated the TCPA by sending faxes to Mr. Bradley's company.
8

9 4. Respondent does not represent Mr. Bradley's company and has never
10 represented his company. Respondent was in fact representing QSMS/FCC
11 Enforcement Co.
12

13 5. QSMS/FCC Enforcement Co. obtained faxes from Mr. Bradley's
14 receptionist without management's consent. The receptionist turned over
15 numerous faxes to QSMS/FCC Enforcement Co. that were from Safeguard's
16 vendors and customers and who had permission from Safeguard to send
17 solicitation faxes.
18

19 6. Respondent never contacted Mr. Bradley to determine whether the
20 faxes were actually unsolicited faxes prior to sending demand letters to
21 Safeguard's vendors and customers.
22

23 7. Mr. Bradley received a list of all the companies Respondent was
24 pursuing supposedly on Safeguard's behalf from Respondent and
25

1 Respondent was asked to purge the names from her files. Mr. Bradley never
2 received confirmation that Respondent did as he asked.

3
4 8. Respondent disregarded Safeguard's legal rights when she pursued
5 TCPA violators on behalf of Safeguard without Safeguard's knowledge or
6 consent.

7
8 9. Respondent violated or attempted to violate the rules of professional
9 conduct, knowingly assisted or induced another to violate the rules of
10 professional conduct, or did so through the acts of another when she pursued TCP
11 A violators on behalf of Safeguard without Safeguard's knowledge or consent
12 and/or when she failed to communicate with Safeguard to determine the
13 authenticity of the assignments Safeguard allegedly made.

14
15 10. Respondent engaged in conduct involving dishonesty, fraud, deceit or
16 misrepresentation when she pursued TCPA violators on behalf of Safeguard
17 without Safeguard's knowledge or consent.

18
19 11. Respondent's conduct in initiating litigation on behalf of Safeguard
20 without Safeguard's permission was prejudicial to the administration of justice.

21
22 12. Respondent's conduct as stated in this count violated Rule 42,
23 Ariz.R.S.Ct., specifically, ERs 4.4(a) and 8.4(a), (c) and (d).

1 settlement discussions, Kirkland advised Mr. Patterson to review the "Hooter's
2 case," and advised Mr. Patterson that the case supported QSMS/FCC
3 Enforcement Co. position.
4

5 20. A mandatory pretrial conference was scheduled for February 20,
6 2004, but Respondent failed to appear and the court dismissed the case.

7 21. Respondent filed a motion to consolidate the Alzheimer's Association
8 and the Geriatric cases after the lawsuit against the Alzheimer's Association had
9 been dismissed. Respondent failed to send a copy of the motion to consolidate to
10 Mr. Patterson.
11

12 22. Respondent filed a frivolous motion to consolidate after the lawsuit
13 against the Alzheimer's Association had been dismissed.
14

15 23. Respondent made a false statement to a tribunal by filing two
16 separate lawsuits based on one fax and by seeking double recovery.
17

18 24. Respondent knowingly disobeyed an obligation under the rules of a
19 tribunal by failing to send a copy of the motion to consolidate to Mr. Patterson
20 and by failing to attend the pretrial conference.

21 25. Respondent did not make reasonable efforts to ensure that her firm
22 had in effect measures giving reasonable assurance that Kirkland's conduct was
23 compatible with Respondent's professional obligation. Kirkland was in control of
24 the litigation decisions on the Hayden case, such as whether to settle and the
25

1 terms of the settlement, and he actively participated in settlement negotiations
2 with Mr. Patterson.

3
4 26. Respondent had direct supervisory authority over Kirkland and failed
5 to make reasonable efforts to ensure that the firm had in effect measures giving
6 reasonable assurance that Kirkland's conduct was compatible with Respondent's
7 professional obligation. Kirkland was in control of the litigation decisions on
8 the Hayden case, such as whether to settle and the terms of the settlement, and he
9 actively participated in settlement negotiations with Mr. Patterson.

10
11 27. Respondent is responsible for Kirkland's conduct because she had
12 direct supervisory authority over Kirkland and had knowledge of his conduct at a
13 time when its consequences could have been avoided or mitigated, but she failed
14 to take reasonable remedial action. Kirkland was in control of the litigation
15 decisions on the Hayden case, such as whether to settle and the terms of the
16 settlement, and he actively participated in settlement negotiations with Mr.
17 Patterson.
18
19

20 28. Respondent assisted Kirkland in performing activities that constitutes
21 the unauthorized practice of law. Kirkland was in control of the litigation
22 decisions on the Hayden case, such as whether to settle and the terms of the
23 settlement, and he actively participated in settlement negotiations with Mr.
24 Patterson.
25

1 29. Respondent violated or attempted to violate the rules of professional
2 conduct, knowingly assisted or induced another to violate the rules of
3 professional conduct, or did so through the acts of another by allowing Kirkland,
4 suspended Arizona attorney, to engage. in the unauthorized practice of law.
5

6 30. Respondent engaged in conduct involving dishonesty, fraud, deceit or
7 misrepresentation by filing two separate lawsuits based on one fax and by
8 seeking double recovery and causing legal fees to accrue to two separate
9 defendants.
10

11 31. Respondent's conduct was prejudicial to the administration of justice
12 by filing two separate lawsuits based on one fax and by seeking double recovery
13 and causing legal fees to accrue to two separate defendants.
14

15 32. Respondent's conduct as stated in this count violated Rule 42,
16 Ariz.R.S.Ct., specifically, ERs 3.1, 3.3(a), 3.4(c), 5.3(a), (b), and (c), 5.5(b), and
17 8.4(a), (c), and (d).
18

19 **COUNT THREE (04-0385)**
20 **(Edwards)**

21 33. Kenneth Edwards ("Mr. Edwards") is the owner of a small, auto
22 parts business. On or about November 23, 2003, Mr. Edwards received a
23 demand letter from Hampton & Associates alleging that his company had
24 violated the TCP A by sending unsolicited faxes to Hampton's client.
25

1 34. Hampton's "client" is not identified in the demand letter, but since
2 the letter was sent along with a copy of a fax that had been sent to Cadillac of
3 Las Vegas, the reader is misled into believing the "client" is Cadillac of Las
4 Vegas.
5

6 35. Sometime in January 2004, Respondent took over Hampton's TCPA
7 cases, which included the Cadillac of Las Vegas matter.
8

9 36. All conversations between Mr. Edwards and the Hampton/Masters
10 firm were crafted in a manner so as to conceal the true identity of their client and
11 to mislead Mr. Edwards and his attorney into believing that the client was in fact
12 Cadillac of Las Vegas.
13

14 37. Mr. Edwards called Cadillac of Las Vegas controller Lisa Tricarico,
15 who assured Mr. Edwards that Respondent did not represent Cadillac of Las
16 Vegas and that neither Hampton nor Respondent had its permission to file
17 lawsuits on its behalf.
18

19 38. Respondent actually represented 47USC227, Inc. 47USC227, Inc. is
20 registered to Hampton & Associates through GoDaddy.com. The address for
21 47USC227, Inc., is the address of the Hampton/Masters law firms. 47USC227,
22 Inc., is not registered with the Arizona Corporation Commission. 47USC227,
23 Inc. is listed with the Arizona Corporation Commission as the manager of QSMS
24 as of August 7, 2003.
25

1 39. Cadillac of Las Vegas's did not assign its rights regarding unsolicited
2 faxes to 47USC227, Inc.

3 40. Respondent acknowledged that the demand letter sent to Mr.
4 Edwards did not clearly identify Respondent's client.
5

6 41. Respondent also acknowledged that the letter and the accompanying
7 fax could mislead someone into thinking that Cadillac of Las Vegas was
8 Respondent's client.
9

10 42. Respondent disregarded Cadillac of Las Vegas's legal rights when
11 she pursued TCPA violators on behalf of Cadillac of Las Vegas without its
12 knowledge or consent.
13

14 43. Respondent's violated or attempted to violate the rules of
15 professional conduct, knowingly assisted or induced another to violate the rules
16 of professional conduct, or did so through the acts of another when she pursued
17 TCP A violators on behalf of Cadillac of Las Vegas without its knowledge or
18 consent and when she failed to determine whether someone in authority had
19 made the alleged assignment of TCPA claims.
20

21 44. Respondent engaged in conduct involving dishonesty, fraud, deceit
22 or misrepresentation when she pursued TCPA violators on behalf of Cadillac of
23 Las Vegas without its knowledge or consent.
24
25

1 45. Respondent's conduct as stated in this count violated Rule 42,
2 Ariz.R.S.Ct., specifically, ERs 4.4 and 8.4(a) and (0).

3
4 **COUNT FOUR (04-0424)**
5 **(Ezzell)**

6 46. Tina M. Ezzell, Esq., ("Ms. Ezzell") represented the defendants in a
7 lawsuit filed by Respondent for alleged TCPA violations.

8 47. Gina Kelly allegedly had claims arising out of violations of the
9 TCPA. Respondent sued Ms. Ezzell's clients after allegedly being assigned Gina
10 Kelly's cause of action with regard to unsolicited faxes.

11 48. Ms. Ezzell's clients denied sending faxes to Gina Kelly.

12 49. Ms. Ezzell filed a motion to dismiss, which Respondent failed to
13 respond to, and the lawsuit was dismissed.

14 50. Respondent then filed a motion for summary judgment, to which she
15 attached her own declaration, alleging she had personal knowledge of the facts.

16 51. Respondent took over the file from Hampton in January 2004. On
17 January 27, 2004, Respondent signed a declaration asserting that she had
18 personal knowledge regarding the fax that had been sent to Ms. Kelly. The
19 declaration was an exhibit attached to Respondent's motion for summary
20 judgment filed on behalf of the plaintiffs. Respondent did not have personal
21 knowledge about the sending of the fax.
22
23
24
25

1 52. Respondent filed a frivolous motion for summary judgment because
2 the case had been dismissed and there were outstanding discovery requests from
3 Ms. Ezzell.
4

5 53. Respondent made a false statement to a tribunal when she stated in
6 her declaration that she had personal knowledge of the facts regarding the
7 sending of the fax.
8

9 54. Respondent knowingly disobeyed an obligation under the rules of a
10 tribunal when she failed to respond to Ms. Ezzell's motion to dismiss, when she
11 filed the motion for summary judgment while there were outstanding discovery
12 requests, and when she stated in her declaration that she had personal knowledge
13 of the facts.
14

15 55. Respondent violated or attempted to violate the roles of professional
16 conduct, knowingly assisted or induced another to violate the roles of
17 professional conduct, or did so through the acts of another when she pursued Ms.
18 Ezzell's client for TCP A violations without providing Ms. Ezzell information
19 about Ms. Kelly and the alleged assignment of the claim to Respondent's client.
20

21 56. Respondent engaged in conduct involving dishonesty, fraud, deceit
22 or misrepresentation when she failed to respond to Ms. Ezzell's motion to
23 dismiss, when she filed the motion for summary judgment while there were
24
25

1 outstanding discovery requests, and when she stated in her declaration that she
2 had personal knowledge of the facts.

3
4 57. Respondent's conduct in filing a false declaration was prejudicial to
5 the administration of justice.

6 58. Respondent's conduct as stated in this count violated Rule 42,
7 Ariz.R.S.Ct., specifically, ERs 3.1, 3.3(a), 3.4(c), and 8.4(a), (c), and (d).

8
9 **COUNT FIVE (04-0540)**
10 **(Davis)**

11 59. Mr. Davis is the managing partner of Geek Force LLC ("Geek
12 Force") and KND Marketing Services LLC ("KND"). Respondent sued Geek
13 Force and KND in the North Valley Justice Court for allegedly sending
14 unsolicited faxes to Hayden Carpet and Tile. Hayden Carpet and Tile allegedly
15 assigned their rights under TCPA to QSMS/FCC Enforcement Co.
16

17 60. Respondent advised Kirkland to appear at a pre-hearing conference
18 because she had a conflict with another court appearance. Kirkland submitted the
19 pre-hearing form that was filed by the hearing officer. The form named Kirkland
20 as the person who appeared on behalf of QSMS/FCC Enforcement Co.
21

22 61. Mr. Davis talked to the owner of Hayden Carpet and Tile and the
23 owner does not recall receiving a fax from Mr. Davis.

24 62. Respondent signed a declaration asserting that she had personal
25 knowledge that Mr. Davis sent a fax to Hayden Carpet and Tile. The declaration

1 was an exhibit attached to Respondent's motion for summary judgment filed on
2 behalf of the plaintiffs in Mr. Davis's matter. Respondent did not have personal
3 knowledge about the sending of the fax.
4

5 63. Respondent filed a frivolous declaration regarding the motion for
6 summary judgment.

7 64. Respondent made a false statement to a tribunal by filing the false
8 declaration.
9

10 65. Respondent assisted Kirkland in performing activities that constitutes
11 the unauthorized practice of law by having Kirkland appear in court on behalf of
12 QSMS/FCC Enforcement Co.
13

14 66. Respondent violated or attempted to violate the rules of Professional
15 conduct, knowingly assisted or induced another to violate the rules of
16 professional conduct, or did so through the acts of another when she failed to
17 confirm with anyone in authority at Hayden whether Hayden in fact had assigned
18 its claims under the TCP A to QSMS/FCC Enforcement Co.
19

20 67. Respondent engaged in conduct involving dishonesty, fraud, deceit
21 or misrepresentation when she filed a false declaration.
22

23 68. Respondent's conduct was prejudicial to the administration of justice
24 when she filed a false declaration.
25

1 73. Ms. Drubin placed a conference call and had Brad on the telephone
2 with the "blast-fax" company. The company assured Brad that All Fund was not
3 a client of theirs and they had never faxed anything on behalf of All Fund.
4

5 74. Brad told Ms. Drubin he would send a release within 3 days. Ms.
6 Drubin called Brad again when the release did not arrive. Brad stated that he
7 would not release All Fund as All Fund had sent a fax to a company called La
8 Mida Homes ("La Mida") and Hampton was now suing on La Mida's behalf.
9

10 75. Ms. Drubin contacted the owner of Desert Motor Sports and the
11 owner of Safeguard Securities Communications. The owners of the two
12 companies told Ms. Drubin they were not involved in any TCPA litigation and
13 they did not authorize QSMS/FCC Enforcement Co. to sue on their behalf.
14

15 76. Ms. Drubin called La Mida and talked to Becky. When asked if La
16 Mida wanted to receive faxes from Ms. Drubin, Becky said yes.
17

18 77. La Mida did not retain Hampton & Associates, did not sue Ms.
19 Drubin or All Fund, and did not want to be involved in a lawsuit.

20 78. On January 19, 2004, Respondent sent Ms. Drubin a notice and
21 stipulation for substitute of counsel in the Desert Motor Sports action.
22

23 79. Ms. Drubin also received 22 notices from Respondent, indicating her
24 clients' intent to sue All Fund.
25

1 80. On February 6, 2004, Ms. Drubin received a motion for summary
2 judgment in the Desert Motor Sports action. Attached to the motion was
3 Respondent's declaration that she had personal knowledge of the facts stated in
4 the motion; however, the name of the person or company who received the faxes
5 was left blank.
6

7 81. Respondent did not have personal knowledge of the facts stated in
8 her motion for summary judgment.
9

10 82. Respondent maintained a frivolous lawsuit against All Fund.

11 83. Respondent made a false statement to a tribunal by stating in a
12 declaration that she had personal knowledge that All Fund had faxed flyers to her
13 client.
14

15 84. Respondent knowingly disobeyed an obligation under the rules of a
16 tribunal by failing to ascertain the truth of her statements prior to filing a false
17 declaration with the court.
18

19 85. Respondent violated or attempted to violate the rules of professional
20 conduct, knowingly assisted or induced another to violate the rules of
21 professional conduct, or did so through the acts of another by allowing
22 employees to harass Ms. Drubin.
23

24 86. Respondent engaged in conduct involving dishonesty, fraud, deceit
25 or misrepresentation when she filed her false declaration with the court.

1 Valdez and instructed Valdez to fax it back to the defendant. Respondent was
2 neither consulted about nor was she present when this incident occurred.

3
4 107. Respondent did not make reasonable efforts to ensure that her firm
5 had in effect measures giving reasonable assurance that Kirkland's conduct was
6 compatible with Respondent's professional obligation. Kirkland settled a TCPA
7 matter by signing a stipulation agreement as an attorney.

8
9 108. Respondent had direct supervisory authority over Kirkland and failed
10 to make reasonable efforts to ensure that the firm had in effect measures giving
11 reasonable assurance that Kirkland's conduct was compatible with Respondent's
12 professional obligation. Kirkland settled a TCPA matter by signing a stipulation
13 agreement as an attorney.

14
15 109. Respondent is responsible for Kirkland's conduct because she had
16 direct supervisory authority over Kirkland and had knowledge of his conduct at a
17 time when its consequences could have been avoided or mitigated, but she failed
18 to take reasonable remedial action. Kirkland settled a TCPA matter by signing a
19 stipulation agreement as an attorney.

20
21 110. Respondent assisted Kirkland in performing activities that constitutes
22 the unauthorized practice of law. Kirkland settled a TCPA matter by signing a
23 stipulation agreement as an attorney.
24
25

1 116. Respondent used means that had no substantial purpose other than to
2 embarrass, delay or burden a third person when she sent a demand letter to Sun
3 Radiology indicating she represented Dr. Singh when she did not.
4

5 117. Respondent engaged in conduct involving dishonesty, fraud, deceit
6 or misrepresentation when she sent a demand letter to Sun Radiology indicating
7 she represented Dr. Singh when she did not.
8

9 118. Respondent's conduct as stated in this count violated Rule 42,
10 Ariz.R.S.Ct., specifically) ERs 4.4 and SA(c).
11

12 **CONCLUSIONS OF LAW SUMMARIZED**

13 This hearing officer finds that there is clear and convincing evidence that
14 Respondent violated Rule 42, Ariz.R.S.Ct., ERs 3.1, 3.3(a), 3.4(c), 4.4, 5.3(a),
15 (b), and (c), 5.5, and 8.4(a), (c) and (d). More specifically, Respondent failed to
16 properly supervise Charles St. George Kirkland ("Mr. Kirkland"), a suspended
17 Arizona attorney, resulting in numerous violations of the ethical rules, including:
18 allowing Mr. Kirkland to engage in the unauthorized practice of law, allowing
19 Mr. Kirkland to file and maintain frivolous lawsuits that appeared to be done on
20 respondent's behalf, by allowing Mr. Kirkland to serve irrelevant and unduly
21 burdensome discovery requests that appeared to be done on respondent's behalf,
22 by failing to supervise other non-attorney employees under Mr. Kirkland's
23 supervision, all of which resulted in prejudice to the administration of justice,
24
25

1 failing to make reasonable efforts to ensure that the conduct of Mr. Kirkland,
2 over whom respondent had direct supervisory authority, was compatible with
3 respondent's professional obligations, and failed to take reasonable remedial
4 action with respect to conduct by Mr. Kirkland. Respondent also filed pleadings
5 in lawsuits attesting to personal knowledge of facts, when in fact she had no
6 personal knowledge.
7

8
9 **Totals of Rule violations:**

10	ER 3.1	4 violations
11	ER 3.3(a)	4 violations
12	ER 3.4(c)	3 violations
13	ER 4.4	5 violations
14	ER 5.3(a) (b) and (c)	2 violations
15	ER 5.5(b)	3 violations
16	ER 8.4(a)	7 violations
17	ER 8.4(c)	9 violations
18	ER 8.4(d)	6 violations

19
20
21
22 **ABA STANDARDS**

23
24 In determining the appropriate sanction in a disciplinary matter, the
25 analysis should be guided by the principle that the ultimate purpose of discipline

1 is not to punish the lawyer, but to set a standard by which other lawyers may be
2 deterred from such conduct while protecting the interests of the public and the
3 profession. *In re Kersting*, 151 Ariz. 171, 726 P. 2d 587 (1986).
4

5 In determining the appropriate sanctions, the State Bar considered both the
6 *American Bar Association's Standards for Imposing Lawyer Sanctions* ("the
7 *Standard(s)*") and applicable case law.
8

9 ABA *Standard* 3.0 provides that four criteria should be considered: (1) the
10 duty violated; (2) the lawyer's mental state and (3) the actual or potential injury
11 caused by the lawyer's misconduct; and (4) the existence of aggravating or
12 mitigating factors.
13

14 The Supreme Court and the Disciplinary Commission consistently use the
15 *Standards* to determine appropriate sanctions for attorney discipline. See *In re*
16 *Clark*, 207 Ariz. 414, 416 n.2, 87 P.3d 827, 829 n.2 (2004). The *Standards* are
17 designed to promote consistency in sanctions by identifying relevant factors the
18 court should consider and then applying these factors to situations in which
19 lawyers have engaged in various types of misconduct. *Standard* 1.3,
20
21 Commentary.
22

23 *Standard* 6.1 addresses the conduct involved in the violation of ER 3.3:

24 Suspension is generally appropriate when a lawyer knows that false
25 statements or documents are being submitted to the court or that material
information is improperly being withheld, and takes no remedial action,

1 and causes injury or potential injury to a party to the legal proceeding, or
2 causes an adverse or potentially adverse effect on the legal proceeding

3 Respondent engaged in conduct involving dishonesty, fraud, deceit or
4 misrepresentation when she stated in her declaration to motions for summary
5 judgment that she had personal knowledge of the facts.

6
7 *Standard 6.2* addresses the conduct involved in the violation of ERs 3.1,
8 3.4 and 4.4:

9 Suspension is appropriate when a lawyer knowingly violates a court
10 order or rule, and there is injury or potential injury to a client or a
11 party, or interference or potential interference with a legal
12 proceeding.

13 Respondent engaged in conduct that violated court rules when she failed to
14 respond to motions and when she filed motions for summary judgment when
15 there were outstanding discovery requests or when the matter had already been
16 dismissed,

17 The Arizona Supreme Court has noted that the issue of failure to
18 adequately supervise a non-lawyer assistant is "not specifically addressed" by the
19 *Standards. Matter of Miller*, 178 Ariz. 257, 259, 872 P.2d 661, 663 (1994). The
20 most nearly applicable *Standard* is *Standard 7.2*:

21
22 Suspension is generally appropriate when a lawyer knowingly
23 engages in conduct that is a violation of a duty owed as a
24 professional and causes injury or potential injury to a client, the
25 public, or the legal system.

1 Respondent failed to prevent Mr. Kirkland from misrepresenting his status
2 to litigants who called the Masters Law firm and failed to prevent Mr. Kirkland
3 from taking actions in respect to litigation that could properly be made only by a
4 licensed attorney.

6 Respondent knowingly violated her duties resulting in actual harm to the
7 legal system, the profession and the public.

8
9 A. The duty violated

10 Respondent violated her duties as a member of the profession, to the legal
11 system and to the public by: (1) failing to prevent Mr. Kirkland from
12 misrepresenting his status to litigants who called the Masters Law firm, (2)
13 failing to prevent Mr. Kirkland from taking actions in respect to litigation that
14 could properly be made only by a licensed attorney, (3) failing to prevent Mr.
15 Kirkland from engaging in litigation abuse, (4) filing frivolous lawsuits against
16 members of the public, causing them to retain attorneys to defend against
17 questionable claims and lawsuits, and (5) appearing to be involved in a scam to
18 defraud the public.

21 B. The lawyer's mental state

22 Respondent's failure to prevent Mr. Kirkland's misconduct was knowing.
23 Respondent had an affirmative duty to prevent Mr. Kirkland from
24 misrepresenting his status as an attorney, and she knew or should have known
25

1 that Mr. Kirkland was not conforming to respondent's directives. Respondent's
2 own misconduct, in filing numerous pleadings that violated court rules, was also
3 knowing.
4

5 C. The potential or actual injury caused by respondent's conduct

6 As a result of respondent's conduct, a number of litigants involved in
7 lawsuits with respondent's firm were misled into believing that Mr. Kirkland was
8 a licensed attorney, when in fact he was suspended. Also, opposing litigants were
9 subjected to potential injury because there was a possibility of Mr. Kirkland
10 making inappropriate legal decisions that a licensed attorney would not make.
11 Respondent's conduct caused actual harm to the profession and the legal system
12 by appearing to be involved in a scam to defraud the public.
13
14

15 As the *Standards* do not account for multiple charges of misconduct, the
16 ultimate sanction imposed should at least be consistent with the sanction for the
17 most serious instance of misconduct among a number of violations. *Standards*,
18 Theoretical Framework at pg. 6; *Matter of Redeker*, 177 Ariz. 305, 868 P.2d. 318
19 (1994).
20

21 Based on the foregoing, the presumptive sanction for the admitted conduct
22 is suspension. After determining the presumptive sanction, it is appropriate to
23 evaluate factors enumerated in the *Standards* that justify an increase or decrease
24 in the presumptive sanction.
25

1 **AGGRAVATING AND MITIGATING FACTORS**

2 This Hearing Officer then considered aggravating and mitigating
3 factors in this case, pursuant to *Standards* 9.22 and 9.32, respectively.
4

5 Standard 9.22(c) – Pattern of misconduct. The Hearing Officer in
6 recommending an appropriate sanction should consider respondent’s prior course
7 of conduct. In this case, the misconduct occurred while respondent was
8 participating in the State Bar’s diversion program in connection with an
9 unrelated discipline file. Respondent has continued to engage in the same
10 behavior despite being on notice.
11

12 Standard 9.22(d) – Multiple offenses. Respondent’s failure to curtail Mr.
13 Kirkland’s actions related to a large number of separate lawsuits.
14

15 *Matter of Galbasini* – Large number of potential victims. In *Matter of*
16 *Galbasini*, 163 Ariz. 120, 786 P.2d 971 (1990), the Arizona Supreme Court
17 stated that, although this factor did not fit exactly into the *Standards*, it believed
18 that the “large and potentially larger” number of clients and members of the
19 public who could have been damaged by an attorney’s failure to supervise non-
20 lawyers under his direct supervision could be considered an aggravating factor.
21
22 *Id.*, 163 Ariz. at 126, 786 P.2d at 977.
23

24 Standard 9.22(i) – Substantial experience in the practice of law.
25 Respondent has been an Arizona attorney since October 8, 1977.

1 giving rise to numerous ethical violations, including but not limited to fourteen
2 violations of ER 5.3. Although there may often be some question of what is a
3 reasonable effort to ensure proper conduct by nonlawyer employees, at a
4 minimum the lawyer must screen, instruct, and supervise. Struthers was
5 disbarred.
6

7 In *Matter of Galbasini*, 163 Ariz. 120, 786 P.2d 971, the Arizona Supreme
8 Court approved the imposition of a six-month suspension for an attorney who,
9 *inter alia*, failed to properly control non-lawyers under his supervision. The
10 attorney had entered into an agreement with a debt-collection company that was
11 not licensed to operate in Arizona, and essentially permitted the company “to
12 operate a law office in his . . . name,” exercising “no supervision whatsoever”
13 over the non-lawyer employees who handled debt-collection matters while
14 representing that they were acting by and for his law practice. *Id.*, 163 Ariz. at
15 124, 126, 786 P.2d at 975, 977. The company’s non-lawyer employees solicited
16 legal business on his behalf and failed to abide by the ethical obligations that
17 would be applicable to attorneys in their position, including by failing to remit
18 funds owed to a client and failing to communicate with a client for several
19 months.
20
21
22
23

24 This case is similar to *In re Struthers* and *In re Galbasini*, in that when
25 Kirkland was suspended, he first had David Hampton take over his law office and

1 run it as Hampton & Associates, then when Hampton left, he had Masters take
2 over as the Masters Law office. Respondent allowed Kirkland to have absolute
3 control over the TCPA litigation and she failed to investigate matters when it
4 became apparent to her, or should have been apparent to her, that there were
5 numerous telephone calls from defendants and numerous filings with the State
6 Bar. Respondent failed to adequately supervise Mr. Kirkland, a suspended
7 attorney, who repeatedly held himself out as a licensed attorney and made legal
8 decisions in matters under respondent's supervision. Respondent also failed to
9 supervise any of the non-lawyer staff that reported to Mr. Kirkland.
10
11

12 On June 24, 2005, this hearing officer ordered the parties to file separate
13 memoranda on or before Friday, July 1, 2005, addressing the potential impact and
14 disparity of this hearing officer's recommended sanction in the Hampton matter
15 versus the State Bar's recommended sanction in the instant case.
16

17 The basis for the State Bar's recommended sanction of a six month
18 and one day suspension in this matter versus the 90-day suspension recommended
19 in Mr. Hampton's case involves application of the mitigating and aggravating
20 factors identified by the State Bar. Specifically, the State Bar has recommended a
21 longer suspension for Respondent based on her failure in the past to comply with
22 discipline sanctions, and the number of the aggravating factors.
23
24
25

1 The State Bar Adjudicative Review Team considered all three cases before
2 coming to a consensus as to the appropriate sanction to recommend in each.
3 Based on the *American Bar Association's Standards for Imposing Lawyer*
4 *Sanctions* ("the ABA Standard(s)") and applicable case law, Mr. Hampton was
5 offered, and agreed to accept, a 90-day suspension for his misconduct. Mr.
6 Kirkland was offered, and agreed to accept, a two-year suspension for his
7 misconduct. Both matters are pending before the Disciplinary Commission and
8 neither is final at this time.

11 Additionally, both Mr. Hampton and Mr. Kirkland cooperated with the
12 State Bar in either immediately entering into a consent agreement, or entering
13 into a consent agreement after an answer was filed, but before a hearing was held.
14 In this case, Respondent failed to respond to the State Bar's complaint, which
15 Respondent had a duty to answer. *In re Jones*, 169 Ariz. 19, 21, 816 P.2d 916
16 (1991). The Disciplinary Clerk¹ filed a Notice of Default on February 2, 2005,
17 and when Respondent still failed to file an answer, Entry of Default was entered
18 on February 25, 2005.

21 As Respondent stated at the hearing, she did "not ask[] enough questions,

24 ¹ Rule 57(d), Ariz.R.S.Ct.:

25 If respondent fails to answer within the prescribed time, the disciplinary clerk shall ... file and serve a copy of the notice of default upon respondent and bar counsel. ... [A] default shall be entered by the disciplinary clerk ten days after the notice of default is filed and served and the allegations in the complaint shall be deemed admitted.

1 [and did] not investigat[e] thoroughly enough at the time that [she] agreed to take
2 over the [TCPA] cases from David Hampton.” Respondent had enough
3 experience that she should have realized she needed to investigate more
4 thoroughly from the beginning.
5

6 By comparison, Mr. Hampton was only a few years out of law school at the
7 time of the misconduct and Mr. Kirkland was the only attorney with whom Mr.
8 Hampton had worked for any sustained period of time. Mr. Hampton also was
9 subjected to a number of stressful circumstances, including his wife’s difficult
10 pregnancy, his attempts to handle Mr. Kirkland’s former clients, his staff’s
11 tendency to continue taking direction from Mr. Kirkland, rather than from him,
12 and his own untreated depression.
13
14

15 In Mr. Hampton’s case, there were two aggravating factors and five
16 mitigating factors. The Hearing Officer found (a) absence of a prior disciplinary
17 record, (b) personal or emotional problems, (c) full and free disclosure to
18 disciplinary board or cooperative attitude, (d) inexperience in the practice of law,
19 and (remorse). Only one of these mitigating factors is present in Respondent’s
20 case.
21

22 In that regard, none of the factors listed by Respondent in her
23 Memorandum of Aggravation and Mitigation as mitigating factors are factors
24 recognized by the *ABA Standards*.
25

1 In imposing discipline, it is appropriate to consider the facts of the case, the
2 American Bar Association's *Standards for Imposing Lawyer Sanctions*
3 (*"Standards"*) and the proportionality of discipline imposed in analogous cases.
4 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
5

6 Upon consideration of the facts, application of the *Standards*, including
7 aggravating and mitigation factors, and a proportionally analysis, this Hearing
8 Officer recommends the following:
9

10 1. Respondent shall be suspended from the practice of law for six months
11 and one day. Given the three aggravating factors it is incumbent upon respondent
12 to prove rehabilitation prior to being reinstated; therefore it is necessary that
13 respondent be suspended for at least six months and one day.
14

15 2. Upon reinstatement, Respondent shall serve a two-year term of probation
16 under the terms and conditions to be determined at the time of reinstatement,
17 including participation in the State Bar's Member Assistance Program (MAP) and
18 Law Office Management Assistance Program (LOMAP).
19

20 In the event that Respondent fails to comply with any of the foregoing
21 conditions, and the State Bar receives information, bar counsel shall file with the
22 Hearing Officer a Notice of Non-Compliance, pursuant to Rule 60(a)5,
23 Ariz.R.S.Ct. The Hearing Officer shall conduct a hearing within thirty days after
24 receipt of said notice, to determine whether the terms of probation have been
25

1 violated and if an additional sanction should be imposed. In the event there is an
2 allegation that any of these terms have been violated, the burden of proof shall be
3 on the State Bar of Arizona to prove non-compliance by clear and convincing
4 evidence.
5

6 3. Respondent shall pay the expenses and costs of the disciplinary
7 proceedings.
8

9
10 DATED this 20th day of July, 2005.

11
12 
13 Robert J. Lord
14 Hearing Officer 6L

15 Original filed with the Disciplinary Clerk
16 this 20th day of July, 2005.

17 Copy of the foregoing was mailed
18 this 20th day of July, 2005, to:

19 Kathleen D. Masters
20 Respondent
21 4430 North 23rd Avenue
22 Phoenix, AZ 85015

23 and

24 Kathleen D. Masters
25 Respondent
26 2421 West Montebello
27 Phoenix, AZ 85014

1 and

2 Kathleen D. Masters
3 Respondent
4 309 West Mariposa
Phoenix, AZ 85013

5 Shauna R. Miller
6 Senior Bar Counsel
7 State Bar of Arizona
4201 N. 24th Street, Suite 200
8 Phoenix, AZ 85016-6288

9 by: PhWilliams

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