

FILED

OCT 28 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 AN INACTIVE)	No. 05-0341
MEMBER OF THE STATE BAR OF)	
ARIZONA,)	
)	
KATHLEEN D. MASTERS,)	
Bar No. 005003)	
)	HEARING OFFICER'S REPORT
RESPONDENT.)	

PROCEDURAL HISTORY

A Probable Cause Order was filed on May 23, 2005. A Complaint was filed on July 12, 2005. Respondent filed an Answer on July 25, 2005. A settlement conference was scheduled for September 1, 2005. The State Bar then filed a Notice of Settlement; therefore, the settlement conference was vacated. A Tender of Admissions and Agreement for Discipline by Consent (Tender) and Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent (Joint Memo) were filed on September 27, 2005. A hearing was not held.

1 **FINDINGS OF FACT**

2 1. At all times relevant, Respondent was an attorney licensed to
3 practice law in the State of Arizona, having been admitted to practice in Arizona
4 on October 8, 1977.

5
6 2. A probable-cause order was entered on May 23, 2005. the probable
7 cause order is attached to the formal complaint that was filed on July 12, 2005.

8
9 3. A hearing has not been held in this matter.

10 4. Carra Harwell ("Ms. Harwell") retained Respondent on September
11 16, 2004, to prepare the necessary paperwork to have Ms. Harwell appointed as
12 the personal representative to her daughter's estate.

13
14 5. Ms. Harwell paid Respondent a total of \$1,416.00 for the
15 representation.

16 6. If this matter were to go to hearing, Respondent would testify that
17 she instructed her paralegal Renita Brokaw to prepare the necessary documents,
18 under Respondent's supervision, and to mail the documents, together with a letter
19 advising how to complete the documents to Ms. Harwell. Ms. Harwell completed
20 the documents and mailed them back to Respondent. For purposes of this
21 agreement, the State Bar does not contest Respondents proffered testimony.
22

23
24 7. Ms. Harwell did not hear from Respondent for five months. Ms.
25 Harwell tried to call Respondent but Respondent's voice mailbox was always full.

1 8. Ms. Harwell then called Respondent's paralegal, Renita Brokaw
2 ("Ms. Brokaw"). At first, Ms. Brokaw told Ms. Harwell she was sure Respondent
3 had filed the paperwork, later she told Ms. Harwell that Respondent had
4 disappeared.
5

6 9. Ms. Brokaw advised Ms. Harwell to call the probate registrar to see
7 if she had been appointed as her daughter's personal representative. The probate
8 registrar informed Ms. Harwell that nothing had been filed on her behalf.
9

10 10. In response to the State Bar's charging letter, Respondent provided
11 the State Bar with a copy of her April 4, 2005, letter to Ms. Harwell. In her letter
12 to Ms. Harwell, Respondent states, "due to serious health and personal problems
13 [she has] had to withdraw from the practice of law."
14

15 11. On April 24, 2005, over seven months after she was retained and
16 over two months after Ms. Harwell filed her complaint with the State Bar,
17 Respondent refunded Ms. Harwell her \$1,416.00.
18

19 CONDITIONAL ADMISSIONS

20 Respondent conditionally admits that her conduct, as set forth above,
21 violated the following Rules of Professional Conduct and the Rules of the
22 Supreme Court:
23

24 1. By failing to competently represent Ms. Harwell, Respondent violated
25 ER 1.1.

1 suspension is the presumptive sanction for Respondent's misconduct. *Standard*
2 7.2 specifically provides:

3 Suspension is generally appropriate when a lawyer
4 knowingly engages in conduct that is a violation of a duty
5 owed as a professional, and causes injury or potential injury
6 to a client, the public, or the legal system.

7 *Standard* 4.42 (Lack of Diligence) specifically provides:

8 Suspension is generally appropriate when:
9 (a) a lawyer knowingly fails to perform services for a client
10 and causes injury or potential injury to a client; or
11 (b) a lawyer engages in a pattern of neglect and causes
12 injury or potential injury to a client.

13 The parties agree that due to Respondent's failures to pursue the
14 probate/personal representative matter, there was a potential for injury to
15 Respondent's client who needed to determine the status of her daughter's estate
16 but could not do so until she was appointed as the personal representative by the
17 probate court. However, the parties agree that Respondent's clients suffered no
18 actual injury. In addition, Respondent knew or should have known that her
19 conduct was inappropriate.
20

21
22 **AGGRAVATING AND MITIGATING FACTORS**

23 This Hearing Officer then considered aggravating and mitigating factors in
24 this case, pursuant to *Standards* 9.22 and 9.32, respectively.
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1 This Hearing Officer agrees with the parties that there are two applicable
2 aggravating factors in this matter:

- 3 (a) prior disciplinary offenses;¹ and,
4
5 (i) substantial experience in the practice of law.²

6 This Hearing Officer agrees with the parties that two factors are present in
7 mitigation:

- 8 (b) absence of a dishonest or selfish motive; and,
9
10 (e) full and free disclosure to disciplinary board or cooperative attitude
11 toward proceedings.

12 PROPORTIONALITY REVIEW

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14
15 To have an effective system of professional sanctions, there must be
16 internal consistency, and it is appropriate to examine sanctions imposed in cases
17 that are factually similar. *Peasley, supra*, at ¶ 33, 90 P.3d at 772. However, the
18 discipline in each case must be tailored to the individual case, as neither
19 perfection nor absolute uniformity can be achieved. *Id.* at ¶ 61, 90 P.3d at 778,
20 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines* 135
21 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).
22
23

24
25 ¹ See Joint Memo.

² Respondent was admitted in 1977.

1 The cases set forth below demonstrate that a period of suspension is an
2 appropriate disciplinary response.

3 In *In re Weber*, SB-05-0034-D (2005), the Hearing Officer, Disciplinary
4 Commission and the Supreme Court approved the parties' Tender of Admissions
5 and Agreement for Discipline by Consent and Joint Memorandum in Support of
6 Discipline by Consent providing for a suspension of six-months and one day,
7 probation upon reinstatement and restitution. Weber admitted to knowingly
8 causing harm to his clients by violating ERs 1.3, 1.4, 1.16(d), 3.4(c), 8.1(b), Rule
9 42, Ariz.R.S.Ct. and Rules 51(h) and 53(d), Ariz.R.S.Ct. Weber failed to act with
10 reasonable diligence and promptness, failed to keep his clients reasonably
11 informed about the status of their matters, failed to promptly comply with clients'
12 reasonable requests for information, failed to explain matters to the extent
13 necessary to permit clients to make informed decisions regarding representation,
14 and failed to surrender documents and property belonging to the clients. Weber
15 also failed to comply with a lawful demand for information from a disciplinary
16 authority. There were two aggravating factors found: a pattern of misconduct,
17 *Standard 9.22(c)*, and multiple offenses, *Standard 9.22(d)*. The parties agreed
18 that the absence of a prior disciplinary record, *Standard 9.32(a)*; absence of a
19 dishonest or selfish motive, *Standard 9.32(b)*; personal and emotional problems,
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1 *Standard 9.32(c)*; and remorse, *Standard 9.32(l)*, were appropriate mitigating
2 factors.

3
4 In *In re Clark*, SB-04-0086-D (2004), Clark received a suspension of six-
5 months and one-day and two years probation. Clark's misconduct involved three
6 separate client matters and included, failing to abide by his client's decisions
7 concerning the objectives of the representation and to consult with his client as to
8 the means by which the objectives are to be pursued; failing to act with
9 reasonable diligence and promptness in representing a client; failing to keep his
10 client reasonably informed about the status of the matter and to comply with
11 reasonable requests for information; failing to safeguard his client's property and
12 to render a full accounting upon request of the client; failing to protect his client's
13 interests upon termination of the representation, including failing to return
14 documents and property to which the client is entitled and to refund any advance
15 payment of a fee that had not been earned; engaging in conduct prejudicial to the
16 administration of justice; and failing to provide prompt and thorough responses to
17 the disciplinary investigations. Clark was found to have caused actual injury to
18 his clients when he knowingly violated ERs 1.2, 1.3, 1.4, 1.15, 1.16(d) and 8.4(d),
19 Rule 42, Ariz.R.S.Ct., and Rule 51(h), Ariz.R.S.Ct. There were six factors found
20 in aggravation, including prior disciplinary offenses, *Standard 9.22(a)*; a pattern
21 of misconduct, *Standard 9.22(c)*; multiple offenses, *Standard 9.22(d)*; bad faith
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1 obstruction of the disciplinary process by intentionally failing to comply with
2 rules or orders of the disciplinary agency, *Standard 9.22(e)*; substantial
3 experience in the practice of law, *Standard 9.22(i)*; and indifference to making
4 restitution, *Standard 9.22(j)*. There were no factors found in mitigation.

6 In *In re Ruiz*, 2002 Ariz. LEXIS 88, SB-02-0064-D (2002) Ruiz agreed to a
7 retroactive suspension of six-months and restitution for violation of ERs 1.2, 1.3,
8 1.4, 1.5, 1.15, 1.16, 3.2, 8.4 and Rule 63, Ariz.R.S.Ct.³ Ruiz failed to return a
9 number of his client's calls, failed to advise his client that he had not filed a
10 bankruptcy petition on his behalf, failed to inform the client of his new address
11 and telephone number, failed to inform the client that he had been suspended
12 from the practice of law in Arizona and failed to return any of the client's original
13 documents. There were four aggravating factors and five mitigating factors. The
14 *Ruiz* Disciplinary Commission stated:
16

17 Although the Respondent's conduct in the instant matter
18 supports a censure, the Respondent's prior disciplinary
19 record, which supports a pattern of misconduct, in
20 addition to the Respondent's failure to return unearned
21 fees is basis for a greater sanction of suspension. The
22 Respondent is currently suspended and has not yet
23 applied for reinstatement. As a result of the
24 Respondent's prior two-year suspension, he will be
25 required to apply for reinstatement, pursuant to Rule
71(d). With regard to the instant matter, the Respondent

³ Rule 72, Ariz. R. S. Ct., effective December 1, 2003.

1 will also be required to submit an affidavit of
2 reinstatement, pursuant to Rule 71(c).

3 The facts in the instant case are somewhat different from those set forth in
4 Ruiz in that Ruiz was already serving a period of suspension at the time of the
5 discussed discipline, whereas the final disposition of Respondent's other formal
6 matter is still pending.
7

8 In *In re Axford*, 2000 Ariz. LEXIS 104, SB-00-0068-D (2000), Axford was
9 suspended for six-months and one-day, placed on two-years of probation and
10 ordered to pay restitution for violating ERs 1.2, 1.3, 1.4, 1.4(a), 1.4(b), 1.5(a),
11 1.5(c), 3.1, 3.2 and 8.4(d), Rule 42 Ariz.R.S.Ct.. Aggravation factors included a
12 pattern of misconduct, multiple offenses, and obstruction of a disciplinary
13 proceeding. Mitigating factors included no prior disciplinary record; lack of
14 dishonest or selfish motive, and personal and emotional problems.
15
16

17 Again, the facts in Respondent's case are different that Axford in that
18 Respondent has cooperated with the instant disciplinary proceedings and, unlike
19 Axford, the complaint filed in the instant case involved only one count.
20

21 Each of the cited cases relates to failures of competent and diligent
22 representation of clients, failures to communicate with clients and as well as
23 failures to return client property and terminating the representation and support
24 the recommended sanction given the facts of the instant case.
25

1 **RECOMMENDATION**

2 The purpose of lawyer discipline is not to punish the lawyer, but to protect
3 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
4 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
5 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
6 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
7 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
8 (1994).
9

10
11 In imposing discipline, it is appropriate to consider the facts of each case,
12 the American Bar Association's *Standards for Imposing Lawyer Sanctions*
13 (*"Standards"*) and the proportionality of discipline imposed in analogous cases.
14 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
15

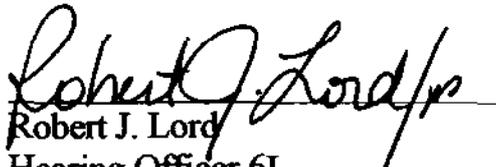
16 Upon consideration of the facts, application of the *Standards*, including
17 aggravating and mitigating factors, and a proportionality analysis, this Hearing
18 Officer recommends acceptance of the Tender of Admissions and Agreement for
19 Discipline by Consent and the Joint Memorandum in Support of Agreement for
20 Discipline by Consent which provides for the following:
21

- 22 1. Respondent shall be suspended for six months and one day.
- 23 2. Upon reinstatement, Respondent shall serve a two-year term of
24 probation under the terms and conditions to be determined at the time of
25

2 Program (MAP) and the Law Office Management Assistance Program (LOMAP).

3
4 3. Respondent shall pay the costs and expenses incurred in this
5 disciplinary proceeding.

6 DATED this 28th day of October, 2005.

7
8 
9 Robert J. Lord
Hearing Officer 6L

10 Original filed with the Disciplinary Clerk
11 this 28th day of October, 2005.

12 Copy of the foregoing was mailed
13 this 28th day of October, 2005, to:

14 Kathleen D. Masters
15 Respondent
16 4430 North 23rd Avenue
Phoenix, AZ 85015

17 and

18
19 Kathleen D. Masters
20 Respondent
309 West Mariposa, No. 6
21 Phoenix, AZ 85013

22 Shauna R. Miller
23 Senior Bar Counsel
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24 4201 North 24th Street, Suite 200
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25 by: Williams