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MAY 11 2005

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

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

IN THE MATTER OF A MEMBER)	Nos. 04-0039, 04-1193
OF THE STATE BAR OF ARIZONA,)	
)	
JOHN DANIEL ROLPH,)	
Bar No. 021302)	
)	HEARING OFFICER'S REPORT
RESPONDENT.)	

PROCEDURAL HISTORY

The State Bar filed a Complaint on November 15, 2004. Respondent filed an Answer on January 3, 2005. A hearing was then scheduled for March 15, 2005. The Settlement Officer conducted a settlement conference on February 7, 2005. The parties were unable to reach an agreement at that time. The hearing was continued and rescheduled for April 13, 2005. The parties filed a Tender of Admissions and Agreement for Discipline by Consent (Tender) and a Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memo) on April 11, 2005. A telephonic hearing was held on April 13, 2005.

FINDINGS OF FACT

1. Respondent was conditionally admitted to the State Bar of Arizona on October 22, 2002.

1 2. Respondent was conditionally admitted to the State Bar of Arizona
2 subject to the terms of a contract due to his financial irresponsibility (“contract”).
3
4 The contract was developed by the State Bar’s Law Office Management
5 Assistance Program (“LOMAP”).

6 3. The contract was executed between Respondent, the State Bar and the
7 Committee on Character and Fitness on January 6, 2003.

8 4. The term of the contract was for a period of one year.

9
10 5. The terms of respondent’s contract included but were not limited to his
11 participation in a financial assessment with a not-for-profit debt counseling
12 agency, authorizing the debt counselor to provide a copy of the budget and
13 financial plan to LOMAP, following the plan developed and issuing written
14 reports to LOMAP every thirty days. Respondent also had a practice monitor
15 during the period of the contract.
16

17 6. The contract became effective on January 6, 2003. The contract would
18 only terminate upon the successful completion of the terms of the agreement, as
19 determined by the LOMAP Director.
20

21 7. From January 2003 through August 2003, Respondent continually failed
22 to report as required by the terms of the contract.
23

24 8. On or about September 23, 2003, the State Bar opened a discipline file
25 numbered 03-1538 regarding Respondent’s non-compliance of his contract.

1 17.Mr. Aguilera filed a counter-petition for modification of decree of
2 dissolution of marriage regarding parenting time and child support. Mr. Aguilera
3 was also seeking a judgment for overpayment of spousal maintenance.
4

5 18.Respondent was assigned to Ms. Aguilera's case just prior to the
6 hearing on the Petition for Order to Show Cause.

7 19.On April 28, 2003, an evidentiary hearing was held before the
8 Honorable Edward Burke.
9

10 20.Respondent was approximately fifteen minutes late because he
11 mistakenly believed the hearing was at another location.

12 21.If Ms. Aguilera was to testify she would state that during the course of
13 the representation, she and her daughter made numerous phone attempts to
14 contact Respondent and his employer, James Leather and that she did not receive
15 any response or an inadequate response to their contacts.
16

17 22.On or about December 31, 2003, Ms. Aguilera filed a complaint against
18 Respondent with the State Bar of Arizona.
19

20 23.By letter dated January 28, 2004, Respondent was asked to provide a
21 response to the charges within twenty (20) days of the date of the State Bar's
22 letter.
23
24
25

1 24. On February 17, 2004, Respondent contacted the State Bar and advised
2 that he had prepared a response but he was awaiting a copy of the transcript.
3 Respondent requested additional time to file his response.
4

5 25. Respondent's request for additional time was granted and he was to file
6 his response on or before March 1, 2004.

7 26. Respondent failed to file a response by March 1, 2004.

8 27. On March 5, 2004, Respondent contacted the State Bar and advised that
9 he received the transcript and he would send his response by March 15, 2004.
10

11 28. Respondent did not file his response.

12 29. The State Bar advised Respondent by letter dated March 25, 2004, that
13 if the State Bar did not receive his response by April 1, 2004, bar counsel would
14 schedule his deposition. Respondent was advised that his failure to respond was
15 in and of itself grounds for discipline.
16

17 30. The State Bar's letter of March 25, 2004 was sent to Respondent's
18 address of record as maintained in Membership Records.
19

20 31. Respondent did not respond to the State Bar's letter dated March 25,
21 2004.
22

23 32. On June 24, 2003, a subpoena was issued compelling Respondent's
24 attendance at a deposition at the State Bar offices on July 20, 2004.
25

1 41.If Respondent were to testify in this matter, he would state that he did
2 perform services for Ms. Zornacki and was entitled to retain her \$500.00 fee.
3 However, in the interest of resolving any issues relating to Ms. Zornacki's funds,
4 Respondent has returned the \$500.00 to her.
5

6 42.On or about July 12, 2004, Ms. Zornacki filed a complaint with the
7 State Bar concerning Respondent's conduct.
8

9 43.By letter dated August 5, 2004, Respondent was advised of the
10 allegations concerning his professional conduct. Respondent was advised that he
11 was to respond within twenty (20) days of the date of the letter.
12

13 44.The State Bar's letter dated August 5, 2004 was sent to Respondent's
14 address of record as maintained in Membership Records.
15

16 45.Respondent did not provide a response to the State Bar's letter dated
17 August 5, 2004.
18

CONDITIONAL ADMISSIONS

Count One

19 1. Respondent conditionally admits his conduct violates Rule 42, Ariz. R.
20 S. Ct., specifically: ER 1.3, ER 1.4, ER 3.4(c), ER 8.1(b), and ER 8.4(d) and
21 Rule 53(f), Ariz. R. S. Ct.
22

23 2. With respect to count one, the State Bar's complaint contained
24 allegations that during Ms. Aguilera's hearing, Respondent asserted positions
25

1 contrary to that of the client's regarding settlement and responsibility for
2 uninsured healthcare expenses thereby providing false information to the court.
3
4 The complaint also charged that Respondent was not adequately prepared for Ms.
5 Aguilera's hearing. These facts were the basis for alleged violations of ER 1.1,
6 ER 1.2, ER 3.3, and ER 8.4(c). At a hearing these issues would be determined
7 based on the credibility of each witness. Respondent is prepared to testify
8 contrary to Ms. Aguilera's position. This agreement considers the possibility that
9 the State Bar cannot prove these allegations by clear and convincing evidence and
10 will, for purposes of this agreement, conditionally admit that it cannot meet its
11 burden of proof with respect to the above-cited violations.
12

13
14 3. The State Bar's complaint also alleged that Respondent's fees were not
15 reasonable based on the services provided. Respondent did not receive any
16 payments directly from Ms. Aguilera. The client made the payments to the firm
17 of Burton, Leather & Associates. Respondent drew a salary from the firm.
18 Respondent would testify about the reasonableness of the services he rendered
19 and the amount of the fee charged by the firm. For purposes of this agreement,
20 the State Bar conditionally admits that it cannot prove a violation of ER 1.5.
21

22 Count Two

23
24 4. Respondent conditionally admits his conduct violates Rule 42, Ariz. R.
25 S. Ct., specifically: ER 1.3, ER 1.4, and ER 8.1(b), and Rule 53(f), Ariz. R. S. Ct.

1 (b) a lawyer engages in a pattern of neglect and causes
2 injury or potential injury to a client.

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

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

10 Respondent knowingly failed to respond to the State Bar, both in its request
11 for compliance with the terms of his admission as well as the Bar's request for
12 information regarding two separate disciplinary matters. When a lawyer fails to
13 discharge his duties to the profession there is harm caused to the public and the
14 legal system. The legal profession is self-regulating and the failure of its
15 members to meet their obligations to the system erodes the integrity of the
16 profession and undermines the confidence the public should rightly place in the
17 profession.
18
19

20 **AGGRAVATING AND MITIGATING FACTORS**

21 This Hearing Officer then considered aggravating and mitigating factors in
22 this case, pursuant to *Standards 9.22* and *9.32*, respectively. This Hearing Officer
23 agrees with the parties that four aggravating factors apply and should be
24 considered in this matter:
25

1 (a) prior disciplinary offenses: Respondent was placed on probation by order
2 filed November 10, 2003. The sanction was imposed due to Respondent's failure to
3 comply with the terms imposed upon his conditional admission to the State Bar of
4 Arizona.
5

6 (c) a pattern of misconduct: Respondent failed to respond to the Bar in its
7 attempts to monitor the conditions of his admission. His failure in that regard
8 resulted in the imposition of probation as discussed above.
9

10 (d) multiple offenses: Respondent also failed to respond to the State Bar in its
11 investigation of the two discipline matters underlying this agreement as well as
12 failed to appear at a deposition set by the Bar in its attempt to obtain information
13 concerning the charges made by Ms. Aguilera.
14

15 (e) bad faith obstruction of the disciplinary proceeding by intentionally
16 failing to comply with rules or orders of the disciplinary agency.
17

18 This Hearing Officer agrees with the parties that three factors are present in
19 mitigation:

20 (b) absence of a dishonest or selfish motive.

21 (f) inexperience in the practice of law: Respondent was admitted to the State
22 Bar in October 2002.
23
24
25

1 (l) remorse¹.

2 Respondent has also provided a letter expressing his commitment to address
3 the issues that led to the underlying complaints in this matter as well as his
4 commitment to serve his clients and meet his obligations as a lawyer in a manner
5 that exceeds the minimum requirements as stated in the rules. Respondent's letter is
6 attached as Exhibit E to the Joint Memo.
7

8
9 **PROPORTIONALITY REVIEW**

10 To have an effective system of professional sanctions, there must be
11 internal consistency, and it is appropriate to examine sanctions imposed in cases
12 that are factually similar. In re Shannon, 179 Ariz. 52, 71, 876 P.2d 548, 567
13 (1994), (quoting In re Wines, 135 Ariz. 203, 207 (1983)). However, the
14 discipline in each case must be tailored to the individual case, as neither
15 perfection nor absolute uniformity can be achieved. Matter of Riley, 142 Ariz.
16 604, 615 (1984).
17

18
19 The following cases are instructive: In In re Blaine, 2002 Ariz. LEXIS 81
20 (2002), the respondent was suspended for a period of six months and one day for
21 multiple violations of Rule 42, Ariz.R.S.Ct., specifically ERs 1.2(a), 1.3, 1.4(a)
22
23
24

25

¹ See Exhibits C and D attached to Joint Memo.

1 and (b), 8.1(a), and 8.4(d), and Rule 51(h) and (i)², Ariz. R. S. Ct. Blaine
2 knowingly failed to respond to the State Bar's inquiry into the charges filed by
3 two clients in separate matters, despite requesting an extension to file a response.
4 Blaine initially received an informal reprimand in the first Count of the complaint
5 however, after the second charge was received the Order of Informal Reprimand
6 was vacated and an Order of Probable Cause issued. In aggravation, the
7 Disciplinary Commission found three factors to be present: prior disciplinary
8 offenses including an informal reprimand; a pattern of misconduct; and multiple
9 offenses. In mitigation the only factors found were absence of a dishonest or
10 selfish motive and 9.32(c) personal or emotional problems.
11
12

13
14 In *In re Davis*, 181 Ariz. 263, 889 P.2d 621 (1995), Davis conditionally
15 admitted that she had violated Rule 42, Ariz.R.S.Ct., specifically ERs 1.3 and
16 8.1(b) as well as Rule 51(h) and (i)³. Davis failed to adequately communicate
17 with opposing counsel in a dissolution matter and failed to timely file documents
18 although no prejudice to the clients resulted. At the time of the violations Davis
19 was on probation. Davis failed to fulfill the requirements of her probation terms
20 and repeatedly failed to respond to inquiries related to three subsequent
21 complaints filed with the State Bar. After Davis failed to respond to the Bar's
22
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25 ² Re-designated as Rule 53(f) and (d), Ariz. R. S. Ct., respectively, effective December 1, 2003.

³ See Footnote 1.

1 first complaint, she failed to appear when she was subpoenaed to give a
2 deposition. Davis also promised to submit a written response but failed to do so.
3 She also failed to respond to the second complaint and was untimely in her
4 response to the third complaint. In addition, despite warnings that she could be
5 suspended for her failure to pay the costs associated with the prior disciplinary
6 matter, Davis failed to pay the assessed costs. The Hearing Officer and
7 Disciplinary Commission agreed that a sixty-day suspension was appropriate and
8 found in mitigation that Davis had not acted dishonestly or with a selfish motive
9 and she was experiencing personal and emotional problems during the relevant
10 period of time.
11
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13
14 In *In re Hatfield*, SB-04-0010-D, (2004) the State Bar and Hatfield had
15 entered into an Agreement for Discipline by Consent for a thirty-day suspension.
16 Hatfield had prior disciplinary history including two informal reprimands, with
17 probation, for similar conduct violations. Hatfield conditionally admitted to
18 multiple violations of Rule 42, Ariz. R. S. Ct., specifically ERs 1.3, 1.4, and
19 8.1(b), and Rule 51(h) and (i)⁴, Ariz.R.S.Ct., and the State Bar dismissed the
20 allegation of a violation of ER 8.4(d). Hatfield admitted to a negligent pattern of
21 neglect during the representation of several unrelated clients, as well as failure to
22
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25 ⁴ See footnote 1.

1 adequately communicate with those clients, and failure to furnish information and
2 promptly respond to inquiries and requests from the State Bar during the
3 investigation on four of the five complaints. A period of suspension was
4 determined to be the presumptive sanction. Prior disciplinary offenses, a pattern
5 of misconduct, failure to comply with the State Bar, and substantial experience in
6 the practice of law, were considered to be aggravating factors. Absence of a
7 dishonest or selfish motive, personal or emotional problems, character and
8 reputation, mental disability or impairment, and remorse, were considered to be
9 mitigating factors.

12 RECOMMENDATION

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

21
22 In imposing discipline, it is appropriate to consider the facts of the case, the
23 American Bar Association's *Standards for Imposing Lawyer Sanctions*
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 acceptance of the Tender of Admissions and Agreement for
7 Discipline by Consent and the Joint Memorandum in Support of Agreement for
8 Discipline by Consent providing for the following:
9

10 1. Respondent shall be suspended for a period of 90 days.

11 2. Respondent shall be placed on probation for a period of two years
12 effective upon the signing of the probation contract. The terms of probation are
13 as follows:
14

15 a. Respondent currently has a probation contract in effect as of
16 April 14, 2004. The contract is attached as Exhibit A to the Tender. The terms
17 of that probation contract shall be held in abeyance during Respondent’s period
18 of suspension.
19

20 b. Respondent shall contact the director of the State Bar’s Law Office
21 Management Assistance Program (“LOMAP”) thirty (30) days prior to filing his
22 application for reinstatement pursuant to Rule 64, Ariz. R. S. Ct. Respondent
23 shall submit to a LOMAP audit of his office procedures within thirty (30) days
24 from the date he is reinstated by order of the court. The Director of LOMAP
25

1 shall develop any additional terms of probation to be incorporated with or
2 including in an addendum to the existing probation contract. The final
3 probation contract, and its terms shall be incorporated herein by reference.
4 Probation will commence upon Respondent signing the probation contract for a
5 period of two years. Bar Counsel will notify the Disciplinary Clerk of the date
6 on which the probation term begins. A failure to comply with any term of the
7 LOMAP contract will result in a notice of noncompliance as a violation of a
8 term of probation.
9
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11 c. Within thirty (30) days of signing the tender of admissions and
12 joint memorandum, Respondent shall submit to an evaluation by the director of
13 the State Bar's Member Assistance Program ("MAP"). The MAP director shall
14 develop a therapeutic contract stating the terms of treatment, if he deems such a
15 contract is appropriate. The MAP contract shall be incorporated into this
16 agreement by reference. A failure to comply with any term of the MAP contract
17 will result in a notice of noncompliance as a violation of a term of probation.
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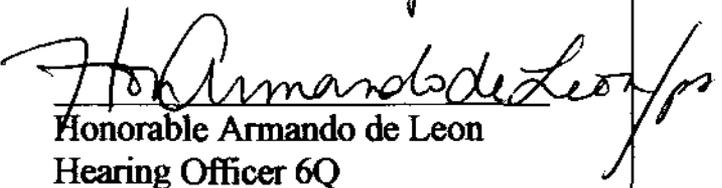
20 d. Respondent shall be assigned a practice monitor for the period of
21 his probation term. The reporting terms shall be developed by the Director of
22 LOMAP and included in the probation contract which shall be incorporated
23 herein by this reference.
24
25

1 e. Respondent shall refrain from engaging in any conduct that
2 would violate the Rules of Professional Conduct or other rules of the Supreme
3 Court of Arizona.
4

5 f. In the event that Respondent fails to comply with any of the
6 foregoing conditions, and the State Bar receives information, bar counsel shall
7 file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule
8 60(a)5, Ariz. R. S. Ct. The Hearing Officer shall conduct a hearing within thirty
9 days after receipt of said notice, to determine whether the terms of probation
10 have been violated and if an additional sanction should be imposed. In the event
11 there is an allegation that any of these terms have been violated, the burden of
12 proof shall be on the State Bar of Arizona to prove non-compliance by clear and
13 convincing evidence.
14
15

16 3. Respondent shall pay the costs and expenses incurred in this
17 disciplinary proceeding.
18

19 DATED this 11th day of May, 2005.

20
21 
22 Honorable Armando de Leon
Hearing Officer 6Q

23 Original filed with the Disciplinary Clerk
24 this 11th day of May, 2005.
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Copy of the foregoing was mailed
this 11th day of May, 2005, to:

Cheryl A. Brown
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