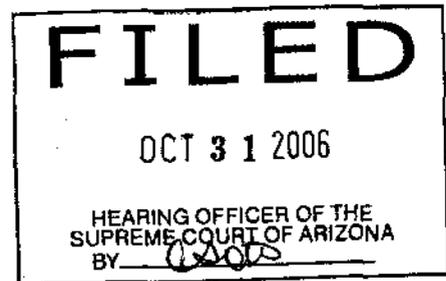


1 Frederick K. Steiner, Jr
2 Hearing Officer 8T, Bar No. 000656
3 2915 E. Sherran Lane
4 Phoenix, AZ 85016
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7
8 **BEFORE A HEARING OFFICER**
9 **OF THE SUPREME COURT OF ARIZONA**

10 **IN THE MATTER OF A SUSPENDED**
11 **MEMBER OF THE STATE BAR OF**
12 **ARIZONA,**

13 **MATTHEW C. BOWER,**
14 **Bar No. 020385**

15 Respondent.

16 File Nos. 05-1655, 05-1741, 05-2149,
17 06-0100, 06-0104, 06-0384

18 **FINDINGS OF FACT,**
19 **CONCLUSIONS OF LAW AND**
20 **RECOMMENDATIONS OF**
21 **HEARING OFFICER**

22 (Assigned to Hearing Officer 8T,
23 Frederick K. Steiner, Jr.)

24 An aggravation and mitigation hearing was held on this matter on Monday,
25 September 11, 2006, at 10:00 a.m. The hearing was held at the Supreme Court of
Arizona, Certification and Licensing Division, 1501 West Washington Street,
Phoenix, Arizona. The State Bar of Arizona was represented by Ariel I. Worth,
staff bar counsel. Respondent did not appear.

26 **PROCEDURAL HISTORY**

27 1. At all times relevant hereto, Respondent was an attorney licensed to
28 practice law in the State of Arizona having been admitted to practice in Arizona
29 on October 29, 2001.

1 2. By Supreme Court order dated March 14, 2006, Respondent was
2 placed on interim suspension in file no. 06-0236 and remains suspended as of the
3 date of the filing of this recommendation.

4 3. Orders of probable cause were issued in this matter for Count One
5 (file no. 05-1655), Count Two (file no. 05-1741), Count Three (file no. 05-2149),
6 Count Four (file no. 06-0100), and Count Five (file no. 06-0104) on April 19,
7 2006 and for Count Six (file no. 06-0384) on April 27, 2006.

8 4. The State Bar filed its six count Complaint against Respondent on
9 April 28, 2006.

10 5. On May 1, 2006, a copy of the Complaint was mailed to Respondent
11 by first class mail to Respondent's address of record with the State Bar pursuant
12 to Rule 47(c), Ariz.R.S.Ct.

13 6. On May 2, 2006, a copy of the Complaint was mailed to Respondent
14 by certified mail to Respondent's address of record with the State Bar pursuant to
15 Rule 47(c), Ariz.R.S.Ct. The copy sent to Respondent via certified mail was
16 signed for on May 2, 2006, although not signed by Respondent.

17 7. On May 3, 2006, the Complaint was served in hand to Respondent at
18 the Madison Street Jail in Phoenix, Arizona by a State Bar Investigator pursuant
19 to Rule 47(c), Ariz.R.S.Ct. On May 5, 2006, the Affidavit of Service of
20 Complaint was filed.

21 8. Respondent failed to file an Answer as required by Rule 57(d),
22 Ariz.R.S.Ct., and the disciplinary clerk issued a notice of default on June 9, 2006.

23 9. Respondent failed to enter his appearance in these proceedings or
24 otherwise respond and an Entry of Default was issued on June 30, 2006.
25

1 10. Respondent was convicted and sentenced in two class one
2 misdemeanor matters before the Maricopa County Superior Court while these
3 discipline proceedings were pending. In July 2005, at the time set for sentencing,
4 the assigned trial judge in the criminal matter requested a Rule 11,
5 Ariz.R.Crim.Proc., pre-screen to determine whether Respondent was competent
6 to assist in his own criminal defense. At that time the judge also continued the
7 sentencing hearing to await the results of the pre-screen evaluation. The results of
8 the pre-screen evaluation were presented to the court on August 25, 2006.
9 Inferentially, Respondent was deemed mentally competent for the purpose of the
10 criminal proceedings; for the sentencing hearing went forward and Respondent
11 was sentenced on his two felony convictions. However, if there was any
12 testimony or evidence presented to the court in the criminal proceedings,
13 particularly evidence relating to mental illness or derangement of the Respondent
14 in a medical or civil sense, it was not presented to the Hearing Officer in these
15 proceedings, even though the record suggests that the Respondent has serious
16 mental and drug addiction problems which at the least would bear directly on the
17 very purpose of this hearing, the extent to which there are aggravating or
18 mitigating circumstances bearing on his discipline.

19 11. Bar counsel requested an aggravation/mitigation hearing, as provided
20 by Rule 57(d), and a hearing was held on Monday, September 11, 2006. Ariel I.
21 Worth appeared on behalf of the State Bar. Respondent did not appear.

22 12. On or about September 27, 2006, the Hearing Officer received an
23 unsolicited letter from Respondent's mother, Mrs. Holly Bower. The letter
24 presented information that Mrs. Bower wished to have considered in mitigation in
25 Respondent's case. The letter was forwarded to the State Bar on September 28,

1 2006, along with correspondence from this Hearing Officer indicating that he
2 intended to consider the information presented by Mrs. Bower. The State Bar
3 responded to this letter through a pleading filed on October 11, 2006, indicating
4 that the State Bar objected to consideration of Mrs. Bower's letter and waiving
5 the Hearing Officer's invitation to re-open the aggravation/mitigation hearing and
6 cross-examine Mrs. Bower as to the information presented in her letter. The
7 Hearing Officer did in fact take into account the letter from Mrs. Bower, even
8 though it belatedly reached him. Respondent did not participate in any way in
9 these proceedings, either in person or by counsel, and, according to her, did not
10 know of Mrs. Bower's letter.

11 13. Pursuant to the supplemental instructions provided by the Hearing
12 Officer, the State Bar filed a Proposed Hearing Officer's Report on October 19,
13 2006. The Hearing Officer adopts most, but not all, of the State Bar submission.

14 **FINDINGS OF FACT**

15
16 1. Respondent was properly served and noticed and failed to respond as
17 required by the rules, the allegations of the complaint are deemed admitted. Rule
18 53(c)1, Ariz.R.S.Ct., *In re Zang*, 158 Ariz. 251, 762 P.2d 528 (1988).

19 **Count One (File No. 05-1655)**

20
21 2. In or around April 2005, Complainants Howard and Kathleen Sadlier
22 (the "Sadliers") paid \$1,500.00 to Respondent to retain him to assist in a real
23 property dispute.

24 3. In April 2005, the Sadliers also provided original documents to
25 Respondent for use in the representation.

1 4. After being paid \$1,500.00 and being provided with original
2 documents, Respondent failed to perform any substantive work on behalf of the
3 Sadliers.

4 5. On May 12, 2005, the Sadliers went to Respondent's office to
5 retrieve their \$1,500.00 payment and their original documents.

6 6. At that time, Respondent told the Sadliers that he could not find their
7 original documents.

8 7. The Sadliers continued to contact, or attempt to contact, Respondent
9 during June, July and August of 2005. Sometimes the Sadliers were able to leave
10 a message for Respondent, other times Respondent's voice message system was
11 full and the Sadliers were unable to leave a message.

12 8. On August 11, 2005, the Sadliers went to Respondent's office and
13 found Respondent there. Respondent stated that he had been out of town for 35
14 days. Respondent stated that the Sadliers should return the next day to retrieve
15 their documents.

16 9. The next day, August 12, 2005, Respondent telephoned the Sadliers
17 and canceled the scheduled meeting. Respondent re-scheduled the meeting with
18 the Sadliers for another day in August 2005.

19 10. Respondent failed to appear for the re-scheduled meeting with the
20 Sadliers.

21 11. The Sadliers telephoned Respondent repeatedly after his failure to
22 appear for the re-scheduled meeting. Respondent did not answer the Sadliers'
23 telephone calls.
24
25

1 39. Respondent continued representing the Millers after leaving The
2 Law Office of Gregory A. Ring.

3 40. In March 2005, Respondent filed a motion for summary judgment on
4 behalf of the Millers.

5 41. The Millers assisted in the preparation of the motion for summary
6 judgment by signing the affidavit and talking to Respondent.

7 42. After the motion for summary judgment was filed in late March
8 2005, the Millers did not have any contact with Respondent.

9 43. In June 2005, Millers learned through another source that their
10 motion for summary judgment had been denied and that a judgment for
11 approximately \$5,000.00 in attorney's fees had been entered against them.

12 44. Since learning about the entry of the judgment, the Millers have tried
13 repeatedly to talk to Respondent. Respondent's voice message system was
14 always full and the Millers were unable to leave any messages. The Millers also
15 visited Respondent's office in person, but were not able to talk to Respondent.

16 45. The Millers have not been able to retrieve their file or get other
17 information about their case in order to set aside the judgment against them.

18 46. Based on information provided by the Millers, the State Bar opened
19 an investigation pursuant to Rules 51 and 54, Ariz.R.S.Ct.

20 47. By letter dated January 26, 2006, sent to Respondent's address of
21 record, bar counsel advised Respondent of the investigation and requested that
22 Respondent respond, no later than 20 days from the date of the letter, regarding
23 his possible violations of the Rules of Professional Conduct.

24 48. Respondent failed to respond to the January 26, 2006, letter.
25

1 49. Respondent's conduct as described in this count violated Rule 42,
2 Ariz.R.S.Ct., specifically, ERs 1.2, 1.3, 1.4, 1.5, 1.15, 8.1(b) and 8.4, and Rule
3 53(f), Ariz.R.S.Ct.

4 **Count Five (File No. 06-0104)**

5 50. Complainants Lori Snow and Phillip Hurst retained Respondent in
6 late 2004 or early 2005, to represent them in a claim arising out of a fire at their
7 residence. Complainants paid Respondent \$1,000.00 for the representation.

8 51. As of December 2005, Snow and Hurst had received no
9 communication from Respondent for approximately one year. Snow and Hurst
10 were informed by third parties that Respondent had dropped their claim.

11 52. In November 2005, Snow and Hurst learned that Respondent had
12 closed his office in Bullhead City.

13 53. In November and December 2005, Snow and Hurst tried to talk to
14 Respondent about their case, but received no response to their calls.

15 54. Snow and Hurst have no information about the status of their claim.

16 55. Based on information by Snow and Hurst, the State Bar opened an
17 investigation pursuant to Rule 51 and 54, Ariz.R.S.Ct.

18 56. By letter dated January 30, 2006, sent to Respondent's address of
19 record, bar counsel advised Respondent of the investigation and requested that
20 Respondent respond, no later than 20 days from the date of the letter, regarding
21 his possible violations of the Rules of Professional Conduct.

22 57. Respondent failed to respond to the January 30, 2006, letter.

23 58. Respondent's conduct as described in this count violated Rule 42,
24 Ariz.R.S.Ct., specifically, ERs 1.2, 1.3, 1.4, 1.5, 1.15 and 8.1(b), and Rule 53(f),
25 Ariz.R.S.Ct.

1 **Count Six (File No. 06-0384)**

2 59. In CR2005-9037793, Phoenix City Court, Respondent is charged
3 with two counts of harassment, class 1 misdemeanors in violation of A.R.S. § 13-
4 2921.A, committed on October 7 and 8, 2005.

5 60. On October 7 and 8, 2005 Respondent sent voluminous facsimile
6 transmittals to attorney J. Douglas McVay who at the time was representing
7 Respondent's wife, Maureen Bower, in a dissolution of marriage proceeding.

8 61. The facsimile transmittals state, for example, "YOU ARE A
9 FUCKING WHORE HOW DO YOU LIVE WITH YOURSELF YOU
10 GODDAMNED FUCKING WHORE YOU ARE A DISGRACE TO THE
11 PROFESSION YOU ARE NOTHING BUT A WHORE!!!!!!!!!!!!!!" This text, or
12 similar text, is repeated over and over again for many pages.

13 62. On February 24, 2006, Respondent failed to appear at a pretrial
14 disposition conference in CR2005-9037793. At that time an arrest warrant was
15 issued for Respondent.

16 63. Based on information provided to the State Bar, an investigation was
17 opened pursuant to Rules 51 and 54, Ariz.R.S.Ct.

18 64. By letter dated April 13, 2006, sent to Respondent's address of
19 record, bar counsel advised Respondent of the investigation and requested that
20 Respondent respond, no later than 5 days from the date of the letter, regarding his
21 possible violations of the Rules of Professional Conduct.

22 65. Respondent failed to respond to the April 13, 2006, letter.

23 66. Respondent's conduct as described in this count violated Rule 42,
24 Ariz.R.S.Ct., specifically, ERs 3.4(c), 4.4(a), 8.1(b), 8.4(b) and 8.4(c), Rule 41(g),
25 Ariz.R.S.Ct., and Rules 53(c) and (f), Ariz.R.S.Ct.

1
2 **CONCLUSIONS OF LAW**

3 **Count One (File No. 05-1655)**

4 1. By failing to comply with the scope of the representation by failing
5 to assist the Sadliers in their real property dispute, Respondent violated Rule 42,
6 Ariz.R.S.Ct., specifically, ER 1.2.

7 2. By failing to act with reasonable diligence and promptness in
8 representing the Sadliers, Respondent violated Rule 42, Ariz.R.S.Ct., specifically,
9 ER 1.3.

10 3. By failing to communicate with the Sadliers, Respondent violated
11 Rule 42, Ariz.R.S.Ct., specifically, ER 1.4.

12 4. By collecting an unreasonable fee by charging the Sadliers for work
13 not performed, Respondent violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.5.

14 5. By failing to refund unearned fees and client documents to the
15 Sadliers, Respondent violated Rule 42, Ariz.R.S.Ct., specifically, ERs 1.15 and
16 1.16.

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

20 **Count Two (File No. 05-1741)**

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

24 **Count Three (File No. 05-2149)**

1 8. By disobeying a court order by failing to appear and failing to
2 comply with the terms of his probation, Respondent violated Rule 42,
3 Ariz.R.S.Ct., specifically, ER 3.4(c).

4 9. By willfully violating a court order, Respondent violated Rule 53(c),
5 Ariz.R.S.Ct.

6 10. By engaging in criminal conduct, Respondent violated Rule 42,
7 Ariz.R.S.Ct., specifically, ER 8.4(b).

8 11. By entering into a plea agreement and then failing to abide by the
9 terms of that agreement thereby engaging in dishonest conduct, Respondent
10 violated Rule 42, Ariz.R.S.Ct., specifically, ER 8.4(c).

11 12. By failing to respond to a lawful demand for information from the
12 State Bar, Respondent violated Rule 42, Ariz.R.S.Ct., specifically, ER 8.1(b) and
13 Rule 53(f), Ariz.R.S.Ct.

14 **Count Four (File No. 06-0100)**

15 13. By failing to comply with the scope of the representation by failing
16 to assist the Millers in their personal property dispute, Respondent violated Rule
17 42, Ariz.R.S.Ct., specifically, ER 1.2.

18 14. By failing to act with reasonable diligence and promptness in
19 representing the Millers, Respondent violated Rule 42, Ariz.R.S.Ct., specifically,
20 ER 1.3.

21 15. By failing to communicate with the Millers, Respondent violated
22 Rule 42, Ariz.R.S.Ct., specifically, ER 1.4.

23 16. By collecting an excessive fee from the Millers for work performed,
24 Respondent violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.5.

1 17. By failing to refund unearned fees to the Millers, Respondent
2 violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.15.

3 18. By failing to timely advise the Millers of the adverse judgment
4 against them resulting in the Millers having to engage in additional litigation to
5 set aside the judgment Respondent engaged in conduct prejudicial to the
6 administration of justice, in violation of Rule 42, Ariz.R.S.Ct., specifically, ER
7 8.4(d).

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

11 **Count Five (File No. 06-0104)**

12 20. By failing to comply with the scope of the representation by failing
13 to complete tasks for which he was retained, Respondent violated Rule 42,
14 Ariz.R.S.Ct., specifically, ER 1.2.

15 21. By failing to act with reasonable diligence and promptness in
16 representing Snow and Hurst, Respondent violated Rule 42, Ariz.R.S.Ct.,
17 specifically, ER 1.3.

18 22. By failing to communicate with Snow and Hurst, Respondent
19 violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.4.

20 23. By collecting an excessive fee from Snow and Hurst for work
21 performed, Respondent violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.5.

22 24. By failing to refund unearned fees to Snow and Hurst, Respondent
23 violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.15.

1 25. By failing to respond to a lawful demand for information from the
2 State Bar, Respondent violated Rule 42, Ariz.R.S.Ct., specifically, ER 8.1(b) and
3 Rule 53(f), Ariz.R.S.Ct.

4 **Count Six (File No. 06-0384)**

5 26. By willfully violating a rule or obligation of a tribunal by failing to
6 appear at his pretrial disposition conference, Respondent violated Rule 42,
7 Ariz.R.S.Ct., specifically, ER 3.4(c) and Rule 53(c), Ariz.R.S.Ct.

8 27. By engaging in methods that had no other purpose than to embarrass
9 or burden opposing counsel and his office staff by sending offensive facsimile
10 transmittals, Respondent violated Rule 42, Ariz.R.S.Ct., specifically, ER 4.4(a).

11 28. By engaging in criminal conduct, Respondent violated Rule 42,
12 Ariz.R.S.Ct., specifically, ER 8.4(b).

13 29. By failing to appear at a pretrial disposition conference thereby
14 engaging in dishonest conduct, Respondent violated, Rule 42, Ariz.R.S.Ct.,
15 specifically, ER 8.4(c).

16 30. By sending facsimile transmittals to opposing counsel containing
17 profane language thereby engaging in offensive conduct, Respondent violated
18 Rule 41(g), Ariz.R.S.Ct.

19 31. By failing to respond to a lawful demand for information from the
20 State Bar, Respondent violated Rule 42, Ariz.R.S.Ct., specifically, ER 8.1(b) and
21 Rule 53(f), Ariz.R.S.Ct.

22 **LEGAL ANALYSIS**

23 In determining the appropriate sanction in a disciplinary matter, the
24 analysis should be guided by the principle that the ultimate purpose of discipline
25 is not to punish the lawyer, but to set a standard by which other lawyers may be

1 deterred from such conduct while protecting the interest of the public and the
2 profession. *In re Kersting*, 151 Ariz. 171, 726 P.2d 587 (1986).

3 **Application of the ABA Standards**

4 The American Bar Association *Standard for Imposing Lawyer Sanctions*
5 are a “useful tool in determining the proper sanction.” *In re Cardenas*, 164 Ariz.
6 149, 791 P.2d 95 (1990). In drafting the ABA *Standards* the Committee
7 developed a model that requires the body imposing sanctions to consider the
8 following four factors: 1) the duties violated; 2) the lawyer’s mental state; 3) the
9 potential or actual injury caused by the lawyer’s misconduct; and 4) the existence
10 of aggravating or mitigating factors. *Standard 3.0*. It must, of course, be kept in
11 mind that the Standards are a model, not a mandate, and that they are neither
12 statutes nor rules that admit no exceptions.

13 In this matter, Respondent violated duties to his clients, duties to the legal
14 system and duties to the legal profession. Respondent violated his duties to his
15 clients by failing to exercise due diligence, failing to communicate, and failing to
16 abide by the objectives of the representation. Respondent violated his duties to
17 the legal system by failing to expedite litigation and failing to appear at court
18 dates. Respondent violated his duty to the profession by failing to cooperate with
19 the lawful request for information concerning this disciplinary matter.

20 The second prong of the analysis under the *Standards* is the lawyer’s
21 mental state when engaging in misconduct. In this matter, Respondent’s mental
22 state was both knowing and intentional. Knowing is defined as “the conscious
23 awareness of the nature or attendant circumstances of the conduct without the
24 conscious objective or purpose to accomplish a particular result.” Intentional is
25 defined as “the conscious objective or purpose to accomplish a particular result.”

1 *See Standards* at page 7. Respondent failed to respond to his clients despite
2 repeated requests by the clients in counts one, two, four and five. Respondent
3 failed to cooperate with the tribunal in counts three and six resulting in warrants
4 being issued for his arrest. Respondent failed to cooperate with the State Bar in
5 all counts.

6 The third prong under the *Standards* is the injury or potential injury caused
7 by Respondent's misconduct in these matters:

8 As to Count One, the Sadliers suffered actual injury by Respondent's
9 failure to timely assist them with their claim, by depriving them of their original
10 documents and by not refunding the unearned fees. As to Count Two, Wyatt
11 suffered potential injury by Respondent's failure to notify Wyatt of the closure of
12 his office. As to Count Four, the Millers suffered actual injury by Respondent's
13 failure to notify them of the adverse judgment thus prejudicing their ability to
14 timely challenge the adverse judgment or take other corrective action. As to
15 Count Five, Snow and Hurst suffered actual injury by Respondent's failure to
16 pursue their claim, failure to advise them regarding the status of their claim and
17 by not refunding the unearned fees.

18 As to Counts Three and Six the legal system and the legal profession
19 Respondent's failure to cooperate with the courts and with the disciplinary
20 process impeded the State Bar's investigation but cannot be said of itself to have
21 caused injury.

22 The ultimate sanction imposed in a disciplinary matter generally should be
23 consistent with the sanction for the most serious instance of misconduct among a
24 number of violations. *See Standards* at page 6. *In re Redeker*, 177 Ariz. 35, 868
25 P.2d 318 (1994). At this state of the analysis, the facts would justify either long-

1 term suspension or disbarment if there are no or insufficient mitigating
2 circumstances. "Absent aggravating or mitigating circumstance," is invariably
3 the introductory qualification of the Standard's discussion of appropriate
4 penalties.

6 **Aggravating and Mitigating Factors**

7 The *ABA Standards* also call for consideration of the relevant aggravating
8 and mitigating factors in arriving at the appropriate sanction. It is here that I part
9 company with the State Bar to some extent. The State Bar suggests that there are
10 seven aggravating factors present under *Standard 9.22*:

11 (b) dishonest or selfish motive;

12 (c) a pattern of misconduct;

13 (d) multiple offenses;

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

17 (g) refusal to acknowledge wrongful nature of conduct;

18 (j) indifference to making restitution;

19 (k) illegal conduct, including that involving the use of controlled
20 substances.

21
22 I find only three factors in aggravation, 9.22(c), pattern of misconduct,
23 9.22(d), multiple offenses, and 9.22(k), illegal conduct. The other four
24 would require that I find that the Respondent was at all relevant times
25

1 capable of thinking and acting rationally and sane enough to control his
2 behavior, despite the evidence that he was at least at some times irrational
3 if not paranoid. A fully sane lawyer does not send to another lawyer page
4 after page of "YOU ARE A FUCKING WHORE."

6 Yet there were times Respondent seemed to act quite rationally with
7 wrongful motivation, such as when he accepted fees from clients in counts one,
8 four and five and then failed to represent them diligently or refund the unearned
9 fees. The problem for me is that the State Bar takes the position that it is enough
10 to impute indifference, bad faith, dishonesty and selfish motives to everything
11 that Respondent has done however mentally ill or drug-addled he may have been
12 in particular instances. The State Bar takes the position that the bad acts alone
13 coupled with a inference draw from the criminal case that Respondent knew the
14 difference between right and wrong (by criminal justice standards) requires that I
15 find that evil or rational wrongful intent and not mental impairment or irrational
16 behavior due to mental illness or drug use motivated Respondent throughout
17 when it comes to attorney discipline. Although rational evil or wrongful intent
18 may have motivated Respondent some or even most of the time, there was no
19 medical or other evidence of Respondent's mental condition whatever presented
20 at the hearing and no representation made by the State Bar that it had seen the
21 medical evaluation in the criminal case or otherwise looked into Respondent's
22 mental or emotional state. In a matter as important as disbarment I am not willing
23 to go on inference alone as far as the State Bar wants me to go in findings of
24 aggravating factors.

1 Respondent engaged in illegal conduct as evidenced by his criminal
2 convictions in Counts Three and Count Six.

3 The State Bar and I agree that there are three mitigating factors present
4 under *Standard 9.32*:

5 (a) absence of a prior disciplinary history.

6 (c) personal and emotional problems.

7 (f) inexperience in the practice of law.
8

9 In October 2005, Respondent informed a State Bar Investigator that he was
10 going through some difficulties related to his divorce and substance abuse. The
11 record relating to Counts Three and Six, in which Respondent violated an order of
12 protection obtained by his former wife and harassed wife's divorce lawyer, also
13 provide some evidence that Respondent was going through a divorce and coping
14 poorly. The State Bar suggests that personal and emotional problems be given
15 minimal weight because Respondent has never come forward with any
16 information indicating his divorce impacted his practice or regarding the nature
17 and extent of his substance abuse issues. However, his failure to do so could as
18 easily be taken to show that he is unable to do so *because* of his mental and
19 emotional problems. I decline to give the factor either lesser or greater weight.

20 A more difficult problem is to what extent, if any, there can be taken
21 into account the possibility that Mr. Bower my someday triumph over his
22 present impairment and become once again competent to practice law. ER
23 9.32(i) makes rehabilitation from mental disability or chemical dependency a
24 mitigating factor. But the door that ER 9.32(i) seems to open is all but illusory
25 if the Respondent is given no chance to go through it by being given the

1 ultimate penalty of disbarment before he has a chance to prove recovery and
2 rehabilitation. The State Bar cannot be faulted for acting promptly, but by
3 doing so ER 9.32(i). is largely sidestepped, except to the extent it extends the
4 ray of hope that even if disbarred someday Respondent may overcome his
5 present problems and then be able to use his rehabilitation in support of a
6 request for reinstatement. In any case, for ER 9.32(i) to apply requires both
7 medical evidence and a showing of sustained recovery over a long time. The
8 specificity of ER 9.32 precludes using the more general ER 9.32(c) as a vehicle
9 to consider in mitigation the possibility of future rehabilitation.

10 Respondent was admitted to practice law in the state of Arizona in 2001,
11 approximately four years, or in some instances less, at the time of the misconduct.

12 13 **Proportionality Review**

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

20 *In re Brown*, SB 05-0054-D (2005), Brown violated Rule 42, Ariz.R.S.Ct.,
21 specifically, ERs 1.2, 1.3, 1.4, 1.5, 1.15(a), 1.16, 3.2, 8.4(d) and Rules 32(c)(3)
22 and 53(d) and (f), Ariz.R.S.Ct. After receiving substantial retainers, Brown
23 abandoned clients and their cases and refused to return any fees paid. Brown
24 failed to communicate with his clients, failed to return files containing original
25 documents, and lied to clients about the status of their cases. Brown also failed to

1 respond or cooperate with the State Bar's investigation. Brown was disbarred.
2 There were six aggravating factors and no mitigating factors. The mental state
3 was knowing and there was serious injury. In this case there was apparently drug
4 impairment although the hint appears in the recommendations rather than the
5 findings.

6 *In re Menkveld*, SB No. 06-0120-D (2006), addresses misconduct involving
7 violations of Rule 42, Ariz.R.S.Ct., specifically, ERs 1.2, 1.3, 1.4, 1.5, 1.15,
8 1.16(d), 3.2, 3.4(c), 8.1(b) and 8.4(d) and Rules 32(c)(3), 43, 44 and 53(f) and (d),
9 Ariz.R.S.Ct. Menkveld abandoned his practice. He misappropriated funds from
10 the estate in file 04-1931 and failed to repay the judgment ordered in the estate in
11 file 04-2065 resulting in serious harm to his clients. Menkveld failed to respond
12 to the State Bar's investigations or the formal disciplinary process. There were
13 seven aggravating factors and one mitigating factor. The mental state was
14 knowing/intentional and there was serious injury. Menkveld was disbarred and
15 ordered to pay restitution and costs.

16 **Conclusion**

17 The purpose of lawyer discipline is not to punish the lawyer, but to protect
18 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 197, 859
19 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
20 public, the profession and the administration of justice. *In re Nelville*, 147 Ariz.
21 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
22 the bar's integrity. *In re Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

23 In this matter, Respondent may have abandoned his practice. Respondent
24 knowingly and intentionally engaged in significant repeated acts of misconduct
25 that harmed his clients. Respondent also failed to participate or respond in the

1 State Bar's investigations of these matters or the formal disciplinary process
2 causing inconvenience to the legal system and the profession but not necessarily
3 harm.

4 Respondent has failed to follow court orders by violating an order of
5 protection and then failing to abide by the terms of his probation once convicted.
6 Respondent sent highly offensive and harassing facsimiles to the opposing
7 counsel in his divorce proceeding, which he was later charged with misdemeanor
8 harassment for these facsimiles. He then failed to appear for the court dates in
9 both criminal matters. These actions show that Respondent engaged in criminal
10 conduct and failed to abide by the court's directives.

11 This case clearly calls for either long-term suspension or disbarment, but it
12 is not an easy or self-evident case as to where to draw the line. In the criminal
13 case the court imposed a short sentence and a long probation, suggesting that the
14 Court there did not feel the Respondent beyond salvation. I have seriously
15 considered recommending that the Respondent be given a long-term suspension
16 of three or four year to give Respondent more of an incentive and a chance to
17 qualify for the mitigating factor of rehabilitation under ER 9.32(i). To do so
18 might be the best course, and there would be no risk to the public for he could not
19 practice until then and could not be reinstated without meeting the stringent
20 requirements of Rule 65. But because to all appearances Respondent has
21 abandoned the practice of law, because Respondent has engaged in at least some
22 activities that most likely were motivated by selfishness and self-interest and not
23 due to extenuating emotional stress, mental illness, or drug dependency, and
24 because the Respondent has done nothing whatever to try to help himself,
25 disbarment appears to be the better recommendation

1
2 **RECOMMENDATIONS**
3

4 I recommend disbarment.

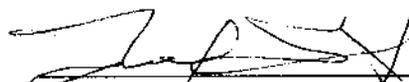
5 In addition Respondent should be ordered to pay restitution in the amount
6 of \$1,500.00 to Howard and Kathleen Sadlier, complainants in Count One.

7 Respondent should be ordered to participate in fee arbitration to determine
8 the amount of any refund that may be owed to Darrell and Joanne Miller,
9 complainants in Count Four and Lori Snow and Phillip Hurst, complainants in
10 Count Five.

11 In the event that the victims of Respondent's misconduct are made whole
12 by application to the State Bar Client Protection Fund, Respondent should be
13 likewise ordered to reimburse the client protection fund in the appropriate and
14 applicable amounts.

15 Respondent should be ordered to pay the costs and expenses incurred in
16 these disciplinary proceedings.

17 **DATED** this 23rd day of October 2006.

18
19 
20 Frederick K. Steiner, Jr.
21 Hearing Officer 8T

22 Original mailed to the Disciplinary Clerk
23 of the Supreme Court of Arizona for filing
24 1501 W. Washington, Suite 104
Phoenix, Arizona 85007-3231

25 And copy mailed to

1 Ariel I Worth, Bar No. 018702
2 Staff Bar Counsel
3 State Bar of Arizona
4 4201 N. 24th Street, Suite 200
Phoenix, Arizona 85016-6288

5 October 24, 2006

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7 _____
8 Frederick K. Steiner, Jr.
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