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HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY Q. J. J. J.

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

IN THE MATTER OF A SUSPENDED MEMBER) Nos. 05-0959, 05-1668
OF THE STATE BAR OF ARIZONA,) 05-1686

JASON J. BRYN,
Bar No. 018750

RESPONDENT.

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) **HEARING OFFICER'S**
) **REPORT**
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I. PROCEDURAL HISTORY

The State Bar filed its complaint in this matter on December 13, 2005. The complaint was served on Respondent by certified restricted mail and regular first class mail as provided for in the Rules of the Supreme Court. Respondent failed to file an answer or otherwise defend. As such, a default was entered in this matter on February 3, 2006. The allegations in the complaint therefore having been deemed admitted, the case was subsequently set for an aggravation/mitigation hearing on the appropriate sanction for March 7, 2006. Respondent was served by mail with the notice dated February 23, 2006, setting the March 7, 2006, hearing date.

Patricia Williams, a member of the staff of the Disciplinary Clerk, spoke by

1 telephone with Respondent on March 2, 2006, and confirmed to Respondent that
2 the hearing was scheduled for March 7, 2006, to begin at 1:00 p.m. Ms. Williams
3 later confirmed her conversation with Respondent by e-mail. Respondent was
4 asked to notify the State Bar whether or not he would appear at hearing, and was
5 informed that if he had a conflict with the date or time that he was required to file a
6 motion with the Disciplinary Clerk. Respondent did not file any motion or
7 otherwise contact the State Bar or the Disciplinary Clerk.
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9 On March 6, 2006, approximately 24 hours prior to the commencement of
10 the aggravation/mitigation hearing, the legal assistant to the Hearing Officer
11 personally contacted Respondent to determine whether Respondent would appear
12 for the hearing. Respondent informed the Hearing Officer's legal assistant that he
13 might be out of town, and that he had just found out that he would not be available
14 for the hearing. Respondent, however, failed to file a motion for continuance,
15 failed to otherwise contact the Disciplinary Clerk's office and did not contact the
16 State Bar.
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20 The Hearing Officer, having determined that Respondent had been
21 adequately advised of the hearing date and time, commenced the
22 aggravation/mitigation hearing on March 7, 2006, at approximately 1:15 p.m. The
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1 State Bar presented no witnesses, but made a presentation concerning the facts and
2 circumstances of the instant matters, including information gathered from the
3 complainants, and presented its recommendation for proposed sanction. The
4 Hearing Officer requested that the State Bar file by April 7, 2006, a proposed
5 decision, including findings of fact and conclusions of law, and proposed
6 recommendation, incorporating the applicable standards and aggravating and
7 mitigating factors under the *ABA Standards for Imposing Lawyer Sanctions*, as
8 well as addressing proportionality and restitution.
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10 **II. FACTS**

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12 The facts listed below are those set forth in the State Bar's complaint, and were
13 deemed admitted by way of Respondent's default.
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15 At all times relevant, Respondent was an attorney licensed to practice law in
16 the State of Arizona, having been admitted to practice in Arizona on May 16, 1998.
17 Respondent was suspended from the practice of law, for a period of six months and
18 one day, by the Supreme Court of Arizona, effective July 30, 2005, by Order filed
19 June 30, 2005.
20

21 **COUNT ONE (05-0959)**

22 Respondent was hired by Craig and Diane Suter ("Mr. and Mrs. Suter" or "the
23 Suters") on or about May 25, 2004, to represent them in an employment
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1 discrimination matter against Mrs. Suter's employer, University Medical Center
2 ("UMC"). The Suters paid Respondent \$2,000, as an advance fee. Respondent
3 informed Mr. and Mrs. Suter that Mrs. Suter should file a claim with the Equal
4 Employment Opportunity Commission ("EEOC"), but that he would, by sending a
5 demand (or settlement) letter, attempt to get UMC to settle before the matter
6 proceeded to a full EEOC hearing.
7

8 Respondent, by e-mail, sent Mr. and Mrs. Suter a "fee and service" agreement
9 for their signature. Mr. and Mrs. Suter signed the agreement and returned it to
10 Respondent on or about May 26, 2004. Over several weeks following May 26,
11 2004, Mr. and/or Mrs. Suter attempted to communicate with Respondent by e-mail
12 with information and/or questions about their matter. Respondent either did not
13 respond or did not promptly respond to the e-mails.
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16 In an e-mail to Mr. Suter, sent on or about August 21, 2004, Respondent
17 stated that Respondent would be in Colorado until September 9, 2004, before
18 leaving for Athens (Greece), that Respondent would have the demand letter done
19 before leaving for Athens and that Mr. and Mrs. Suter would have an opportunity
20 to review the letter.
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23 In the weeks and months following August 21, 2004, Mr. and Mrs. Suter had
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1 no further communication from Respondent and did not receive the promised
2 letter, or a copy of the letter, in draft or final form. Mr. Suter attempted to
3 communicate with Respondent by e-mail on or about October 18, 2004. Mr. Suter
4 did not receive a reply to his e-mail.

5 In December 2004 around Christmas, Mrs. Suter received a telephone call
6 from Respondent in which Respondent stated that he would have the demand letter
7 to UMC prepared and sent before the first of the new year (2005). Mr. and Mrs.
8 Suter had no further communication from Respondent, and did not receive the
9 promised letter, or a copy of the letter, in draft or final form.
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12 On or about January 19, 2005, Mrs. Suter attempted to communicate with
13 Respondent by e-mail, asking about the demand (settlement) letter. Mrs. Suter
14 received no response from Respondent. As Respondent had failed to communicate
15 with the Suters, on or about February 8, 2005, Mr. and Mrs. Suter went to
16 Respondent's office. Respondent met with the Suters and admitted that he had
17 neglected his responsibility regarding the letter and assured the Suters that he
18 would get it done. Respondent, however, failed to communicate with the Suters
19 after the February 8, 2005, meeting.
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23 On or about February 22, 2005, having received no communication from
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1 Respondent, Mr. Suter attempted to communicate with Respondent by e-mail. Mr.
2 Suter received an e-mail response from Respondent on or about February 22, 2005,
3 in which Respondent stated that he was working to complete the letter for the
4 Suters. Despite Respondent's prior assertion that Respondent was working on the
5 Suter's matter, and having received no communication from Respondent, Mr. Suter
6 attempted to communicate with Respondent by e-mail on or about March 7, 2005.
7 Respondent did not reply.
8

9 On or about Sunday, March 27, 2005, Mr. Suter again attempted to
10 communicate with Respondent by e-mail. Respondent replied and stated that the
11 promised letter would be ready for their review by "Thursday." No letter was
12 received from Respondent. Mr. Suter attempted to communicate with Respondent
13 by e-mail on or about Saturday, April 2, 2005. Mr. Suter indicated that he was
14 considering terminating Respondent's services and asked for an accounting of the
15 \$2,000 advance fee paid to Respondent.
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18 Respondent replied on Wednesday, April 6, 2005, that he was working on a
19 "pressing matter" and would have the Suter's letter by Friday, but did not provide
20 an accounting as requested. Respondent again failed to provide the promised
21 letter. On May 23, 2005, the Suters went to Respondent's office and waited for
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1 him to arrive. Respondent again promised that the letter would be prepared within
2 days.

3 On or about May 25, 2005, Respondent telephoned Mrs. Suter and stated
4 that the accounting was almost done and that the long-promised letter would be
5 prepared by May 27, 2005. Respondent also informed Mrs. Suter that the entire
6 \$2,000 advance fee had been expended, but did not provide an accounting.
7

8 On May 26, 2005, Respondent telephoned the Suters and stated that the
9 accounting was done. Mr. Suter asked that the accounting be e-mailed to him.
10 Despite Respondent's statement that he would e-mail the accounting, no
11 accounting from Respondent was received by Complainant. By written
12 communication dated June 10, 2005, Mr. Suter informed the State Bar of Arizona
13 ("State Bar") of his concerns regarding Respondent's conduct during Respondent's
14 representation of Mr. and Mrs. Suter.
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17 A screening investigation pursuant to Rules 51 and 54, Ariz.R.S.Ct., was
18 initiated by Bar counsel based on the information provided by Mr. Suter. By letter
19 dated June 22, 2005, mailed to Respondent's address of record, Bar counsel
20 advised Respondent of the charge and requested that Respondent respond, no later
21 than 20 days from the date of the letter, addressing his possible violations of the
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Rules of Professional Conduct. Respondent failed to respond.

1 By letter dated July 8, 2005, mailed to Respondent's address of record, Bar
2 counsel provided additional documentation of Mr. Suter's charge to Respondent,
3 asking that he consider the additional information in his response to the Bar
4 counsel's letter, due July 18, 2005. Respondent was invited to contact Bar
5 counsel's assistant should Respondent require an extension of time in which to
6 respond. Respondent, however, again failed to respond.
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9 By letter from Bar counsel dated July 21, 2005, mailed to Respondent's
10 address of record, Respondent was reminded of his obligation to respond to the
11 request for response from Bar counsel, and advised that his failure to cooperate
12 with the disciplinary investigation was, in itself, grounds for discipline.
13 Respondent failed to respond.
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16 **COUNT TWO (05-1668)**

17 On or about September 3, 2003, Respondent was consulted by Kent Churchill
18 ("Mr. Churchill") about possible representation in an employment and disability
19 matter with Mr. Churchill's employer and the EEOC. In or about October 2003,
20 Mr. Churchill retained Respondent to represent him and paid a \$2,000 advance fee.
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22 Respondent took no action in Mr. Churchill's matter from October through the
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1 beginning of December 2003, and was not present in his office or available to Mr.
2 Churchill. Respondent met with Mr. Churchill in early December 2003 and
3 informed Mr. Churchill of a timeframe in which Respondent would handle Mr.
4 Churchill's matter.

5 Respondent, however, did not act promptly in Mr. Churchill's matter and
6 approximately 6 months passed before Respondent filed a claim on Mr. Churchill's
7 behalf with the EEOC. Respondent's delay in filing Mr. Churchill's claim caused
8 Mr. Churchill great anxiety and stress.
9

10 In August 2004, Mr. Churchill received a "right to sue" letter from the
11 EEOC, which meant that a lawsuit on Mr. Churchill's behalf had to be filed, if at
12 all, within 90 days. Mr. Churchill immediately requested that Respondent take
13 action to file a lawsuit on Mr. Churchill's behalf. Respondent did not do so.
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16 Mr. Churchill communicated with or attempted to communicate with
17 Respondent numerous times over the ensuing months, but Respondent failed to
18 timely respond to Mr. Churchill's telephone calls, letters and/or e-mails and/or
19 failed to take prompt action to file Mr. Churchill's legal action. In mid-April 2005,
20 Mr. Churchill again attempted to communicate with Respondent regarding the
21 claim he wished to make against his employer as well as information on Mr.
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1 Churchill's on-going medical expenses. Respondent failed to adequately
2 communicate with Mr. Churchill.

3 Mr. Churchill, not having received any response from Respondent, again e-
4 mailed Respondent on or about May 20, 2005, asking for a response, an update on
5 the status of his case and expressing concern that the applicable limitation period
6 would expire before Respondent took action to file a lawsuit. Mr. Churchill also
7 asked Respondent to provide an accounting of the \$2,000 advance fee, as well as to
8 explain the terms of Respondent's representation including the rate at which and on
9 what basis Respondent charged against the advance fee. Respondent responded to
10 Mr. Churchill's May 20, 2005, e-mail stating that he would provide the
11 information Mr. Churchill requested.

12 However, Mr. Churchill had no further communication from Respondent,
13 other than a telephone call in August 2005, in which Respondent failed to provide
14 the information Mr. Churchill was seeking. On or about October 10, 2005, Mr.
15 Churchill attempted to communicate with Respondent by e-mail, as he had been
16 unable to communicate with Respondent for over one month by any other means.

17 In an e-mail sent on October 10, 2005, Mr. Churchill again asked whether
18 Respondent had filed a lawsuit on Mr. Churchill's behalf within the applicable
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1 limitations period, reminded Respondent that Respondent had promised further
2 information to Mr. Churchill, including information on how to transfer Mr.
3 Churchill's case to another attorney. Finally, in the e-mail sent October 10, 2005,
4 Mr. Churchill requested the return of the \$2,000 advance fee and his file.
5 Respondent did not reply to Mr. Churchill, nor did he refund the \$2,000.

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7 By written communication dated September 19, 2005, Mr. Churchill
8 informed the State Bar of the conduct of Respondent with regard to his
9 representation of Mr. Churchill. Based on the information provided by Mr.
10 Churchill, a screening investigation pursuant to Rules 51 and 54, Ariz.R.S.Ct., was
11 initiated by Bar counsel. By letter dated October 18, 2005, mailed to Respondent
12 at his address of record, Bar counsel informed Respondent of the charge filed by
13 Mr. Churchill and requested that Respondent respond, no later than 20 days from
14 the date of the letter, addressing his possible violations of the Rules of Professional
15 Conduct.

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18 Respondent was also asked to provide his trust account records and
19 supporting records and documents relating to his representation of Mr. Churchill.
20 Respondent failed to respond. By letter dated November 16, 2005, mailed to
21 Respondent at his address of record, Bar counsel reminded Respondent of his
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1 obligation to respond to the request for response from Bar counsel and informed
2 Respondent that failure to cooperate with the disciplinary investigation was
3 grounds, in itself, for further discipline. Respondent failed to respond.

4 **COUNT THREE (05-1686)**

5 On or about November 1, 2004, Respondent was retained by Thomas Sroka
6 ("Mr. Sroka") to represent Lois Sroka ("Ms. Sroka"), his mother, in an
7 employment dispute. Respondent requested that Mr. Sroka and Ms. Sroka review
8 and sign a written fee agreement. Mr. Sroka and Ms. Sroka did so, and Mr. Sroka
9 provided Respondent with a \$1,000 advance fee.
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12 On or about November 5, 2004, Mr. Sroka communicated with Respondent
13 and based on their conversation it was clear to Mr. Sroka that Respondent was
14 going to draft and send a demand letter to Ms. Sroka's employer. Mr. Sroka
15 understood from their conversation that Respondent wanted Ms. Sroka to review
16 the letter and that it would be sent to her employer by November 12, 2004.
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19 Neither Mr. Sroka nor Ms. Sroka had any communication from Respondent in
20 the days and weeks following the November 5, 2004, telephone conversation. By
21 e-mail sent on December 4, 2004, Mr. Sroka communicated with Respondent and
22 asked to be advised of the status of Ms. Sroka's matter, and asked that Respondent
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1 call him or Ms. Sroka. Respondent replied by e-mail sent on December 8, 2004,
2 that Respondent was "finishing a few other matters and will be working on it
3 shortly."

4 Neither Mr. Sroka nor Ms. Sroka had any communication from Respondent in
5 the days and weeks following Respondent's December 8, 2004, e-mail. By e-mail
6 sent on December 29, 2004, Mr. Sroka provided Respondent with additional
7 information about Ms. Sroka's matter and asked for guidance on what materials
8 Respondent might need to proceed. By e-mail sent on December 30, 2004,
9 Respondent indicated his desire to review the documents to which Mr. Sroka had
10 referred in his December 29, 2004, e-mail, but indicated that there was "no rush."
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13 Soon thereafter, Mr. Sroka and/or Ms. Sroka delivered copies of the documents
14 to Respondent's office. Neither Mr. Sroka nor Ms. Sroka had any communication
15 from Respondent in the days and weeks that followed the December 29 and 30,
16 2004, e-mails. Having had no communication from Respondent in approximately
17 7 weeks, Mr. Sroka contacted Respondent by e-mail on February 23, 2005.
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20 Mr. Sroka expressed his concern that Respondent had not followed through
21 with the actions that Respondent had promised to take in Ms. Sroka's matter, asked
22 that Respondent contact him and asked for both a billing statement and an
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1 accounting for the \$1,000 Mr. Sroka had paid Respondent. In addition, Mr. Sroka
2 reminded Respondent that time was of the essence, as Ms. Sroka was considering
3 filing for bankruptcy and wished to resolve this matter prior to that time.
4 Respondent replied, stating that he was “working on deadlines” and that he would
5 respond to Mr. Sroka on Friday, two days later, but did not provide the requested
6 billing or accounting. Mr. Sroka communicated with Respondent several times
7 after the February 23, 2005, e-mail requesting an accounting and billing
8 statements. Despite multiple promises to provide an accounting or billing
9 statements to Mr. Sroka, Respondent continually failed to do so.
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12 Respondent failed to prepare the promised demand letter, and to the best of Mr.
13 Sroka’s knowledge, Respondent, despite having been retained to do so, failed to
14 communicate with Ms. Sroka’s employer to attempt to resolve Ms. Sroka’s
15 employment matter. By written communication dated September 3, 2005, Mr.
16 Sroka informed the State Bar of the conduct of Respondent with regard to his
17 representation of Ms. Sroka.
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20 Based on the information provided by Mr. Sroka, a screening investigation
21 pursuant to Rules 51 and 54, Ariz.R.S.Ct., was initiated by Bar counsel. By letter
22 dated October 18, 2005, mailed to Respondent at his address of record, Bar counsel
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1 informed Respondent of the charge filed by Mr. Sroka and requested that
2 Respondent respond, no later than 20 days from the date of the letter, addressing
3 his possible violations of the Rules of Professional Conduct.

4 Respondent was also asked to provide all trust account information,
5 including supporting documents and records, relating to his representation of Ms.
6 Sroka. Respondent failed to respond.

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8 By letter dated November 16, 2005, mailed to Respondent at his address of
9 record, Bar counsel reminded Respondent of his obligation to respond to the
10 request for response from Bar counsel and informed Respondent that failure to
11 cooperate with the disciplinary investigation was grounds, in itself, for further
12 discipline. Respondent failed to respond.

13 14 **ADDITIONAL FINDINGS**

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16 The Arizona Supreme Court in SB 05-0098-D, State Bar File Numbers 03-
17 2228, 04-0313 and 04-1141, ordered Respondent's current suspension from the
18 practice of law effective July 30, 2005. The facts in that matter were, as are those
19 in the instant matter, deemed admitted by default.

20
21 During many, if not most, of the events underlying the State Bar's complaint in
22 this matter, Respondent was actively involved in the formal proceedings in SB 05-
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0098-D, State Bar File Numbers 03-2228, 04-0313 and was therefore on notice that
1 his responses to the State Bar in both the investigation and formal proceedings, as
2 well as his attendance at the aggravation/mitigation hearing, were vitally important.
3 Yet, Respondent failed to file an answer to the State Bar's complaint in the instant
4 matter and failed, despite both written and personal notice, to participate in the
5 aggravation/mitigation hearing or to appropriately move for a continuance.
6
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8 **CONCLUSIONS OF LAW**

9 Respondent violated Rule 42, Ariz.R.S.Ct., as follows:

- 10 1. In Counts Two and Three, Respondent violated ER 1.1 by failing to
11 provide competent representation of his clients;
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- 13 2. In Counts Two and Three, Respondent violated ER 1.2 by failing to
14 abide by his clients' decisions concerning the objectives of the representation and
15 take action on the client's behalf as authorized and requested;
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- 17 3. In Counts One, Two and Three, Respondent ER 1.3, by failing to act
18 with reasonable diligence and promptness in his representation of his clients;
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- 20 4. In Counts One, Two and Three, Respondent specifically ER 1.4, by
21 failing to adequately communicate with his clients, the by failing to keep his clients
22 reasonably informed about the status of their matter and by failing to promptly
23

Further,

1 11. In Count Two, Respondent violated Rules 43 and 44, Ariz.R.S.Ct., by
2 failing to comply with the requirements for the establishment and maintenance of
3 his client trust account;
4

5 12. In Counts One, Two and Three, Respondent violated Rule 53(d),
6 Ariz.R.S.Ct., by failing to cooperate with Bar counsel, acting in the course of Bar
7 counsel's duties; and
8

9 13. In Counts One, Two and Three, Respondent violated Rule 53(f),
10 Ariz.R.S.Ct., by failing to furnish information or respond promptly to inquiry and
11 request from Bar counsel.
12

13 **IV. RECOMMENDED SANCTION**

14 This recommendation is based on the applicable *ABA Standards for Imposing*
15 *Lawyer Sanctions* ("Standards"), 1991 edition, including the relevant aggravating
16 and mitigating factors, as well as its review of the applicable case law regarding
17 proportionality of the proposed sanction.
18

19 **A. APPLICABLE STANDARDS**

20 The Standards provide guidance with respect to an appropriate sanction in this
21 matter. The Supreme Court and Disciplinary Commission consider the Standards a
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1 suitable guideline. *In re Peasley*, 208 Ariz. 27, ¶ 23, ¶ 33, 90 P.3d 764, 770, 772
2 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

3 The Supreme Court and the Disciplinary Commission consistently use the
4 *Standards* to determine appropriate sanctions for attorney discipline. See *In re*
5 *Clark*, 207 Ariz. 414, 87 P.3d 827 (2004). The *Standards* are designed to promote
6 consistency in sanctions by identifying relevant factors the court should consider
7 and then applying these factors to situations in which lawyers have engaged in
8 various types of misconduct. *Standard* 1.3, Commentary.

9
10 In determining an appropriate sanction, the Court and the Disciplinary
11 Commission consider the duty violated, the lawyer's mental state, the presence or
12 absence of actual or potential injury, and the existence of aggravating and
13 mitigating factors. *Peasley*, 208 Ariz. at ¶ 33, 90 P.3d at 772; ABA *Standard* 3.0.

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16 “The *Standards* do not account for multiple charges of misconduct. The
17 ultimate sanction imposed should at least be consistent with the sanction for the
18 most serious instance of misconduct among a number of violations; it might well
19 be and generally should be greater than the sanction for the most serious conduct.”
20
21 *Standards*, p. 6 *In re Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994).

22
23 The *Standards* identify four distinct categories in which a lawyer has

1 specific duties, to his client, to the general public, to the legal system and to the
2 profession. Respondent's duties his clients, to the general public, to the legal
3 system and to the profession are all implicated in this matter.

4 Respondent's duties to his clients, however, are paramount. The *Standards*
5 assume that the most important ethical duties are those obligations that a lawyer
6 owes to clients. Those duties include the duty of loyalty, diligence, competence
7 and candor. The facts in these matters show that Respondent failed in all of these
8 duties. Respondent's conduct toward his clients varied from neglect to outright
9 dishonesty, as he continually failed to accomplish the work for which he had been
10 retained and then continually provided empty promises of action. While the State
11 Bar has not alleged, and this Hearing Officer has not found, a violation of ER
12 8.4(c), Respondent's conduct including procrastination, empty promises and a lack
13 of appropriate action certainly implicate his honesty and integrity.

14 Respondent's lack of diligence and his failure to adequately, or honestly,
15 communicate with his clients implicate *Standard 4.4*, that provides:

16 Disbarment is generally appropriate when:

17 (b) a lawyer knowingly fails to perform services for a
18 client and causes serious or potentially serious injury
19 to a client; or

20 (c) lawyer engages in a pattern of neglect with respect to
21 client matters and causes serious or potentially serious injury
22

to a client.

1 In addition, *Standard* 8.1 provides that,

2 Disbarment is generally appropriate when a lawyer:

3 (b) has been suspended for the same or similar misconduct,
4 and intentionally or knowingly engages in further similar
5 acts of misconduct that cause injury or potential injury to
6 a client, the public, the legal system, or the profession.

7 Respondent's suspension in SB 05-0098-D, was predicated on the same, and
8 at times identical, misconduct seen in the instant case including his failure to
9 cooperate with the efforts of the State Bar and his failure to file an answer to the
10 complaint in the formal proceedings. Even more egregious in the instant matter is
11 Respondent's deliberate failure to participate in the aggravation/mitigation hearing,
12 and the fact that Respondent was certainly aware, by virtue of the proceedings in
13 his prior disciplinary matter, the importance of his participation.
14
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16 Considering Respondent's conduct in the underlying matters as well as
17 during the State Bar's investigation and the formal discipline process, together with
18 his disciplinary history, ~~that~~ the presumptive sanction in this matter is disbarment.
19

20 STATE OF MIND

21 It is clear from the facts of the instant matter, including the statements
22 made by Respondent to his clients, that Respondent's state of mind was
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1 knowing and/or intentional. Respondent acknowledged during his conversations
2 with his clients that he had not met deadlines, had not promptly or diligently
3 followed through with promised actions and that he had not given their matters
4 the attention they deserved. There can be no conclusion other than that
5 Respondent acted knowingly, if not intentionally, with regard to each of the
6 ethical violations found.
7

8 Further, in light of Respondent's recent prior experience with the
9 discipline system, there can be no doubt that Respondent's failure to cooperate
10 with the investigation by the State Bar, and his failure to participate in the
11 formal discipline proceedings including failure to appear at the
12 aggravation/mitigation hearing, was intentional.
13

14 AGGRAVATING AND MITIGATING FACTORS 15

16 The Hearing Officer finds, that the following aggravating factors,
17 enumerated in *Standard 9.22*, apply in this matter:
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19 (a) Prior disciplinary offenses. As previously stated, Respondent was
20 suspended from the practice of law for six months and one day by the Supreme
21 Court of Arizona, effective July 30, 2005.
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23 (b) Dishonest or selfish motive. Respondent's conduct in these matters
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1 span a period of time when he was either absent from his practice for extended
2 periods of time due to his personal athletic goals or while he was involved in
3 disciplinary proceedings in his prior matter. During all of those times,
4 Respondent should have been cognizant of his competing demands on his time
5 and should not have accepted new clients and/or promised legal work he would
6 not complete. However, Respondent accepted fees from each of his clients, in
7 the three underlying matters, did virtually nothing to earn them, continually
8 provided empty promises of action and results, and then when confronted
9 declined to refund fees he clearly had not earned.
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12 (c) Pattern of misconduct. As noted above, Respondent's conduct in
13 these matters is substantially the same, if not identical, to the conduct that
14 formed the basis for the ethical violations found in the prior formal discipline
15 matter. In addition, Respondent's misconduct in these three matters, in and of
16 itself, demonstrates a pattern of misconduct.
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18 (d) Multiple offenses.

19 (e) Bad faith obstruction of the disciplinary proceeding by intentionally
20 failing to comply with rules or orders of the disciplinary agency.
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22 Respondent's violations include his failure to cooperate with the
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1 State Bar during their investigation of the three underlying matters,
2 and his failure to participate in the formal disciplinary proceedings.

3 (g) Refusal to acknowledge wrongful nature of conduct. The Hearing
4 Officer has considered the applicability of this factor. Respondent has,
5 practically speaking, stood mute in this matter. While it is not given great
6 weight, the Hearing Officer finds that Respondent did not avail himself of a
7 number of opportunities to admit the wrongful nature of his conduct, including
8 failing to cooperate with the investigation of the State Bar and by failing to
9 participate in the formal discipline process. Respondent's apparently insincere
10 apologies to his clients when they confronted him do not vitiate this finding, as
11 his proffered apologies were not accompanied by appropriate remedial conduct.

12 (h) Vulnerability of victim. In particular, Mr. Suter, who made
13 Respondent aware of his terminal illness and his precarious financial position,
14 was vulnerable. As related through Bar counsel during the
15 aggravation/mitigation hearing, it was difficult for the Suters to gather the
16 \$2,000 they paid Respondent and Respondent did virtually nothing for them,
17 while claiming to have exhausted their entire fee.

18 (j) Indifference to making restitution. Respondent has not, despite
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1 requests from each of his former clients, refunded any portion of their fee.
2 Respondent's failure to participate in the formal discipline proceedings, and his
3 failure to acknowledge his obligation to refund fees he did nothing to earn
4 support a finding of this aggravating factor.

5 Having considered the possible mitigating factors, as listed in *Standard*
6 9.32, the Hearing Officer finds that none apply.
7

8 D. PROPORTIONALITY

9 In the past, the Supreme Court has consulted similar cases in an attempt to
10 assess the proportionality of the sanction recommended. *See In re Struthers*, 179
11 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that
12 the concept of proportionality review is "an imperfect process." *In re Owens*, 182
13 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases "are
14 ever alike." *Id.*
15
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17 To have an effective system of professional sanctions, there must be internal
18 consistency, and it is appropriate to examine sanctions imposed in cases that are
19 factually similar. *Peasley, supra*, 208 Ariz. at ¶ 33, 90 P.3d at 772. However, the
20 discipline in each case must be tailored to the individual case, as neither perfection
21 nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778
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1 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135
2 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

3 Given the findings above, that disbarment is the presumptive sanction, that
4 Respondent's state of mind was knowing or intentional and that there are numerous
5 aggravating, but no mitigating, factors, there is no reason to recommend a sanction
6 other than disbarment. Disbarment is, further, appropriate and proportionate.
7

8 In reviewing proportional cases, it is appropriate to begin with Respondent's
9 prior matter. In *In re Bryn*, SB-05-0098-D (2005), Respondent was suspended for
10 six months and one day. In that matter, as referenced above, Respondent was
11 found to have violated numerous ERs including ERs 1.3, 1.4, 1.5 and Rules 53(d)
12 and (f). Respondent's misconduct, in accepting clients, not performing the
13 promised work, making continual excuses, and then failing to cooperate with the
14 State Bar and minimal participation in the formal proceedings in that matter echoes
15 his misconduct in the instant matter. More egregious in this matter, however, is the
16 fact that Respondent was actually in the midst of formal disciplinary proceedings
17 in his prior matter while much of the misconduct in the instant matter was
18 occurring and that Respondent did not participate in the aggravation/mitigation
19 hearing. Clearly, a sanction more severe than the one imposed earlier is
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1 In each of these matters actual and/or serious injury to the clients were
2 found. In the instant matter, there is both actual and serious injury to Respondent's
3 former clients. The Suters were left financially devastated, the statute of
4 limitations expired in Mr. Churchill's matter and the Srokas were unable to pursue
5 their claim due to their filing of bankruptcy, an impending event Respondent knew
6 of.
7

8 Having reviewed proportional cases, as well as considering the guidance
9 provided by the *Standards*, there is no doubt that disbarment is the only appropriate
10 sanction in this matter.
11

12 E. RECOMMENDED SANCTION

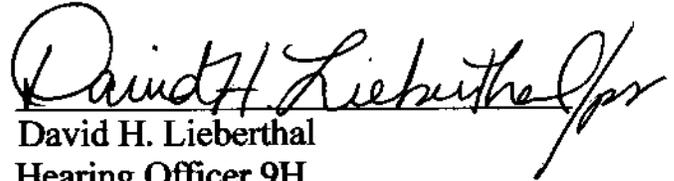
13 It is recommended that Respondent be disbarred. In addition, this Hearing
14 Officer recommends that Respondent be required to make restitution, as follows:
15

16	Craig and Diane Suter	\$2,000
17	Ken Churchill	\$2,000
18	Thomas Sroka	\$1,000

19
20 If Respondent is reinstated to the practice of law at some time in the future,
21 Respondent should be placed on probation for two years and be required to
22 participate in the State Bar's Law Office Management Assistance Program
23
24

including the use of a Practice Monitor, in addition to any other terms of probation
determined upon reinstatement.

RESPECTFULLY SUBMITTED this 12th day of April, 2006.


David H. Lieberthal
Hearing Officer 9H

Original filed with the Disciplinary Clerk
this 12th day of April, 2006.

Copy of the foregoing mailed
this 12th day of April, 2006, to:

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Respondent
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by: 