

**FILED**

JUL 25 2006

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

1 Daniel P. Beeks  
2 2800 North Central Ave., Suite 1100  
3 Phoenix, Arizona 85004  
4 Hearing Officer 7M

5  
6 **BEFORE A HEARING OFFICER**  
7 **OF THE SUPREME COURT OF ARIZONA**

8 **IN THE MATTER OF A**  
9 **MEMBER OF THE STATE BAR OF**  
10 **ARIZONA,**

11 **ERIC M. CASPER,**  
12 **Bar No. 009947**

13 Respondent.

No. 05-2180

HEARING OFFICER'S REPORT

14  
15 Respondent, Eric M. Casper ("Respondent" or "Casper") has defaulted  
16 and failed to answer the complaint in this matter. Previously, on September 6,  
17 2005 Casper was informally reprimanded and placed on probation. Casper has  
18 failed to comply with the terms of his probation, and has failed to cooperate  
19 with the State Bar of Arizona in the present matter. As a result, the Hearing  
20 Officer recommends that Casper be suspended for six months and one day.

21 **I. Procedural History**

22 The probable cause order in this matters was issued against Casper on  
23 January 13, 2006. The complaint was filed on March 30, 2006, and a copy was  
24 mailed by certified mail to Casper at his addresses of record on April 3, 2006.  
25 Casper failed to file an answer, and on May 10, 2006, a notice of default was  
filed and mailed to Casper at the same addresses. Casper still did not answer,

1 and on June 5, 2006, default was entered against Casper. Neither the State Bar  
2 nor Casper requested a hearing on aggravation and mitigation. However, on  
3 July 7, 2006, the State Bar did file proposed findings of fact and conclusions of  
4 law, and mailed a copy to Casper at his address of record. Casper did not  
5 respond to the proposed findings of fact and conclusions of law.

6 **II. Matters Deemed Admitted**

7 Because Casper did not file an answer in this matter, and default was  
8 entered against him, the following matters contained in the complaint are  
9 deemed admitted pursuant to Rule 57(d), Ariz. R. S. Ct.

10 1. At all times relevant, Casper was an attorney licensed to practice  
11 law in the State of Arizona, having been admitted to practice in Arizona on  
12 June 4, 1985.

13 2. On December 8, 2004, the Probable Cause Panelist of the State  
14 Bar of Arizona ("the Probable Cause Panelist") found that probable cause  
15 existed to believe that Casper had violated Rule 42, Ariz. R. Sup. Ct., including  
16 but not limited to ERs 1.3 and 1.4, while representing a client, Lesley K.  
17 Neptune.

18 3. Finding that Casper met the necessary requirements, the Probable  
19 Cause Panelist entered an Order of Diversion.

20 4. The Order of Diversion specifically ordered Casper to contact the  
21 Director of the State Bar's Lawyer Assistance Program ("LAP") in order to  
22 develop a Memorandum of Understanding.

23 5. Casper did not object to the Order of Diversion.

24 6. In or about February 8, 2005 and February 10, 2005, Casper  
25 participated in Lawyer Office Management Assistance Program ("LOMAP")

1 and Member Assistance Program ("MAP") assessments with the directors of  
2 the respective programs.

3 7. The Memoranda of Understanding ("MOUs") for both LOMAP  
4 and MAP were sent to Casper for signature on March 11, 2005. No response  
5 was received.

6 8. A reminder letter was sent on April 7, 2005 requesting that Casper  
7 return the signed MOUs by April 21, 2005.

8 9. On April 28, 2005 a staff member of the Lawyers Assistance  
9 Program ("LAP") left a voice mail message for Casper asking him to call.

10 10. On April 29, 2005, Casper was sent a third letter, by regular and  
11 certified mail, requesting return of the MOUs by May 12, 2005.

12 11. On April 29, 2005, Casper called the LAP office and indicated  
13 that he had not received the MOUs.

14 12. On May 2, 2005, Casper visited the State Bar of Arizona to obtain  
15 the MOUs. Casper was given new copies of the MOU to sign. Casper was  
16 instructed to return the signed copies by June 3, 2005. Casper failed to return  
17 the copies as instructed.

18 13. A reminder letter was sent to Casper's address of record on May  
19 20, 2005, requesting return of the signed documents. Casper failed to respond.

20 14. On June 13, 2005 a final reminder was sent to Casper's address of  
21 record by certified and regular mail.

22 15. Casper accepted the certified mail, as evidenced by the return  
23 receipt bearing his signature, but did not respond.

24 16. LAP staff left another voice mail for Casper on June 27, 2005.  
25 Casper again failed to respond.

1 17. Casper's failure to return the MOUs despite repeated requests over  
2 a four-month period of time constituted a material breach of the terms of the  
3 Order of Diversion.

4 18. A Notice of Non-Compliance with Diversion Order was filed on  
5 July 19, 2005. A copy was mailed to Casper that same day.

6 19. The Probable Cause Panelist entered an Order on July 22, 2005,  
7 giving Casper twenty days to respond to the Notice of Non-Compliance.

8 20. A copy of the Order was mailed to Casper on July 26, 2005.  
9 Casper again failed to respond.

10 21. On September 1, 2005, the Probable Cause Panelist found that  
11 Casper had failed to comply with the terms of the Order of Diversion.

12 22. On September 6, 2005 the Probable Cause Panelist vacated the  
13 Order of Diversion dated December 8, 2004.

14 23. By Order of Informal Reprimand, Probation and Costs filed on  
15 September 6, 2005 ("the IRP"), the Probable Cause Panelist found that  
16 probable cause existed to believe that Casper had violated Rule 42, Ariz. R.  
17 Sup. Ct., including but not limited to ERs 1.3 and 1.4, while representing a  
client, Lesley K. Neptune.

18 24. The Probable Cause Panelist also found that, by failing to sign and  
19 return the required documents to the Lawyer Assistance Program, Casper had  
20 materially breached a condition of his diversion in violation of Rule 53(e),  
21 Ariz. R. Sup. Ct.

22 25. The IRP also imposed a two year term of probation with Casper  
23 required to report, in writing, his compliance with the terms of probation to the  
24 State Bar's Phoenix office.

25 26. On September 8, 2005 a copy of the IRP was mailed to Casper by  
certified and regular mail.

1 27. Casper accepted the certified mail, as evidenced by the return  
2 receipt bearing his signature.

3 28. Casper did not formally object to the IRP.

4 29. On September 13, 2005, LAP Director, Maria Bahr ("Ms. Bahr"),  
5 sent Casper a letter requesting that he contact the office by September 27, 2005  
6 for participation in LOMAP and MAP.

7 30. In a reminder letter dated October 6, 2005, Ms. Bahr again asked  
8 Casper to contact her by October 13, 2005 to set an appointment for his  
9 assessments related to the probation.

10 31. Casper failed to respond to Ms. Bahr's letters.

11 32. A third letter dated October 18, 2005, sent both regular U.S. Mail  
12 and by Certified Mail, Return Receipt Requested, asked Casper to contact the  
13 Director of the LAP by 5:00 pm on October 25, 2005, or the matter would be  
14 turned over to bar counsel.

15 33. Casper accepted the certified mail, as evidenced by the return  
16 receipt bearing his signature. However, Casper again failed to respond.

17 34. A Notice of Non-Compliance with the IRP was filed on November  
18 10, 2005.

19 35. By Order of the Probable Cause Panelist dated November 14,  
20 2005, Casper was given 15 days to respond to the Notice of Non-Compliance.

21 36. The November 14, 2005, Order specifically noted that failure to  
22 file a timely response could be treated as an additional violation or as a  
23 separate disciplinary offense.

24 37. On November 14, 2005, the State Bar's Staff Investigator, Kevin  
25 McBay, spoke with Casper on the telephone. Casper acknowledged to Mr.  
McBay that he had received the three (3) letters from LAP but that, because he

1 was quitting the practice of law at the end of the year, Casper saw no sense in  
2 contacting the LAP.

3 38. Mr. McBay informed Casper that he was in non-compliance with  
4 the terms of probation and told him to contact both bar counsel and LAP to  
5 discuss his intentions. Mr. McBay provided all the appropriate telephone  
6 numbers to Casper who informed Mr. McBay that he would make those  
7 contacts.

8 39. Casper failed to respond.

9 40. A Probable Cause Order was filed on January 13, 2006.

10 41. By failing to respond to the LAP Director and/or to bar counsel,  
11 Casper materially breached a condition of his probation and violated Rule  
12 53(e) (violation of a condition of probation or diversion), Ariz. R. Sup. Ct.

### 13 **III. CASPER'S FAILURE TO COOPERATE WITH THE STATE BAR**

14 As discussed in paragraphs 7-10, paragraphs 13-20, and paragraphs 26-  
15 39 of the Complaint, Casper failed to respond to the State Bar's many requests  
16 for information relating to his alleged violations. He also failed to respond to  
17 the Complaint, or to participate in these proceedings. As an officer of the  
18 Court, Casper's duties included the obligation to fully and actively cooperate  
19 with the bar when his conduct was called into question. *In re Brown*, 184 Ariz.  
20 480, 483, 910 P.2d 631, 634 (1996).

21 Failure to respond to inquiries from the State Bar  
22 shows a disregard for the Rules of Professional Conduct and  
23 borders on contempt for the legal system. . . . Inaction serves  
24 to undermine the profession's efforts at self-regulation,  
25 damaging both its credibility and reputation. Additionally,  
respondent's disregard of court orders casts a shadow over  
the integrity of the justice system.

*Id.* (citations omitted). See also *In re Wagner*, SB-05-0175-D (2006)  
(quoting *Brown*); *In re Meyer*, 2000 Ariz. LEXIS 96 at \*22 (2000) (failure to

1 cooperate with State Bar's investigation is indicative of contempt for the legal  
2 profession and disciplinary proceedings). "By his failure to respond and failure  
3 to respond completely to the State Bar's investigation, Respondent breached his  
4 duty to maintain the integrity of the profession and uphold the self-regulation  
5 that is vital to the disciplinary system." *In re Rojas*, 2001 Ariz. LEXIS 212 at  
6 \*13 (2001).

7 Casper's multiple instances of failing to respond to the State Bar, or to  
8 this disciplinary proceeding, borders on contempt. *In re Buffenstein*, 2002  
9 Ariz. LEXIS 29 at \*12 (2002).

#### 10 **IV. VIOLATIONS**

11 As a result of his default, Casper has admitted that he violated Rule  
12 53(e).

#### 13 **III. SANCTION**

##### 14 **A. General Approaches to Discipline of Lawyers**

15 The purpose of lawyer discipline is not to punish the lawyer, but to  
16 protect the public and deter future misconduct. *In re Fioramonti*, 176 Ariz.  
17 182, 187, 859 P.2d. 1315, 1320 (1993). Another purpose is to instill public  
18 confidence in the Bar's integrity. *Matter of Horowitz*, 180 Ariz. 20, 29, 881  
19 P.2d 352, 361 (1994).

21 In imposing discipline, it is appropriate to consider the facts of the case,  
22 the American Bar Association's Standards for Imposing Lawyer Sanctions  
23 (1991) (the "Standards"), and the proportionality of discipline imposed in  
24  
25

1 analogous cases. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238  
2 (1994).

3 In evaluating the appropriate sanction in a discipline case, *Standard 3.0*  
4 provides that consideration should be given to:  
5

- 6 (1) the duty violated;
- 7 (2) the lawyer's mental state;
- 8 (3) the actual or potential injury caused by the misconduct; and
- 9 (4) the existence of aggravating or mitigating factors.

10  
11 **1. The Duty Violated**

12 The only violation alleged in the complaint was a violation of Rule 53(e)  
13 (violation of a condition of probation or diversion). Although not alleged, it  
14 also appears that Casper also violated Rule 53(d) (refusal to cooperate with the  
15 State Bar), and Rule 53(f) (failure to respond promptly to any inquiry or  
16 request from bar counsel). The recommended sanction would be the same with  
17 or without these additional potential violations, because the *Standards* state  
18 that if there are multiple acts of misconduct, the sanction should be based upon  
19 the most serious violation, with the other violations being considered as  
20 aggravating factors. See *In re Moak*, 205 Ariz. 351, 353, 71 P.3d 343, 345  
21 (2003). Here, the State Bar has treated the failure to cooperate and respond  
22 violations as aggravating factors, and the Hearing Officer has done likewise.  
23  
24  
25

1                   **2.     Casper's Mental State**

2                   The second factor to be considered is Casper's mental state. The  
3 complaint does not contain any allegations regarding whether Casper acted  
4 intentionally, knowingly or negligently.  
5

6                   The facts deemed admitted, however, establish that Casper acted at least  
7 knowingly, if not intentionally. Paragraph 27 establishes that Casper actually  
8 received the IRP order. Paragraph 33 establishes that Casper actually received  
9 the October 18, 2005 letter from LAP. Paragraph 37 establishes that Casper  
10 was aware of the three letters from LAP, but did not intend to respond because  
11 he was quitting the practice of law at the end of the year.  
12

13                   Based on these facts, the Hearing Officer concludes that Casper acted  
14 **knowingly.**  
15

16                   **3.     Actual or Potential Injury Caused by Misconduct**

17                   There is no allegation that Casper's failure to comply with the terms of  
18 his suspension caused injury or potential injury to his clients. The lack of  
19 injury to clients, however, is not dispositive. Casper's actions caused injury or  
20 potential injury to the legal system, and the credibility and reputation of the  
21 legal profession. *In re Brown*, 184 Ariz. 480, 483, 910 P.2d 631, 634 (1996).  
22  
23

24                   This type of injury and potential injury is sufficient to justify severe  
25 forms of attorney discipline. This issue was considered by the Arizona

1 Supreme Court in *In re Davis*, 181 Ariz. 263, 266, 889 P.2d 621, 624 (1995).

2 The *Davis* court explained:

3  
4 Here, Davis argues that because her conduct did not  
5 harm her clients, she should not be suspended. She suggests  
6 that another opportunity to fulfill the prior terms of her  
7 probation along with mandated counseling would be  
8 sufficient. Though Davis's conduct may not have harmed her  
9 clients, she violated the terms of her probation and ignored  
10 repeated efforts by the State Bar to fulfill the terms of the  
11 probation. . . . These violations were especially egregious in  
12 light of the fact that Davis was previously reprimanded for  
13 "repeatedly failing to timely respond to inquiries and orders  
14 from the State Bar." . . . The Commission stated, "Davis will  
15 not, or cannot, accept full responsibility for her failures to  
16 comply with both the disciplinary orders and the Rules of  
17 Professional Conduct." . . . Merely extending the probation  
18 or adding additional terms would not provide her or other  
19 lawyers with a meaningful indication of the seriousness of  
20 violating probationary terms and ignoring the State Bar's  
21 information requests. . . . Indeed, anything less than  
22 suspension would make a mockery of the disciplinary  
23 process.

24 *Id.* (citations omitted).

#### 25 4. Aggravating or Mitigating Factors

After determining the violation, the attorney's mental state, and the level  
of injury or potential injury, the *Standards* require consideration of any  
aggravating or mitigating factors. See *Standard* 9.1.

Relevant aggravating factors include a pattern of misconduct (*Standard*  
9.22(c)), and Bad-faith obstruction of the disciplinary process by intentionally  
failing to comply with rules or orders of the disciplinary agency (*Standard*  
9.22(e)). "Failure to cooperate with disciplinary authorities is a significant

1 aggravating factor.” *In re Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1172  
2 (1988).

3  
4 It does not appear from the record that there are any applicable  
5 mitigating factors. Consequently, the aggravating factors outweigh any  
6 mitigating factors.

7 **B. Applicable Standard**

8  
9 Casper’s failure to comply with the terms of his probation falls under  
10 *Standard 7.2*, which provides:

11  
12 Suspension is generally appropriate when a lawyer  
13 knowingly engages in conduct that is a violation of a duty  
14 owed as a professional, and causes injury or potential injury  
15 to a client, the public, or the legal system.

16  
17 Casper’s conduct also implicates *Standard 8.2*, which provides:

18  
19 Suspension is generally appropriate when a lawyer has  
20 been reprimanded for the same or similar misconduct and  
21 engages in further acts of misconduct that cause injury or  
22 potential injury to a client, the public, the legal system, or the  
23 profession.

24 **C. Recommended Sanction**

25  
26 This issue of the appropriate sanction in this case is very difficult, and  
27 the Hearing Officer struggled to find the appropriate sanction to best protect  
28 the public, deter future misconduct, and instill public confidence in the Bar’s  
29 integrity.

30  
31 Because Casper informed the State Bar that he intended to quit  
32 practicing law, and apparently did not care enough about his license to

1 cooperate with the State Bar or participate in these proceedings, the Hearing  
2 Officer gave serious consideration to disbaring Casper.

3 An attorney was disbarred under somewhat similar circumstances in *In*  
4 *re Bachstein*, 1995 Ariz. LEXIS 114 (1995). In *Bachstein*, the respondent  
5 violated ER 1.3 (diligence) and ER 1.4 (communication), similar to Casper's  
6 initial violations in the prior matter involving his client Lesley K. Neptune.  
7 Bachstein then failed to respond to the State Bar, failed to participate in the  
8 disciplinary proceedings, and stopped practicing law. *Id.* The Disciplinary  
9 Commission commented that:

10 It is apparent that Bachstein has not only abandoned  
11 his practice, but has abandoned these disciplinary  
12 proceedings, as well. While the Standards indicate a  
13 suspension may be appropriate for the underlying conduct,  
14 the Commission cannot ignore Bachstein's complete failure  
15 to participate in any way in these proceedings. Had he made  
16 even the minimum amount of effort to represent himself in  
17 these proceedings, the Commission may well have been  
18 convinced that disbarment would be inappropriately harsh.  
19 An isolated incident of failure to diligently handle a client's  
20 case would, in all likelihood, not result in disbarment.  
21 However, that isolated incident, viewed in conjunction with  
22 practicing while suspended, failing to respond in a  
23 disciplinary proceeding, and the presence of numerous  
24 aggravating factors, leads the Commission to agree with the  
25 Hearing Committee that Bachstein "lacks the character,  
ethics, and fitness to practice law in the State of Arizona."  
The Commission recommends that Bachstein be disbarred.<sup>1</sup>

20 Casper's conduct is very similar to that engaged in by Bachstein, and the  
21 Hearing Officer strongly considered disbaring Casper. The Hearing Officer  
22 determined, however, that Casper's violations caused slightly less harm to  
23 clients than did Bachstein's violations. In addition, there was no evidence

---

25 <sup>1</sup> See also *In re Wagner*, SB-05-0175-D (2006) (disbaring attorney who engaged  
in slightly more serious violations, quit practicing law, and failed to participate in  
disciplinary proceedings).

1 suggesting that Casper continued to practice after being suspended as did  
2 Bachstein. As a result, the Hearing Officer determined that disbarment would  
3 be too harsh of a sanction under the facts of this case, and that the goals of  
4 attorney discipline could adequately be satisfied by suspending Casper.

5 The State Bar has requested that Casper be suspended for six months  
6 and one day. *Standards* 7.2 and 8.2 suggest that suspension would be an  
7 appropriate sanction in this case. Similarly, the Arizona Supreme Court held  
8 that suspension was appropriate for similar violations in *In re Davis*, 181 Ariz.  
9 263, 266, 889 P.2d 621, 624 (1995) (sixty day suspension justified because of  
10 numerous mitigating factors).

11 *Standard* 2.3, and its commentary, suggest that suspension should  
12 generally be for a period of time equal to or greater than six months. *See also*  
13 *Davis*, 181 Ariz. at 266, 889 P.2d at 624 (“Generally, where suspension is  
14 deemed appropriate, the Standards suggest a minimum suspension of six  
15 months.”). Although the *Davis* court found that a sixty day suspension was  
16 appropriate, the shorter suspension in that case was based on a number of  
17 mitigating factors. *Id.* Here, Casper did not participate in the disciplinary  
18 process, and there are no mitigating factors. Consequently, there is no  
19 evidence justifying a downward departure from the presumptive minimum  
20 suspension of six months. The “significant” aggravating factor of Casper’s  
21 failure to cooperate with the State Bar, in fact, justifies a slight increase above  
22 the presumptive minimum.

23 Because probation has already proved to be an ineffective tool in dealing  
24 with Casper’s past disciplinary issues, and because Casper has demonstrated a  
25 total lack of interest in whether he retains his license to practice law, the  
Hearing Officer finds that a suspension for six months and one day is  
appropriate. This will insure that in order for Casper to begin practicing again,

1 he will have to comply with the reinstatement provisions of Rule 65, including  
2 the requirement that he demonstrate by clear and convincing evidence that he  
3 has been rehabilitated, that he has complied with all applicable discipline  
4 orders and rules, that he is fit to practice, and that he is competent. See Rule  
5 65(b)(2).

6 **D. Proportionality**

7 The last step in determining if a particular sanction is appropriate is to  
8 assess whether the sanction is proportional to the discipline imposed in similar  
9 cases. *In re Peasley*, 208 Ariz. 27; 41, 90 P.3d 764, 778 (2004). "This is an  
10 imperfect process because no two cases are ever alike." *In re Owens*, 182 Ariz.  
11 121, 127; 893 P.2d 1284, 1290 (1995). Because perfect uniformity cannot be  
12 achieved, the Arizona Supreme Court has long recognized that the discipline in  
13 each situation must be tailored for the individual case. *In re Piatt*, 191 Ariz.  
14 24; 31, 951 P.2d 889, 896 n.5 (1997). The Hearing Officer has attempted to do  
15 so in this case.  
16  
17

18 A number of somewhat similar cases were discussed in the  
19 "Recommended Sanction" section above. Another similar case was considered  
20 in *In re Kalish*, 1996 Ariz. LEXIS 32, SB 96-0013-D (1996). In *Kalish*, the  
21 attorney failed to participate in his diversion program, and consequently  
22 received an informal reprimand with probation. Like Casper, Kalish then  
23 failed to comply with the terms of his probation. The Disciplinary  
24  
25

1 Commission determined that this conduct justified a suspension. Based on  
2 several mitigating factors, including his cooperation with the discipline process  
3 after an initial failure to respond, the Disciplinary Commission found that a  
4 four month suspension was sufficient. Unlike Kalish, Casper has not  
5 cooperated or established any mitigating factors.  
6

7 Other similar cases in which attorneys were suspended for six months  
8 and one day after they violated their duties of diligence and communication,  
9 and then failed to participate in the discipline system include *Matter of*  
10 *Kobashi*, 177 Ariz. 584, 870 P.2d 402 (1994), and *In re Apker*, 2001 Ariz.  
11 LEXIS 161, SB-01-0126-D (2003).  
12

13  
14 These prior cases suggest that a suspension of six months and one day is  
15 within the reasonable range of sanctions imposed in similar cases

16 **IV. CONCLUSION**

17 For the reasons discussed above, the Hearing Officer recommends that  
18 Casper be suspended for six months and one day, and ordered to pay the costs  
19 of these proceeding.  
20  
21  
22  
23  
24  
25

1 DATED: July 25, 2006

2 HEARING OFFICER 7M

3  
4 By 

5 Daniel P. Beeks  
6 Suite 1100  
7 2800 North Central Avenue  
8 Phoenix, Arizona 85004-1043

9 ORIGINAL of the foregoing filed  
10 July 25, 2006, with:

11 Disciplinary Clerk  
12 Supreme Court of Arizona  
13 1501 West Washington, Suite 104  
14 Phoenix, Arizona 85007-3231

15 COPIES of the foregoing mailed  
16 July 25, 2006, to:

17 Denise M. Quinterri  
18 State Bar of Arizona  
19 4201 N. 24th Street, Suite 200  
20 Phoenix, Arizona 85016-6288

21 Eric M Casper  
22 5778 W Corrine Dr  
23 Glendale, AZ 85304-0001  
24 (Respondent)  
25

