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APR 26 2006

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

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY Coe

IN THE MATTER OF A SUSPENDED) File Nos.: 05-0363; 05-0416; 05-0706;
MEMBER OF THE STATE BAR OF) 05-0789; 05-0891; 05-1344;
ARIZONA,) 05-1446; 05-1756
) (Consolidated)

**SEAN M. COE,
Bar No. 016150.**

HEARING OFFICER'S REPORT

Respondent.

I. PROCEDURAL HISTORY

On October 31, 2005, the State Bar filed a two-count formal complaint (File Nos. 05-0416 and 05-0891) against Respondent Sean M. Coe. The State Bar served the complaint on Respondent by certified restricted mail and regular first class mail as provided for by Arizona Rule of the Supreme Court 47(c). Respondent failed to answer or otherwise defend. As such, the Disciplinary Clerk of the Arizona Supreme Court ("Disciplinary Clerk") entered default against Respondent on December 22, 2005.

On December 21, 2005, the State Bar filed a six-count formal complaint (File Nos. 05-0363; 05-0706; 05-0789; 05-1344; 05-1446; and 05-1756) against Respondent. The State Bar served the complaint on Respondent by certified restricted mail and regular first class mail as provided by Rule 47(c).

1 The State Bar also served a second copy of the complaint on Respondent by
2 regular mail to his parent's address in Flushing, Michigan.¹ Again, Respondent
3 failed to answer or otherwise defend. The Disciplinary Clerk entered default
4 against him in the second formal proceeding on February 10, 2006.
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6 Upon his own motion, this Hearing Officer consolidated the two formal
7 cases on February 15, 2006. The allegations in the complaint therefore having
8 been deemed admitted, an aggravation/mitigation hearing to determine the
9 appropriate sanction was set for March 16, 2006. On March 3, 2006, the
10 Respondent was served by mail with the notice setting the March 16, 2006
11 hearing date.
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14 Having determined that Respondent had been provided with adequate
15 notice of the hearing date and time, the aggravation/mitigation hearing took
16 place on March 16, 2006. Although he was provided notice of the hearing,
17 Respondent did not appear. The State Bar presented no witnesses, but it
18 introduced its exhibits into the record and made a presentation concerning the
19 facts and circumstances of the instant matters, including information gathered
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23 ¹ Bar counsel spoke with Respondent in September 2005 concerning his then pending
24 disciplinary matters. At that time, Respondent was residing in Michigan and accepting mail
25 at his address on record with the State Bar's Membership Department and at his parent's
home in Flushing, Michigan. Bar counsel forwarded a copy of the second formal complaint
and other pleadings and notices to Respondent's Michigan address to ensure he received
notice of the complaint. The State Bar has continued to forward all pleadings and
correspondence to Respondent's address on record with its membership department.

1 from the complainants, and presented its recommendation for a proposed
2 sanction. This Hearing Officer requested that the parties file any proposed
3 findings of fact and conclusions of law on or before April 17, 2006. This
4 Hearing Officer also requested that the State Bar forward to Respondent a copy
5 of the hearing transcript once it was received.²

7 **II. FINDINGS OF FACT**

8 The facts listed below are those set forth in the State Bar's complaints
9 and are deemed admitted by way of Respondent's default.

11 Respondent was an attorney licensed to practice law in the State of
12 Arizona, having been admitted to practice in Arizona on October 21, 1995. On
13 December 17, 2004, the State Bar of Arizona "Board of Governors" summarily
14 suspended Respondent from the practice of law for non-compliance with the
15 mandatory continuing legal education ("MCLE") requirements. The State Bar
16 reinstated Respondent on February 2, 2005.

19 On June 29, 2005, upon motion by the State Bar and pursuant to Arizona
20 Rule of the Supreme Court 61, the Arizona Supreme Court suspended
21 Respondent from the practice of law for engaging in conduct, the continuation
22

24 ² On April 3, 2006, Bar counsel forwarded a copy of the March 16, 2006
25 aggravation/mitigation hearing transcript, as well as a copy of the exhibits introduced at the
March 16, 2006 hearing, to Respondent at his address of record and his alternate Michigan
address.

1 of which would result in substantial harm, loss or damage to the public, the
2 legal profession or the administration of justice.

3
4 **COUNT ONE (File No. 05-0416)**

5 On March 10, 2005, the Honorable Elizabeth Peasley-Fimbres, Pima
6 County Juvenile Court, sent a letter concerning Respondent to the State Bar. In
7 her letter, Judge Peasley-Fimbres stated that the Pima County Juvenile Court
8 had contracted with Respondent to provide legal representation to indigent
9 parents and children in dependency actions. During the previous month,
10 however, Respondent failed to appear on four separate occasions at hearings in
11 Judge Peasley-Fimbres courtroom where he was the attorney of record.
12

13
14 In one instance, Respondent was appointed to represent a father in a
15 dependency action before Judge Peasley-Fimbres. Respondent appeared with
16 the father at the first hearing on January 5, 2005. However, on February 4,
17 2005, Respondent failed to appear despite the fact that the status hearing had
18 been set during the first hearing.
19

20 Due to Respondent's absence, Judge Peasley-Fimbres continued the
21 hearing to February 11, 2005. Judge Peasley-Fimbres also set an order to show
22 cause ("OSC") hearing on February 11, 2005, for Respondent to appear and
23 explain why he failed to appear on February 4, 2005.
24
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1 Prior to the February 11, 2005 hearings, Judge Peasley-Fimbres'
2 administrative assistant spoke with Respondent about the situation.
3 Respondent informed the administrative assistant that his wife had just been
4 diagnosed with cancer and he had been with her at the hospital at the time of
5 the February 4, 2005 hearing. Respondent stated that he would appear at both
6 hearings on February 11, 2005. Despite his assertions, Respondent failed to
7 appear at the hearings on February 11, 2005, and failed to inform the court of
8 his inability to attend prior to the scheduled hearings.
9

11 As a result of Respondent's failure to appear at the February 11, 2005,
12 hearings, Judge Peasley-Fimbres removed him from the representation and
13 appointed new counsel. Judge Peasley-Fimbres ordered Respondent to send
14 his file to the father's new counsel. On February 25, 2005, Judge Peasley-
15 Fimbres learned that Respondent had not forwarded his file to new counsel as
16 ordered, and she set a second OSC hearing for March 10, 2005, for Respondent
17 to appear and explain why he failed to comply with the order. Judge Peasley-
18 Fimbres informed Respondent of the OSC hearing by placing a copy of the
19 order setting the hearing in his mailbox at the court center and by having her
20 bailiff leave a voice message on his office answering service. Despite having
21 notice of the OSC hearing, Respondent failed to appear.
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1 On June 3, 2005, the State Bar forwarded a copy of the charges to
2 Respondent and requested that he submit a written response within twenty
3 days. Respondent failed to submit a response as requested. On July 21, 2005,
4 the State Bar sent a second letter to Respondent requesting that he respond to
5 the charges. To date, Respondent has not submitted a response to the charges.
6

7 By failing to provide competent representation to his clients, Respondent
8 violated ER 1.1, Ariz. R. Sup. Ct. 42.
9

10 By failing to act with reasonable diligence and promptness in
11 representing his clients, Respondent violated ER 1.3, Ariz. R. Sup. Ct. 42.
12

13 By failing to keep his clients reasonably informed about the status of the
14 representation, Respondent violated ER 1.4, Ariz. R. Sup. Ct. 42.

15 By failing to comply with applicable law requiring notice to or
16 permission of a tribunal when terminating a representation, Respondent
17 violated ER 1.16, Ariz. R. Sup. Ct. 42.
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19 By continuing to practice law while suspended, Respondent violated
20 Ariz. R. Sup. Ct. 31(b) and ER 5.5(a), Ariz. R. Sup. Ct. 42.

21 By engaging in conduct that is prejudicial to the administration of
22 justice, Respondent violated ER 8.4(d), Ariz. R. Sup. Ct. 42.
23

24 By willfully violating an order of the court, refusing to cooperate with
25 staff of the State Bar acting in the course of that person's duties, and failing to

1 promptly respond to a request for information from Bar counsel, Respondent
2 violated Ariz. R. Sup. Ct. 53(c), (d), and (f).

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4 Respondent's conduct as described in this count violated Ariz. R. Sup.
5 Ct. 31(b), Ariz. R. Sup. Ct 42, specifically, ER 1.1, ER 1.3, ER 1.4, ER 1.16,
6 ER 5.5(a), and ER 8.4(d), and Ariz. R. Sup. Ct. 53(c), (d), and (f).

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8 **COUNT TWO (File No. 05-0891)**

9 On or about May 31, 2005, the State Bar received correspondence
10 concerning Respondent from the Honorable Richard J. Trujillo, Maricopa
11 County Superior Court. In his correspondence, Judge Trujillo stated that on
12 February 11, 2005, Respondent was substituted as counsel of record for a
13 defendant in a criminal matter. The deputy county attorney and the pre-
14 sentence report writer had both recommended a prison sentence in excess of
15 ten years.
16

17 At Respondent's request, Judge Trujillo continued the case until March
18 11, 2005. On March 11, 2005, Respondent called Judge Trujillo's chambers
19 and informed Judge Trujillo that he was having car trouble. Respondent
20 requested a short continuance, and the court continued the sentencing hearing
21 until March 21, 2005.
22

23 Prior to the sentencing hearing, Respondent filed a motion to set aside
24 the plea agreement in the case, and Respondent requested a hearing on the
25

1 motion. The court set a hearing on the motion to set aside the plea agreement
2 for April 11, 2005.

3
4 On April 11, 2005, Respondent appeared at the hearing telephonically
5 and advised Judge Trujillo that his wife was ill. As a result, the hearing on the
6 motion to set aside the plea agreement and the sentencing was continued until
7 April 29, 2005.

8
9 On April 29, 2005, Respondent failed to appear at the hearing, despite
10 the fact Respondent advised that Judge Trujillo's judicial assistant that he was
11 "on his way." As a result of Respondent's failure to appear, Judge Trujillo
12 continued the hearing again, and he re-appointed the public defender's office to
13 represent the defendant. Judge Trujillo scheduled a contempt hearing for
14 Respondent on May 9, 2005. Respondent failed to appear at the contempt
15 hearing, and Judge Trujillo has had no further communications with
16 Respondent.
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19 On June 24, 2005, the State Bar forwarded a copy of the charges to
20 Respondent and requested that he submit a written response within twenty
21 days. Respondent failed to submit a response as requested. On July 21, 2005,
22 the State Bar sent a second letter to Respondent requesting that he respond to
23 the charges. To date, Respondent has not submitted a response to the charges.
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1 By failing to provide competent representation to his client, Respondent
2 violated ER 1.1, Ariz. R. Sup. Ct. 42.

3 By failing to act with reasonable diligence and promptness in
4 representing his client, Respondent violated ER 1.3, Ariz. R. Sup. Ct. 42.

5 By failing to keep his client reasonably informed about the status of the
6 representation, Respondent violated ER 1.4, Ariz. R. Sup. Ct. 42.

7 By failing to comply with applicable law requiring notice to or
8 permission of a tribunal when terminating a representation, Respondent
9 violated ER 1.16, Ariz. R. Sup. Ct. 42.

10 By failing to expedite litigation consistent with the interests of his client,
11 Respondent violated ER 3.2, Ariz. R. Sup. Ct. 42.

12 By knowingly disobeying an obligation under the rules of a tribunal,
13 Respondent violated ER 3.4(c), Ariz. R. Sup. Ct. 42.

14 By engaging in conduct that is prejudicial to the administration of
15 justice, Respondent violated ER 8.4(d), Ariz. R. Sup. Ct. 42.

16 By willfully violating an order of the court, refusing to cooperate with
17 staff of the State Bar acting in the course of that person's duties, and failing to
18 promptly respond to a request for information from Bar counsel, Respondent
19 violated Ariz. R. Sup. Ct. 53(c), (d), and (f).

1 Respondent's conduct as described in this count violated Ariz. R. Sup.
2 Ct. 42, specifically, ER 1.1, ER 1.3, ER 1.4, ER 1.16, ER 3.2, ER 3.4(c) and
3 ER 8.4(d), and Ariz. R. Sup. Ct. 53(c), (d), and (f).
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5 **COUNT THREE (File No. 05-0363)**

6 On or about March 1, 2005, the Honorable Virginia C. Kelly, ("Judge
7 Kelly"), Pima County Superior Court, sent a letter concerning Respondent to
8 the State Bar. Judge Kelly provided the State Bar copies of letters she had
9 received from Anastasia Marie Sykes ("Ms. Sykes") and Bridgett Chappell
10 ("Ms. Chappell"), two defendants Respondent represented in separate criminal
11 matters.
12

13
14 In a letter dated December 23, 2004, Ms. Sykes informed Judge Kelly
15 that she had a pending criminal case (CR2004-2782) before the court and
16 Respondent was the court-appointed lawyer in the matter. Ms. Sykes
17 explained she had been arrested on or about July 23, 2004 and was arraigned
18 on or about August 9, 2004. Ms. Sykes informed the court that Respondent
19 had met with her on only two occasions between his appointment as her lawyer
20 and the date of her letter to Judge Kelly. Ms. Sykes further informed the court
21 that the two short meetings with Respondent had taken place prior to, or after,
22 court appearances.
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1 During the two times Ms. Sykes had contact with Respondent, he
2 assured Ms. Sykes that he would meet with her at the jail to discuss the status
3 of her case. Ms. Sykes had many questions regarding her criminal charges and
4 was concerned about the length of her incarceration. Ms. Sykes believed her
5 right to a speedy trial was violated since it had been almost 150 days from the
6 date of her arraignment. Ms. Sykes informed the court that she had attempted
7 to contact Respondent to discuss her questions and concerns. However, three
8 letters sent by Ms. Sykes, and repeated telephone calls to Respondent's office,
9 went unanswered.

12 Ms. Sykes also informed the court that the co-defendant in the case had
13 already received, and accepted, a plea offer and had been sentenced. Ms.
14 Sykes expressed her concerns that she had not received a plea offer in her case.
15 In addition, Ms. Sykes was concerned that no other action, including the setting
16 of a hearing date, had taken place in her case because Respondent, despite his
17 assertions to the contrary, had failed to meet with her.

20 In a letter dated February 19, 2005, Ms. Chappell informed Judge Kelly
21 that Respondent had failed to appear at a hearing set for February 8, 2005. Ms.
22 Chappell reminded Judge Kelly that during a telephonic conference,
23 Respondent had informed the court that he would have "his clerk" file a
24 "motion of release" on the same date as the telephonic conference. Ms.
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1 Chappell stated that Judge Kelly told Respondent that if he filed the motion,
2 Judge Kelly would set a motion hearing date for February 15, 2005.
3 Respondent failed to file the necessary motions and Ms. Chappell had to
4 prepare and submit motions on her own behalf. Ms. Chappell further informed
5 the court that Respondent had made several visits to other defendants in Ms.
6 Chappell's housing unit in the jail to solicit new cases, yet had failed to meet
7 with Ms. Chappell to discuss her case.
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10 Judge Kelly provided a copy of a transcript of the February 28, 2005
11 "Motion to Withdraw as Counsel" hearing, in *State v. Chappell*. During the
12 motion hearing, Respondent did not oppose Ms. Chappell's request for new
13 counsel. Respondent told the court that "there [was] a substantial enough
14 breakdown in communication and judgment" and admitted that he had visited
15 Ms. Chappell in jail only once. Respondent alleged "I have a full staff and my
16 investigator goes to see clients once a week and there's somebody down there
17 from my office to get intake and get information, and they can call collect.
18 There's several collect calls to my office where she's spoken to my paralegal,
19 and there's been communication with my office." Ms. Chappell informed the
20 court that, in fact, when she attempted to call Respondent's office, the staff
21 would not accept her collect calls. Ms. Chappell explained that to have contact
22 with Respondent's office, she had to ask other inmates to call Respondent's
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1 office so that the call would be accepted. Only then would Ms. Chappell be
2 able to speak to any of Respondent's staff, who never had any information
3 regarding Ms. Chappell's case.
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5 During the hearing, Respondent informed the court he had not prepared
6 any release motions on Ms. Chappell's case because of discrepancies between
7 information provided by Ms. Chappell and Pretrial Services. Respondent told
8 Judge Kelly that the release motions were based on the ability to get Ms.
9 Chappell into three programs, two of which had waiting lists. Respondent
10 alleged that a gentleman at Pretrial Services had informed him that if they filed
11 the motion there would not be any way to get her into a program until the
12 waiting lists were taken care of. Respondent asserted that his office was
13 waiting to hear back from the three different places to find out when there
14 would be beds available.
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17 When questioned by Judge Kelly whether Pretrial Services was working
18 on locating programs for Ms. Chappell, Respondent informed the court that his
19 paralegal, Christine McGarvey, was working on it. When asked by Judge
20 Kelly to identify the individual he had spoken with at Pretrial Services
21 regarding Ms. Chappell, Respondent answered that he "didn't recall." Judge
22 Kelly told Respondent that she was surprised that Pretrial Services would set
23 the conditions of release without a motion being before the court, and again
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1 asked Respondent to identify the individual with whom he had spoken at
2 Pretrial Services.

3
4 Respondent claimed that he could not “remember the gentleman’s name,
5 but [could] have his office call and provide Judge Kelly with the name.” Judge
6 Kelly asked Respondent whether Ms. McGarvey had spoken to the Pretrial
7 Services gentleman, to which Respondent responded “That’s correct - - no, I
8 spoke with him.”
9

10 By letter dated March 1, 2005, Judge Kelly informed the State Bar that
11 she had been in contact with Pretrial Services and was told that Ms. Chappell’s
12 pretrial file had not been pulled since December 22, 2004. Judge Kelly’s
13 contact at Pretrial Services also told her and that the only men in the Pretrial
14 Services office did not know Respondent, and had not spoken with him.
15

16 On March 15, 2005, the State Bar received a copy of a case management
17 conference transcript from Judge Kelly, regarding *State v. Policicchio*. Frank
18 Policicchio, the defendant in the matter, informed Judge Kelly that he had
19 unsuccessfully attempted to contact Respondent and/or his assistant, Christine,
20 at least forty times. Mr. Policicchio told Judge Kelly that he had spoken to
21 Respondent four weeks prior to the case management conference date. Mr.
22 Policicchio indicated he had been comfortable with Respondent’s
23 representation until Respondent stopped returning his calls, and until
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1 Respondent failed to appear at the case management conference. Mr.
2 Policicchio told Judge Kelly that he had appeared in court on March 1, 2005
3 only to learn the case management conference had been rescheduled to March
4 4, 2005. According to Mr. Policicchio, Respondent failed to notify him of the
5 change.
6

7 Judge Kelly inquired about the status of any plea offers made in Mr.
8 Policicchio's case and the prosecuting attorney, Mr. Buescher, informed her
9 that no offers had been extended because he had not had any contact with
10 Respondent. During a subsequent status conference, Mr. Policicchio's new
11 counsel informed Judge Kelly that Respondent had failed to provide Mr.
12 Policicchio with any copies of the extensive disclosure in the fraud-scheme
13 case. Per dates on the discovery materials, Judge Kelly learned that discovery
14 had been provided to Respondent in October 2004 and/or January 2005.
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17 Mr. Policicchio again informed the court that the only contact he had
18 with Respondent had been on the date of Respondent's appointment as his
19 attorney, and for approximately five minutes on two other occasions, right
20 before scheduled court dates. Mr. Policicchio reiterated that he had been
21 unsuccessful in getting Respondent to provide him with any information. Mr.
22 Policicchio confirmed that he had not been appraised of the extent of the case
23 and had been told by Respondent "don't worry about it, I'll get you off, this is
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1 not a problem.” Mr. Policicchio’s new counsel informed Judge Kelly that her
2 opinion of the case was different from Respondent’s, and that she could not tell
3 Mr. Policicchio “that he’d get off” that the matter would be dismissed or “not
4 to worry about it.” As a result of Respondent’s failure to contact his client and
5 provide disclosure, Judge Kelly had to continue the hearing.
6

7 By letter dated May 2, 2005, mailed to Respondent’s address on record
8 with the State Bar, the State Bar informed Respondent of the inquiry into his
9 professional conduct. Copies of the submitted information were provided to
10 Respondent and it was requested that Respondent respond to the State Bar
11 within twenty days of the date of the letter. Respondent failed to respond.
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14 By letter dated August 3, 2005, mailed to Respondent’s address on
15 record with the State Bar, Respondent was reminded of his professional
16 obligations to respond to the State Bar and was asked to submit a response
17 within ten days. Respondent failed to respond.
18

19 By failing to reasonably and necessarily prepare for his clients’
20 representation, Respondent violated ER 1.1, Ariz. R. Sup. Ct. 42.

21 By failing to address and respond to his clients’ concerns regarding their
22 release status, possible plea offers and/or failing to consult with his clients as to
23 the means by which the objectives of the representation were to be pursued,
24 Respondent violated ER 1.2, Ariz. R. Sup. Ct. 42.
25

1 By failing to appear at scheduled court dates, failing to timely file
2 pleadings and motions, failing to pursue plea agreements or otherwise act with
3 reasonable diligence and promptness in representing his clients, Respondent
4 violated ER 1.3, Ariz. R. Sup. Ct. 42.

6 By failing to inform his clients of court dates, failing to reasonably
7 consult with his clients about the means by which the clients' objectives were
8 to be accomplished; failing to promptly comply with reasonable requests for
9 information; failing to explain to his clients any plea options or the status of
10 their cases to the extent reasonably necessary to permit his clients to make
11 informed decisions regarding the representation, Respondent violated ER. 1.4,
12 Ariz. R. Sup. Ct. 42.

15 By failing to comply with applicable law requiring notice to or
16 permission of a tribunal when terminating a representation, Respondent
17 violated ER 1.16(c), Ariz. R. Sup. Ct. 42.

19 By failing to take steps to the extent reasonably practicable, upon
20 termination of representation, to protect his clients' interests, such as giving
21 reasonable notice to the client, allowing time for employment of other counsel,
22 surrendering documents and property to which the client is entitled and
23 refunding any advance payment of a fee that has not been earned, Respondent
24 violated ER 1.16(d), Ariz. R. Sup. Ct. 42.

1 By failing to expedite litigation consistent with the interest of his clients,
2 Respondent violated ER 3.2, Ariz. R. Sup. Ct. 42.

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4 By knowingly making a false statement of fact or law to Judge Kelly
5 when he stated that he had been in contact with Pretrial Services regarding Ms.
6 Chappell's release, Respondent violated ER 3.3, Ariz. R. Sup. Ct. 42.

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8 By directly contacting defendants at the jail to solicit professional
9 employment from prospective clients when his motive for doing so was
10 Respondent's pecuniary gain, Respondent violated ER 7.3, Ariz. R. Sup. Ct.
11 42.

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13 By failing to respond to the State Bar's lawful demand for information,
14 Respondent violated ER 8.1(b), Ariz. R. Sup. Ct. 42, and Ariz. R. Sup. Ct.
15 53(d) and (f).

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17 By engaging in conduct involving dishonesty, fraud, deceit or
18 misrepresentation, Respondent violated ER 8.4(c), Ariz. R. Sup. Ct. 42.

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20 By engaging in conduct that is prejudicial to the administration of
21 justice, Respondent violated ER 8.4(d), Ariz. R. Sup. Ct. 42.

22
23 By willfully violating an order of the court, refusing to cooperate with
24 staff of the State Bar acting in the course of that person's duties, and failing to
25 promptly respond to a request for information from Bar counsel, Respondent
violated Ariz. R. Sup. Ct. 53(c), (d), and (f).

1 Respondent's conduct as described in this count violated Ariz. R. Sup.
2 Ct. 42, specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.16(c) and (d), 3.2, 3.3, 7.3, 8.1(b),
3 8.4(c) and (d), and Ariz. R. Sup. Ct. 53(d) and (f).
4

5 **COUNT FOUR (File No. 05-0706)**

6 Christine McGarvey owns and operates a business that offers paralegal,
7 investigation, mitigation, and legal transcription services. Ms. McGarvey also
8 provides paralegal and/or investigative services under contract with the Pima
9 County Office of Court Appointed Counsel. Ms. McGarvey maintained a
10 business relationship with Respondent from November 2004 to March 23,
11 2005. As part of her contract with Respondent, Ms. McGarvey set up and
12 maintained files for most of his clients. The files included criminal, juvenile,
13 dependency/guardianship, and mental health cases assigned to Respondent by
14 the Office of Court Appointed Counsel in Pima and Pinal Counties, and several
15 private clients.
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19 Ms. McGarvey informed the State Bar that on or about March 23, 2005,
20 she began to receive inappropriate voice messages from Respondent. Ms.
21 McGarvey alleged that Respondent called her at her home around midnight one
22 night and made false accusations against one of her staff members. Ms.
23 McGarvey believed that Respondent was drunk during this conversation.
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1 Prior to the late night telephone call, Ms. McGarvey had sporadic contact
2 with Respondent for approximately two weeks. As a result of Respondent's
3 behavior, Ms. McGarvey terminated her working relationship with him.
4

5 On or about April 4, 2005, Ms. McGarvey requested that Respondent pick
6 up his client files. At the time of the request, Complainant was in possession of
7 approximately 40 files for which Respondent was the attorney of record.
8 Respondent told Ms. McGarvey that he would send someone to collect his case
9 files. However, Ms. McGarvey was uncomfortable with providing the files to a
10 third-party and requested that Respondent pick up the files. Ms. McGarvey also
11 wanted Respondent to sign a receipt acknowledging that he had personally
12 received the case files.
13
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15 Ms. McGarvey informed the State Bar that she had not had any contact
16 with Respondent since having last spoken to him on or about April 7, 2005. Ms.
17 McGarvey expressed concerns to the State Bar that Respondent's clients were
18 not being provided with competent and diligent representation because she was
19 repeatedly receiving phone calls from clients trying to locate Respondent. Ms.
20 McGarvey further informed the State Bar that the clients were complaining that
21 they had paid retainer fees to Respondent but he had not been in contact with
22 them in several weeks.
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1 Due to the lack of any contact with Respondent after April 7, 2005, Ms.
2 McGarvey contacted the Pima and Pinal Counties Offices of Court Appointed
3 Counsel, provided them with a list of the case files in her possession, and
4 requested that the cases be re-assigned to other counsel. At the time of her
5 contact with the State Bar, in or about May 2005, Ms. McGarvey believed that
6 the Pima County matters were in the process of being reassigned; however, she
7 was still in possession of several files from Pinal County, as well as the file of a
8 defendant who had privately retained Respondent.
9

10
11 The State Bar also received information concerning Respondent from Rita
12 Ramos. Ms. Ramos, a Spanish-speaking paralegal, maintained a business
13 relationship with Respondent from approximately November 2004 to the end of
14 March or beginning of April 2005. Ms. Ramos informed the State Bar that she
15 attended several meetings with Respondent and his clients between December
16 2004 and February 2005. Ms. Ramos acted as an interpreter for Respondent and
17 his Spanish-speaking clients. Ms. Ramos identified a number of cases in which
18 she acted as an interpreter for Respondent, including *Arizona v. Mauricio*
19 *Gastello-Figueroa*; *Arizona v. Daniel Jimenez*; *Arizona v. Roberto Ortiz-*
20 *Herrera*; *Arizona v. Amy Baker*, Pima County Case No. CR2005-0455; and
21 *United States v. Oscar Mendez-Romo*. Ms. Ramos also indicated that she
22 believed Respondent was representing Carmen Torres in an immigration matter.
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1 Ms. Ramos personally observed Respondent accept retainer fees for his
2 services. Ms. Ramos had no knowledge that Respondent was administratively
3 suspended during this time period. At no time during the meetings that took
4 place between December 2004 and February 2005 did Respondent notify Ms.
5 Ramos or his clients that he was suspended from the practice of law. According
6 to Ms. Ramos, on or about the middle of March or early April 2005, Respondent
7 stopped returning calls from his clients. Respondent's clients would then call
8 Ms. Ramos to ask her to have Respondent call them.

11 In early April 2005, Ms. Ramos spoke to Respondent, informed him that
12 she no longer wanted to work with him and requested that he obtain assistance
13 from someone else. Respondent agreed to Ms. Ramos' request and Ms. Ramos
14 did not have any further contact with Respondent after April 2005. However,
15 Ms. Ramos continued to receive telephone calls from Respondent's clients and
16 their families requesting information about their cases.

19 In May 2005, Isabel Dominguez, one of Respondent's clients who had
20 been able to obtain substitute counsel, informed Ms. Ramos that Respondent had
21 continued to accept representation and payments from several individuals
22 referred to Respondent by Ms. Dominguez. Ms. Ramos expressed her concerns
23 to the State Bar that Respondent's clients had legal issues that needed to be
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1 addressed in a timely manner, yet Respondent was not providing competent
2 and diligent representation.

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4 By letter dated June 13, 2005, mailed to Respondent's address on record
5 with the State Bar, the State Bar informed Respondent of the concerns related
6 to his professional conduct. Copies of the submitted information were
7 provided to Respondent, and it was requested that Respondent respond to the
8 State Bar within twenty days of the letter. Respondent failed to respond.
9

10 By letter dated August 3, 2005, mailed to Respondent's address on
11 record with the State Bar, the State Bar reminded Respondent of his
12 professional obligations to respond and it was requested that he submit a
13 response within twenty days. Respondent failed to respond.
14

15 By failing to provide competent representation to his clients Respondent
16 violated ER 1.1, Ariz. R. Sup. Ct. 42.

17
18 By failing to address and respond to his clients' concerns regarding their
19 legal matters and failing to consult with his clients as to the means by which
20 the objectives of their representation were to be pursued, Respondent violated
21 ER 1.2, Ariz. R. Sup. Ct. 42.
22

23 By failing to act with reasonable diligence and promptness in
24 representing his clients, Respondent violated ER 1.3, Ariz. R. Sup. Ct. 42.
25

1 By failing to promptly comply with reasonable requests for information
2 from his clients, Respondent violated ER 1.4, Ariz. R. Sup. Ct. 42.

3 By failing to comply with applicable law requiring notice to or
4 permission of a tribunal when terminating a representation, Respondent
5 violated ER 1.16(c), Ariz. R. Sup. Ct. 42.

6 By failing to take steps to the extent reasonably practicable, upon
7 termination of representation, to protect his clients' interests, such as giving
8 reasonable notice to the client, allowing time for employment of other counsel,
9 surrendering documents and property to which the client is entitled and
10 refunding any advance payment of a fee that has not been earned, Respondent
11 violated ER 1.16(d), Ariz. R. Sup. Ct. 42.

12 By failing to expedite litigation consistent with the interest of his clients,
13 Respondent violated ER 3.2, Ariz. R. Sup. Ct. 42.

14 By meeting with clients and accepting retainers for legal services while
15 summarily suspended from the practice of law, Respondent violated ER 5.5,
16 Ariz. R. Sup. Ct. 42 and Ariz. R. Sup. Ct. 31(b).

17 By failing to respond to the State Bar's lawful demand for information,
18 Respondent violated ER 8.1(b), Ariz. R. Sup. Ct. 42 and Ariz. R. Sup. Ct.
19 53(d) and (f).

1 In accepting retainers for legal services that he knowingly was unable to
2 perform due to his suspension, Respondent engaged in conduct involving
3 dishonesty, fraud, deceit or misrepresentation, in violation of ER 8.4(c), Ariz.
4 R. Sup. Ct. 42
5

6 By engaging in conduct that is prejudicial to the administration of
7 justice, Respondent violated ER 8.4(d), Ariz. R. Sup. Ct. 42
8

9 By refusing to cooperate with staff of the State Bar acting in the course
10 of that person's duties and failing to promptly respond to a request for
11 information from Bar counsel, Respondent violated Ariz. R. Sup. Ct. 53(d),
12 and (f).
13

14 Respondent's conduct as described in this count violated Ariz. R. Sup.
15 Ct. 42, specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.16, 3.2, 5.5, 8.1(b), 8.4(c) and (d),
16 Ariz. R. Sup. Ct. 31(b), and Ariz. R. Sup. Ct. 53(d) and (f).
17

18 **COUNT FIVE (File No. 05-0789)**

19 Hilda Ortiz retained Respondent to represent her husband, Robert Ortiz,
20 in a domestic violence dispute. On March 21, 2005, Ms. Ortiz and Respondent
21 signed a "Criminal Defense – Retainer Agreement." Ms. Ortiz paid
22 Respondent \$2,500.00 for the representation. The retainer agreement reflected
23 that payment was due on the date of signing and that the Ortiz's did not owe
24 any additional sums for the representation. The representation was to include
25

1 all proceedings, including trial, if necessary; however, Respondent failed to
2 appear at any of Mr. Ortiz's court proceedings.

3
4 Ms. Ortiz attempted to contact Respondent regarding his failure to
5 appear on behalf of her husband at a scheduled court date, but received no
6 response to her phone messages.

7
8 On or about May 11, 2005, Ms. Ortiz submitted a complaint against
9 Respondent to the State Bar. By letter dated July 12, 2005, mailed to
10 Respondent's address on record with the State Bar, and to an alternate address
11 believed to be that of Respondent's parents, the State Bar informed Respondent
12 of the allegations made by Ms. Ortiz regarding his professional conduct. The
13 State Bar asked Respondent to provide a response within twenty days of the
14 letter. Respondent failed to respond.

15
16 On August 25, 2005, by letter mailed to Respondent's address on record
17 with the State Bar, Respondent was reminded of his professional obligations to
18 respond to the State Bar and was asked to submit a response within twenty (20)
19 days. Respondent failed to respond.

20
21 By failing to competently represent Mr. Ortiz, Respondent violated ER
22 1.1, Ariz. R. Sup. Ct. 42.
23
24
25

1 By failing to consult with his client as to the means by which the
2 objectives of the representation were to be pursued, Respondent violated ER
3 1.2, Ariz. R. Sup. Ct. 42.
4

5 By failing to appear at scheduled court dates and otherwise act with
6 reasonable diligence and promptness in representing Mr. Ortiz, Respondent
7 violated ER 1.3, Ariz. R. Sup. Ct. 42.
8

9 By failing to promptly comply with reasonable requests for information
10 from his clients, Respondent violated ER 1.4, Ariz. R. Sup. Ct. 42.

11 By failing to include in his fee agreement that Ms. Ortiz could discharge
12 Respondent at any time, and in that event she may be entitled to a refund,
13 Respondent violated ER 1.5(d)(3), Ariz. R. Sup. Ct. 42.
14

15 By failing to comply with applicable law requiring notice to or
16 permission of a tribunal when terminating a representation, Respondent
17 violated ER 1.16(c), Ariz. R. Sup. Ct. 42.
18

19 By failing to take steps to the extent reasonably practicable, upon
20 termination of representation, to protect his clients' interests, such as giving
21 reasonable notice to the client, allowing time for employment of other counsel,
22 surrendering documents and property to which the client is entitled and
23 refunding any advance payment of a fee that has not been earned, Respondent
24 violated ER 1.16(d), Ariz. R. Sup. Ct. 42.
25

1 By failing to expedite litigation consistent with the interest of his clients,
2 Respondent violated ER 3.2, Ariz. R. Sup. Ct. 42.

3 By failing to respond to the State Bar's lawful demand for information,
4 Respondent violated ER 8.1(b), Ariz. R. Sup. Ct. 42 and Ariz. R. Sup. Ct.
5 53(d) and (f).
6

7 By engaging in conduct involving dishonesty, fraud, deceit or
8 misrepresentation, Respondent violated ER 8.4(c), Ariz. R. Sup. Ct. 42.
9

10 By engaging in conduct that is prejudicial to the administration of
11 justice, Respondent violated ER 8.4(d), Ariz. R. Sup. Ct. 42.

12 By refusing to cooperate with staff of the State Bar acting in the course
13 of that person's duties and failing to promptly respond to a request for
14 information from Bar counsel, Respondent violated Ariz. R. Sup. Ct. 53(d) and
15 (f).
16

17 Respondent's conduct as described in this count violated Ariz. R. Sup.
18 Ct. 42, specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.5(d), 1.16(c) and (d), 3.2, 8.1(b),
19 8.4(c) and (d), and Ariz. R. Sup. Ct. 53(d) and (f).
20

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23
24 **COUNT SIX (File No. 05-1344)**
25

1 On or about January 24, 2005, Rose and Amy Barker retained
2 Respondent to represent Amy Barker in a criminal matter. At the time that
3 Respondent signed the retainer agreement in January 24, 2005, Respondent
4 was summarily suspended from the practice of law for failure to comply with
5 the mandatory continuing legal education requirements.
6

7 The Barkers paid Respondent \$7,500.00 toward the \$10,000.00 retainer.
8 Respondent was to provide legal services to include representation through
9 trial, if needed. Respondent negotiated the checks paid by Rose Barker to
10 Respondent for Amy's representation. Amy Barker's first scheduled court date
11 was set for May 17, 2005. The Barkers unsuccessfully attempted to reach
12 Respondent for several weeks prior to the court date.
13
14

15 As of May 4, 2005, the date of the Barker's first inquiry with the State
16 Bar, Respondent had not had any contact with the clients. The Barkers were
17 concerned that Amy's court date was approaching and they had no additional
18 funds with which to hire new counsel for Amy's representation.
19

20 By letter dated May 18, 2005, the State Bar's Director of
21 Attorney/Consumer Assistance Program ("A/CAP"), mailed a letter of inquiry
22 to Respondent regarding the Barker's allegations. The letter from A/CAP
23 requested that Respondent provide a response within fifteen days. Respondent
24 failed to respond.
25

1 On June 14, 2005, a second letter was sent by A/CAP to Respondent
2 with a request that Respondent provide a response within fifteen days.
3 Respondent failed to respond. On August 5, 2005, the State Bar opened an
4 investigation into Respondent's professional conduct. By letter mailed to
5 Respondent's address on record with the State Bar, the State Bar informed
6 Respondent of the concerns related to his professional conduct. Copies of the
7 information submitted by the Barkers were provided to Respondent, who was
8 asked to respond to the State Bar within twenty days of the letter. Respondent
9 failed to respond.
10
11

12 On October 14, 2005, by letter mailed to Respondent's address on record
13 with the State Bar, the State Bar reminded Respondent of his professional
14 obligations to respond and was asked to submit a response within twenty (20)
15 days. Respondent failed to respond.
16

17 By failing to reasonably and necessarily prepare for his client's
18 representation, Respondent violated ER 1.1, Ariz. R. Sup. Ct. 42.
19

20 By failing to consult with his client as to the means by which the
21 objectives of her representation were to be pursued, Respondent violated ER
22 1.2, Ariz. R. Sup. Ct. 42.
23
24
25

1 By failing to appear at scheduled court dates and otherwise act with
2 reasonable diligence and promptness in representing Amy Barker, Respondent
3 violated ER 1.3, Ariz. R. Sup. Ct. 42.
4

5 By failing to promptly comply with reasonable requests for information
6 from his clients, Respondent violated ER 1.4, Ariz. R. Sup. Ct. 42.
7

8 By failing to include in his fee agreement that the Barkers could
9 discharge Respondent at any time and, in that event, the Barkers may be
10 entitled to a refund, Respondent violated ER 1.5(d)(3), Ariz. R. Sup. Ct. 42.
11

12 By failing to comply with applicable law requiring notice to or
13 permission of a tribunal when terminating a representation, Respondent
14 violated ER 1.16(c), Ariz. R. Sup. Ct. 42.
15

16 By failing to take steps to the extent reasonably practicable, upon
17 termination of representation, to protect his clients' interests, such as giving
18 reasonable notice to the client, allowing time for employment of other counsel,
19 surrendering documents and property to which the client is entitled and
20 refunding any advance payment of a fee that has not been earned, Respondent
21 violated ER 1.16(d), Ariz. R. Sup. Ct. 42.
22

23 By failing to expedite litigation consistent with the interest of his client,
24 Respondent violated ER 3.2, Ariz. R. Sup. Ct. 42.
25

1 By meeting with Rose Barker and accepting a retainer for legal services
2 while summarily suspended from the practice of law, Respondent violated ER
3 5.5, Ariz. R. Sup. Ct. 42 and Ariz. R. Sup. Ct. 31(b).
4

5 By failing to respond to the State Bar's lawful demand for information,
6 Respondent violated ER 8.1(b), Ariz. R. Sup. Ct. 42 and Ariz. R. Sup. Ct.
7 53(d) and (f).
8

9 In accepting retainers for legal services that he knowingly was unable to
10 perform due to his suspension, Respondent engaged in conduct involving
11 dishonesty, fraud, deceit or misrepresentation, in violation of ER 8.4(c), Ariz.
12 R. Sup. Ct. 42.
13

14 By engaging in conduct that is prejudicial to the administration of
15 justice, Respondent violated ER 8.4(d), Ariz. R. Sup. Ct. 42.
16

17 By refusing to cooperate with staff of the State Bar acting in the course
18 of that person's duties, and failing to promptly respond to a request for
19 information from Bar counsel, Respondent violated Ariz. R. Sup. Ct. 53(d) and
20 (f).
21

22 Respondent's conduct as described in this count violated Ariz. R. Sup.
23 Ct. 31(b), Ariz. R. Sup. Ct. 42, specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.5(d)(3),
24 1.16(c) and (d), 3.2, 5.5, 8.1(b), 8.4(c) and (d), and Ariz. R. Sup. 53(d) and (f).
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COUNT SEVEN (File No. 05-1446)

In or about August 2004, Tyler Griffith-Mercer retained Respondent to represent him in a DUI criminal matter. Mr. Griffith-Mercer paid Respondent \$1,700.00 toward the retainer fee that was to include representation through trial. In or about January 2005, Mr. Griffith-Mercer met with Respondent to discuss the case. In January 2005, at the time that Respondent met with Mr. Griffith-Mercer to discuss the case, Respondent was summarily suspended from the practice of law for failure to comply with the mandatory continuing legal education requirements.

Subsequent to the January 2005 meeting, Mr. Griffith-Mercer had difficulty getting in contact with Respondent. In early August 2005, after several unsuccessful attempts to have Respondent return his telephone calls, Mr. Griffith-Mercer went to Respondent's residence. Mr. Griffith-Mercer left a note at Respondent's residence pleading with Respondent to contact him so they could discuss the upcoming August 30, 2005 trial date.

As of August 22, 2005, the date of his complaint to the State Bar, Mr. Griffith-Mercer had not had contact with Respondent. Mr. Griffith-Mercer was concerned that his trial date was drawing near and he had no funds to obtain substitute representation.

1 By letter dated September 9, 2005, mailed to Respondent's address on
2 record with the State Bar, the State Bar informed Respondent of the concerns
3 related to his professional conduct. The State Bar provided copies of the
4 submitted information to Respondent and asked him to respond to the State Bar
5 within twenty days of the letter. Respondent failed to respond.
6

7 On October 19, 2005, by letter mailed to Respondent's address on record
8 with the State Bar, the State Bar reminded Respondent of his professional
9 obligations to respond and asked him to submit a response within twenty days.
10 Respondent failed to respond.
11

12 By failing to competently represent Mr. Griffith-Mercer, Respondent
13 violated ER 1.1, Ariz. R. Sup. Ct. 42.
14

15 By failing to abide by Mr. Griffith-Mercer's decisions concerning the
16 objectives of the representation and failing to consult with his client as to the
17 means by which the objectives of the representation were to be pursued,
18 Respondent violated ER 1.2, Ariz. R. Sup. Ct. 42.
19

20 By failing to keep his client informed about the status of his case; failing
21 to promptly comply with reasonable requests for information; failing to explain
22 to his client any matters regarding his case to the extent reasonably necessary
23 to permit the client to make informed decisions regarding the representation,
24 Respondent violated ER 1.4, Ariz. R. Sup. Ct. 42.
25

1 By failing to include in his fee agreement that Mr. Griffith-Mercer could
2 discharge Respondent at any time, and in that event Mr. Griffith-Mercer may
3 be entitled to a refund, Respondent violated ER 1.5(d)(3), Ariz. R. Sup. Ct. 42.
4

5 By failing to comply with applicable law requiring notice to or
6 permission of a tribunal when terminating a representation, Respondent
7 violated ER 1.16(c), Ariz. R. Sup. Ct. 42.
8

9 By failing to take steps to the extent reasonably practicable, upon
10 termination of representation, to protect his clients' interests, such as giving
11 reasonable notice to the client, allowing time for employment of other counsel,
12 surrendering documents and property to which the client is entitled and
13 refunding any advance payment of a fee that has not been earned, Respondent
14 violated ER 1.16(d), Ariz. R. Sup. Ct. 42.
15

16 By failing to expedite litigation consistent with the interest of his client,
17 Respondent violated ER 3.2, Ariz. R. Sup. Ct. 42.
18

19 By meeting with Mr. Griffith-Mercer in January 2005 and accepting
20 additional fees towards the representation at a time when he was summarily
21 suspended from the practice of law, Respondent violated Ariz. R. Sup. Ct.
22 31(b) and ER 5.5, Ariz. R. Sup. Ct. 42.
23
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1 By failing to respond to the State Bar's lawful demand for information,
2 Respondent violated ER 8.1(b), Ariz. R. Sup. Ct. 42 and Ariz. R. Sup. Ct.
3 53(d) and (f).
4

5 In accepting retainers for legal services that he knowingly was unable to
6 perform due to his suspension, Respondent engaged in conduct involving
7 dishonesty, fraud, deceit or misrepresentation, in violation of ER 8.4(c), Ariz.
8 R. Sup. Ct. 42.
9

10 By engaging in conduct that is prejudicial to the administration of
11 justice, Respondent violated ER 8.4(d), Ariz. R. Sup. Ct. 42.

12 By refusing to cooperate with staff of the State Bar acting in the course
13 of that person's duties and failing to promptly respond to a request for
14 information from Bar counsel, Respondent violated Ariz. R. Sup. Ct. 53(d) and
15 (f).
16

17 Respondent's conduct as described in this count violated Ariz. R. Sup.
18 Ct. 31(b), Ariz. R. Sup. Ct. 42, specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.5(d)(3),
19 1.16(c) and (d), 3.2, 5.5, 8.1(b), 8.4(c) and (d), and Ariz. R. Sup. Ct. 53(d), and
20 (f).
21

22 **COUNT EIGHT (File No. 05-1756)**
23

24 On February 16, 2005, Vionna E. Jose retained Respondent to represent
25 him in criminal and forfeiture matters. Mr. Jose paid Respondent \$7,500.00 for

1 the representation, which was to include any trials. In February 2005, when he
2 signed the fee agreement and accepted representation of Mr. Jose, Respondent
3 was summarily suspended from the practice of law. After a few initial contacts
4 with Mr. Jose, Respondent stopped returning Mr. Jose's telephone calls.
5

6 During one of his attempts to contact Respondent, Mr. Jose discovered
7 that Respondent's telephone had been disconnected. Mr. Jose received notice
8 from the State Bar's conservatorship administrator that Respondent had been
9 suspended from the practice of law and that the State Bar had possession of
10 Mr. Jose's case file.
11

12 On October 6, 2005, Mr. Jose submitted his complaint regarding
13 Respondent to the State Bar. By letter dated October 19, 2005, mailed to
14 Respondent's address on record with the State Bar, and to an alternative
15 address believed to be that of Respondent's parents, the State Bar informed
16 Respondent of the allegations made by Mr. Jose regarding his professional
17 conduct. The State Bar asked Respondent to provide a response within twenty
18 days of the letter. Respondent failed to respond.
19
20

21 On November 14, 2005, by letter mailed to Respondent's address on
22 record with the State Bar, the State Bar reminded Respondent of his
23 professional obligations to respond to the State Bar and asked him to submit a
24 response within twenty days. Respondent failed to respond.
25

1 By failing to competently represent Mr. Jose, Respondent violated ER
2 1.1, Ariz. R. Sup. Ct. 42.

3 By failing to abide by Mr. Jose's decisions concerning the objectives of
4 the representation and failing to consult with his client as to the means by
5 which the objectives of the representation were to be pursued, Respondent
6 violated ER 1.2, Ariz. R. Sup. Ct. 42.
7

8 By failing to keep Mr. Jose informed about the status of his case; failing
9 to promptly comply with reasonable requests for information; failing to explain
10 to his client any matters regarding his case to the extent reasonably necessary
11 to permit the client to make informed decisions regarding the representation,
12 Respondent violated ER 1.4, Ariz. R. Sup. Ct. 42.
13

14 By failing to include in his fee agreement that Mr. Jose could discharge
15 Respondent at any time, and in that event Mr. Jose may be entitled to a refund,
16 Respondent violated ER 1.5(d)(3), Ariz. R. Sup. Ct. 42.
17

18 By failing to comply with applicable law requiring notice to or
19 permission of a tribunal when terminating a representation, Respondent
20 violated ER 1.16(c), Ariz. R. Sup. Ct. 42.
21

22 By failing to take steps to the extent reasonably practicable, upon
23 termination of representation, to protect his client's interests, such as giving
24 reasonable notice to the client, allowing time for employment of other counsel,
25

1 surrendering documents and property to which the client is entitled and
2 refunding any advance payment of a fee that has not been earned, Respondent
3 violated ER 1.16(d), Ariz. R. Sup. Ct. 42.
4

5 By failing to expedite litigation consistent with the interest of his client,
6 Respondent violated ER 3.2, Ariz. R. Sup. Ct. 42.

7 By meeting with Mr. Jose in February 2005 and accepting fees towards
8 the representation at a time when he was summarily suspended from the
9 practice of law, Respondent violated Ariz. R. Sup. Ct. 31(b) and ER 5.5, Ariz.
10 R. Sup. Ct. 42.
11

12 By failing to respond to the State Bar's lawful demand for information,
13 Respondent violated ER 8.1(b), Ariz. R. Sup. Ct. 42 and Ariz. R. Sup. Ct.
14 53(d) and (f).
15

16 In accepting retainers for legal services that he knowingly was unable to
17 perform due to his suspension, Respondent engaged in conduct involving
18 dishonesty, fraud, deceit or misrepresentation, in violation of ER 8.4(c), Ariz.
19 R. Sup. Ct. 42.
20

21 By engaging in conduct that is prejudicial to the administration of
22 justice, Respondent violated ER 8.4(d), Ariz. R. Sup. Ct. 42.
23

24 By refusing to cooperate with staff of the State Bar acting in the course
25 of that person's duties and failing to promptly respond to a request for

1 information from Bar counsel, Respondent violated Ariz. R. Sup. Ct. 53(d) and
2 (f).

3 Respondent's conduct as described in this count violated Ariz. R. Sup.
4 Ct. 31(b), Ariz. R. Sup. Ct. 42, specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.5(d)(3),
5 1.16(c) and (d), 3.2, 5.5, 8.1(b), 8.4(c) and (d), and Ariz. R. Sup. Ct. 53(d), and
6 (f).
7

8 **III. CONCLUSIONS OF LAW**

9 **A. Count One (File No. 05-0416)**

10 1. By failing to provide competent representation to a client,
11 Respondent violated ER 1.1, Ariz. R. Sup. Ct. 42.
12

13 2. By failing to act with reasonable diligence and promptness in
14 representing a client, Respondent violated ER 1.3, Ariz. R. Sup. Ct. 42.
15

16 3. By failing to adequately communicate with his client, Respondent
17 violated ER 1.4, Ariz. R. Sup. Ct. 42.
18

19 4. By failing to comply with applicable law requiring notice to or
20 permission of a tribunal when terminating a representation, Respondent
21 violated ER 1.16, Ariz. R. Sup. Ct. 42.
22

23 5. By continuing to practice law while suspended, Respondent
24 violated Ariz. R. Sup. Ct. 31(b) and ER 5.5(a), Ariz. R. Sup. Ct. 42.
25

1 6. By engaging conduct prejudicial to the administration of justice,
2 Respondent violated ER 8.4(d), Ariz. R. Sup. Ct. 42.

3
4 7. By willfully violating an order of the court, refusing to cooperate
5 with staff of the State Bar acting in the course of that person's duties, and
6 failing to promptly respond to a request for information from Bar counsel,
7 Respondent violated Ariz. R. Sup. Ct. 53.

8
9 **B. Count Two (File No. 05-0891)**

10 8. By failing to provide competent representation to a client,
11 Respondent violated ER 1.1, Ariz. R. Sup. Ct. 42.

12 9. By failing to act with reasonable diligence and promptness in
13 representing a client, Respondent violated ER 1.3, Ariz. R. Sup. Ct. 42.

14 10. By failing to adequately communicate with his client, Respondent
15 violated ER 1.4, Ariz. R. Sup. Ct. 42.

16 11. By failing to comply with applicable law requiring notice to or
17 permission of a tribunal when terminating a representation, Respondent
18 violated ER 1.16, Ariz. R. Sup. Ct. 42.

19 12. By failing to make reasonable efforts to expedite litigation
20 consistent with the interests of his client, Respondent violated ER 3.2, Ariz. R.
21 Sup. Ct. 42.
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1 13. By knowingly disobeying an obligation under the rules of a
2 tribunal, Respondent violated ER 3.4(c), Ariz. R. Sup. Ct. 42.

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4 14. By engaging conduct prejudicial to the administration of justice,
5 Respondent violated ER 8.4(d), Ariz. R. Sup. Ct. 42.

6 15. By willfully violating an order of the court, refusing to cooperate
7 with staff of the State Bar acting in the course of that person's duties, and
8 failing to promptly respond to a request for information from Bar counsel,
9 Respondent violated Ariz. R. Sup. Ct. 53(c), (d), and (f).

11 **C. Count Three (File No. 05-0363)**

12 16. By failing to provide competent representation to his client,
13 Respondent violated ER 1.1, Ariz. R. Sup. Ct. 42.

14
15 17. By failing to abide by a client's decisions concerning the
16 objectives of representation and consult with his client as to the means by
17 which they were to be pursued, Respondent violated ER 1.2, Ariz. R. Sup. Ct.
18 42.

19
20 18. By failing to act with reasonable diligence and promptness in
21 representing a client, Respondent violated ER 1.3, Ariz. R. Sup. Ct. 42.

22
23 19. By failing to adequately communicate with his client, Respondent
24 violated ER 1.4, Ariz. R. Sup. Ct. 42.

1 20. By failing to comply with applicable law requiring notice to or
2 permission of a tribunal when terminating a representation and failing to take
3 reasonable steps necessary to protect a client's interests upon termination of
4 representation, Respondent violated ER 1.16(c) and (d), Ariz. R. Sup. Ct. 42.

6 21. By failing to make reasonable efforts to expedite litigation
7 consistent with the interests of his client, Respondent violated ER 3.2, Ariz. R.
8 Sup. Ct. 42.

10 22. By knowingly making a false statement of fact or law to a
11 tribunal, Respondent violated ER 3.3, Ariz. R. Sup. Ct. 42.

12 23. By soliciting professional employment from a prospective client
13 who was not a lawyer, a family member, close friend, or former professional
14 client or contact, Respondent violated ER 7.3, Ariz. R. Sup. Ct. 42.

16 24. By knowingly failing to respond to a lawful demand for
17 information from the State Bar, Respondent violated ER 8.1(b), Ariz. R. Sup.
18 Ct. 42.

20 25. By engaging in conduct involving dishonesty, fraud, deceit, or
21 misrepresentation, and engaging in conduct prejudicial to the administration of
22 justice, Respondent violated ER 8.4(c) and (d), Ariz. R. Sup. Ct. 42.

24 26. By refusing to cooperate with staff of the State Bar acting in the
25 course of that person's duties, and failing to promptly respond to a request for

1 information from Bar counsel, Respondent violated Ariz. R. Sup. Ct. 53(d) and
2 (f).

3 **D. Count Four (File No. 05-0706)**

4 27. By failing to provide competent representation to his client,
5 Respondent violated ER 1.1, Ariz. R. Sup. Ct. 42.

6 28. By failing to abide by a client's decisions concerning the
7 objectives of representation and consult with his client as to the means by
8 which they were to be pursued, Respondent violated ER 1.2, Ariz. R. Sup. Ct.
9 42.

10 29. By failing to act with reasonable diligence and promptness in
11 representing a client, Respondent violated ER 1.3, Ariz. R. Sup. Ct. 42.

12 30. By failing to adequately communicate with his client, Respondent
13 violated ER 1.4, Ariz. R. Sup. Ct. 42.

14 31. By failing to comply with applicable law requiring notice to or
15 permission of a tribunal when terminating a representation, Respondent
16 violated ER 1.16, Ariz. R. Sup. Ct. 42.

17 32. By failing to make reasonable efforts to expedite litigation
18 consistent with the interests of his client, Respondent violated ER 3.2, Ariz. R.
19 Sup. Ct. 42.
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1 33. By continuing to practice law while suspended, Respondent
2 violated Ariz. R. Sup. Ct. 31(b) and ER 5.5(a), Ariz. R. Sup. Ct. 42.

3
4 34. By knowingly failing to respond to a lawful demand for
5 information from the State Bar, Respondent violated ER 8.1(b), Ariz. R. Sup.
6 Ct. 42.

7 35. By engaging in conduct involving dishonesty, fraud, deceit, or
8 misrepresentation, and engaging in conduct prejudicial to the administration of
9 justice, Respondent violated ER 8.4(c) and (d), Ariz. R. Sup. Ct. 42.

10
11 36. By refusing to cooperate with staff of the State Bar acting in the
12 course of that person's duties, and failing to promptly respond to a request for
13 information from Bar counsel, Respondent violated Ariz. R. Sup. Ct. 53(d) and
14 (f).

15
16 **E. Count Five (File No. 05-0120)**

17 37. By failing to provide competent representation to his client,
18 Respondent violated ER 1.1, Ariz. R. Sup. Ct. 42.

19
20 38. By failing to abide by a client's decisions concerning the
21 objectives of representation and consult with his client as to the means by
22 which they were to be pursued, Respondent violated ER 1.2, Ariz. R. Sup. Ct.
23 42.
24
25

1 39. By failing to act with reasonable diligence and promptness in
2 representing a client, Respondent violated ER 1.3, Ariz. R. Sup. Ct. 42.

3
4 40. By failing to adequately communicate with his client, Respondent
5 violated ER 1.4, Ariz. R. Sup. Ct. 42.

6 41. By failing to include in his fee agreement denominated as "earned
7 upon receipt" that the client may nevertheless discharge him at any time and in
8 that event may be entitled to a refund of all or part of his fee, Respondent
9 violated ER 1.5, Ariz. R. Sup. Ct. 42.

10
11 42. By failing to comply with applicable law requiring notice to or
12 permission of a tribunal when terminating a representation and by failing to
13 take steps necessary to protect his client's interests upon termination of
14 representation, Respondent violated ER 1.16(c) and (d), Ariz. R. Sup. Ct. 42.

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16 43. By failing to make reasonable efforts to expedite litigation
17 consistent with the interests of his client, Respondent violated ER 3.2, Ariz. R.
18 Sup. Ct. 42.

19
20 44. By knowingly failing to respond to a lawful demand for
21 information from the State Bar, Respondent violated ER 8.1(b), Ariz. R. Sup.
22 Ct. 42.

1 45. By engaging in conduct involving dishonesty, fraud, deceit, or
2 misrepresentation, and engaging in conduct prejudicial to the administration of
3 justice, Respondent violated ER 8.4(c) and (d), Ariz. R. Sup. Ct. 42.

4
5 46. By refusing to cooperate with staff of the State Bar acting in the
6 course of that person's duties, and failing to promptly respond to a request for
7 information from Bar counsel, Respondent violated Ariz. R. Sup. Ct. 53(d) and
8 (f).

9
10 **F. COUNT SIX (File No. 05-1344)**

11 47. By failing to provide competent representation to his client,
12 Respondent violated ER 1.1, Ariz. R. Sup. Ct. 42.

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14 48. By failing to abide by a client's decisions concerning the
15 objectives of representation and consult with his client as to the means by
16 which they were to be pursued, Respondent violated ER 1.2, Ariz. R. Sup. Ct.
17 42.

18
19 49. By failing to act with reasonable diligence and promptness in
20 representing a client, Respondent violated ER 1.3, Ariz. R. Sup. Ct. 42.

21
22 50. By failing to adequately communicate with his client, Respondent
23 violated ER 1.4, Ariz. R. Sup. Ct. 42.

24
25 51. By failing to include in his fee agreement denominated as "earned
upon receipt" that the client may nevertheless discharge him at any time and in

1 that event may be entitled to a refund of all or part of his fee, Respondent
2 violated ER 1.5(d)(3), Ariz. R. Sup. Ct. 42.

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4 52. By failing to comply with applicable law requiring notice to or
5 permission of a tribunal when terminating a representation and by failing to
6 take steps necessary to protect his client's interests upon termination of
7 representation, Respondent violated ER 1.16(c) and (d), Ariz. R. Sup. Ct. 42.

8
9 53. By failing to make reasonable efforts to expedite litigation
10 consistent with the interests of his client, Respondent violated ER 3.2, Ariz. R.
11 Sup. Ct. 42.

12
13 54. By continuing to practice law while suspended, Respondent
14 violated Ariz. R. Sup. Ct. 31(b) and ER 5.5(a), Ariz. R. Sup. Ct. 42.

15
16 55. By knowingly failing to respond to a lawful demand for
17 information from the State Bar, Respondent violated ER 8.1(b), Ariz. R. Sup.
18 Ct. 42.

19
20 56. By engaging in conduct involving dishonesty, fraud, deceit, or
21 misrepresentation, and engaging in conduct prejudicial to the administration of
22 justice, Respondent violated ER 8.4(c) and (d), Ariz. R. Sup. Ct. 42.

23
24 57. By refusing to cooperate with staff of the State Bar acting in the
25 course of that person's duties, and failing to promptly respond to a request for

1 information from Bar counsel, Respondent violated Ariz. R. Sup. Ct. 53(d) and
2 (f).

3
4 **G. COUNT SEVEN (File No. 05-1446)**

5 58. By failing to provide competent representation to his client,
6 Respondent violated ER 1.1, Ariz. R. Sup. Ct. 42.

7 59. By failing to abide by a client's decisions concerning the
8 objectives of representation and consult with his client as to the means by
9 which they were to be pursued, Respondent violated ER 1.2, Ariz. R. Sup. Ct.
10 42.

11 60. By failing to act with reasonable diligence and promptness in
12 representing a client, Respondent violated ER 1.3, Ariz. R. Sup. Ct. 42.

13 61. By failing to adequately communicate with his client, Respondent
14 violated ER 1.4, Ariz. R. Sup. Ct. 42.

15 62. By failing to include in his fee agreement denominated as "earned
16 upon receipt" that the client may nevertheless discharge him at any time and in
17 that event may be entitled to a refund of all or part of his fee, Respondent
18 violated ER 1.5(d)(3), Ariz. R. Sup. Ct. 42.

19 63. By failing to comply with applicable law requiring notice to or
20 permission of a tribunal when terminating a representation and by failing to
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1 take steps necessary to protect his client's interests upon termination of
2 representation, Respondent violated ER 1.16(c) and (d), Ariz. R. Sup. Ct. 42.

3
4 64. By failing to make reasonable efforts to expedite litigation
5 consistent with the interests of his client, Respondent violated ER 3.2, Ariz. R.
6 Sup. Ct. 42.

7
8 65. By continuing to practice law while suspended, Respondent
9 violated Ariz. R. Sup. Ct. 31(b) and ER 5.5(a), Ariz. R. Sup. Ct. 42.

10
11 66. By knowingly failing to respond to a lawful demand for
12 information from the State Bar, Respondent violated ER 8.1(b), Ariz. R. Sup.
13 Ct. 42.

14
15 67. By engaging in conduct involving dishonesty, fraud, deceit, or
16 misrepresentation, and engaging in conduct prejudicial to the administration of
17 justice, Respondent violated ER 8.4(c) and (d), Ariz. R. Sup. Ct. 42.

18
19 68. By refusing to cooperate with staff of the State Bar acting in the
20 course of that person's duties, and failing to promptly respond to a request for
21 information from Bar counsel, Respondent violated Ariz. R. Sup. Ct. 53(d) and
22 (f).

23 **H. COUNT EIGHT (File No. 05-1756)**

24
25 69. By failing to provide competent representation to his client,
Respondent violated ER 1.1, Ariz. R. Sup. Ct. 42.

1 70. By failing to abide by a client's decisions concerning the
2 objectives of representation and consult with his client as to the means by
3 which they were to be pursued, Respondent violated ER 1.2, Ariz. R. Sup. Ct.
4 42.
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6 71. By failing to act with reasonable diligence and promptness in
7 representing a client, Respondent violated ER 1.3, Ariz. R. Sup. Ct. 42.
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9 72. By failing to adequately communicate with his client, Respondent
10 violated ER 1.4, Ariz. R. Sup. Ct. 42.

11 73. By failing to include in his fee agreement denominated as "earned
12 upon receipt" that the client may nevertheless discharge him at any time and in
13 that event may be entitled to a refund of all or part of his fee, Respondent
14 violated ER 1.5(d)(3), Ariz. R. Sup. Ct. 42.
15

16 74. By failing to comply with applicable law requiring notice to or
17 permission of a tribunal when terminating a representation and by failing to
18 take steps necessary to protect his client's interests upon termination of
19 representation, Respondent violated ER 1.16(c) and (d), Ariz. R. Sup. Ct. 42.
20

21 75. By failing to make reasonable efforts to expedite litigation
22 consistent with the interests of his client, Respondent violated ER 3.2, Ariz. R.
23 Sup. Ct. 42.
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1 76. By continuing to practice law while suspended, Respondent
2 violated Ariz. R. Sup. Ct. 31(b) and ER 5.5(a), Ariz. R. Sup. Ct. 42.

3
4 77. By knowingly failing to respond to a lawful demand for
5 information from the State Bar, Respondent violated ER 8.1(b), Ariz. R. Sup.
6 Ct. 42.

7
8 78. By engaging in conduct involving dishonesty, fraud, deceit, or
9 misrepresentation, and engaging in conduct prejudicial to the administration of
10 justice, Respondent violated ER 8.4(c) and (d), Ariz. R. Sup. Ct. 42.

11
12 79. By refusing to cooperate with staff of the State Bar acting in the
13 course of that person's duties, and failing to promptly respond to a request for
14 information from Bar counsel, Respondent violated Ariz. R. Sup. Ct. 53(d) and
15 (f).

16 **IV. RECOMMENDED SANCTION**

17
18 The recommended sanction is based on the applicable American Bar
19 Association's *Standards for Imposing Lawyer Sanctions* (1991 ed.)
20 ("*Standards*" or "*Standard* ___"), including the relevant aggravating and
21 mitigating factors, as well as its review of the applicable case law regarding
22 proportionality of the recommended sanction. In determining an appropriate
23 sanction, our disciplinary system considers the facts of the case, the *Standards*,
24 and the proportionality of discipline imposed in analogous cases. *In re Kaplan*,

1 179 Ariz. 175, 177, 877 P.2d 274 (1994); *In re Bowen*, 178 Ariz. 283, 286, 872
2 P.2d 1235, 1238 (1994); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037,
3 1040 (1990). Because the discipline in each situation must be tailored for the
4 individual case, neither perfection nor absolute uniformity can be achieved. *In*
5 *re Riley*, 142 Ariz. 604, 691 P.2d 695 (1984).

7 **A. ABA Standards**

8
9 The *Standards* are designed to promote consistency in sanctions by
10 identifying relevant factors the court should consider and then applying these
11 factors to situations in which lawyers have engaged in various types of
12 misconduct. *Standard 1.3, Commentary*. In determining an appropriate
13 sanction, the court and the Disciplinary Commission consider the duty violated,
14 the lawyer's mental state, the presence or absence of actual or potential injury,
15 and the existence of aggravating and mitigating factors. *Standard 3.0*. "The
16 Standards do not account for multiple charges of misconduct." *Standards*, pg.
17
18 6. Where there are multiple acts of misconduct, a lawyer should receive one
19 sanction consistent with the most serious instances of misconduct, and the
20 other acts should be considered as aggravating factors. *In re Cassalia*, 173
21 Ariz. 372, 843 P.2d 654 (1992).

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1 **1. Applicable Standards**

2 The Standards identify four distinct categories in which a lawyer owes a
3 duty. *See Standards*, pg. 5. A lawyer owes duties to his clients, to the general
4 public, to the legal system, and to the profession. *Id.* The most important
5 duties a lawyer owes are his duties to his client, including the duties of loyalty,
6 diligence, competence, and candor. *Id.*

7
8 In this case, the Respondent's most serious acts of misconduct are his
9 failure to competently and diligently represent, and adequately communicate
10 with, his clients. In each Count in this matter, Respondent either accepted
11 private representation of his clients or was appointed to the representation by
12 the court. Despite this, Respondent failed to competently and diligently
13 represent his clients, resulting in the respective courts removing him from the
14 representation. Further, Respondent failed to appear at several court hearings
15 without adequately explaining his absence to the courts in which he was to
16 appear or to his clients. Respondent's action in these cases caused unnecessary
17 delay in his clients' cases and shows a lack of competence in his ability to
18 represent his clients. His conduct also shows that he lacks the required
19 diligence necessary to meet his obligations under the Rules of Professional
20 Conduct. Frequently, when his clients inquired as to the status of the
21 representation, Respondent failed to communicate with them. Additionally,
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1 Respondent represented many of the clients while he was suspended from the
2 practice of law.

3 Respondent's lack of diligence and his failure to communicate with his
4 client implicate *Standard 4.4 (Lack of Diligence)*. *Standard 4.41* provides:
5

6 Disbarment is generally appropriate when:

- 7 (c) a lawyer abandons the practice and causes serious
8 or potentially serious injury to a client; or
- 9 (c) a lawyer knowingly fails to perform services for a
10 client and causes serious or potentially serious
11 injury to a client; or
- 12 (c) lawyer engages in a pattern of neglect with respect
13 to client matters and causes serious or potentially
14 serious injury to a client.

15 Respondent's lack of competence to adequately represent his clients
16 implicate *Standard 4.5 (Lack of Competence)*. *Standard 4.51* provides:
17

18 Disbarment is generally appropriate when a lawyer's
19 course of conduct demonstrates that the lawyer does
20 not understand the most fundamental legal doctrines
21 or procedures, and the lawyer's conduct causes injury
22 or potential injury to a client.

23 Disbarment is the appropriate sanction in this matter. The record
24 reflects that Respondent has abandoned the practice of law. At the time
25 many of the complainants submitted their charges to the State Bar,
Respondent had failed to communicate with his clients or to appear in
court on their behalf. Several of the complainants were judges presiding
over cases in which Respondent represented the defendant. *See Counts*
One, Two, and Three. In each of those matters, Respondent's failure to

1 competently and diligently represent his clients and to communicate with
2 them necessitated his removal from the case. Additionally, the State Bar
3 received charges against Respondent from complainants who served as
4 contract paralegals for Respondent. *See* Count Four. In Count Four, the
5 record reflects that Respondent represented numerous clients and
6 subsequently abandoned their files and cases with the complainants.
7 Either the Pima or Pinal County Office of Court Appointed Counsel had
8 appointed respondent to many of the cases and his failure to adequately
9 represent his clients resulted in the cases being reassigned to new
10 counsel. This further delayed the cases. Finally, the record reflects that
11 Respondent abandoned and failed to communicate with several clients
12 facing criminal charges who privately retained Respondent. *See* Counts
13 Five, Six, Seven, and Eight.

14 Furthermore, Respondent has failed to participate in these
15 disciplinary proceedings. Respondent has been provided with notice and
16 been given an opportunity to appear and answer the allegations against
17 him. In spite of this, Respondent has not participated in these
18 proceedings and failed to provide any reason for his failure to
19 participate. Based upon the record in this matter, and Respondent's
20 seeming lack of respect for the disciplinary process, disbarment is
21 appropriate.

22 **2. State of Mind**

23 It is clear from the admitted facts that Respondent's state of mind in
24 these matters was knowing and/or intentional. In several matters, Respondent
25 failed to appear in court despite having received notice from the court that his

1 appearance was required. Additionally, many of the complainants and clients
2 attempted to contact Respondent concerning their respective representations,
3 yet Respondent failed to communicate with them. Finally, it is clear that
4 Respondent received notice of these disciplinary matters and chose not to
5 respond to the charges.
6

7 **3. Injury**

8 From the record in this matter, it is clear that Respondent's conduct
9 caused serious actual injury or, at least, had the potential to cause serious actual
10 injury to his clients, the public, the legal system, and the profession. Many of
11 Respondent's clients were facing criminal charges and several of his clients
12 were in jail at the time the charges against Respondent were sent to the State
13 Bar. Several of Respondent's clients complained of upcoming court hearings
14 and their fear that they would not be prepared because they had had no
15 communication with Respondent. Indeed, Respondent failed to appear at
16 several court hearings, which caused the courts to continue the matters and
17 hold show cause and contempt hearings based on his conduct. Respondent's
18 failure to appear at the hearings also wasted limited judicial time and resources.
19 Respondent's conduct necessitated his removal from the cases, which
20 undoubtedly delayed the proceedings. Finally, several of the complainants
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1 paid substantial fees for the representation and have not been reimbursed by
2 Respondent.

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4 **4. Aggravating and mitigating factors**

5 Under the facts admitted by default in this case, the following
6 aggravating factors apply:

- 7 • Prior disciplinary offenses (*Standard 9.22(a)*). Respondent
8 received two previous informal reprimands. Both informal
9 reprimands involved misconduct involving lack of competence,
10 diligence, and communication.
- 11 • Dishonest or selfish motive (*Standard 9.22(b)*). Respondent's
12 conduct in knowingly and/or intentionally abandoning his clients
13 and accepting legal fees for work he did not plan on completing
14 evidences a dishonest or selfish motive.
- 15 • Pattern of misconduct (*Standard 9.22(c)*). Respondent continued
16 to practice law while suspended in at least twenty-six cases.
17 Respondent knowingly failed to comply with the terms of his
18 probation, and he failed to provide competent and diligent
19 representation to his clients.
- 20 • Multiple offenses (*Standard 9.22(d)*). The formal complaints in
21 this matter detail multiple instances of similar misconduct,
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1 including lack of competence, diligence, and communication
2 among other ethical violations.

- 3 • Bad-faith obstruction of the disciplinary proceeding of the
4 disciplinary proceedings by intentionally failing to comply with
5 rules or orders of the disciplinary agency (*Standard 9.22(e)*). The
6 State Bar notified Respondent about the disciplinary matters by
7 forwarding the charges by certified and first-class mail to
8 Respondent's address of record. Additionally, the State Bar
9 forwarded the second formal complaint to an address in Michigan
10 believed to be Respondent's parent's address. Despite having
11 adequate notice of these proceedings, Respondent failed to
12 participate.

- 13 • Substantial experience in the practice of law (*Standard 9.22(i)*).
14 Respondent was admitted to practice law in Arizona in 1991.

15 Based on the record in this matter, no mitigating factors are present.

16 **B. Proportionality**

17 Respondents who engaged in the unauthorized practice of law and who
18 have failed to comply with the terms of their probation have received sanctions
19 ranging from six months suspension to disbarment:
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1 • *In re Woltman*, 178 Ariz. 548; 875 P.2d 781 (1994): In a twenty-five
2 count complaint, alleging misconduct involving twenty-four separate
3 client matters, Woltman was found to have converted client funds, failed
4 to perform work for which he was retained and for which he accepted
5 retainers, failed to pursue clients' cases with diligence and competence,
6 and continued to practice law while on interim suspension. Woltman
7 failed to respond to the formal complaint, and the facts were deemed
8 admitted. Woltman also did not participate in the aggravation/mitigation
9 hearing, nor did he object to the hearing officer's report, although he
10 received notice of the opportunity to participate and object. The hearing
11 officer found violations of Ariz. R. Sup. Ct. 42, specifically, ERs 1.1,
12 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, 3.3, 3.4, 4.2, 4.4, 5.5, 8.1, 8.4, Ariz. R.
13 Sup. Ct. 41(g), Ariz. R. Sup. Ct. 51(e), (f), (h), and (i)³, and Ariz. R. Sup.
14 Ct. 63. The hearing officer found five aggravating factors (multiple
15 offenses, a pattern of misconduct, dishonest or selfish motive, failure to
16 cooperate with or participate in the disciplinary process, vulnerability of
17 the victims, and indifference to making restitution). No mitigating
18 factors were found. Woltman was **disbarred**.

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³ Former Ariz. R. Sup. Ct. 51 corresponds with current Ariz. R. Sup. Ct. 53.

1 • *In re Brown*, SB-05-0054-D (2005): Respondent represented four clients
2 in separate civil matters. In each instance, the client paid Respondent an
3 advance fee for the representation. Despite this, Respondent failed to
4 follow client direction with regard to the representation, failed to
5 communicate with the clients regarding the representation, failed to
6 diligently pursue the cases, and failed to return any portion of the
7 advance fee deposits he received. In each case, the client's case suffered
8 as a result of Respondent's abandonment of the representation.
9 Respondent also failed to cooperate with the State Bar's investigation
10 into his conduct. The hearing officer found violations of Ariz. R. Sup.
11 Ct. 32(c)(3), ERs 1.2, 1.3, 1.4, 1.5, 1.15(a), 1.16, 3.2, and 8.4(d), Ariz. R.
12 Sup. Ct. 42, and Ariz. R. Sup. Ct. 53(d) and (f). The hearing officer
13 found five aggravating factors (prior disciplinary history; dishonest or
14 selfish motive; pattern of misconduct; multiple offenses; bad faith
15 obstruction of the disciplinary proceedings; and substantial experience in
16 the practice of law). No mitigating factors were found as a result of
17 Respondent's failure to participate in the disciplinary proceedings.
18 **Brown was disbarred.**

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24 • *In re MacAskill*, 163 Ariz. 354 (1990): In an eleven count complaint, the
25 State Bar alleged that Respondent failed to adequately represent five

1 clients despite being retained and compensated for the representation.
2 The State Bar also alleged that Respondent failed to cooperate with its
3 investigation. In one case, a client retained Respondent to assist her in
4 collecting funds from her deceased father's estate. Respondent
5 neglected to file an amended petition and waiver of bond of intestacy so
6 that the client could receive her portion of the estate. Respondent also
7 failed to adequately respond to the client's requests for information. In a
8 second matter, a client retained Respondent to represent him in his
9 dissolution matter. Respondent neglected the client's case by failing to
10 file a dissolution petition. In spite of his failure to file the petition,
11 Respondent assured his client that he had done so and failed to respond
12 to the opposing counsel's telephone calls in the matter. In the three
13 other matters, Respondent also failed to abide by the clients' wishes with
14 regard to the representations and failed to adequately communicate with
15 them. The State Bar also alleged, and the supreme court found, that
16 Respondent continued to practice law while suspended and failed to
17 cooperate with the disciplinary investigation. The supreme court found
18 violations of ERs 1.3, 1.4(a), 1.15, 5.5, 8.1(b), and 8.4(c), Ariz. R. Sup.
19 Ct. 42 and Ariz. R. Sup. Ct. 51(h) and (i). The supreme court noted the
20 presence of several aggravating factors, including: a pattern of
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1 misconduct; the vulnerability of Respondent's clients; and a prior
2 disciplinary record. McAskill was **disbarred**.

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4 It is clear from the record that Respondent's conduct in these matters
5 establish that disbarment is appropriate under *Standards* 4.41 and 4.51. The
6 commentary to *Standard* 4.4 states "[l]ack of diligence can take a variety of
7 forms. Some lawyers simply abandon their practices, leaving clients
8 completely unaware that they have no legal representation and often leaving
9 their clients without any legal remedy." In other situations, lack of diligence,
10 may be shown where the lawyer knowingly fails to perform services for a
11 client, or engages in misconduct that reflects an inability or unwillingness to
12 conform to his or her ethical obligations. *Id.* Additionally, the proportional
13 cases cited evidence that disbarment is appropriate when an attorney abandons
14 the practice of law.
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17 Here, Respondent failed to competently and diligently represent his
18 clients in numerous criminal matters. Many of his clients were in jail at the
19 time of their complaints to the State Bar, or were facing upcoming criminal
20 proceedings, and were relying on Respondent for their legal representation.
21 The facts also indicate that clients tried numerous times without success to
22 communicate with Respondent concerning the representation. Likewise,
23 several of the judges before whom Respondent was to appear attempted to
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1 locate Respondent regarding his representation of his respective clients.
2 Furthermore, Respondent was suspended from the practice of law and
3 continued to practice law, and he has failed to cooperate with these disciplinary
4 proceedings. Respondent's conduct in these matters shows a total lack of
5 respect for his obligations to his clients, the profession, the legal system, and
6 the public. Based upon the record in this matter, there can be no other
7 conclusion but that Respondent has abandoned his practice and disbarment is
8 appropriate.
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11 **V. Restitution**

12 Based upon the facts alleged in the State Bar's complaints that are
13 deemed admitted due to Respondent's default, and the exhibits introduced into
14 evidence at the aggravation/mitigation hearing, this Hearing Officer finds that
15 restitution in the following amounts is appropriate:
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17	Count I	None
18	Count II	None
19	Count III	None
20	Count IV	None
21	Count V	\$2,500.00 to Hilda and Robert Ortiz
22	Count VI	\$7,500.00 to Rose Barker
23	Count VII	\$1,700.00 to Tyler Griffith-Mercer
24		
25		

1 Count VIII \$7,500.00 to Vionna Jose

2 **Total Restitution \$19,200.00**

3 **VI. Conclusion**

4 It is recommended that Respondent be disbarred. It is further
5 recommended that Respondent be ordered to make restitution as listed in
6 Section V above. If Respondent is reinstated to the practice of law at some
7 time in the future, it is recommended he be placed on probation for two years
8 and be required to participate in the State Bar's Law Office Management
9 Assistance Program and Member Assistance Program, as well as any other
10 terms of probation determined upon reinstatement.

11 **DATED** this 26th day of April, 2006.

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14
15 Bruce G. Macdonald
16 Bruce G. Macdonald
17 Hearing Officer 6M

18 Original filed with the Disciplinary Clerk
19 this 26th day of April, 2006.

1 Copy of the foregoing mailed this

2 26th day of April, 2006 to:

3 Sean M. Coe

4 17752 South Placita De Laton

5 Sahuarita, AZ 85629

6 and

7 Clarence E. Matherson Jr.

8 Staff Bar Counsel

9 State Bar of Arizona

10 4201 N. 24th St., Suite 200

11 Phoenix, Arizona 85016-6288

12 By: Christina Soto