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MAY 04 2006

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

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5 IN THE MATTER OF A MEMBER) File Nos. 05-0437 and 05-0899
6 OF THE STATE BAR OF ARIZONA,)
7) **HEARING OFFICER'S REPORT**
8 **RICHARD C. ERICKSON,**)
9 **Bar No. 010859**)
RESPONDENT.)

10 **I. PROCEDURAL HISTORY**

11 The State Bar filed its complaint in this matter on December 30, 2005. On
12 January 3, 2006, the State Bar filed its affidavit of service. On January 24, 2006,
13 the Disciplinary Clerk filed a notice of default. Respondent failed to appear or to
14 otherwise defend and on February 15, 2006, an entry of default was filed.
15 Pursuant to Rule 57(d) Arizona Rules of the Supreme Court ("Ariz.R.S.Ct."),
16 Respondent is deemed to have admitted the allegations contained in the State
17 Bar's complaint. The only issue is the determination of an appropriate sanction.
18 On February 27, 2006, the State Bar requested an aggravation – mitigation
19 hearing, so it could offer evidence in support of the appropriate sanction. The
20 aggravation – mitigation hearing was held on March 16, 2006.
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1 **II. FINDINGS OF FACT**

2 **COUNT ONE (File No. 05-0437)**

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4 1. Respondent first started representing Debra Degiorgi ("Ms.
5 Degiorgi") in October 2001.

6 2. While Respondent was representing Ms. Degiorgi, he borrowed
7 \$4,000.00 from her.

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9 3. Respondent did not get Ms. Degiorgi's consent to the loan
10 transaction in writing.

11 4. Respondent did not advise Ms. Degiorgi in writing that she should
12 consult with an attorney about the loan transaction.

13
14 5. Ms. Degiorgi did not give informed consent in writing to the
15 essential terms of the transaction and there was no writing as to what
16 Respondent's role was in the loan transaction.

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18 6. Respondent made several promises to Ms. Degiorgi to pay her back
19 the \$4,000.00, but he did not keep these promises.

20
21 7. Respondent failed to pay Ms. Degiorgi the money back, so she
22 retained Robert T. Neville ("Mr. Neville").

23
24 8. Mr. Neville sent Respondent a demand letter asking that he pay Ms.
25 Degiorgi the \$4,000.00, plus interest.

1 9. Respondent failed to respond to Mr. Neville's demand letter, so Mr.
2 Neville filed a lawsuit on behalf of Ms. Degiogi in East Mesa Justice Court, No.
3 CV2004-03101 RB.
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5 10. Respondent was properly served with the complaint filed in the East
6 Mesa Justice Court, but he failed to file an answer.

7 11. On March 15, 2005, a judgment was entered in the East Mesa Justice
8 Court in favor of Ms. Degiogi in the amount of \$5,177.40, with interest at 10%
9 per annum from March 17, 2005 until paid.
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11 12. Respondent has failed to pay the \$5,177.40 judgment.

12 13. On May 6, 2005, the State Bar sent Respondent a charging letter
13 regarding the above listed conduct.
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15 14. Respondent failed to respond to the May 6, 2005, charging letter.

16 15. On June 9, 2005, the State Bar sent Respondent a second letter,
17 warning him that he needed to respond.
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19 16. Respondent failed to respond to the June 9, 2005, warning letter.

20 17. On August 29, 2005, Respondent was served with a subpoena duces
21 tecum that instructed Respondent to appear at the State Bar offices on September
22 27, 2005, so he could be deposed.
23

24 18. The subpoena duces tecum also instructed Respondent to bring his
25 trust account records pertaining to Ms. Degiogi to the deposition.

1 **IV. RECOMMENDED SANCTION**

2 **A. The ABA Standards for Imposing Lawyer Sanctions.**

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4 The *ABA Standards* are designed to promote consistency in the imposition
5 of sanctions by identifying relevant factors the court should consider and then
6 applying these factors to situations where lawyers have engaged in various types
7 of misconduct. *ABA Standard 1.3, Commentary*. In this matter, consideration
8 was given to *ABA Standards 4.32 and 8.2*. Generally, suspension is appropriate
9 when a lawyer knows of a conflict of interest and does not fully disclose to a
10 client the possible effect of that conflict, and causes injury or potential injury to a
11 client, or when a lawyer has been reprimanded for the same or similar
12 misconduct and engages in further acts of misconduct that cause injury or
13 potential injury to a client, the public, the legal system, or the profession.

14 In this case, Respondent borrowed money from two clients without proper
15 written disclosure and without getting the clients' consent in writing. He failed to
16 abide by a legal judgment entered against him, failed to cooperate with the State
17 Bar, and engaged in all of this misconduct while on probation in another file.
18 Respondent's conduct was knowing and caused harm to his client, the legal system
19 and the profession.

21 In deciding what sanction to impose, the hearing officer considered the
22 following aggravating and mitigating circumstances.
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1 Aggravating Factors

2 • *Standard 9.22(a)* prior disciplinary offenses. January 23, 2004 – In file
3 no. 03-0297, Respondent received an informal reprimand, probation, costs, and
4 restitution (ERs 1.3, 1.4). “Respondent violated ERs 1.3 and 1.4 by failing to
5 timely communicate with Ms. Medina about his inability to repay her retainer and
6 his failure during the representation to diligently keep Ms. Medina informed
7 about the status of her case.” At the time of the misconduct in this matter,
8 Respondent was still on probation.
9

10 • *Standard 9.22(c)* and or (d). Respondent’s conduct can be considered
11 either a pattern or multiple offenses, as he borrowed money from two separate
12 clients.
13

14 • *Standard 9.22(e)*. Respondent has failed to cooperate in these
15 disciplinary proceedings.
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17 • *Standard 9.22(i)* substantial experience in the practice of law.
18 Respondent was admitted December 1, 1986 and has been an Arizona attorney
19 for 20 years.
20

21 There are no mitigating factors to consider; therefore, the presumptive
22 sanction is suspension.
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1 **B. Proportionality Analysis**

2 Sanctions against lawyers must have internal consistency to maintain an
3 effective and enforceable system; therefore, the court looks to cases that are
4 factually similar to the case before it. *In re Pappas*, 159 Ariz. 516, 526, 768 P.2d
5 1161, 1171, (1988).

6
7 *In re Alcorn*, SB-04-0044-D (2004) – Mr. Alcorn received a three-month
8 suspension for violation of ER 1.8(a). Mr. Alcorn borrowed money from a client
9 without proper written disclosure and did not get the clients’ consent to the
10 transaction in writing. Aggravating factors included prior discipline, substantial
11 experience in the practice of law. Mitigation factors included full and free
12 disclosure and a cooperative attitude, and remorse.

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15 *In re Clark*, SB-01-0104-D (2001) – Mr. Clark received a three-year
16 suspension, was ordered to pay restitution and costs, and two years probation upon
17 reinstatement. Mr. Clark violated ERs 1.7, 1.8, 4.1, 8.1, 8.4(c), and Rules 31(c) and
18 51(h) and (i). While representing an elderly client, Mr. Clark borrowed \$58,000.00
19 to purchase a home. He failed to consult with the clients regarding the conflict of
20 interest or obtain their consent to the conflict or the terms of the loan. The clients
21 were not advised to seek independent counsel and the terms were not in writing.
22 He failed to disclose that he was not going to secure or record the deed of trust, that
23 he was paying higher interest on existing loans, or that he was having difficulty
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1 meeting his current financial obligations. Mr. Clark also failed to timely respond to
2 the State Bar. There were seven aggravating factors and two mitigating factors.

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4 *In re Merrill*, 178 Ariz. 469, 875 P.2d 128 (1994) – Mr. Merrill received a
5 three-month suspension and two years probation for violation of ERs 1.8(a) and
6 1.15. Mr. Merrill accepted two loans from a client and failed to disclose the
7 potential conflict of interest to the client. He also failed to advise the client to
8 seek the advice of independent counsel or obtain the client's consent in writing.
9 The conduct did not result in any client harm. Merrill also failed to account to the
10 client for \$4,000.00 he received from her to have several paintings appraised.
11 The only aggravating factor was the vulnerability of the client. There were six
12 mitigating factors including: no prior disciplinary record, full and free disclosure,
13 repayment of the loans with interest, cooperation during the disciplinary
14 proceedings, and excellent reputation in the legal community.
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18 This case is similar to the above listed cases, in that they all involve
19 borrowing money from a client without following the proper conflict procedures.
20 In *Clark*, Mr. Clark failed to cooperate with the State Bar. In *Merrill*, Mr. Merrill
21 failed to account to his client regarding the money he had received for the
22 appraisal. In *Alcorn*, Mr. Alcorn had prior discipline.
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25 Based on violation of ER 1.8 alone, the above referenced cases indicate
that a three-month suspension is at the low end of the acceptable range of

1 sanctions. The fact that Respondent failed to cooperate with the State Bar and
2 that he was on probation when the conduct occurred indicates an increase in the
3 presumptive sanction, which is why this hearing officer recommends the
4 following sanctions:
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6 1. Respondent shall be suspended for six months and one day.

7 2. Respondent shall be placed on probation for two years from date on
8 which his suspension is ended.
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10 3. Respondent shall pay restitution in the amount of \$5,177.40 with
11 interest at 10% per annum until paid.
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13 **VII. CONCLUSION**

14 The objective of lawyer discipline is not to punish the lawyer, but to protect
15 the public, the profession, and the administration of justice. A six month and one
16 day suspension, restitution in the amount of \$5,177.40 with interest at 10% per
17 annum from March 17, 2005 until paid, two years probation and payment of the
18 disciplinary costs in this matter, are proportional to sanctions imposed in other
19 cases. The recommended sanction serves the purposes of discipline in that it
20 protects the public and will deter other lawyers from engaging in similar
21 misconduct.
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