

FILED

AUG 16 2006

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY 02/06

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

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3 IN THE MATTER OF A MEMBER)
4 OF THE STATE BAR OF ARIZONA,)
5 **JOHN DANIEL ROLPH,**)
6 **Bar No. 021302**)
7 **RESPONDENT.**)

Nos. 05-0662, 05-0998, 05-1137
05-1313, 05-1398, 05-1985
05-2127, 05-2190, 05-2194
06-0077, 06-0211

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

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11 The State Bar in this matter filed an eleven-count Complaint against Respondent on April
12 20, 2006. The Complaint was served on Respondent by certified restricted mail and regular first
13 class mail as provided for in the Rules of the Supreme Court. Respondent failed to file an Answer
14 or otherwise defend. An Entry of Default was entered in the matter on June 8, 2006. Bar Counsel
15 requested an Aggravation/Mitigation Hearing on the appropriate sanction and a hearing was
16 conducted on June 29, 2006. Respondent did not appear for the hearing.

FINDINGS OF FACT

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19 The facts listed below are those set forth in the State Bar's Complaint, and were deemed
20 admitted by way of Respondent's default.

21 At all times relevant to the complaint, Respondent was an attorney licensed to practice law
22 in the State of Arizona, having been admitted to practice in Arizona on October 22, 2004. Since
23 his admission to the practice of law, Respondent was placed on probation and was subject to a
24 probation contract in File No. 03-1358. This probation contract was placed in abeyance and
25 Respondent was subject to disciplinary action in File No. SB-06-0011-D. The disciplinary action
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1 resulted in the suspension of Respondent's license to practice law and he was required to enter
2 into a therapeutic contract, one of the terms and conditions of which was that "Respondent shall
3 refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other
4 rules of the Supreme Court of Arizona." Exhibit 2

5 **COUNT ONE (File No. 05-0662)**

6 **(Cannon)**

7 In April 2004, Respondent was retained by John A. Cannon ("Mr. Cannon") to modify the
8 amount of spousal maintenance he was paying. He paid Respondent a \$300.00 advanced fee and
9 after paying for Respondent's services, Mr. Cannon could not reach Respondent regarding the
10 status of his case. Mr. Cannon left numerous messages and could not get a response from
11 Respondent.

12 At least one time, Mr. Cannon did find Respondent at his office and Respondent told Mr.
13 Cannon that he had researched the matter and would be "filing paperwork." Thereafter, Mr.
14 Cannon was unable to reach Respondent for a period of more than one year, and Respondent failed
15 to file any documents with the appropriate court on behalf of Mr. Cannon. When the State Bar
16 attempted to contact Respondent by letter dated May 11, 2005, advising him of the allegations
17 concerning his professional conduct, Respondent failed to respond. A second letter dated July 12,
18 2005, was sent to Respondent advising of the need to provide a response and Respondent provided
19 a late response on July 27, 2005.

20 **COUNT TWO (File No. 05-0998)**

21 **(Silverman)**

22 Respondent represented Cindy Silverman ("Ms. Silverman") pro bono in a breach of
23 contract action, CV 2003-022460, in Maricopa County Superior Court. In preparation of his
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1 representation, Ms. Silverman met with Respondent on three occasions: once in his office, once at
2 her home and once at a Burger King. Ms. Silverman also had numerous telephone contacts with
3 Respondent's secretary, but did not have contact with Respondent for two years.

4 During the two year period, Respondent never sent Ms. Silverman copies of any
5 documents, did not keep her informed as to the status of the case and did not return her calls. At
6 the time of the initiation of this disciplinary action, Ms. Silverman was not aware of the status of
7 her case. State Bar staff reviewed the Maricopa County Superior Court website regarding case
8 information and determined that Ms. Silverman's case was dismissed on November 10, 2004 for
9 lack of prosecution.

10 On July 7, 2005, the State Bar sent Respondent a letter advising him of the allegations
11 concerning his professional conduct. Respondent failed to respond and a second letter dated
12 August 11, 2005, was sent to Respondent advising him of the need to provide a response.
13 Respondent failed to respond to the second communication.

14 On September 9, 2005, the State Bar sent Respondent another letter advising him that he
15 had several outstanding responses due in four separate screening files initiated due to allegations
16 concerning his professional conduct and Respondent failed to respond to this letter.

17 **COUNT THREE (File No. 05-1137)**

18 **(Muller)**

19 On May 19, 2005, Respondent was retained to represent Suzanne Muller ("Ms. Muller") in
20 a divorce action and paid Respondent a \$1,500.00 advanced fee, plus \$271.00 for advanced costs.
21 Ms. Muller and Respondent agreed that the Respondent was not to begin preparation of any
22 documents until after the weekend in order for Ms. Muller to be certain of her decision to seek a
23 divorce.
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1 When Ms. Muller contacted Respondent to tell him to proceed with the paperwork she was
2 unable to reach him. Ms. Muller continued to leave messages with the Respondent that she wanted
3 a return telephone call to make sure Respondent was proceeding with the divorce action and
4 Respondent did not return her numerous calls for more than a week.

5 On May 27, 2005, when Respondent contacted Ms. Muller, he told her that he had not
6 performed any services as he needed her to sign more paperwork and the divorce action was
7 delayed several more days.

8 Around the end of May or the beginning of June 2005, Ms. Muller left Respondent a
9 message that she was terminating his services and that she wanted her money returned. Ms.
10 Muller left over twenty messages for Respondent, but he did not return any of her telephone calls,
11 send her a refund, or acknowledge her attempt to talk to him about terminating his services.

12 The State Bar sent Respondent a letter dated July 18, 2005, advising him of the allegations
13 concerning his professional conduct. Respondent failed to respond and a second letter dated
14 September 8, 2005, was sent to Respondent advising him of the need to provide a response.
15 Respondent failed to immediately respond, but sent a late response by an undated letter, received
16 by the State Bar on November 11, 2005.

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18 **COUNT FOUR (File No. 05-1313)**

19 **(Cross)**

20 On August 12, 2004, Tanya Cross ("Ms. Cross") retained Respondent to represent her in
21 her divorce action and paid Respondent \$1,300.00 advanced fee, and an additional \$850.00 fee.
22 Respondent did not timely proceed with Ms. Cross's case and neither Ms. Cross nor her husband's
23 counsel could successfully communicate with Respondent. Ms. Cross contacted the court and she
24 was advised that her case had been dismissed.
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1 Ms. Cross requested that Respondent refund all the money she paid him for the divorce
2 matter. As of the date of the Complaint filed by the State Bar, Ms. Cross had not been reimbursed
3 by the Respondent.

4 On August 17, 2005, the State Bar sent Respondent a letter advising him of the allegations
5 concerning his professional conduct and Respondent failed to respond. The State Bar sent a second
6 letter dated September 9, 2005, to Respondent advising of the need to provide a response and
7 again, Respondent failed to respond.

8 **COUNT FIVE (File No. 05-1398)**

9 **(Merrow)**

10 In March 2005, Charles O. Merrow ("Mr. Merrow") retained Respondent to modify his
11 divorce decree regarding child support and custody. Mr. Merrow paid Respondent a \$1,061.00
12 advanced fee. Mr. Merrow told Respondent Mr. Merrow wanted to review any documentation
13 prior to its filing. Respondent provided Mr. Merrow with documents for his review, but Mr.
14 Merrow was not pleased with Respondent's work and told Respondent not to file anything.

15 On May 24, 2005, Mr. Merrow retained new counsel and requested that Respondent
16 provide an itemized statement and a refund of the unused portion of the retainer fee. Mr. Merrow
17 made multiple follow-up phone calls, e-mails and visits to Respondent's office, but never received
18 the itemized statement or a refund of any kind.

19 On September 9, 2005, the State Bar sent a letter to Respondent advising him of the
20 allegations concerning his professional conduct. Respondent failed to immediately respond and
21 provided a late response by an undated letter, received by the State Bar on November 11, 2005.
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2004. Subsequently, Ms. Zvonik received a second letter from the court stating that her
1 bankruptcy matter had been dismissed due to an improper filing. Ms. Zvonik contacted
2 Respondent and asked Respondent to return the funds she had paid to him in 2004.

3 On December 19, 2005, the State Bar sent Respondent a letter advising him of the
4 allegations concerning his professional conduct. Respondent failed to respond.
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6 **COUNT EIGHT (File No. 05-2190)**

7 **(Nielson)**

8 In August 2004, Douglas Nielson ("Mr. Nielson") paid Respondent \$200.00 to file a
9 bankruptcy petition. For nearly one year, Mr. Nielson repeatedly called Respondent to urge him to
10 take action. When Mr. Nielson would reach Respondent, Respondent told Mr. Nielson that he was
11 working on it and that it would be done shortly. During the year-long period, Mr. Nielson would
12 leave messages and Respondent would not return the calls. As of July 2005, Respondent had not
13 filed the bankruptcy petition for Mr. Nielson.
14

15 By letter dated August 15, 2005, Mr. Nielson asked Respondent for a copy of his file and
16 repayment of all monies paid to Respondent. Respondent failed to return the file provide an
17 accounting of any expenses or return any money to Mr. Nielson.

18 On December 22, 2005, the State Bar sent Respondent a letter advising him of the
19 allegations concerning his professional conduct and Respondent failed to respond.
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21 **COUNT NINE (File No. 05-2194)**

22 **(State Bar)**

23 On November 10, 2003, Respondent was placed on probation in disciplinary action case
24 file No. 03-1538 for violation of Rule 51(1), Ariz.R.S.Ct. On April 14, 2004, Respondent entered
25 into a two-year probation contract with the State Bar that required Respondent to comply with the
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1 probation provisions until April 14, 2006, in addition to other relevant terms and conditions of
2 probation.

3 On November 18, 2005, the State Bar filed a notice of non-compliance with the probation
4 contract with the probable cause panelist and the probable cause panelist issued an order dated
5 November 21, 2005. The order provided for Respondent to respond to the State Bar's notice of
6 non-compliance within fifteen days and Respondent failed to file a response.

7 On December 30, 2005, an order of probable cause was entered for violation of Rule 53,
8 Ariz.R.Sup.Ct.

9 **COUNT TEN (File No. 06-0077)**

10 **(Johnson)**

11 Alan and Linda Johnson ("the Johnsons") retained Respondent to represent them in a
12 bankruptcy action. On October 13, 2005, Respondent contacted the Johnsons to tell them that the
13 deadline to file for bankruptcy before new laws went into effect would be October 17, 2005.
14 Respondent advised that he thought it would be in their best interest to file prior to the effective
15 date of the new laws.
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17 The Johnsons decided to take Respondent's advice and file prior to October 17, 2005.
18 Respondent met Mr. Johnson at Mr. Johnson's office to obtain information and collect a \$450.00
19 advanced fee with an additional \$459.00 paid on October 27, 2005, with \$209.00 of this fee
20 specifically identified for the cost of filing the bankruptcy petition.
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22 On November 14, 2005, the Johnsons received a letter from the Bankruptcy Court stating
23 that their case had been dismissed due to the failure to list creditors in the proper format and to
24 timely file schedules in support of their bankruptcy petition. Mr. Johnson attempted to contact
25 Respondent on several occasions in order to find out the status of the case and the reason for the
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1 letter from the Bankruptcy Court. Respondent returned the call after regular business hours to Mr.
2 Johnson's office telephone. Respondent left a message in reference to the bankruptcy filing
3 indicating that there had been a mix-up and that Respondent would take care of it.

4 The Johnsons believed that they were scheduled for a creditor hearing on November 30,
5 2005 in reference to their petition for bankruptcy. When the Johnsons appeared at the bankruptcy
6 court, they were advised that their case had been dismissed and that the bankruptcy petition filing
7 fee had not been paid.

8 On January 25, 2006, the State Bar sent Respondent a letter advising him of the allegations
9 concerning his professional conduct and Respondent failed to respond.

10 **COUNT ELEVEN (File No. 06-0211)**

11 **(Mancuso)**

12 Nancy Mancuso ("Ms. Mancuso") retained the services of Respondent on December 5,
13 2005, to represent her in her divorce. Ms. Mancuso borrowed money from her employer to retain
14 Respondent and on December 6, 2005, she gave Respondent a \$2,000.00 advanced fee. On
15 December 7, 2005, Respondent notified her he could not cash a check, so Ms. Mancuso met
16 Respondent at a Wells Fargo bank branch on December 8, 2005, and paid him \$2,000.00 cash.
17 After paying Respondent and until December 19, 2005, Ms. Mancuso was unable to contact
18 Respondent.
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20 On December 19, 2005, Ms. Mancuso spoke to Respondent, who told her that his email
21 was down and he was working from another office, but later that day, he would be emailing Ms.
22 Mancuso forms to complete as part of the divorce proceedings. Ms. Mancuso did not receive the
23 forms until December 21, 2005, and at that time, she received by email, two documents, an
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Affidavit Regarding Minor Children and a Verification, but the Verification had the wrong name
1 on it. Ms. Mancuso did not have any other communications from Respondent.

2 On January 12, 2006, Ms. Mancuso discovered a discipline document stating that
3 Respondent's license to practice law was suspended for 90 days. She sent an email
4 communication to Respondent indicating that she wanted a full refund of the retainer that she paid
5 him. Since making her request, Ms. Mancuso has not heard from Respondent.
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7 The State Bar sent a letter to Respondent on March 1, 2006, advising him of the allegations
8 concerning his professional conduct and Respondent failed to respond.

9 **CONCLUSIONS OF LAW**

10 **COUNT ONE (File No. 05-0662):** Respondent failed to competently represent a client;
11 Respondent failed to abide by the client's decision as to the purpose of the representation;
12 Respondent did not act with reasonable diligence and promptness in representing the client;
13 Respondent failed to consult with the client and failed to keep the client reasonably informed about
14 the representation; Respondent failed to explain matters to the extent reasonably necessary so the
15 client could make informed decisions; and Respondent failed to promptly respond to the State
16 Bar's requests for information. Respondent's conduct as described in this count violated Rule 42,
17 Ariz.R.Sup.Ct., specifically, ERs 1.1, 1.2, 1.3, and 1.4, and Rule 53(f), Ariz.R.Sup.Ct.
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19 **COUNT TWO (File No. 05-0998):** Respondent failed to competently represent the client;
20 Respondent failed to abide by the client's decision as to the purpose of the representation;
21 Respondent did not act with reasonable diligence and promptness in representing the client and
22 failed to expedite litigation on her behalf; Respondent failed to consult with the client and he failed
23 to keep her reasonably informed about the representation; Respondent failed to explain matters to
24 the extent reasonably necessary so the client could make informed decisions; and Respondent
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1 failed to respond to the State Bar's requests for information. Respondent's conduct as described in
2 this count violated Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1.1, 1.2, 1.3, 1.4, 3.2, and 8.1(b), and
3 Rule 53(f), Ariz.R.Sup.Ct.

4 **COUNT THREE (File No. 05-1137):** Respondent failed to competently represent the client;
5 Respondent failed to consult with the client and he failed to keep her reasonably informed about
6 the representation; Respondent failed to explain matters to the extent reasonably necessary so the
7 client could make informed decisions; Respondent charged an unreasonable fee; Respondent failed
8 to promptly deliver funds to the client that she was entitled to receive; Respondent failed to refund
9 the client's advanced fees and costs after she terminated the representation; and Respondent failed
10 to promptly respond to the State Bar's requests for information. Respondent's conduct as described
11 in this count violated Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1.1, 1.4, 1.5, 1.15(d), 1.16(d), and
12 Rule 53(f) Ariz.R.Sup.Ct.

13 **COUNT FOUR (File No. 05-1313):** Respondent failed to competently represent the client;
14 Respondent failed to abide by the client's decision as to the purpose of the representation;
15 Respondent did not act with reasonable diligence and promptness in representing the client;
16 Respondent failed to consult with the client and he failed to keep her reasonably informed about
17 the representation; Respondent failed to explain matters to the extent reasonably necessary so the
18 client could make informed decisions; Respondent charged an unreasonable fee; Respondent failed
19 to promptly respond to the State Bar's requests for information. Respondent's conduct as described
20 in this count violated Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.5, and 8.1(b),
21 and Rule 53(f), Ariz.R.Sup.Ct.

22 **COUNT FIVE (File No. 05-1398):** Respondent failed to consult with the client and he failed to
23 keep him reasonably informed about the representation. Respondent failed to explain matters to
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the extent reasonably necessary so the client could make informed decisions; Respondent charged
1 an unreasonable fee; Respondent failed to promptly deliver funds to the client that he was entitled
2 to receive and failed to provide the client with an accounting; Respondent failed to refund the
3 client's advanced fees after he terminated the representation; and Respondent failed to promptly
4 respond to the State Bar's requests for information. Respondent's conduct as described in this
5 count violated Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1.4, 1.5, 1.15(d), 1.16(d), and Rule 53(f),
6 Ariz.R.Sup.Ct.
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COUNT SIX (File No. 05-1985): Respondent failed to competently represent the client;
8 Respondent failed to abide by the client's decision as to the purpose of the representation;
9 Respondent did not act with reasonable diligence and promptness in representing the client;
10 Respondent failed to consult with the client and he failed to keep her reasonably informed about
11 the representation; Respondent failed to explain matters to the extent reasonably necessary so the
12 client could make informed decisions; Respondent charged an unreasonable fee; Respondent failed
13 to refund the client's advanced fees and costs after she terminated the representation; Respondent
14 failed to respond to the State Bar's requests for information. Respondent's conduct as described in
15 this count violated Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.16(d), 8.1(b),
16 and Rule 53(f), Ariz.R.Sup.Ct.
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COUNT SEVEN (File No. 05-2127): Respondent failed to competently represent the client;
19 Respondent failed to abide by the client's decision as to the purpose of the representation;
20 Respondent did not act with reasonable diligence and promptness in representing the client;
21 Respondent failed to consult with the client and he failed to keep her reasonably informed about
22 the representation; Respondent failed to explain matters to the extent reasonably necessary so the
23 client could make informed decisions; Respondent charged an unreasonable fee; Respondent failed
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to refund the client's advanced fees and costs after she terminated the representation; and

1 Respondent failed to respond to the State Bar's requests for information. Respondent's conduct as
2 described in this count violated Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.5,
3 1.16(d), 8.1(b) and Rule 53(f), Ariz.R.Sup.Ct.

4 **COUNT EIGHT (File No. 05-2190):** Respondent failed to competently represent the client;
5 Respondent failed to abide by the client's decision as to the purpose of the representation;
6 Respondent did not act with reasonable diligence and promptness in representing the client;
7 Respondent failed to consult with the client and he failed to keep him reasonably informed about
8 the representation; Respondent failed to explain matters to the extent reasonably necessary so the
9 client could make informed decisions; Respondent charged an unreasonable fee; Respondent failed
10 to promptly deliver funds to the client that he was entitled to receive; Respondent failed to refund
11 the client's advanced fees and costs after he terminated the representation; and Respondent failed
12 to respond to the State Bar's requests for information. Respondent's conduct as described in this
13 count violated Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15(d), 1.16(d), and
14 8.1(b), and Rule 53(f), Ariz.R.Sup.Ct.

17 **COUNT NINE (File No. 05-2194):** Respondent violated a condition of his probation.
18 Respondent's conduct as described in this count violated Rule 42, Ariz.R.Sup.Ct., specifically Rule
19 53(e), Ariz.R.Sup.Ct.

20 **COUNT TEN (File No. 06-0077):** Respondent failed to competently represent the Johnsons.
21 Respondent failed to abide by the clients' decision as to the purpose of the representation;
22 Respondent did not act with reasonable diligence and promptness in representing the clients;
23 Respondent failed to consult with the clients and he failed to keep them reasonably informed about
24 the representation; Respondent failed to explain matters to the extent reasonably necessary so the
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clients could make informed decisions; Respondent charged an unreasonable fee; Respondent
1 failed to promptly deliver funds to the clients that they were entitled to receive; Respondent failed
2 to refund the clients' advanced fees and costs; and Respondent failed to respond to the State Bar's
3 requests for information. Respondent's conduct as described in this count violated Rule 42,
4 Ariz.R.Sup.Ct., specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15(d), 1.16(d), and 8.1(b), and Rule 53(f),
5 Ariz.R.Sup.Ct.
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7 **COUNT ELEVEN (File No. 06-0211):** Respondent failed to competently represent the client;
8 Respondent failed to abide by the client's decision as to the purpose of the representation;
9 Respondent did not act with reasonable diligence and promptness in representing the client;
10 Respondent failed to consult with the client and he failed to keep her reasonably informed about
11 the representation; Respondent failed to explain matters to the extent reasonably necessary so the
12 client could make informed decisions; Respondent charged an unreasonable fee; Respondent failed
13 to refund the client's advanced fees after she terminated the representation; and Respondent failed
14 to respond to the State Bar's requests for information. Respondent's conduct as described in this
15 count violated Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15(d), 1.16(d),
16 and 8.1(b), and Rule 53(f), Ariz.R.Sup.Ct.
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18 ABA STANDARDS

19 The ABA Standards ("Standards") provide guidance with respect to an appropriate
20 sanction in this matter. The Supreme Court and the Disciplinary Commission are consistent in
21 utilizing the Standards to determine appropriate sanctions for attorney discipline. In re Kaplan, 179
22 Ariz.175, 877 P.2d 274 (1994). The Standards provide that four factors should be considered in
23 determining the sanction: the duty violated; the lawyer's mental state; the actual or potential injury;
24 and aggravating and mitigating factors. Also, according to the Standards and In re Cassalia, 173
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Ariz. 372, 843 P.2d 654 (1992), where there are multiple acts of misconduct, the Respondent should receive one sanction that is consistent with the most serious instance of misconduct, and the other acts should be considered as aggravating factors.

The history of claims in this matter clearly shows a pattern and practice of serious client neglect because of the number of clients aggrieved by Respondent's consistent and inexplicable lack of diligence as shown in Counts One through Eight, Ten and Eleven. Violations of ER 1.2, 1.3, and 1.4, (lack of diligence) triggers Standard 4.41, which provides:

Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or*
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or*
- (c) lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.*

The Respondent is also subject to disbarment due to his conduct described in Counts One through Eight, Ten and Eleven. Standard 4.61 provides: "*Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.*"

Finally, disbarment is an appropriate sanction against the Respondent because of his failure to comply with the terms and conditions imposed by a prior disciplinary order as shown in Count Nine. Standard 8.1 provides:

Disbarment is generally appropriate when a lawyer:

- (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or*
- (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.*

AGGRAVATING AND MITIGATING FACTORS

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2 Based on the foregoing, disbarment is the presumptive sanction in this matter. Using
3 disbarment as the presumptive sanction, the next step in the analysis under the Standards is
4 consideration of aggravating and mitigating circumstances.

5 A review of Standard 9.22 indicates the following aggravating factors are present:

- 6 • Standard 9.22(a) prior disciplinary offenses. Respondent's was suspended for 90
7 days on March 14, 2006 in SB-06-0011-D. Respondent was placed on probation
8 by order dated November 7, 2003. The sanction was imposed due to Respondent's
9 failure to comply with the terms imposed upon his conditional admission to the
10 State Bar of Arizona.
- 11 • Standard 9.22(c) and or (d) either a pattern or multiple offenses. Respondent
12 repeatedly failed to respond to the State Bar. Respondent failed to respond to the
13 Bar in its attempts to monitor the conditions of his admission. His failure in that
14 regard resulted in the imposition of probation as discussed above.
- 15 • Standard 9.22(e) bad-faith obstruction of the disciplinary proceeding. Respondent
16 has failed to cooperate in these disciplinary proceedings. Respondent's non-
17 response to the State Bar in these matters also serves to allow for the consideration
18 that his conduct obstructed the disciplinary process.

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21 From the record before this Hearing Officer, there is insufficient evidence to find the
22 existence of any mitigating factors in this matter. Based on the foregoing, as there are numerous
23 aggravating factors and no mitigating factors, there is no reason to deviate from the presumptive
24 sanction of disbarment in this case.
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PROPORTIONALITY REVIEW

1 The decisions of the Supreme Court of Arizona and the recommendations of the
2 Disciplinary Commission in factually and procedurally similar discipline cases support the
3 proposition that disbarment is an appropriate and proportional sanction. When a lawyer fails to
4 participate in proceedings and fails to present any evidence or explanation in his or her own
5 defense, there is little that the Bar, the Hearing Officer, the Disciplinary Commission, or the
6 Supreme Court can do except to move forward to further the purposes of discipline in protecting
7 the public, the profession and the justice system from that lawyer.
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9 The Disciplinary Commission has historically observed, "the ultimate sanction imposed
10 should at least be consistent with the sanction for the most serious instance of misconduct among
11 the number of violations; it might well be and generally should be greater than the sanction for the
12 most serious misconduct" (Matter of Redeker, 177 Ariz. 305, 868 P.2d 318 (1994), citing 1991
13 APA Standards, Theoretical Framework, p.6). Accordingly, the following cases are instructive as
14 to sanctions imposed in other cases involving lack of due diligence, improper use of fees, and
15 prior violations.
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17 In re Brady, 186 Ariz. 370, 923 P.2d 836 (1996), Brady was disbarred and ordered to pay
18 costs and restitution. Similar to the case involving Respondent, the Brady matter involved two
19 consolidated complaints and ten clients who suffered various degrees of damage because the Brady
20 abandoned his practice. Specifically, Brady failed to file two petitions for post conviction relief,
21 potentially subjecting one client to a 35 year prison term; did not respond to inquiries with regard
22 to a client's difficulty in being released from prison after his conviction was overturned; Brady
23 stole \$1,100 from another client; abandoned his practice and mishandled cases, causing damage to
24 clients; failed to perform work for which he was retained; failed to respond to court orders and
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1 failed to appear at oral arguments/hearings; failed to pay a client in a personal injury matter
2 pursuant to the attorney/client agreement and falsely told the client that the case was still not
3 resolved, while seeking additional fees to collect the balance of monies owed to the client; and
4 prepared false documents in another case. Respondent was found to have violated the following:
5 ER 1.1, 1.3, 1.4, 1.5, 1.15, 1.16, 3.3, 8.1, and 8.4 Rule 42, Ariz. R.Sup.Ct. Prior discipline was an
6 aggravating circumstance that weighed strongly against Brady because he had been informally
7 reprimanded twice for the same or similar conduct. Other aggravation factors considered in the
8 Brady matter included: (a) prior discipline; (b) dishonest/selfish motive; (c) pattern of misconduct;
9 (d) multiple offenses; (e) bad faith obstruction of disciplinary proceeding/intentionally failing to
10 comply with rules and/or orders of disciplinary agency. There were no mitigating factors.

11 Other cases where disbarment, restitution and were found to be appropriate sanctions when
12 attorneys were engaged in activities that involved multiple clients, lack of diligence and
13 communication charges, and prior disciplinary matters are as follows:

14 In re Woltman, 181 Ariz. 525, 892 P.2d 861 (1995), Woltman faced eleven counts of
15 misconduct with multiple clients and the allegations included conversion of funds, failure to
16 perform work for which he was retained, failure to return unearned fees, failure to provide clients
17 with competent and diligent representation, failure to maintain communication with clients and
18 respond to their requests for information, and failure to return client files and property. The
19 complaint also alleged that Woltman made misrepresentations to clients concerning the status of
20 their cases, engaged in a conflict of interest with a client, failed to inform current and potential
21 clients that he was on interim suspension, and failed to cooperate with the State Bar's
22 investigations into virtually every one of these matters. Woltman's conduct violated all of the
23 ethical rules charged in the complaint, that is ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.8, 1.15, 1.16, 3.2, 5.5;
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8.1, 8.3, 8.4, and Supreme Court Rules 43, 44, 51, and 63(a). Woltman's conduct was so egregious and comprehensive that virtually every ABA Standard was applicable, rendering a violation-by-violation analysis superfluous. Further, Woltman had already been disbarred, effective as of May 24, 1994, for conduct virtually identical to this matter pertaining to Respondent.

In re Elowitz, 177 Ariz. 240, 866 P.2d 1326 (1994), Elowitz was disbarred and ordered to pay restitution in reference to six disciplinary files. The nature of the complaints included Elowitz accepting representation of numerous clients, then failing to diligently or competently handle their cases and failing to maintain adequate communication with the clients. Elowitz also failed to adequately safeguard a client's property, failed to return any portion of one client's retainer, failed to deal appropriately with funds received on behalf of one client's estate, charged one client an unreasonable fee, and made factual misrepresentations in a motion filed with the court. He signed his clients' and secretary's names on documents and then used his secretary's notary seal to notarize the falsified signatures. He failed to cooperate with the State Bar's investigations and made misrepresentations to the State Bar during the disciplinary proceedings. A hearing was held but Elowitz failed to appear, although his attorney did appear. Aggravation factors included: (b) dishonest/selfish motive; (c) pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of disciplinary proceedings/intentionally failing to comply with rules and/or orders of disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (i) substantial experience in practice of law; (j) indifference to making restitution. There was one mitigating factor: (a) absence of prior disciplinary record. Elowitz was disbarred and ordered to pay restitution.

1 In re MacAskill, 163 Ariz. 354, 788 P.2d 87 (1990), MacAskill was disbarred and order to
2 pay restitution for matters dealing with five clients. MacAskill continued to practice law for more
3 than a year after being suspended for non-payment of dues; he neglected clients' cases, then
4 reassured the clients that everything had been filed; he failed to contact or respond to clients and
5 failed to return client's files and the unused portion of their retainers; and he failed to cooperate
6 with the State Bar's investigations. His clients suffered financial losses as a result of his
7 misconduct. Aggravating factors included: (a) prior disciplinary record; (c) pattern of misconduct;
8 (d) multiple offenses; (e) bad faith obstruction of disciplinary proceeding/ intentionally failing to
9 comply with rules and/or orders of disciplinary agency; (h) vulnerability of victims. There were no
10 mitigating factors. MacAskill was found to have violated ERs 1.3, 1.4(a), 1.15, 5.5, 8.1(b) and
11 8.4(c) and Rule 51(h) & (i), Ariz.R.Sup.Ct.

12 In re Bertz, SB 03-0024-D (2003), the Bertz matter is very similar to this case in that it
13 involved twenty files and the facts were deemed admitted by default. Bertz abandoned his clients;
14 engaged in a pattern of neglect and practiced law while summarily suspended for nonpayment of
15 dues. He was placed on interim suspension and he failed to respond or cooperate with the State
16 Bar's investigation. Bertz violated ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, 3.4, 5.5, 8.1(b) and
17 8.4, Rule 31(c)(3) and Rule 51(h) & (i), Ariz.R.Sup.Ct. Aggravating factors included: (c) pattern
18 of misconduct; (d) multiple offenses; (e) bad faith obstruction of disciplinary
19 proceedings/intentionally failing to comply with rules and/or orders of disciplinary agency; (g)
20 refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victims; (j) indifference to
21 making restitution. Unlike the present case, there were at least two factors: (a) absence of prior
22 disciplinary record; (f) inexperience in practice of law. The mitigating factors were not sufficient to
23 overcome the aggravating factors and Bertz was disbarred, and ordered to pay restitution.
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1 In re Blasingim-Stenzel, SB 04-0035-D (2004), Blasingim-Stenzel engaged in conduct
2 very similar to Respondent's conduct in that it involved thirty-six files and the facts were deemed
3 admitted by default. Blasingim-Stenzel converted settlement proceeds and other funds for her own
4 personal use; she accepted retainers from clients and then failed to perform the contracted services
5 and to provide funds upon request from the clients. She abandoned her clients and failed to
6 respond or cooperate with the State Bar's investigation. Blasingim-Stenzel violated ERs 1.1, 1.2,
7 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, 3.3, 3.4, 4.1, 5.3, 5.5, 8.1 and 8.4 and Rules 31, 41, 43, 44, 51, and 63,
8 Ariz.R.Sup.Ct. Aggravating factors included: (a) prior disciplinary offenses; (b) dishonest/selfish
9 motive; (c) pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of disciplinary
10 proceeding/intentionally failing to comply with rules and/or orders of disciplinary agency; (h)
11 vulnerability of victims; (j) indifference to making restitution. Like the Respondent, Blasingim-
12 Stenzel had no factors to mitigate the overwhelming aggravating factors. Blasingim-Stenzel was
13 disbarred and ordered to pay restitution.
14

15 RECOMMENDATION

16 Based on the conduct of Respondent, and considering the applicable ABA Standards and
17 overwhelming case law, it is the recommendation of this Hearing Officer that Respondent receive
18 the following sanctions:

- 19 1. Respondent shall be disbarred.
- 20 2. Respondent shall pay restitution as follows:

21 **Count One (File NO. 05-0662):** Restitution to John Cannon in the amount of
22 \$300.00.

23 **Count Three (File No. 05-1137):** Restitution to Suzanne Muller in the amount of
24 \$1,771.00.
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1 Original filed with the Disciplinary Clerk
this 11th day of August, 2006.

2 Copy of the foregoing mailed
3 this 11th day of August, 2006, to:

4 John Daniel Rolph
Respondent
5 P.O. Box 71252
6 Phoenix, AZ 85050

7 Shauna R. Miller
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11 by: Christina Sals
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