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OCT 23 2006

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY

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

IN THE MATTER OF A MEMBER)	Nos. 04-1349, 04-2137, 05-1318 and
OF THE STATE BAR OF ARIZONA,)	06-0594
)	
SCOTT W. SCHLIEVERT,)	
Bar No. 003188)	
)	HEARING OFFICER'S
)	AMENDED REPORT
RESPONDENT.)	
_____)	

PROCEDURAL HISTORY

A Probable Cause Order was filed on July 18, 2005. A Complaint was filed on July 29, 2005. Respondent filed an Answer on September 20, 2005. The Settlement Officer held a settlement conference on November 22, 2005, at which time the parties were able to reach an agreement. A Tender of Admissions and Agreement for Discipline by Consent (Tender) and Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent (Joint Memo) were filed on December 21, 2005. No hearing was originally held in this matter.

The Disciplinary Commission issued a report on May 8, 2006, rejecting the tender and agreement and remanding the matter to the Hearing Officer.

A new matter was filed against Respondent and the parties again reached a settlement and tendered admissions and an agreement for discipline by consent.

A hearing was held September 28, 2006.

FINDINGS OF FACT

1. Respondent is licensed to practice law in Arizona, having been first admitted to practice in this state on September 23, 1972.

COUNT ONE (File No. 04-1349)

2. Respondent was the attorney of record for Edward Frances Baldwin (hereinafter "Baldwin"), Defendant/Respondent in *In Re the Marriage of Baldwin v. Baldwin*, Pima County Superior Court, D-128670, from on or about April 11, 2004, through October 25, 2004.
3. Baldwin is a resident of Oklahoma City, Oklahoma. Baldwin temporarily resided in Tucson, Arizona from on or about April 11, 2004, through June 3, 2004, in order to seek greater custodial rights to his son and to be available to work with Respondent.
4. From on or about April 11, 2004, through October 21, 2004, Respondent failed to reasonably return Baldwin's phone calls.
5. In April 2004, Respondent failed to file a required form when Respondent filed Baldwin's Petition for Order to Show Cause.
6. On June 28, 2004, at the time set for hearing on Baldwin's Petition for Order to Show Cause regarding parenting time, Respondent did not personally

appear due to a family medical emergency. Instead, Respondent appeared telephonically and was immediately excused due to a bad telephonic connection.

7. Baldwin proceeded *in propria persona* for the purpose of the Order to Show Cause Hearing.
8. Respondent failed to provide Baldwin with monthly billing statements in spite of Baldwin's repeated requests for such statements and in spite of a provision in Respondent's fee agreement that requires monthly billing statements.
9. Baldwin sent Respondent a letter on or about August 3, 2004, in which he expressly asked Respondent to contact him to discuss his case and the lack of monthly billing statements.
10. Respondent made no response to Baldwin's August 3, 2004 letter.
11. Respondent failed to reasonably communicate regarding the continuance of a deposition and court date scheduled for August 2004, causing Baldwin to cancel his travel plans at the last minute.
12. In early September 2004, Baldwin made approximately five telephone messages requesting that Respondent contact him.
13. On or about September 16, 2004, Respondent finally contacted Baldwin via

telephone.

14. Communication between Respondent and Baldwin did not improve after the September 16, 2004, telephone conversation. Baldwin sent another letter to Respondent dated October 14, 2004. Respondent failed to respond to concerns identified in the October 14, 2004, letter.
15. On or about October 15, 2004 Respondent filed a motion to withdraw as Baldwin's attorney of record. This motion was granted on or about October 25, 2005.
16. On or about November 30, 2004, Baldwin retained new counsel, Ann Nicholson Haralambie. Baldwin called Respondent several times requesting that a copy of his file be provided to Haralambie.
17. Respondent failed to promptly provide a copy of Baldwin's file to Haralambie.
18. As of December 20, 2004, Respondent had failed to provide a copy of Baldwin's file, and Haralambie filed a Motion to Continue Hearing in which she stated that she had not received a copy of Baldwin's file from Respondent.
19. By failing to return client phone calls Respondent did not reasonably consult with the client about the means by which the client's objectives were to be

accomplished, in violation of Rule 42, Ariz. R. S. Ct., specifically ER 1.4(a)(2).

20. By failing to return client phone calls Respondent did not keep client reasonably informed about the status of the matter, in violation of Rule 42, Ariz. R. S. Ct., specifically ER 1.4(a)(3).
21. By failing to return client phone calls and failing to provide monthly billing statements Respondent did not promptly comply with reasonable requests for information, in violation of Rule 42, Ariz. R. S. Ct., specifically ER 1.4(a)(4).
22. By failing to promptly surrender client's file to client's new counsel Respondent did not take steps to the extent reasonably practicable to protect the client's interests, in violation of Rule 42, Ariz. R. S. Ct., specifically ER 1.16(d).
23. Respondent's conduct as described in this count violates Rule 42, Ariz. R. S. Ct., specifically ERs 1.4 and 1.16(d).

COUNT TWO (File No. 04-2137)

24. Respondent was, at all relevant times, the attorney of record for Anthony Joseph Robinson, Defendant/Respondent in *In Re the Marriage of Davila v. Robinson*, Pima County Superior Court, D 2004-0906.

25. On November 15, 2004, Respondent failed to appear in court at the time set for the Domestic Settlement Conference.
26. In a minute entry dated November 15, 2004, (filed November 16, 2004), the court ordered Respondent to file an affidavit on or before November 29, 2004, addressing his failure to appear for the Domestic Settlement Conference and why the court should not enter sanctions against Respondent and/or his client.
27. Respondent failed to file the court-ordered affidavit.
28. On December 15, 2004, Respondent failed to appear in court at the time set for the Order to Show Cause Hearing regarding Respondent's failure to appear for the Domestic Settlement Conference and failure to file the court-ordered affidavit.
29. On December 15, 2004, the Court called Respondent's office and confirmed that Respondent's office had received notice of the Order to Show Cause Hearing and that the hearing had been noted on Respondent's office calendar.
30. On December 15, 2004, the court found that Respondent had failed to comply with the court's orders.
31. By failing to appear at the Domestic Settlement Conference on November

15, 2004, Respondent did not act with reasonable diligence and promptness in representing a client in violation of Rule 42, Ariz. R. S. Ct., specifically ER 1.3.

32. By failing to appear at the Domestic Settlement Conference on November 15, 2004; failing to comply with a court order directing him to file an affidavit explaining the November 15, 2004, failure to appear; and failing to appear at and Order to Show Cause Hearing on December 15, 2004, Respondent did not expedite litigation consistent with the interests of the client in violation of Rule 42, Ariz. R. S. Ct., specifically ER 3.2.
33. By failing to appear at the Domestic Settlement Conference on November 15, 2004; failing to comply with a court order directing him to file an affidavit explaining the November 15, 2004, failure to appear; and failing to appear at and Order to Show Cause Hearing on December 15, 2004, Respondent knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 42, Ariz. R. S. Ct., specifically ER 3.4©).
34. By failing to appear at the Domestic Settlement Conference on November 15, 2004; failing to comply with a court order directing him to file an affidavit explaining the November 15, 2004, failure to appear; and failing to appear at and Order to Show Cause Hearing on December 15, 2004,

Respondent engaged in conduct that was prejudicial to the administration of justice in violation of Rule 42, Ariz. R. S. Ct., specifically ER 8.4(d).

35. Respondent's conduct as described in this count violates Rule 42, Ariz. R. S. Ct., specifically ERs 1.3, 3.2, 3.4(c) and 8.4(d).

ADDITIONAL MATTER (File No. 05-1318)

36. The admissions set forth in paragraphs 36 through 49 arise out File No. 05-1318. An order of probable cause was issued as to File No. 05-1318 on November 30, 2005, but no formal complaint has been filed. The parties agreed to resolve File No. 05-1318 as part of this settlement.
37. Respondent, at all relevant times, was the attorney of record for Michael Munday (hereinafter "Munday"), in the matter of *In re Marriage of Munday v Munday*, D2004-2995, Pima County Superior Court.
38. On or about January 14, 2005, Munday retained Respondent to represent Munday in the family law matter referred to above.
39. After being retained, Respondent failed to assist Munday in establishing a visitation schedule for Munday's minor child.
40. Due to Respondent's failure to act diligently in establishing a visitation schedule, Munday finally contacted his wife directly and established a visitation schedule without Respondent's assistance.

41. Sometime after Munday retained Respondent, Munday's wife obtained an order of protection against Munday. Munday asked Respondent promptly to challenge the order of protection obtained by Munday's wife.
42. Respondent then failed timely to advise Munday that a hearing on the order of protection had been scheduled for March 21, 2005, on the order of protection.
43. Munday learned of the hearing on the order of protection for the first time on or about March 21, 2005, when Respondent's office notified Munday that the hearing had been continued pursuant to a stipulation of the parties.
44. Due to Respondent's delay of the order of protection hearing, Munday reached an agreement directly with his wife that resulted in an order quashing the order of protection without Respondent's assistance.
45. Respondent failed to provide adequate notice to Munday of a settlement conference set for June 13, 2005.
46. Munday learned of the settlement conference from his wife approximately one day prior to the scheduled time for said settlement conference.
47. Munday appeared at the June 13, 2005, settlement conference *in propria persona* and confirmed a settlement on the record in the litigation.
48. During the entire course of the representation, Respondent failed to timely

return telephone calls from Munday.

49. Respondent violated one or more of the Rules of Professional Conduct as follows: Respondent failed to comply with the scope of the representation; Respondent failed to act with reasonable diligence and promptness in representing a client; Respondent failed to keep the client reasonably informed about the status of the client's matter and failed to promptly comply with reasonable requests for information.
50. Respondent's conduct as described in File No. 05-1318 violates Rule 42, Ariz. R. S. Ct., specifically ERs 1.2, 1.3 and 1.4.

ADDITIONAL MATTER (File No. 06-0594)

51. In July or August, 2005, Complainant Eugene DeBeaulieu retained Respondent to represent him in a domestic relations matter pending in the Maricopa County Superior Court, State of Arizona.
52. In July 2005, DeBeaulieu was served with a petition in the domestic relations matter. The petition required an answer to be filed within twenty days from the date of service.
53. DeBeaulieu sought Respondent's assistance in responding to the petition, and expected Respondent to file a timely answer to the petition.
54. Respondent entered a limited notice of appearance in the domestic relations

matter on August 4, 2005, and subsequently requested a change of venue to Pima County Superior Court.

55. Respondent purportedly limited the scope of representation to requesting a change of venue in DeBeaulieu's domestic relations matter. Respondent agreed to handle the domestic relations litigation only if venue were successfully transferred to Pima County Superior Court.
56. Respondent never filed an answer or response to the petition in the domestic relations matter.
57. A default judgment was entered against DeBeaulieu for amounts that DeBeaulieu believed he did not owe, and for attorneys' fees.
58. DeBeaulieu did not understand that Respondent's representation was limited to requesting the change of venue, and that Respondent would only assist in the underlying litigation if venue were successfully changed to Pima County Superior Court.
59. Respondent failed to adequately communicate the limitations to the scope of the representation.
60. Respondent failed to adequately communicate regarding developments in the case, in spite of DeBeaulieu's requests for information.
61. As a result of Respondent's failure adequately to communicate the scope of

the representation, DeBeaulieu did not respond or appear for various events in the domestic relations matter, as he reasonably believed that Respondent would handle the entire domestic relations matter.

62. DeBeaulieu fired Respondent in January or February, 2006.
63. After being fired, Respondent promised to refund \$400 upon receipt of DeBeaulieu's consent to withdraw as attorney of record.
64. In spite of receiving DeBeaulieu's consent to the withdrawal, Respondent failed to make a timely refund of DeBeaulieu's money.
65. In spite of receiving DeBeaulieu's consent to the withdrawal, Respondent failed to effectuate a timely withdrawal from the domestic relations matter.
66. Respondent violated one or more of the Rules of Professional Conduct as follows: Respondent failed to communicate the scope of the representation; Respondent failed to comply with the scope of the representation; Respondent failed to act with reasonable diligence and promptness in representing a client; Respondent failed to keep the client reasonably informed about the status of the client's matter and failed to promptly comply with reasonable requests for information; Respondent failed to make a timely refund of client money at the conclusion of the representation, Respondent failed to make a timely withdrawal from representation in

accordance with the client's request; and Respondent's failure to communicate the scope of the representation and otherwise communicate with a client caused additional litigation as the client sought to reverse certain orders of the court.

67. Respondent's conduct as described violates Rule 42, Ariz. R. S.Ct., specifically ERs 1.2, 1.3, 1.4, 1.16(d), 1.15, 8.4(d).

CONDITIONAL ADMISSIONS & DISMISSALS

Respondent conditionally admitted his conduct, as set forth above, violated Rule 42, Ariz. R. S. Ct., ERs 1.2, 1.3, 1.4, 1.15, 1.16(d), 3.2, 3.4(c), and 8.4(d). Respondent's admissions were tendered in exchange for the form of discipline stated below.

The State Bar conditionally agreed to dismiss the allegation in Count Two that Respondent violated Rule 53(c), Ariz. R. S. Ct. The State Bar accepted, for purposes of the agreement only, Respondent's assertion that he acted with a knowing state of mind rather than a willful state of mind when he failed to comply with court orders. Additionally, Respondent will be sanctioned for the same conduct pursuant to this Tender and, thus, an additional sanction for the same conduct is not necessary to further the interests of justice in this case.

ABA STANDARDS

The ABA *Standards* list the following factors to consider in imposing the appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct, and (4) the existence of aggravating or mitigating circumstances. ABA *Standard* 3.0.

The parties indicated that *Standard* 4.0 (Violations of Duties Owed to Clients) and *Standard* 6.0 (Violations of Duties Owed to the Legal System) are the most applicable in this matter. A review of ABA *Standard* 4.4 (Lack of Diligence) indicates that suspension is the presumptive sanction for Respondent's misconduct. *Standard* 4.42 specifically provides:

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

A review of *Standard* 6.2 (Abuse of the Legal Process) indicates that suspension is the presumptive sanction for Respondent's misconduct. *Standard* 6.22 specifically provides:

Suspension is appropriate when a lawyer knows that he is violating a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Pursuant to these *Standards*, the parties concur for purposes of this agreement that the presumptive sanction is suspension. If this matter went to hearing, the State Bar would argue that the presumptive sanction for the admitted conduct under the *Standards* is suspension, because Respondent engaged in a pattern of neglect causing injury or potential injury to a client. The State Bar also would argue that Respondent knew that he was violating the rules of a tribunal and that he caused at least potential interference with a legal proceeding. Respondent would argue that he was only negligent when he did not act with reasonable diligence in representing clients and that he was only negligent in violating the rules of a tribunal and, therefore, the presumptive sanction would be less than the sanction set forth in this agreement.

Respondent violated his duty to his clients by repeatedly failing to perform services requested by the client and not remedying the situation or by engaging in a pattern of neglect resulting in potential injury to clients. "The lawyer is not required to accept all clients, but, having agreed to perform services for a client, the lawyer has duties that arise under ethical rules, agency law, and under the terms of the contractual relationship with the individual client... [T]he lawyer must be competent to perform the services requested by the client and be diligent in performing those services." *Standard* 4.0, Introduction. Respondent has admitted that his conduct, taken as a whole, violated his duty to his clients.

Respondent violated his duty to the legal system by failing to observe the rules governing the obligations of attorneys to a tribunal, and by engaging in conduct prejudicial to the administration of justice. “Lawyers are officers of the court, and the public expects lawyers to abide by the legal rules of substance and procedure which affect the administration of justice.” *Standard 6.0*, Introduction. Respondent admits that his conduct, taken as a whole, violated his duty to the legal system.

The parties conditionally agreed that Respondent was negligent in failing to perform the services requested by his clients. The parties conditionally agreed that Respondent acted knowingly when he failed to comply with court orders and when he engaged in conduct prejudicial to the administration of justice.

As set forth in section I., above, if this matter went to hearing, Respondent would assert that he acted with a negligent state of mind when he failed to comply with court orders and when he engaged in conduct prejudicial to the administration of justice. However, for purposes of this settlement, Respondent agrees that he acted with a knowing state of mind.

The parties conditionally agreed the clients did not suffer actual harm due to Respondent’s rule violations, but that Respondent’s conduct exposed his clients to a potential injury. Respondent’s failure to comply with the rules governing his actions to a tribunal exposed his client and others to potential injury by delaying litigation and

interfering with a legal proceeding. However, it appears to the Hearing Officer that the Complainant in 06-0594 did suffer actual harm in that he was not informed of the limited representation, did not seek other counsel as a result and a default judgment was entered against him.

AGGRAVATING AND MITIGATING FACTORS

This Hearing Officer then considered the parties Joint Memorandum in determining aggravating and mitigating factors in this case.

This Hearing Officer agrees with the parties tender that there are three applicable aggravating factors in this matter pursuant to *Standards 9.22*:

- (a) prior disciplinary offenses;
- (c) a pattern of misconduct;
- (d) multiple offenses; and
- (i) substantial experience in the practice of law.

The Hearing Officer notes with concern the existence of the additional matter of 06-0594, the facts of which apparently occurred while Respondent was pending discipline on the first two cases. The Hearing Officer believes this addition of yet another incident emphasizes the aggravating factor of a pattern of misconduct and multiple offenses.

This Hearing Officer agrees with the parties that one factor is present in

mitigation pursuant to *Standards 9.32: (b)* absence of a dishonest or selfish motive.

During the hearing, Respondent argued that his deficits could be explained and requested the Hearing Officer consider two exhibits which were admitted without objection. They are appended to this Report. The first is an explanation of events from Respondent. The second is a letter from an attorney who represented the opposing party in Case No. 05-1318. The Hearing Officer has considered both and finds neither provide any mitigation.

Respondent also offered argument that during the time period of Case No. 04-1349, Respondent's wife had suffered a heart attack, and was hospitalized for several months causing Respondent to be preoccupied. (Transcript of Hearing, pg 19-20) This was the matter in which Respondent failed to appear for court, was ordered to provide an affidavit to justify his failure, then failed to attend an Order to Show Cause hearing set for his failure to provide the affidavit. While it is understandable Respondent might have been preoccupied with his wife's medical condition, he was given ample opportunity by the Court to explain his behavior, and failed to do so. The Hearing Officer does not find this to be a mitigating factor, as Respondent's statements were the only evidence offered regarding his wife's medical condition and the fact that the Court gave him ample opportunity to explain the missed settlement

conference, opportunities of which he failed to take advantage.

PROPORTIONALITY REVIEW

The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *Peasley, supra*, 208 Ariz. at 33, 90 P.3d at 772. However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* 208 Ariz. at 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

The most serious instance of misconduct in this case involves Respondent's failure to comply with court orders, and the presumptive sanction for such conduct is suspension. The State Bar notes that suspension is also appropriate in cases involving a pattern of neglect such as that set forth in Count One and the additional matter

incorporated into this agreement. The following cases are instructive concerning a lawyer's failure to comply with court orders.

In *In re Arrick*, 161 Ariz. 16, 775 P.2d 1080 (1989), the lawyer received a six-month suspension for failing to comply with a court order directing him to reimburse overpayments of attorney's fees to a probate client, among other violations. The lawyer claimed he simply interpreted the court order inaccurately, but the Supreme Court found the order crystal clear saying "We strongly disapprove of respondent's conduct. An attorney must set an example for the general public that obedience to a court order is not a matter of personal convenience and cannot be ignored or disregarded without serious consequences." *Id.* at 20, 775 P.2d at 1084.

The Commission found two aggravating factors (vulnerability of client and substantial experience in the law), and four mitigating factors (absence of prior discipline; acknowledgment of conduct; cooperation with discipline procedure; and remorse).

In *In re Bingham*, SB-02-0040-D (2002), the lawyer was suspended for six months and one day for failing, as a court-appointed arbitrator, to set or conduct a hearing by dates set by the court. The lawyer also failed to attend the OSC hearing on his conduct. The Commission found two factors in aggravation (bad-faith obstruction of the disciplinary process and substantial experience in the practice of law), and one

factor in mitigation (absence of a prior disciplinary record).

In *In re Merchant*, 00-0057-D (2000), the lawyer was suspended for six months and one day for failing to perform as a court-appointed arbitrator, failing to appear at an OSC hearing and other offenses. In addition to lawyer's misconduct, deemed admitted by default, the lawyer failed to respond to the State Bar's inquiries. The Commission found two factors in aggravation (multiple offenses and bad faith obstruction of the disciplinary process), and two factors in mitigation (absence of a prior disciplinary record and the imposition of other fines or penalties).

In *In re Davis*, SB-04-0033-D (2004), the lawyer failed to serve as an arbitrator as ordered, then failed to appear at a show-cause hearing scheduled by the court. When a second show-cause hearing was scheduled, the lawyer appeared, but failed to provide an explanation for her failure to comply with the court's order regarding the arbitration and failure to appear at the show-cause hearing. In that matter, unlike the instant case, the lawyer failed to respond to the inquiry of the State Bar. The hearing officer considered *Standards* 6.22 and 7.2. Although the presumptive sanction was suspension, the sanction imposed was censure based upon the substantial mitigation present. In *Davis*, there was a lack of a selfish or dishonest motive; personal and emotional problems due to deaths of two people close to her and resulting depression; imposition of another penalty by the court that the lawyer had complied with; and

remorse on the lawyer's part. The lawyer had received an informal reprimand six years prior, somewhat like Respondent who was censured in 1999 and 2002.

In the cases cited above, suspension was the most common sanction. The lesser sanction of censure was imposed in one case in which the lawyer presented substantial mitigation arising out of emotional problems from the deaths of two people close to her. Such substantial mitigation is not present in this case.

Overall, Respondent's conduct warrants a greater sanction as that imposed in *Arrick* and a similar sanction to that imposed in *Bingham* and *Merchant*. Respondent failed to comply with court orders and caused interference with a legal proceeding. Respondent's conduct is aggravated by his substantial experience in the practice of law, his prior discipline history for similar misconduct, and his pattern of failure to attend to client matters. In light of the aggravation present, the agreed upon sanction of a six-months and one day suspension is proportional and within the range of discipline imposed in similar cases. Based upon the totality of the circumstances, formal reinstatement proceedings, pursuant to Rule 72, requiring proof of rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice and competence appear necessary.

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.’” *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). This Hearing Officer believes the sanctions agreed upon by the parties are consistent with these principles.

RECOMMENDATION

This Hearing Officer recommends acceptance of the Tender of Admissions and Agreement for Discipline by Consent and the Joint Memorandum in Support of Agreement for Discipline by Consent which provides for the following:

Respondent be suspended for a period of six months and one day.

Upon compliance by Respondent with formal reinstatement proceedings pursuant to Rule 72, the following should be required, in addition to any other requirements by the reinstatement hearing officer:

Respondent be placed on probation for a period of two years to begin when all parties have signed the probation contract. The State Bar would be required to notify Disciplinary Clerk of the exact date of commencement of probation. The term of probation would be as follows:

- a. Respondent would be required, within 30 days successful formal

reinstatement, contact the director of the State Bar's Law Office Management Assistance Program (LOMAP) to schedule an audit of his law office. The LOMAP director or his/her designee will conduct an audit of Respondent's law office no later than 60 days thereafter. Following the audit, Respondent shall enter into a probation contract that will be effective for a period of two yearw from the date upon which all parties have signed the probation contract. Respondent shall comply with all recommendations of the LOMAP director or his/her designee.

b. Respondent shall contact the director of the State Bar's Member Assistance Program (MAP) within 30 days of successful formal reinstatement and submit to an assessment. Respondent thereafter will enter into a MAP contract based upon recommendations made by the MAAP director or designee.

c. Respondent shall follow all the Rules of Professional Conduct and all Trust Account Guidelines. Respondent shall pay all costs incurred by the State Bar in connection with these proceedings, including the assessment by LOMAP and MAP.

d. In the event that Respondent fails to comply with any of the foregoing conditions, and the State Bar receives information, bar counsel shall file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule 60(a)5, Ariz. R. S. Ct. The Hearing Officer shall conduct a hearing within thirty days after receipt of said notice, to determine whether the terms of probation have been violated and if an

additional sanction should be imposed. In the event there is an allegation that any of these terms have been violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence.

Respondent shall pay the costs and expenses incurred in this disciplinary proceeding.

DATED this 18 day of October, 2006.


Denise R. Shepherd
Hearing Officer 7Q

Original filed with the Disciplinary Clerk
this 13 day of Oct, 2006.

Copy of the foregoing was mailed
this 24 day of Oct, 2006, to:

Scott W. Schlievert
Respondent
21 East Speedway Boulevard
Tucson, AZ 85705-7714

Ariel I. Worth
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: 
