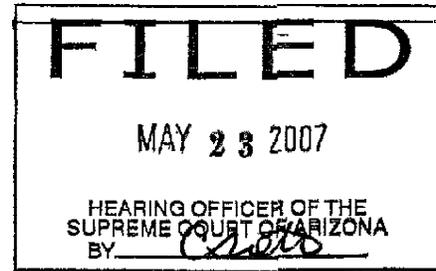


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7 **HEARING OFFICER**



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

10 IN THE MATTER OF A MEMBER OF
11 THE STATE BAR OF ARIZONA,

12 **JASON C. BESKIND,**
13 Bar No 017131,

14 Respondent.

No 06-0934, 05-1566,
06-0836 and 06-0431

HEARING OFFICER'S REPORT

15 **PROCEDURAL HISTORY**

16 The State Bar filed its Complaint on December 28, 2006 based on three Probable
17 Cause Orders dated September 15 and October 4, 2006 and on an Order of Non-
18 Compliance With Order of Diversion (LOMAP) and Restitution dated October 5, 2006
19 Respondent did not timely file an answer to the Complaint and the Disciplinary Clerk
20 filed a Notice of Default on January 24, 2007. Respondent still not file an answer to the
21 Complaint and an Entry of Default was filed on February 13, 2007

22 The State Bar filed a request for an aggravation/mitigation hearing and that
23 hearing was held on April 4, 2007 The State Bar was represented at the hearing by
24 Denise K Tomaiko The Respondent was neither present nor represented by counsel at
25 the hearing. Although the State Bar suggests that this Hearing Officer find that eight
26 aggravating factors exist, the State Bar presented no evidence at the aggravation/mitiga-
tion hearing with regard to any of the proposed aggravating factors Instead, the sole
evidence presented at the hearing was with regard to the factual background of the

1 various complaints against Respondent

2 To the extent that evidence was elicited at the aggravation/mitigation hearing that
3 related only to the facts of the case, not matters regarding aggravation or mitigation, such
4 evidence has not been considered by this Hearing Officer because, to do so would
5 violate Respondent's right to cross-examine factual witnesses (the hearing having not
6 been noticed as an evidentiary proceeding on the facts but, rather, merely one in
7 aggravation/mitigation).

8 The Hearing Officer requested briefing with regard to proposed findings of fact,
9 conclusions of law and recommended sanctions and the State Bar's briefing in that
10 regard was filed on May 7, 2007. Respondent filed nothing

11 Pursuant to Rule 57(d), Ariz R S Ct, with Respondent's failure to answer the
12 Complaint, all allegations in the Complaint were deemed admitted by him.

13 **FINDINGS OF FACT**

14 1 At all times relevant hereto, Respondent was a lawyer licensed to practice
15 law in the State of Arizona, having been first admitted to practice in Arizona on October
16 19, 1996.

17 **COUNT ONE (File No 06-0934)**

18 2. On or about August 31, 2005, Respondent was retained to represent the son
19 of Pam Miller ("Ms. Miller").

20 3 Respondent failed to appear for a consultation with Ms. Miller's son.

21 4. Respondent failed to provide a written fee agreement to Ms. Miller or her
22 son

23 5 Respondent failed to appear at Ms Miller's son's arraignment

24 6. Respondent generally failed to communicate with Ms Miller's son

25 7. By letter dated September 19, 2005, the State Bar informed Respondent of
26 the charges against him and requested that he respond in writing within twenty (20) days

1 of the date of the letter

2 8. On or about November 9, 2005, Respondent responded in writing to the
3 State Bar.

4 9 In that response, Respondent indicated that he would refund all or part of
5 the fee Ms. Miller paid on behalf of her son.

6 10. In that response, Respondent also indicated that he had not performed
7 sufficient work to have earned the entire fee that Ms. Miller had paid

8 11 Respondent failed to refund any part of the advanced fee to Ms. Miller

9 12 On March 13, 2006, an Order of Diversion and Restitution was issued
10 against Respondent for violations of Rule 42, Ariz R Sup.Ct., specifically ER 1.3, ER
11 1 4 and ER 1 16(d).

12 13. Restitution in favor of Ms. Miller was ordered in the amount of \$2,500 00.

13 14 Respondent was properly served with the Order of Diversion

14 15. Respondent failed to comply with the Order of Diversion or contest the
15 Order of Diversion within the proscribed time frame.

16 16 In a letter to Respondent dated April 25, 2006, Sue Mersing of the State
17 Bar's Lawyers Assistance Program attempted to contact Respondent concerning the
18 provision in the Order that Respondent contact the Law Office Management Assistance
19 Program ("LOMAP").

20 17 On or about April 25, 2006, State Bar of Arizona Legal Assistant Lynn
21 Boardman ("Ms Boardman") called Respondent's office and left a message for
22 Respondent to return her call

23 18 Respondent did not return the call

24 19 On or about May 4, 2006, Terry, Respondent's bookkeeper, spoke to
25 Ms. Boardman about the status of the payment to Ms Miller

26 20 Ms Boardman told Terry that Respondent was delinquent in paying the

1 restitution and that this could possibly cause the diversion to be revoked and some other
2 course of action taken.

3 21. On July 10, 2006, the Probable Cause Panelist entered an Order to Show
4 Cause to find out why Respondent should not be found in violation of the order of
5 diversion and restitution.

6 22 Respondent was personally served with the Order to Show Cause but failed
7 to respond.

8 23. On October 13, 2006, the Probable Cause Panelist entered an Order of Non-
9 Compliance with the Order of Diversion and Restitution.

10 24 The Order of Non-Compliance was served by certified mail, return receipt
11 requested, on Respondent on or about October 17, 2006

12 25 Shanda Linn, of Respondent's office, signed the return receipt for the Order
13 of Non-Compliance on Respondent's behalf on or about October 18, 2006

14 COUNT TWO (File No 06-0836)

15 26 On October 5, 2005, Respondent was assessed \$250.00 by the Honorable
16 George Preston, Cave Creek Municipal Court Presiding Judge, for the costs to assemble
17 "yet another jury" in the case of *State of Arizona v Jeffrey Frank Wilson* ("the *Wilson*
18 *Case*"), Case No CR 2004-1143

19 27. Respondent failed to appear for jury trials in the *Wilson Case* on two
20 occasions

21 28 Respondent failed to timely pay the penalty assessed against him by Judge
22 Preston.

23 29. On May 3, 2006, Judge Preston issued an Order to Show Cause as to why
24 Respondent should not be charged with criminal contempt for his failure to pay the
25 \$250 00 penalty as previously ordered by the Court.

26 30. The Order to Show Cause was vacated on May 18, 2006 after Respondent

1 made payment.

2 31. Judge Preston informed the State Bar of Respondent's conduct in the
3 *Wilson Case*

4 32 The State Bar informed Respondent of the charges against him and
5 requested response.

6 33. Respondent failed to respond to the State Bar's letter.

7 34 On July 12, 2006, the State Bar sent a second letter concerning the charges
8 to Respondent, requested that he respond in writing within ten (10) days of the date of
9 the letter and informed Respondent that his failure to respond and provide information
10 was grounds, in itself, for discipline

11 35. Respondent failed to respond to the State Bar's letter dated July 12, 2006.

12 COUNT THREE (File No 06-0431)

13 36 Shelli Pettit ("Ms. Pettit") retained Respondent to advise her concerning
14 post-decree child support issues.

15 37. Respondent failed to fully respond to Ms Pettit's inquiries about her case

16 38. Respondent failed to diligently pursue Ms. Pettit's case

17 39 Respondent failed to perform promised work in a timely manner

18 40 Respondent billed Ms. Pettit for work that was not performed

19 41 Respondent charged an unreasonable fee as he did not complete the work
20 for which he was retained, including calculations of child support.

21 42. Respondent charged an unreasonable fee as he charged Ms Pettit for
22 numerous calls to her and to opposing counsel to discuss the fact that he had not
23 completed the child support calculations.

24 43. By letter dated May 15, 2006, the State Bar informed Respondent of the
25 charges against him and requested that he respond in writing within twenty (20) days of
26 the date of the letter

1 Several ABA *Standards*, all calling for the presumptive sanction of disbarment,
2 apply to Respondent's conduct in these cases. The applicable *Standards* are 4.4 (Lack of
3 Diligence), 6.2 (Abuse of the Legal Process) and 8.0 (Prior Discipline Orders).

4 1. Lack of Diligence. *Standard 4.4(b)* provides that disbarment is generally
5 appropriate when a lawyer "knowingly fails to perform services for a client and causes
6 serious or potentially serious injury to a client." In File No. 06-0934, Respondent failed
7 to appear for consultation with Ms. Miller's son, failed to appear at his arraignment and
8 generally failed to communicate with him. In File No. 06-0836, Respondent failed to
9 appear for two jury trials in the Wilson Case and, in File No. 06-0431, Respondent failed
10 to timely complete the work for which he was retained.

11 2. Abuse of the Legal Process. *Standard 6.2* provides that disbarment is
12 generally appropriate when a lawyer "knowingly violates a court order or rule with the
13 intent to obtain a benefit for the lawyer or another, and causes serious injury or
14 potentially serious injury to a party, or causes serious or potentially serious interference
15 with a legal proceeding." In File No. 06-0836, Respondent not only failed to appear to
16 for two jury trials, but failed to timely pay the penalty assessed against him by Judge
17 Preston.

18 3. Prior Discipline Orders. *Standard 8.1* provides that disbarment is generally
19 appropriate when a lawyer "intentionally or knowingly violates the term of a prior
20 disciplinary order and such violation causes injury or potential injury to a client, the
21 public, the legal system or the profession." In File No. 05-1566, an Order for Diversion
22 and Restitution was issued in 2006. Respondent failed to comply with the Order of
23 Diversion and failed to pay the ordered restitution.

24 AGGRAVATING AND MITIGATING FACTORS

25 Having determined that disbarment is the presumptive sanction in this case, this
26 Hearing Officer then considered aggravating and mitigating factors in this case, pursuant

1 to *Standards* 9 22 and 9 32, respectively. This Hearing Officer that eight (8) factors are
2 present in mitigation:

3 9 22(b) – dishonest or selfish motive,

4 9.22(c) – pattern of misconduct,

5 9.22(d) – multiple offenses;

6 9 22(e) – bad faith obstruction of the disciplinary proceeding,

7 9.22(f) – submission of false evidence, false statements or other deceptive
8 practices during the disciplinary process,

9 9 22(g) – refusal to acknowledge the wrongful nature of his conduct;

10 9 22 (i) – substantial experience in the practice of law; and

11 9 22(j) – indifference to making restitution

12 The only mitigating factor found was the absence of a prior disciplinary record.

13 PROPORTIONALITY REVIEW

14 To have an effective system of professional sanctions, there must be internal
15 consistency, and it is appropriate to examine sanctions imposed in cases that are
16 factually similar *In re Shannon*, 179 Ariz. 52, 71, 876 P 2d 548, 567 (1994). However,
17 the discipline in each case must be tailored to the individual case, as neither perfection
18 nor absolute uniformity can be achieved. *Matter of Riley*, 142 Ariz. 604, 615 (1984)
19 Similar cases involving lack of diligence, conversion of funds by failing to refund fees
20 and failure to cooperate with the disciplinary process, show that disbarment is
21 proportional.

22 In *In re Edson*, 2001 Ariz. LEXIS 213, Edson was disbarred in a nine-count
23 complaint. Similar to this case, Edson failed to appear at hearings, failed to perform
24 work and to respond to client inquiries, delayed returning an advance fee payment and
25 caused serious and potentially serious injury to his clients. Edson also failed to
26 cooperate with the disciplinary process, although he appeared at the aggravation and

mitigation hearing Edson was found to have violated Rule 42, Ariz R Sup.Ct , ERs 1 1, 1 2, 1 3, 1 4, 1 15, 1.16(d) and 8.1(b), and Rules 43, 44 and 51(h) and (i), Ariz.R.Sup Ct Aggravating factors included (a) prior disciplinary history, (c) pattern of misconduct, (d) multiple offenses, (e) bad faith obstruction of the disciplinary proceeding, (g) refusal to acknowledge the wrongful nature of the conduct, and (i) substantial experience in the practice of law.¹ No mitigating factors were found

In *In re Brown*, SB 05-0054 (2005), Brown was disbarred and ordered to pay restitution and costs in a five-count complaint. Brown received substantial retainers, abandoned his clients, failed to communicate with them, failed to turn over client files, lied to his clients about the status of their cases and refused to return fees paid. Brown caused significant and irreparable injury to his clients Brown failed to participate in the disciplinary proceedings, although he was aware of the pending complaints. Brown was found to have violated Rule 42, Ariz R Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 1 5, 1.15(a), 1 16, 3 2 and 8 4(d), as well as Rules 32(c)(3) and 53(d) and (f), Ariz R.Sup Ct Aggravating factors included (a) prior disciplinary history, (b) dishonest or selfish motive, (c) pattern of misconduct, (d) multiple offenses, (e) bad faith obstruction of the disciplinary proceedings, and (i) substantial experience in the practice of law. There were no mitigating factors found.

In *In re Hoover*, SB 05-0145 (2005), Hoover was disbarred in a six-count complaint. Hoover failed to communicate with his clients, failed to diligently pursue their cases, failed to safeguard client property, and failed to appear at court proceedings He failed to participate in the disciplinary proceedings, including failing to file an answer to the complaint and failing to cooperate with ordered diversion Hoover was

¹ In its proportionality analysis, the State Bar asserts that two additional aggravating factors (dishonest or selfish motive and indifference to making restitution) were found by the Supreme Court Such is not the case and the State Bar is admonished to properly summarize the cases to which it cites

1 found to have violated Rule 42, Ariz R Sup Ct., specifically ERs 1 2, 1.3, 1.4, 1.5(c),
2 1 15, 1 16, 3.2, 8 1(b) and 8 4(d), as well as Rules 43(d), 44 and 53(d)(e) and (f),
3 Ariz R.Sup Ct. He caused serious potential injury to several clients Aggravating
4 factors included (a) prior disciplinary history, (b) dishonest or selfish motive, (c) pattern
5 of misconduct, (d) multiple offenses, (e) bad faith obstruction of the disciplinary
6 proceeding, and (i) substantial experience in the practice of law

7 In this case, as in the cases above, Respondent took retainers from clients but
8 failed to fully or adequately perform the services promised. He failed to attend hearings
9 and trials, and failed to communicate with his clients Respondent's actions subjected
10 his clients to actual, or potential, serious injury Respondent failed to cooperate in the
11 disciplinary proceedings, including his failure to respond during the State Bar's
12 investigation, failure to file an answer to the State Bar's complaint and failure to appear
13 at the aggravation/mitigation hearing.

14 RECOMMENDATION

15 The purpose of lawyer discipline is not to punish the lawyer, but to protect the
16 public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d
17 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the
18 profession and the administration of justice *In re Neville*, 147 Ariz. 106, 708 P 2d 1297
19 (1985). Yet another purpose is to instill public confidence in the bar's integrity *Matter*
20 *of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994)

21 In imposing discipline, it is appropriate to consider the facts of the case, the
22 American Bar Association's *Standards* and the proportionality of discipline imposed in
23 analogous cases. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

24 Upon consideration of the facts, application of the *Standards*, including
25 aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer
26 recommends the following:

- 1 1 Respondent should be disbarred;
- 2 2 The original Order of Restitution entered in File No 05-1566 should be
- 3 confirmed,
- 4 3 Respondent should be ordered to pay the costs and expenses incurred in this
- 5 disciplinary proceeding.

6 The State Bar has requested restitution to Ms. Pettit but the amount of damages

7 suffered by Ms Pettit at the hands of Respondent was not included in the Complaint and

8 has not been deemed admitted by Respondent. While testimony regarding the amount

9 paid by Ms. Pettit was elicited at the aggravation/mitigation hearing, as noted above, this

10 Hearing Officer believes that such evidence is inadmissible since that hearing was not

11 designed to elicit factual evidence that could be the basis of sanctions against

12 Respondent (but, rather, was merely to solicit evidence regarding aggravating factors)

13 As such, since the amount was not pled by the State Bar in its Complaint, no restitution

14 is recommended with regard to Ms Pettit

15 DATED this 23rd day of May, 2007.

16

17 
Patricia E. Nolan, Hearing Officer

18

19 ORIGINAL filed with the Disciplinary
Clerk this 23rd day of May, 2007.

20

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22

23

24

25

26 By

Copy of the foregoing mailed
this 25th day of May, 2007, to:

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By Christina Ato