

**FILED**

NOV 19 2007

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY CLJ

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

IN THE MATTER OF A SUSPENDED MEMBER )	File No 's 04-0491, 04-2115, 05-0079,
OF THE STATE BAR OF ARIZONA, )	05-0448, 05-0715, 05-0918,
)	05-1343, 05-1563, 05-1818,
)	06-0066, 06-1279
<b>ROBERT HORTON GREEN, JR.</b> )	
Bar No. 015089, )	<b>HEARING OFFICER'S REPORT</b>
)	)
)	)
RESPONDENT )	)
)	)

**PROCEDURAL HISTORY**

1 This matter was initiated by the State Bar with the direct filing of a Tender of Admissions and Agreement for Discipline by Consent as well as a Joint Memorandum in Support Thereof on August 2, 2007 The matter was assigned to Stanley Lerner, Hearing Officer 7R on September 4, 2007 Thereafter the matter was reassigned to the undersigned Hearing Officer on October 5, 2007 Hearing was held on the agreement on October 9, 2007

**INTRODUCTION**

2 This matter involves an attorney who was suspended from the practice of law in 2005 and, following that suspension, failed in his responsibility under Rule 72 to notify every court, counsel and client of his suspension Respondent also performed some tasks during this period of his suspension that only an attorney in good standing could perform This matter also involves conduct by the Respondent prior to his suspension that violated certain ER's Failure to act with reasonable diligence and promptness, failure to keep his

clients reasonably informed, failure to render an accounting to a client and failure to return an unearned fee upon termination of his representation

3 Judging by the number of counts and their diversity, this Hearing Officer entered the hearing on Respondent's Application for Reinstatement with some reservations. Over a relatively short period of time the Respondent committed numerous and persistent infractions. Was this the result of congenital incompetence, or the desperate response of a relatively new attorney reacting to a catastrophic set of circumstances not of his own making? This Hearing Officer's reservations were satisfied after concluding it was the latter rather than the former. Respondent's infractions and subsequent suspension should be viewed in light of how he got there, which is more fully set forth in Exhibit A to the Joint Memorandum filed by the parties on August 20, 2007.

#### **FINDINGS OF FACT**

4 At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted on October 23, 1993.

5 On January 11, 2005, the Supreme Court of Arizona entered a Judgment and Order suspending Respondent from the practice of law for a period of sixty (60) days, effective February 10, 2005.

6 On April 14, 2005, Respondent filed an Affidavit for Reinstatement pursuant to Rule 64(e)(2) Ariz R Sup Ct.

7 On May 2, 2005, the State Bar filed a response opposing Respondent's reinstatement based on his failure to comply with Rule 72, Ariz R Sup Ct, as specifically set forth in the Court's Order of January 11, 2005.

8 While these matters have been ongoing, Respondent agreed not to seek reinstatement

9 To date, Respondent remains suspended from the practice of law (January 11, 2005, to present)

**COUNT ONE (File No. 04-0491/Gleydura)**

10 Virginia Gleydura (“Ms Gleydura”) hired Respondent on or about August 15, 2000, to pursue a personal injury matter related to an automobile accident

11 Ms Gleydura completed treatment with her health care provider in July 2001

12. Between August 2000 and August 2002, Ms Gleydura had sporadic contact with Respondent and his office staff During these infrequent contacts Ms Gleydura was continually assured that Respondent would soon be working on her case

13 In early August 2002, Ms Gleydura became alarmed that two years had elapsed without any progress in her case

14 On August 2, 2002, Ms Gleydura was able to speak with Respondent on the telephone Respondent assured Ms Gleydura that if he had not been able to achieve a settlement within a week that he would file a lawsuit to “extend the case ” Respondent also assured Ms Gleydura that he would contact her with an update However, Respondent failed to contact Ms Gleydura within the promised timeframe

15 Ms Gleydura resumed her attempts to get a status on her case by contacting Respondent’s office on a regular basis Ms Gleydura began keeping a log of her attempts to communicate with Respondent, along with the results of those attempts and communications

16 During the occasional times that she was able to speak with Respondent or his assistant, Ms Gleydura was either given different reasons for her inability to get a status on her case or was reassured that her case would be handled

17 In January 2004, Ms Gleydura received a collections notice for unpaid medical bills related to her injuries

18 Ms Gleydura faxed the collections notice to Respondent's office along with a letter requesting assistance Ms Gleydura also left several messages for Respondent regarding the collections, but received no response

19 In late January 2004, Ms Gleydura proceeded to contact the collections agency herself to inform them that a lawsuit was pending

20 The collections agency agreed to take the matter out of collections if Ms Gleydura and her attorney agreed to sign a lien

21 Ms Gleydura readily signed the lien documents and on or about February 4, 2004, visited Respondent's office in order to obtain Respondent's signature on the documents

22 Given Respondent's absence from his office on that day, Ms Gleydura left a copy of a letter she had faxed to Respondent in January, along with the lien documents for Respondent to sign and fax to the collections agency

23 For approximately two weeks Ms Gleydura again unsuccessfully attempted to contact Respondent or his assistant

24 Ms Gleydura was informed that, as of February 19, 2004, Respondent had failed to forward the signed lien documents to the collections agency.

25 On February 23, 2004, the collection agency representative informed Ms Gleydura that her case had been closed with the insurance company because no lawsuit had been filed to protect her claim Therefore, an alternative method of resolving the collection issue was unavailable

26 Over the course of a one-year period between March 2003, and February 2004, Ms  
Gleydura logged numerous attempts to contact Respondent via telephone  
27 Respondent's failure to take action on behalf of his client caused Ms. Gleydura to  
become personally responsible for the injury-related, outstanding medical bills  
28 Respondent has acknowledged his role and has taken full responsibility for his actions  
with regard to Ms Gleydura

**COUNT TWO (File No. 04-2115/Wiley)**

29 In February 2004, Patricia Wiley ("Ms Wiley") sought divorce mediation through Gary  
Karpin's "Divorce with Dignity" services in an attempt to seek a divorce without the  
assistance of an attorney  
30 After several meetings with Mr Karpin, it became clear to Ms Wiley that the mediation  
attempts would not be successful, and Ms Wiley was eventually served with the divorce  
documents  
31 Mr. Karpin set up a meeting at his office with Respondent and Ms Wiley  
32 In July 2004, Ms Wiley paid Respondent \$2,500 00 for representation in the marriage  
dissolution proceeding, with her final payment being made on the date of a scheduled  
Order to Show Cause Hearing  
33 Despite several reminders contained in emails sent between Ms Wiley and Respondent,  
Respondent failed to appear at a scheduled Expedited Services conference on September  
28, 2004 Ms Wiley was forced to appear by herself  
34 Ms Wiley was very upset due to Respondent's failure to appear at the Expedited  
Services conference In response to Ms Wiley's yelling and aggressive attitude,

Respondent responded with profanity Respondent later acknowledged his error and apologized for yelling at Ms Wiley

35 In a November 2, 2004, email Ms Wiley questioned Respondent about child support being considered for the parties' twenty-year-old disabled child, who would continue to be a high school student until the age of 22

36 In a November 12, 2004, response email Respondent explained that he had been ill and out-of-town but would review Ms Wiley's questions and would soon provide an answer

37 In a November 19, 2004, email Ms Wiley reminded Respondent that he had not responded to her earlier questions about child support for her disabled child Ms Wiley also reminded Respondent that the trial date was scheduled for December 16, 2004

38 Respondent replied that he was in the middle of a trial but would telephone Ms Wiley so they could discuss the issues Respondent also informed Ms Wiley that they would be prepared for the December 16, 2004, hearing

39 Respondent failed to contact Ms Wiley as promised, and for several days thereafter On December 3, 2004, following several angry and threatening messages, Respondent informed Ms Wiley that he would be filing a Motion to Withdraw as her attorney, forcing Ms Wiley to retain new counsel only weeks before the trial date

40 On December 8, 2004, Ms Wiley filed a Stipulated Motion for Substitution of Counsel indicating that Respondent had been "released" from further representation

**COUNT THREE (File No. 05-0079/Hansen)**

41 Complainant, John Hansen ("Mr Hansen"), retained Respondent to help him get his license renewed after it was suspended due to a DUI conviction

42 On August 24, 2004, Mr Hansen's application for reinstatement of his license was denied based on the recommendations of his substance abuse counselor The earliest reapplication date suggested by the counselor was February 23, 2005

43 Respondent represented Mr Hansen at a review hearing before Administrative Law Judge Rosario J Cirincione ("Judge Cirincione") and on October 21, 2004, Judge Cirincione upheld the August 2004, Order of Denial However, in upholding the counselor's recommendation, Judge Cirincione inadvertently added an additional six months, making the earliest reapplication date August 23, 2005

44 Upon becoming aware of the error in Judge Cirincione's Order, Mr Hansen contacted Respondent for assistance Respondent reassured Mr Hansen that he would bring the error to the Judge's attention and that Respondent would request a correction to the reapplication date

45 Throughout November and December 2004, Mr Hansen attempted, unsuccessfully, to contact Respondent regarding the status of the correction to the Order

46 Respondent did not communicate with Mr Hansen regarding the results of any further review

47 In late December 2004, Mr Hansen informed Respondent's secretary that he would be filing a bar complaint if he did not receive a response from Respondent Having received no response, Mr Hansen filed a complaint with the State Bar on January 12, 2005

48 On January 26, 2005, bar counsel assigned to the case sent a letter to Respondent requesting that Respondent contact Mr Hansen in order to resolve the problem

49 Respondent failed to respond to Mr. Hansen and to bar counsel If this matter went to hearing, Respondent would testify that he did not recall receiving a letter from the State

Bar and that he would not have intentionally failed to respond. There is not sufficient evidence for the Hearing Officer to conclude that this did or did not occur.

50 On May 24, 2005, during a discussion related to State Bar File No. 05-0448, bar counsel cautioned Respondent not to hold himself out as an attorney.

51 On May 25, 2005, bar counsel sent a letter to Respondent requesting that he respond within twenty days to the bar's investigation and to address specific ethical rules.

52 Respondent did not respond. Again, if this matter went to hearing, Respondent would testify that he did not recall receiving a letter from the State Bar and that he would not have intentionally failed to respond. There is not sufficient evidence for the Hearing Officer to conclude that this did or did not occur.

53 On July 12, 2005, bar counsel sent a second letter to Respondent requesting a response within twenty days, and reminding Respondent of his obligation to comply with the disciplinary investigation.

54 On July 29, 2005, Respondent mailed his response, submitted on letterhead of the "Law Offices of Robert H. Green, Jr., Attorney at Law."

**COUNT FOUR (File No. 05-0448/McMurdie)**

55 Respondent represented Luis Valenzuela ("Mr. Valenzuela"), Joe Arvallo ("Mr. Arvallo"), and Michael Lawrence ("Mr. Lawrence") in three separate, unrelated Maricopa County Superior Court criminal cases.

56. In the first matter, on January 27, 2005, at a time set for a settlement conference in Mr. Valenzuela's case, the Honorable Andrew G. Klein ("Judge Klein") called Respondent and the prosecutor, Kristin Larish, into chambers and gave Respondent a copy of the January 11, 2005, suspension Order.

57 Judge Klein asked Respondent how he could avow he was ready to proceed with a trial that could last three to four weeks, when Respondent would not be available due to his impending suspension

58 Respondent informed Judge Klein that he did not believe that the trial would last longer than a couple of weeks Respondent contends he advised Judge Klein he had alternate counsel that would be prepared to proceed to trial

59 Judge Klein stated that Respondent put his client in a difficult position and raised several appellate issues

60 In addition, upon questioning by Judge Klein, Mr Valenzuela stated that he did not know of Respondent's upcoming suspension

61 The Court considered severing Mr Valenzuela's case from that of his co-defendant, which the prosecution believed would place the State in a weakened position

62 Ultimately, the Court decided not to sever, continued the trial to April 21, 2005, and joined the trial with a third defendant

63 In the second matter, on January 14, 2005, Respondent appeared on behalf of Mr Arvallo before the Honorable A Craig Blakey ("Judge Blakey")

64 Respondent asked the Court to continue the mitigation hearing and sentencing until February 11, 2005

65 Respondent failed to notify Judge Blakey or the prosecutor, Scott Doering, that he had been suspended and that the suspension would be effective on February 10, 2005

66 In a third matter, on January 19, 2005, Respondent appeared on behalf of Michael Lawrence before the Honorable David M Talamante ("Judge Talamante")

67 Respondent asked Judge Talamante to set the trial date as close as possible to May 19,  
2005

68 Judge Talamante ordered the parties to file their joint pretrial statement within five days,  
and set the final trial management conference and the jury trial dates for April 27, 2005,  
and May 4, 2005, respectively

69 Although the set dates fell after the anticipated end of Respondent's suspension,  
Respondent failed to notify Judge Talamante or the prosecutor, Armando Rodriguez, of  
his pending suspension

**COUNT FIVE (File No. 05-0715/Moreno)**

70 On or about May 14, 2004, Humbert Moreno ("Mr Moreno") paid Respondent a  
\$1,500 00 fee for representation in a child support matter

71 Mr Moreno had information that his daughter may be married and living in Mexico and  
he wanted to discontinue paying his ex-wife child support

72 Respondent was to determine how much child support Mr Moreno owed and to  
terminate the child support if Mr Moreno's daughter did in fact live in Mexico

73 During their initial meeting, Mr Moreno provided the documents needed for Respondent  
to proceed with the child support matter

74. As part of the representation, Respondent was also to transfer the case from La Paz  
County to Maricopa County

75 For several months Mr Moreno, or his secretary on his behalf and with his permission,  
unsuccessfully attempted to speak with Respondent regarding the status of the case and to  
obtain an accounting

76 Respondent telephoned Mr Moreno sometime in late 2004 or early 2005, after being informed by his investigator, Tony Ahumada, that Mr Moreno was filing a complaint against Respondent with the State Bar

77 Respondent set up a meeting in January or February of 2005 between himself, Mr Moreno, Respondent's secretary, Kim Kees, Respondent's investigator, Tony Ahumada, and Mr Moreno's secretary, Margie Yates. During that meeting, Respondent informed Mr Moreno that he had filed the documents to stop the child support payments in January, and that the case had been transferred from La Paz County to Maricopa County. However, no copies of the documents were provided to Mr Moreno

78 During the meeting, Respondent did not inform Mr Moreno that he was going to be suspended for a sixty-day period effective February 10, 2005

79 In April 2005, Mr Moreno received child support related documents from the La Paz County Court, realized that the case had never been transferred to Maricopa County and proceeded to file a complaint against Respondent with the State Bar

80 The Maricopa County Superior Court's Family Case Information website does not provide any information related to the termination of Mr Moreno's child support, or any other family court matter involving Mr Moreno

81 Respondent contends that he not only expended substantial resources in investigating Mr Moreno's child support obligations, he also drafted the child support documents that he provided to Mr Moreno during their meeting in early 2005

82 Respondent further contends that he informed Mr Moreno of his sixty-day suspension. Respondent provided a copy of the alleged letter, dated February 12, 2005, and drafted on "Green Law Group" letterhead, with his response to the State Bar

83 In a letter to the State Bar dated August 29, 2005, Respondent acknowledged that he drafted the letter to Mr Moreno about the suspension, but did not personally mail it since he directed his assistant to do so Respondent also acknowledged that he “did not feel the need to withdraw, as [his] suspension was only to be 60 days, and Mr Moreno did not have any pending court dates ” Respondent felt that he could finish the case upon the termination of the suspension

84 Respondent further acknowledged his negligence in handling Mr Moreno’s case claiming that he relied on his former assistant who “was very busy, and fail[ed] to complete many tasks ”

**COUNT SIX (File No. 05-0918/West)**

85 In April 2003, Complainant, James B. West (“Mr. West”), paid Respondent \$2,000 00 for representation in a DUI case

86 The Court set the initial pretrial conference for May 29, 2003

87 On May 16, 2003, Respondent filed the first of several Motions to Continue Additional Motions to Continue were filed by Respondent on June 19, 2003, July 2, 2003, and August 14, 2003 He made an oral Motion to Continue on July 17, 2003.

88 On August 21, 2003, Respondent again filed a Motion to Continue that was denied by the judge The Court’s proceeding entries indicate that the court’s clerk unsuccessfully attempted to contact Respondent on that day, at different telephone numbers, to inform him that his Motion to Continue had been denied

89 On September 19, 2003, the clerk again attempted to contact Respondent with no success Per the Court proceedings entry for September 19, 2003, a warrant, with a bond amount of \$1,805 00, was issued for Mr West due to his failure to appear

90 On September 25, 2003, Respondent filed a Motion to Quash the warrant and the pretrial conference was re-scheduled for October 9, 2003. Once again, Respondent filed a Motion to Continue and a new pretrial conference date was set for October 23, 2003.

91 On October 22, 2003, Respondent filed a Notice of Conflict. The judge ordered Respondent and Mr. West to appear before the court the following day.

92 Respondent filed a Motion to Set for Jury Trial on October 28, 2003, and several additional continuances were requested and granted. The matter was finally set for a Change of Plea, but Respondent and Mr. West failed to appear for the scheduled change of plea date.

93 Respondent contends that he did not receive notice of the change of plea date.

94 The Court again unsuccessfully attempted to contact Respondent regarding the failure to appear. On May 14, 2004, a warrant was again issued with bond set at \$100.00 due to the *pro tem* judge's finding that the problem "seemed to be with the attorney and not the defendant."

95 On June 21, 2004, more than one year after the original Change of Plea date, Respondent filed a Motion to Quash and a new Change of Plea date was scheduled for July 8, 2004.

96 Respondent filed another Motion to Continue the Change of Plea date due to illness. The court set the date for July 15, 2004, a notice of the change was sent to Respondent and a telephone message was left.

97 Respondent and Mr. West again failed to appear on the Change of Plea date, and a new warrant was issued on August 10, 2004, with additional instructions that it not be quashed until Mr. West personally appeared before the court.

98 On May 12, 2005, Mr West was arrested on the outstanding warrant Mr West spent  
five days in jail, causing him to miss three days of work and almost lose his job, due to  
his lack of knowledge of the outstanding warrant

99 Mr West's wife attempted to contact Respondent several times regarding Mr West's  
arrest and the warrant, but received no response Respondent was out of town during this  
period of time and did communicate with Mrs. West upon his return

100 On June 2, 2005, Mr West filed his Complaint against Respondent with the State Bar

101 Respondent's July 26, 2005, letter to the State Bar was drafted on the letterhead of the  
"Law Offices of Robert H Green, Jr , Attorney at Law "

**COUNT SEVEN (File No. 05-1343/Mednick)**

102 Complainant, Ronald Mednick ("Mr Mednick"), retained Gary Karpin to assist him in  
"mediating" Mr Mednick's decree of dissolution.

103 Gary Karpin told Mr Mednick that if he could not mediate the matter that he would be  
referred to his partner, attorney Robert Horton Green, Jr

104 Mr Mednick paid Mr Karpin \$200 00 for his services

105 Mr Mednick then met with Respondent the following week and paid him an additional  
\$2,500 00 for Respondent to represent him in an attempt to terminate the spousal  
maintenance he was paying

106 Mr Mednick did not receive a receipt from Respondent for the \$2,500 00 retainer

107 On February 10, 2004, Respondent attended a contempt hearing with Mr Mednick, and  
at that time the Court set the evidentiary hearing related to the modification of spousal  
maintenance

108 At the evidentiary hearing, the Court denied Mr Mednick's request to terminate the  
spousal maintenance and awarded attorney's fees to the ex-wife

109 Mr Mednick failed to pay the Court ordered amount and a contempt hearing was held in  
August 2004 The Court ordered Mr Mednick incarcerated for an indefinite period of  
time or until he posted bond in the amount of \$21,777 00, the total owed as spousal  
maintenance arrearages and his ex-wife's attorney's fees

110 Mr Mednick was given approximately one-half hour to pay the purge amount

111 Mr Mednick was unable to access the amount from his bank account and Respondent  
advanced the full purge amount to Mr Mednick so that he would not have to be  
incarcerated Mr Mednick later refunded the full amount, along with additional  
attorney's fees to Respondent

**COUNT EIGHT (File No. 05-1563/Hawksworth)**

112 Ann Hawksworth ("Ms Hawksworth"), retained Respondent on or about July 2002 to  
represent her in a post-decree dissolution matter

113 Respondent continued to represent Ms Hawksworth in various post-decree matters from  
July 2002, through September 2004

114 During the course of the two-year period Respondent's assistant, Kimberly Kees ("Ms  
Kees"), completed much of the work done on Ms Hawksworth's case Ms Kees also  
attended an expedited services conference with Ms Hawksworth

115 Respondent failed to promptly comply with Ms Hawksworth's requests for information  
and documents relating to her case

116 On March 1, 2005, Respondent forwarded to Ms Hawksworth a check dated December 28, 2004, and made payable to her by her ex-husband's attorney Respondent failed to explain the delay in forwarding the check to Ms Hawksworth.

**COUNT NINE (File No. 05-1818/State Bar)**

117 Respondent's suspension began February 10, 2005 The State Bar received numerous complaints from clients who did not appear to know that Respondent was suspended As a result, the Bar undertook an investigation to determine if Respondent was listed as attorney of record on any case The investigation revealed the following

118 *In re Jiron v Rojas*, Maricopa County Superior Court case no FC2001-007581 On February 7, 2005, Respondent was present in court with his client, Ms Jiron The Court set a trial date and ordered the parties to meet no later than February 28, 2005, to attempt to resolve the issues On March 17, 2005, Respondent signed a Notice of Substitution of Counsel filed by new counsel, Michael Delgado Respondent did not notify the client, the Court and opposing counsel of his suspension albeit untimely

119 *In re the Marriage of Yount*, Maricopa County Superior Court case no. DR1998-013638 Respondent and Mr Yount signed a Stipulation for Withdrawal of Counsel on February 11, 2005 The Court signed the order granting withdrawal on February 14, 2005, and it was filed on February 17, 2005 Respondent did not properly notify the Court or opposing counsel of his suspension Respondent did not notify his client

120 *In re Mann v Apps*, Maricopa County Superior Court case no DR2000-094733 On January 18, 2005, Respondent appeared with his client Mr Apps at a review hearing Although Respondent did notify his client, Respondent did not inform the Court or opposing counsel of the effective date of his suspension On March 7, 2005, Respondent

filed a stipulated Motion for Withdrawal that he signed on or about March 2, 2005  
Respondent did not properly notify the Court or opposing counsel of his suspension

121 *In re Marriage of Smith*, Maricopa County Superior Court case no DR2000-018555 As  
of September 20, 2005, Respondent was still identified as the petitioner's (Mr Smith)  
attorney of record An April 20, 2005, minute entry indicates that neither Mr Smith nor  
Respondent were present for the scheduled status conference The Court placed a phone  
call to Respondent's telephone and was able only to reach an answering machine The  
Court left a message inquiring into Respondent's failure to appear The Court then set an  
evidentiary hearing date for July 27, 2005 The Court's July 27, 2005, Evidentiary  
Hearing minute entry states that neither Mr Smith nor Respondent were present  
Respondent did not timely advise the client, the court or opposing counsel of his  
suspension

122 *In re Galardi v Keough*, Maricopa County Superior Court case no DR1998-013994  
Minute entries dated April 26 and 27, 2005, shows Norman Katz as attorney of record for  
Respondent's client, Mr Keough However, Mr Katz did not file his notice of  
appearance in the matter until April 25, 2005, one day before a scheduled Evidentiary  
Hearing although Respondent had notice since November 23, 2004 Although  
Respondent did notify the client of his suspension, he did not do so timely  
Respondent did not properly notify the Court or opposing counsel of his suspension

123 *In re the Marriage of Hamilton*, Maricopa County Superior Court case no FN2004-  
002345 A review of the Court's minute entries filed between February 8, 2005, and  
August 12, 2005, indicates that Respondent remained as the attorney of record throughout

the proceedings. Although Respondent did notify his client and opposing counsel, Respondent failed to notify the Court of his suspension.

124 In criminal matter *State v. Lawrence*,<sup>1</sup> Adam Driggs is, at times, identified as “appearing for Robert Horton Green, Jr.” The Court however, continues to identify Respondent as the defense attorney as no substitution of counsel was ever filed. In addition, in the State’s Request for Change of Setting, filed on June 21, 2005, Deputy County Attorney Armando Rodriguez informed the Court that, “Defense counsel anticipated a change of plea. Defense counsel, after speaking with defendant, anticipates that plea agreement to be entered. Defense counsel was contacted and has no objection to the changing of the setting. Defense counsel can be reached at 480-228-4174.” The number is Respondent’s telephone number.

125 Deputy County Attorney Rodriguez remembers discussing the case with Respondent during the initial pre-trial conference in January 2005. Mr. Rodriguez recalls that Respondent would attend the court dates, dressed casually, but that another attorney would actually appear before the judge. Mr. Rodriguez and Respondent would discuss the case and Mr. Rodriguez was under the impression that Respondent would have another attorney stand in for him before the judge on the court dates because of Respondent’s casual attire. Respondent never informed Mr. Rodriguez of his suspension.

126 On August 31, 2005, Mr. Rodriguez met with Respondent, the defendant, another attorney, and the bank witness/representative at the courthouse cafeteria and engaged in negotiations related to the amount of restitution. If this matter were to go to hearing, Mr.

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<sup>1</sup> *State v. Lawrence* is the same criminal case referenced in paragraphs 65 and 66.

Rodriguez would testify that Respondent was directly involved in negotiating the amount of restitution to be paid and was making recommendations

**COUNT TEN (File No. 06-0066/Ramirez)**

- 127 In August 2000, Francisco Ramirez (“Mr Ramirez”) purchased some land Four years later the Aldanas sued him in a quiet title action The Aldanas alleged that they had purchased the same property in December 1999
- 128 In the summer of 2004, Mr. Ramirez retained Respondent for \$2,500 00 to represent him in a quiet title action
- 129 Mr Ramirez paid the \$1,000 00 and then an additional \$600 00
- 130 Respondent received an open-ended extension to file the Answer Due to some misunderstanding on Mr Ramirez’s part, he was concerned and filed his own Answer
- 131 Mr Ramirez asked Respondent several times for a report of what he had done with the money Respondent told him not to worry that the case was proceeding Respondent did not provide an accounting
- 132 If the matter went to hearing, Respondent would testify that the amount paid by Mr Ramirez had been expended and he had requested the outstanding balance of the retainer
- 133 Eventually, the plaintiffs moved for summary judgment and Respondent filed a brief asking for additional time to respond to the motion based upon Mr. Ramirez’s representations that he had located the original seller of the property Respondent’s motion was granted
- 134 Mr Ramirez did not provide the information concerning the original seller Respondent thereafter failed to file a responsive pleading and the Court granted the Motion for Summary Judgment and entered judgment against Mr Ramirez that quieted title to the

land to the plaintiffs Mr Ramirez was also ordered to pay plaintiffs' attorney's fees in the amount of \$2,485 00

135 Mr Ramirez finally arranged a meeting with Respondent and informed Respondent that he had received a letter from the plaintiffs' attorney telling him to move the improvements and his property off the plaintiffs' land Respondent told Mr Ramirez he could do nothing more for him

136 Respondent did not advise Mr Ramirez that the case had been decided in the Plaintiffs' favor

**COUNT ELEVEN (File No. 06-1279/Lake)**

137 In June 2000, Dawn Lake ("Ms Lake") hired Respondent for representation relating to injuries she sustained in an automobile accident

138 In February 2003, Ms. Lake was deployed by the U S Army to Afghanistan where she remained for the next fourteen months

139 Respondent was to move to have Ms Lake's case transferred to the "inactive" calendar during her deployment Respondent did not take the appropriate action and Ms. Lake's case was ultimately dismissed for lack of prosecution

140 When Ms Lake returned from duty in March 2004, she learned that her case had been dismissed

141 Respondent filed a Motion to Reinstate Ms Lake's case and the motion was granted Thereafter, Ms Lake retained alternate counsel

142 Although Respondent believes that he adequately communicated with Ms Lake regarding the status of her case and the various issues involved with her case, Respondent

admits that he was not diligent in prosecuting her claims and allowed at one point for the case to be dismissed

### CONCLUSIONS OF LAW

143 The Hearing Officer finds that Respondent's conduct resulted in violations of Rule 42

ER 1 2 Scope of Representation

ER 1 3 Diligence

ER 1 4 Communication

ER 1 5 Fees

ER 1 8 Conflict of Interest

ER 1 15 Safekeeping of Property

ER 1 16 Declining Representation

ER 3 2 Expediting Litigation

ER 5 5 Unauthorized Practice of Law

ER 8 4(c) and (d) Misconduct

As well as Supreme Court Rule 31(b) Unauthorized Practice of Law, and 72(a) Notice to Clients, Adverse Parties and Other Counsel

### ABA STANDARDS

144 The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying these factors to situations where lawyers have engaged in various types of misconduct *Standard 1 3, Commentary* The *Standards* provide guidance with respect to an appropriate sanction in this matter The Supreme Court and Disciplinary Commission consider the *Standards* a suitable guideline *In re Peasley*, 208 Ariz 27, 33, 35, 90 P 3d 764, 770, 772 (2004), *In*

*re Rivkind*, 164 Ariz 154, 157, 791 P 2d 1037, 1040 (1990), *In re Kaplan*, 179 Ariz 175, 177, 877 P 2d 274, 276 (1994)

145 ABA *Standard 3 0* provides that four criteria should be considered (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 factors

146. Given the facts of this case, the Hearing Officer considered *Standard 4 0* (Violations of Duties Owed to Clients) and *Standard 7 0* (Violations of Other Duties Owed as a Professional)

147 A 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 *Standard 4 0*

148 *Standard 4 4* (Lack of Diligence) provides Absent aggravating or mitigating circumstances, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client See *Standard 4 42*

149 Suspension is also appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system See *Standard 7.2*.

150 Based upon the facts in this case, the presumptive sanction with regard to the most serious admission of misconduct under *Standards 4 0* and *7 0* is suspension

151 To determine the applicability of the *Standards* in this case, the factors listed in the theoretical framework must be considered.

152 **A) The duty violated**

As described herein, Respondent violated his duties to his clients and his duties owed as a professional. Respondent failed to act with reasonable diligence and promptness in representing his clients, failed to adequately communicate with his clients, and failed to comply with his obligations pursuant to Rule 72, Ariz R Sup Ct, specifically that he did not notify each and every client, adverse party and/or opposing counsel and court of his 60-day suspension. Further Respondent engaged in the unauthorized practice of law. Failing to notice all required parties/entities of his suspension, holding himself out as a lawyer authorized to practice law and engaging in the unauthorized practice of law was dishonest conduct. The Hearing Officer finds that Respondent violated his duty to his clients and to the profession.

153 **B) The lawyer's mental state**

The Hearing Officer finds that Respondent's conduct was knowing.

154 **C) The extent of the actual or potential injury**

In holding himself out as a lawyer and in engaging in the unauthorized practice of law, Respondent's conduct caused harm to the profession. In failing to diligently represent his clients and adequately communicate with his clients, Respondent caused actual harm and potential for injury.

155 **D) The aggravating and mitigating circumstances**

The Hearing Officer finds the following aggravating and mitigating factors

**Aggravating Factors**

- 156 *Standard 9 22(a)* Prior disciplinary offenses In SB-04-0416-D, Respondent admitted violating ER 1 2, ER 1 3, ER 1 4, ER 1 15(b), ER 1 16(d), ER 3 2 and ER 8 4(d), and Rules 43, 44 and 53(f), Ariz R Sup Ct On February 10, 2005, Respondent was suspended for sixty days with two years probation upon reinstatement and was ordered to pay restitution and costs Respondent has paid the disciplinary costs and the restitution ordered in the previous disciplinary matter
- 157 *Standard 9 22(b)* Dishonest or selfish motive Respondent's conduct in failing to comply with Rule 72, Ariz R Sup Ct , and in engaging in the unauthorized practice of law was motivated by self-interest in preserving as many client relationships as possible and reducing the potential for greater financial hardship
- 158 *Standard 9.22(c)* Pattern of misconduct. As in the case resulting in prior discipline, Respondent demonstrated a pattern of failing to diligently pursue his clients' cases, failing to communicate with his clients, and failing to timely provide an accounting upon the client's request
- 159 *Standard 9 22(d)* Multiple offenses Respondent's conduct involved multiple clients/cases and evidenced a varied number of violations.
- 160 *Standard 9 22(i)* Substantial experience in the practice of law Respondent was admitted to the practice of law in 1993 Coupled with his prior discipline, Respondent is well aware of his obligations and duties to his clients and to the profession This awareness should only increase with the years a lawyer has been engaged in practice

**Mitigating Factors**

The parties agree that the following factors should be considered in mitigation

- 161 *Standard 9 32(c)* Personal and emotional problems Respondent has provided a letter that was attached as Exhibit A to the Joint Memorandum That letter references Respondent's personal and emotional problems during the relevant time periods Also included are supporting documents
- 162 *Standard 9 32(e)* Full and free disclosure Respondent has been forthcoming in his responses and has worked with the State Bar in reaching the resolution set forth in this agreement
- 163 *Standard 9 32(l)* Remorse Respondent has expressed his remorse throughout these proceedings Respondent has acknowledged his misconduct and is taking responsibility for his actions See the Respondent's letter attached as Exhibit A to the Joint Memorandum
- 164 *Standard 9 32(g)* Character and reputation During his practice, Respondent enjoyed a good reputation in the legal community Exhibit B to the Joint Memorandum contains letters in support of Respondent's good character and reputation
- 165 *Standard 9 32(k)* Imposition of other penalties or sanctions Because there were open discipline files at the time Respondent applied for reinstatement, the State Bar opposed his reinstatement The parties agreed that the conduct detailed herein warrants a suspension of two years The actual time period Respondent will have been suspended however, exceeds that time period Therefore, Respondent will be suspended in excess of two years
- 166 The Hearing Officer finds that the mitigating and aggravating factors do not cause a departure from the presumptive sanction of suspension

## PROPORTIONALITY REVIEW

- 167 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*, at 35, 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.* at 41, 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 cases below demonstrate that a two-year retroactive suspension and probation is the appropriate discipline in this case.
- 168 In *In re Ruiz*, SB-98-0071-D (1999), Ruiz was suspended for a period of two years retroactively to May 15, 1997, the date that he had been administratively suspended for failure to pay bar dues. In the agreement for discipline by consent, Ruiz conditionally admitted to violations of ER 1.1, ER 1.2, ER 1.3, ER 1.4, ER 1.5, ER 1.15, ER 1.16, ER 3.3, ER 3.4(c), ER 5.5, ER 8.1(b), ER 8.4 and Rule 63,<sup>2</sup> Ariz R Sup Ct. Considered in aggravation, Ruiz had previously been informally reprimanded and the multiple offenses demonstrated a pattern of misconduct. The Commission considered however, that Ruiz had no dishonest or selfish motive, the prior sanction was remote, he fully cooperated with the proceedings and his conduct was largely the product of physical, personal and emotional problems. The Disciplinary Commission concluded that the two-year retroactive period of suspension was appropriate under those circumstances.
- 169 In *In re Turley*, SB04-0089-D (2004), Turley was suspended from the practice of law for two years, and placed on probation for a period of two years following his reinstatement

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<sup>2</sup> Currently Rule 72(a), Ariz R Sup Ct, effective December 1, 2003

In May 2002, Turley was suspended for a period of six months and one day for violations of ER 1.15 and Rules 43 and 44, Ariz R Sup Ct. The period of suspension was then increased to one year in March 2003, due to Turley's failure to fulfill the terms of probation. Turley entered into an agreement for discipline by consent and conditionally admitted to engaging in the practice of law while suspended, and holding himself out or otherwise representing himself to be an Arizona attorney while suspended in Arizona and without having been reinstated to the practice of law. Turley also admitted to failing to communicate with a client, failing to keep her informed about the status of the case and failing to promptly comply with reasonable request for information. In addition, Turley failed to explain the matter to the client to the extent necessary to permit the client to make informed decisions regarding the representation, failed to expedite the litigation, failed to act with reasonable diligence in pursuing the lawsuit, refused to abide by the client's objectives of representation, and failed to release the case file to the client in a reasonable time after the request was made. Turley conditionally admitted to violations of ER 1.2, ER 1.3, ER 1.4, ER 1.16(a) and (d), ER 3.2, ER 5.5, ER 7.1(a), ER 7.5(a), ER 8.4(c) and (d), as well as Rules 31(b), 33(c), 53(a) and (c) and 63(d) and (c),<sup>3</sup> Ariz R Sup Ct. In aggravation, Turley and the State Bar agreed that three factors were present: 9-22(a) prior disciplinary offenses, 9-22(d) multiple offenses, and 9-22(i) substantial experience in the practice of law. The State Bar and Turley had suggested four mitigating factors: 9-32(b) absence of dishonest or selfish motive, 9-32(c) personal or emotional problems, 9-32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings, and 9-32(l) remorse. Both the Hearing Officer

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<sup>3</sup> Currently Rules 72(e) and (d), respectively, Ariz R Sup Ct, effective December 1, 2003

and the Disciplinary Commission agreed that the record was insufficient to consider personal or emotional problems and remorse, and the Commission found that the outcome of the disposition was not affected by the absence of the two factors. After considering the proportionality presented, the Hearing Officer concluded that, because Respondent's conduct did not involve dishonesty and he cooperated with the State Bar's investigation, a two-year period of suspension was the appropriate sanction

170 In *In re Manning*, 180 Ariz 45, 881 P 2d 1150 (1994), the Disciplinary Commission agreed with the Hearing Officer's findings that Manning's conduct violated ER 1 3, ER, 1 4, ER 3 2, ER 5 5, ER 8 4(c), and Rules 51(f), (h) and (i),<sup>4</sup> Ariz R Sup Ct In addition, the Commission agreed that Respondent had also violated Rule 63(a),<sup>5</sup> Ariz R Sup Ct Manning had been suspended in April 1991 for failing to pay his bar dues and failing to comply with mandatory continuing legal education requirements Manning was fully reinstated in August 1993, following his compliance with the dues requirement Manning's misconduct occurred, in part, during his period of suspension The Disciplinary Commission found that Manning knowingly continued to represent clients while suspended The Commission also found that he deceived his clients by failing to inform them of his suspension, and that he accepted new clients after being placed on suspension The Disciplinary Commission determined that when viewed individually Manning's conduct indicated suspension or disbarment to be the appropriate sanction In aggravation, the Commission found that Manning had a dishonest or selfish motive, had substantial experience in the practice of law, having practiced for nearly ten years, and

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<sup>4</sup> Currently Rules 53(f) and (d), Ariz R Sup Ct , effective December 1, 2003

<sup>5</sup> Currently Rule 72(a), Ariz R Sup Ct , effective December 1, 2003

that the multiple offenses involved created a pattern of misconduct. In mitigation, Manning exhibited remorse, and once he became aware of the proceedings, was totally cooperative and made full and free disclosure. Manning had also testified to additional mitigating factors, including personal and emotional problems at the time the misconduct occurred. However, because the evidence was vague it was not considered in mitigation. The Disciplinary Commission found that, although practicing law while on suspension, was in itself egregious conduct, a four-year suspension was appropriate in Manning's case.

### CONCLUSIONS

171 The cases cited above demonstrate a broad range of sanctions based on very specific facts. This Hearing Officer read the Respondent's file prior to the start of the hearing on the Agreement and, as stated above, had a great deal of skepticism about Respondent. His pre-suspension conduct was a continuation of the conduct that got him suspended in the first place. The conduct was not only offensive to the clients, but also to the profession. When Respondent's post-suspension conduct is factored in, it is just fuel to the fire.

172 Without an awareness of how Respondent got himself into this situation, however, the whole story is not known. (See Respondent's letter attached as Exhibit A to the Joint Memorandum.) As the letter points out, the infractions of a fellow attorney had much to do with pushing Respondent down a path of inappropriate behavior. Were it not for the actions of his former partner in digging such a deep hole for Respondent to climb out of, one has to wonder how things might have turned out differently. Still Respondent accepts his role in the current situation.

173 The Hearing Officer found Respondent to have learned a lot over the past two years of suspension, and has a much greater insight into how the pressures of a law practice can quickly lead one to take on too many cases, render poor service to the clients and do great harm to the profession

174 The Hearing Officer found Respondent to be contrite, remorseful, aware of how he created this mess and very committed to making sure that he does not make the same mistakes in the future

175 Given the factors present in this case, the case law supports the parties agreed upon sanction of a two-year suspension, and the Hearing Officer concurs

#### **RECOMMENDATION**

176 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)

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

178 Upon consideration of the facts, the application of the *Standards*, including aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer recommends that the agreement of the parties to the following be approved

- 1 Two-year suspension, retroactive to August 31, 2005
- 2 Two years of probation upon reinstatement
- 3 Fee arbitration where appropriate with any client disputes
- 4 Respondent pay all costs and expenses

**DATED** this 19<sup>th</sup> day of November, 2007

H Jeffrey Coker  
H Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk  
this 19<sup>th</sup> day of November, 2007

Copy of the foregoing mailed  
this 19<sup>th</sup> day of November, 2007, to

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by *C. S. D.*