

**FILED**

SEP 07 2007

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

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *[Signature]*

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2			
3	IN THE MATTER OF A	)	No 06-1509
4	MEMBER OF THE	)	
5	STATE BAR OF ARIZONA,	)	
6	<b>WILLIAM WAHL,</b>	)	<b>HEARING OFFICER'S REPORT</b>
7	<b>Member No. 019356</b>	)	(Assigned to Hearing Officer 8Z,
8	Respondent	)	Christopher D Thomas)

**I.     INTRODUCTION.**

Respondent William Wahl is a member of the State Bar of Arizona whom the State Bar alleges knowingly engaged in the unauthorized practice of law, engaged in conduct involving dishonesty, fraud, misrepresentation or deceit, failed to cooperate with a disciplinary proceeding, and engaged in conduct prejudicial to the administration of justice. The Bar's allegations arise out of Respondent's continued practice of law during a fourteen-month period during which he was administratively suspended for failure to comply with the State Bar's mandatory continuing legal education requirement. Respondent did not respond to the Bar's complaint, filed on February 28, 2007, and default was entered against him on April 24, 2007.

**II.    PROCEDURAL HISTORY.**

The State Bar filed its Complaint herein on February 28, 2007. Complaint, No 06-1509, dated February 28, 2007. The Complaint was served on Respondent by certified restricted mail and regular first class mail as provided for in the Arizona Rules of the Supreme Court. After Respondent failed to file an answer or otherwise appear, default was entered in this matter on April 24, 2007. Notice of Default, No 06-1509, dated April 4, 2007, Entry of Default, No 06-

1 1509, dated April 24, 2007 The State Bar requested permission to either appear for an  
2 Aggravation/Mitigation Hearing, or to file a brief regarding the appropriate sanction The  
3 Hearing Officer granted the motion, ordering a brief to be filed no later than June 7, 2007

4 **III. FACTS.**

5 Because of Respondent's default, the facts set forth in the State Bar's Complaint are  
6 deemed admitted by Respondent

7 1. Respondent is an attorney licensed to practice law in the State of Arizona, having  
8 been admitted to practice in Arizona on January 12, 1999 Complaint, ¶ 1

9 2. Respondent was placed on administrative suspension on March 25, 2005, for  
10 failure to comply with the Mandatory Continuing Legal Education requirement Respondent  
11 was notified of the suspension by letter dated April 12, 2005 Complaint, ¶ 2

12 3 Respondent remained suspended until he was reinstated on or about June 9, 2006  
13 Complaint, ¶ 3

14 4 In or about May of 2006, attorney Eugene Petrovits was assigned to act as  
15 arbitrator in *Salesforce Com, Inc v FPR II, LLC*, No CV 2006-003048 in the Superior Court of  
16 the State of Arizona, Maricopa County Respondent was listed as attorney of record for the  
17 defendant, filing a pleading on behalf of his client on or about March 8, 2006 Complaint, ¶¶ 4-6

18 5 After the arbitrator contacted the State Bar to confirm the attorneys' mailing  
19 addresses, he learned that Respondent had been suspended from the practice of law Complaint, ¶  
20 8

21 6 By letter dated June 6, 2006, the arbitrator informed the parties of the suspension,  
22 and requested that Respondent respond to the information by June 26, 2006 Respondent did not  
23 respond to the arbitrator, but did seek reinstatement from the suspension Complaint, ¶ 9-10  
24  
25

1           7.       During the period of suspension, Respondent also represented clients in other cases,  
2 including a probate matter, PB 1998-00042, in which Respondent appeared in court as attorney for  
3 the estate on or about October 25, 2005. Complaint, ¶ 11

4           8.       By letter dated October 3, 2006, Respondent was informed by the State Bar of the  
5 charges in this disciplinary proceeding, and asked to submit a written response within 20 days.  
6 Respondent failed to submit a response by that date. Complaint, ¶ 12

7           9       By letter dated November 13, 2006, Respondent was again asked to submit a  
8 written response to the allegations within 10 days. Respondent failed to submit a response by that  
9 date. Complaint, ¶ 13

10  
11                   **IV. CONCLUSIONS OF LAW.**

12       The facts as deemed admitted above establish that Respondent violated the following  
13 Rules of Professional Conduct: Rule 42, Ariz R. Sup Ct., specifically, ER 5.5, ER  
14 8.1(b), ER 8.4(c) and (d), and Rule 53(f), Ariz R. Sup Ct.

15  
16                   **V. SANCTION.**

17       Based on the facts of the case, the *ABA Standards for Imposing Lawyer Sanctions*,  
18 and Arizona case law, the State Bar has recommended that Respondent be suspended from  
19 the practice of law for a period of six months and one day and, further, assessed the costs  
20 and expenses of this disciplinary matter.

21                   **I.     ABA Standards**

22       The Supreme Court and the Disciplinary Commission consistently rely upon the *Standards*  
23 to determine appropriate sanctions for attorney discipline. See *In re Clark*, 207 Ariz. 414, 87 P.3d  
24 827 (2004). The *Standards* are intended to promote consistency in sanctions by identifying  
25 relevant factors and then applying those factors to situations in which lawyers have engaged in

1 not to punish the lawyer, but to set a standard by which other lawyers may be deterred from such  
2 conduct while protecting the interests of the public and the profession *In re Kersting*, 151 Ariz  
3 171, 726 P 2d 587 (1986) The American Bar Association Standards for Imposing Lawyer  
4 Sanctions are a “useful tool in determining the proper sanction ” *In re Cardenas*, 164 Ariz 149,  
5 791 P 2d 95 (1990)

6 In determining an appropriate sanction, the court and the Disciplinary Commission  
7 consider the duty violated, the lawyer’s mental state, the presence or absence of actual or  
8 potential injury, and the existence of aggravating and mitigating factors *In re Tarletz*, 163 Ariz  
9 548, 554, 789 P 2d 1049, 1055 (1990), *Standard 3 0*

10 In this matter, it is appropriate to consider *Standards 6 0* (Violations of Duties Owed to  
11 the Legal System) and *7 0* (Violations of Duties Owed as a Professional)

12  
13 **6.1 False Statements, Fraud, and Misrepresentation**

14 6 12 Suspension is generally appropriate when a lawyer knows  
15 that false statements or documents are being submitted to the  
16 court or that material information is improperly being withheld,  
17 and takes no remedial action, and causes injury or potential injury  
to a party to the legal proceeding, or causes an adverse or  
potentially adverse defect on the legal proceeding

18 **7.0 Violations of Duties Owed as a Professional**

19 7 2 Suspension is generally appropriate when a lawyer  
20 knowingly engages in conduct that is a violation of a duty owed  
21 as a professional and causes injury or potential injury to a client,  
the public, or the legal system

22 **A. The Duty Violated**

23 The *Standards* identify four distinct categories in which a lawyer has a specific duty Those  
24 duties are to his client, the general public, the legal system, and to the profession By knowingly  
25 engaging in the unauthorized practice of law, Respondent violated his duties to each

1 Respondent's continued representation violated his duties to his clients and the court in that his  
2 appearance as an attorney was misleading, at least by omission

3 Respondent's lack of candor regarding his suspension also constituted a violation of  
4 Respondent's duty to the general public "Members of the public are entitled to be able to trust  
5 lawyers to protect their property, liberty and their lives The community expects lawyers to  
6 exhibit the highest standards of honesty and integrity and lawyers have a duty not to engage in  
7 conduct involving dishonesty " *ABA Standards* pg. 5

8 Finally, lawyers have a duty as a professional "These duties do not concern the lawyer's  
9 basic responsibilities in representing clients, serving as an officer of the court, or maintaining  
10 the public trust, but include other duties relating to the profession" *ABA Standards*, pg 5  
11 Engaging in or assisting in the unauthorized practice of law is a violation of that duty

12  
13 **B. The Lawyer's Mental State**

14 Respondent's conduct was unquestionably knowing Respondent was provided notice  
15 from the State Bar that his failure to comply with MCLE requirements would result in his  
16 suspension Further, Respondent received notice that he was in fact suspended from practice  
17 Nevertheless, Respondent continued to represent clients Nothing in the record suggests that  
18 Respondent's conduct was anything other than knowing

19  
20 **a. The Actual or Potential Harm Caused by Respondent's Conduct**

21 There are no facts in this record suggesting that Respondent's conduct caused actual harm  
22 to any party or proceeding The State Bar suggests that Respondent's continued practice of law  
23 during his suspension created potential injury to Respondent's clients, the profession, and the court  
24 system is inherent in continuing to practice law while suspended The Hearing Officer concurs that

25

1 Respondent's continuation of the practice of law while summarily suspended exposed his  
2 clients, the profession, and the court system to potential injury<sup>1</sup>

3 **C. The aggravating and mitigating circumstances**

4 The presumptive sanction for Respondent's conduct in this case is suspension. The  
5 following are factors that should be considered in aggravation of the presumptive sanction

6 *Standard 9 22(d) – Multiple offenses* Respondent knowingly practiced law in multiple  
7 cases while summarily suspended from the practice of law. In addition, Respondent failed to  
8 respond to the State Bar's screening investigation in this matter.

9 *Standard 9 22(e) – Bad faith obstruction of the disciplinary proceeding by intentionally*  
10 *failing to comply with rules or orders of the disciplinary agency* As stated above, Respondent  
11 failed to comply with the State Bar's requirement that he submit a written response to our  
12 screening investigation.

13 *Standard 9 22(i) – Substantial experience in the practice of law* Respondent has been  
14 practicing law in Arizona since December 1999, negating any possibility that Respondent could  
15 have been mistaken about his obligations and responsibilities.

16 The record suggests that one factor should be considered as mitigating

17 *Standard 9 32(a) – Absence of a prior disciplinary record* Respondent has been  
18 practicing law in Arizona since 1999. During that time, Respondent has not previously been the  
19 subject of disciplinary proceedings.  
20

21 **VI. PROPORTIONALITY ANALYSIS.**

22 To have an effective system of professional sanctions, there must be internal  
23 consistency, and it is appropriate to examine sanctions imposed in cases that are factually  
24 similar. *In re Peasley*, 208 Ariz. 27, 35, ¶ 33, 90 P.3d 764, 772 (App. 2004). However, the  
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<sup>1</sup> Standards 6.1 and 7.0 require only that the lawyer's conduct result in "potential injury"

1 discipline in each case must be tailored to the individual case, as neither perfection nor absolute  
2 uniformity can be achieved. *Id.* at 41, ¶ 61, 90 P 3d at 778 (citing *In re Alcorn*, 202 Ariz 62, 76,  
3 41 P 3d 600, 614 (2002) and *In re Wines*, 135 Ariz 203, 207, 660 P 2d 454, 458 (1983))

4 In this case, the most serious instance of misconduct involves Respondent's continued  
5 practice of law in Arizona while summarily suspended. The State Bar proposes that the  
6 following cases are relevant to discipline of Respondent.

7 In *In re Rhees*, SB-01-0161-D (2001), attorney Rhees remained counsel of record for  
8 eighteen clients after he had been suspended for failing to file his MCLE affidavit and payment  
9 of late fees pursuant to Rule 45, Ariz R Sup Ct. While under suspension, Rhees filed motions  
10 and pleadings on behalf of his clients, attended one hearing, and made representations to the  
11 court and clients about his MCLE affidavit. The Disciplinary Commission found that the  
12 *Standards* governing lack of candor towards the tribunal applied. Rhees knowingly violated his  
13 duty owed to his clients, the public, and the legal system by misrepresenting his ability to practice  
14 law and by practicing while suspended, causing actual or potential injury. There were two  
15 aggravating factors present in *Rhees*: multiple offenses and substantial experience in the practice  
16 of law. There were four mitigating factors present: absence of a prior disciplinary record,  
17 cooperation with the State Bar, mental disability, and remorse. The Disciplinary Commission  
18 gave weight to Rhees' mental disability and his probation requiring him to continue with  
19 treatment. Rhees received a four-month suspension.

20  
21 In *In re Allred*, SB-98-0049-D (1998), Allred continued to practice law while suspended  
22 for failure to comply with MCLE requirements. While suspended, Allred continued to have oral  
23 and written communication with opposing counsel and filed pleadings on behalf of a client.  
24 Further, after Allred had been suspended for nearly a year, she appeared at a hearing and  
25

1 erroneously told the judge that she had taken care of her suspension with the State Bar. She had  
2 not completed to the required MCLE requirements despite her assertions.

3 The *Standards* governing lack of candor to the tribunal applied in *Allred*. Allred  
4 knowingly violated her duty owed to her clients, the public and the legal system by  
5 misrepresenting her ability to practice law and by practicing while suspended causing actual or  
6 potential injury. There was one aggravating factor present in *Allred*: substantial experience in  
7 the practice of law. There were four mitigating factors present: personal or emotional problems,  
8 mental disability, no dishonest motive, and cooperation with the State Bar. Allred was  
9 suspended for six months and one day.

10  
11 In *In re Larriva*, SB-96-0020-D (1997), Larriva continued to practice law while  
12 suspended for failure to comply with MCLE requirements. Larriva failed to respond to the State  
13 Bar's requests for information during the investigation, and failed to answer the formal  
14 compliant. Larriva also had prior discipline. The Disciplinary Commission found three  
15 mitigating factors: lack of dishonest motive, cooperation with the State Bar (but only after  
16 formal proceedings were initiated), and alcoholism. However, the Disciplinary Commission  
17 found there was no causal link between Larriva's alcoholism and his conduct. There were three  
18 factors in aggravation present: substantial experience in the practice of law (thirty years), failure  
19 to respond to the State Bar, and prior discipline. The Disciplinary Commission found the final  
20 factor significant, in that Larriva received an informal reprimand in 1993 (four years earlier) for  
21 failing to cooperate in a State Bar investigation. For these reasons, the Disciplinary  
22 Commission recommended the imposition of a suspension of six months and one day.

23  
24 In *re Kalish*, SB-96-0013-D (March 1996), Kalish was summarily suspended on May 27,  
25 2004, for failure to fulfill his MCLE requirements. Although Kalish was fully aware that he was

1 suspended, he filed an answer in Pima County Justice Court on behalf of a client, filed  
2 additional pleadings, and appeared in Court on September 8, 1994, to stipulate to continue a trial  
3 date Kalish never notified his client of the suspension In aggravation, there was a pattern of  
4 misconduct and substantial experience In mitigation, the attorney had personal and emotional  
5 problems Kalish received a four-month suspension, was placed on probation to include MAP  
6 and additional CLE The terms of probation also included that if reinstated Kalish would  
7 participate in LOMAP  
8

9 In this case, Respondent knowingly practiced law in Arizona in violation of the  
10 regulation of the legal profession, violated the Rules of Professional Conduct, and engaged in  
11 conduct that was prejudicial to the administration of justice

12 The State Bar argues that Respondent's conduct in this instant matter is most consistent  
13 with *Larriva*, warranting a suspension in excess of six months Respondent did not answer the  
14 underlying inquiry from the State Bar and has failed to participate in these proceedings Under  
15 the circumstances, argues the Bar, Respondent should be required to prove his fitness to practice  
16 prior to being reinstated The State Bar further argues that a term of probation should be  
17 imposed upon reinstatement, the length and terms of which to be decided at the time of  
18 reinstatement  
19

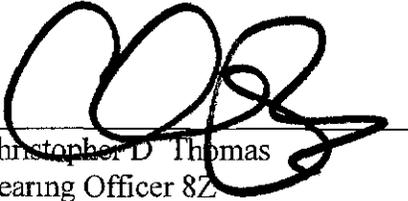
20 The Bar acknowledges there are other cases where attorneys who continued to practice  
21 while under suspension that resulted in censure, *see e g In re Gwilliam*, SB-03-0004-D (2003),  
22 *In re Rodgers*, SB-04-0136-D (2004) In those cases, the conduct involved negligent violations  
23 of the Rules of Professional Conduct and/or the cases involved significant mitigating factors that  
24 reduced to presumptive sanction from a suspension to a censure  
25

1 The hearing officer agrees that suspension, rather than censure, is the appropriate  
2 sanction. However, the hearing officer disagrees that Respondent's conduct most closely  
3 approximates that in *Larriva*. The *Kalish* case appears to provide a better precedent.

4 **VII. CONCLUSION**

5 For the foregoing reasons, the hearing officer recommends that Respondent be  
6 suspended for a period of four months, attend an additional 15 hours of continuing legal  
7 education, and pay all the costs and fees of this proceeding.

8 DATED this 17<sup>th</sup> day of September, 2007

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11  
12   
Christopher D. Thomas  
Hearing Officer 8Z

13 Original filed this 17<sup>th</sup> day  
14 of September, 2007, with

15 Disciplinary Clerk of the  
16 Supreme Court of Arizona  
17 1501 W Washington Street  
Phoenix, Arizona 85007

18 Copies of the foregoing mailed this 17<sup>th</sup> day  
19 of September, 2007 to

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1 Copy of the foregoing hand-delivered this  
2 ~~11~~ day of September, 2007, to

3 Lawyer Regulation Records Manager  
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5 by Sandra Renker

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