

1 reinstatement, completion of the State Bar's Professional Ethics course prior to
2 reinstatement, and costs of these disciplinary proceedings²

3 RESPECTFULLY SUBMITTED this 14th day of July, 2008

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6 Daisy Flores, Chair
7 Disciplinary Commission

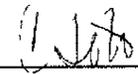
8 Original filed with the Disciplinary Clerk
9 this 14th day of July, 2008

10 Copy of the foregoing mailed
11 this 15th day of July, 2008, to

12 C Eileen Bond
13 Hearing Officer 7N
14 10785 West Cherry Creek Road
15 Dewey, AZ 85327

16 Kristopher C Childers
17 Respondent
18 1837 South Mesa Drive, Suite 1609
19 Mesa, AZ 85210

20 Maret Vessella
21 Deputy Chief Bar Counsel
22 State Bar of Arizona
23 4201 North 24th Street, Suite 200
24 Phoenix, AZ 85016-6288

25 by 

26 /mps

² A copy of the Hearing Officer's Report is attached as Exhibit A. The case offered for a proportionality analysis is *Matter of MacDaniel* instead of *McDonald*. See Report, p 6

Management Assistance Program ["LOMAP"] if he practiced as a sole practitioner or a member of a firm of less than three attorneys. When Respondent failed to comply with the terms of his conditional admission, an Order of Informal Reprimand, Probation and Costs was entered on April 23, 2007, in which the Probable Cause Panelist found that Respondent's conduct violated Rule 53(f) (failure to furnish information) and (g) (violation of a condition of admission), Ariz.R Sup Ct. Respondent was served by certified mail with a copy of the Order of Informal Reprimand, Probation and Costs and signed a receipt for that document on April 26, 2007. [See Complaint paragraphs 1 through 10]

- 4 As a condition of Respondent's probation, he was required to participate in the State Bar's Trust Account Program ["TAP"], to pay a TAP fee of \$175.00 within 30 days of signing the contract, and to submit quarterly reports to the State Bar commencing on September 10, 2007 and every three months thereafter – specifically June 11, 2007, September 10, 2007, December 10, 2007 and March 10, 2008. On May 16, 2007 Respondent signed a Probation Contract which included those requirements. [See Complaint paragraphs 11 through 17]
- 5 Respondent participated in the TAP assessment on May 23, 2007 but failed to submit a TAP report on June 11, 2007. The first report was not received by the State Bar until June 28, 2007. That report indicated a shortage in his Client Trust Account/ Administrative Funds in the amount of \$31.00. Respondent was instructed by letter dated July 3, 2007 to deposit personal funds into the Client Trust Account to cover the shortage and to cover any future bank charges. He was also reminded that his next TAP report was due on September 10, 2007. [See Complaint paragraphs 18 through 35]

6. Respondent failed to respond to the State Bar correspondence, failed to file a TAP report on September 10, 2007 and December 10, 2007 and failed to make the \$175.00 TAP program payment [See Complaint paragraphs 35 through 39]
7. A Notice of Noncompliance with the Order of Informal Reprimand, Probation and Costs and Probation Contract was issued by the Probable Cause Panelist on November 8, 2007 and served on Respondent on that date. An Order to Show Cause by Respondent should not be found in violation of the Order was filed on November 12, 2007 and served on Respondent the following day to respond. Respondent failed to respond within the fifteen days provided in the Order or at any time thereafter. [See Complaint paragraphs 40 through 45]
8. This Hearing Officer finds by clear and convincing evidence that Respondent violated the Rules of Professional Conduct as follows: Respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority, he knowingly violated conditions of his probation, and he knowingly failed to furnish information to or respond promptly to inquiries and requests from Bar counsel for information relevant to matters under investigation concerning his conduct.

CONCLUSIONS OF LAW

9. The Hearing Office concludes that Respondent violated Rule 42, Ariz R Sup Ct specifically ER 8 1(b) and Rule 53(e) and (f) Ariz R Sup Ct.

ABA STANDARDS

Our Supreme Court has determined that the American Bar Association Standards for Imposing Lawyer Sanctions ["ABA Standards"] are a useful tool in determining the proper sanction. *In re Cardenas*, 164 Ariz 149, 791 P 2d 95 (1990). The ultimate sanction imposed

should be consistent with the most serious misconduct. In re Redeker, 177 Ariz 305, 868 P 2d 318 (1994)

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, (4) the existence of aggravating or mitigating factors. The Hearing Officer concludes that the Respondent's actions and inactions in failing to comply with Orders and agreements implicate *Standard 7.0*

Standard 7.2 provides

“Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system ”

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The Duty Violated

Respondent's duty to the legal system is most strongly violated by his total failure to comply with his own probation conditions, and to respond to the State Bar's efforts to elicit compliance. He basically thumbed his nose at the disciplinary process – behavior which calls the profession and the principle of self governance into disrepute.

He totally ignored the relatively simple requirements of the probation contract to which he had previously agreed and totally ignored the assistance repeatedly offered by the State Bar to gain his compliance. Respondent then refused to fulfill his professional obligation to cooperate with the State Bar's investigation his non-compliance.

State Of Mind

There is no other reasonable conclusion than that Respondent's applicable mental state was knowing

Actual or Potential Damages

Although there was no evidence that an individual client or member of the public suffered any injury because of Respondent's behavior, the legal system itself has certainly suffered injury

Aggravating and Mitigating Factors

The Hearing Officer considered aggravating and mitigating factors in this case, pursuant to *Standards 9.22* and *9.32* respectively

Aggravating Factors

Standard 9.22(a) Prior Disciplinary Offenses At the time of this action, Respondent was on probation as a result of his prior noncompliance with his admission conditions

Standard 9.22(c) A Pattern of Misconduct Respondent repeatedly failed to comply with his probation conditions

Standard 9.22(e) Bad Faith Obstruction of the Disciplinary Proceeding Respondent repeatedly failed to respond to communication from the Bar regarding his non-compliance.

The Bar argues that Respondent also *Standard 9.22(g)* by refusing to acknowledge the wrongfulness of his actions This Hearing Officer does not agree with that proposition

Respondent did not refuse to acknowledge anything He simply failed to respond, which is encompassed in *Standard 9.22 (e)*

Mitigating Factors

The Hearing Officer declines to find the only possible mitigating factor, that of Respondent's inexperience in the practice of law, because Respondent's inexperience is not in any way

connected to these violations. It is not that Respondent didn't know what to do, he was specifically told what to do and willfully failed to do it.

PROPORTIONALITY REVIEW

The Supreme Court has held that in order to achieve the purposes of discipline and proportionality when imposing discipline, the discipline in each situation must be tailored to the individual facts of the case. *In Re Wines*, 135 Ariz 203 660 P 2d 454 (1983). In *In Re McDonald*, SB-05-0134-D (2005), the lawyer was suspended for six months and one day. The lawyer failed to respond to bar inquiries on multiple bar complaints. The lawyer also failed to stay in contact with his clients and keep them informed about their respective cases. There were seven aggravating factors, including a pattern of misconduct, bad-faith obstruction of the proceedings, and substantial experience. The Hearing Officer also found seven mitigating factors, including personal problems and mental disability for a history of psychological problems, as well as the hospitalization of the lawyer following his roommate's suicide. The lawyer had no alleged disciplinary history.

In *In re Brown*, 184 Ariz 480, 483, 910 P 2d 631, 634 (1996) the respondent was suspended for nine months for failure to comply with court orders. In *In re Gottesman*, SB 05-1489 (2005) the respondent was suspended for three years for failing to provide financial reports and failing to abide by the terms of his probation.

This Hearing Officer concludes that, given Respondent's total failure to comply with probation conditions, anything less than a substantial suspension would be meaningless. On the other hand, without evidence of actual harm to a client or significant actual harm to the public or profession, disbarment would be excessive.

RECOMMENDATION

1. Suspension for a period of six months and a day with compliance with Rule 72,
2. Probation for two years upon conclusion of the period of suspension with monitoring of office policies by LOMAP,
3. Completion of the Professional Ethics courts prior to reinstatement,
4. Payment of all costs incurred by the State Bar in connection with these proceedings

RESPECTFULLY SUBMITTED THIS 29TH DAY OF APRIL, 2008

C. Eileen Bond /MM
C EILEEN BOND
HEARING OFFICER 7N

Original filed with the Disciplinary Clerk
this 2nd day of May, 2008

Copy of the foregoing mailed
this 2nd day of May, 2008, to

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by Neeta Manelkar