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SEP 08 2008

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

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IN THE MATTER OF A MEMBER)	Nos	06-1878, 07-0059, 07-0369
OF THE STATE BAR OF ARIZONA,)		
)		
DANIEL INSERRA,)		
Bar No. 017284)	DISCIPLINARY COMMISSION	
)	REPORT	
)		
RESPONDENT)		
_____)		

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on August 9, 2008, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the Hearing Officer's Report filed June 10, 2008, recommending a 60 day suspension, one year of probation with the State Bar's Law Office Management Assistance Program ("LOMAP"), Member Assistance Program ("MAP"), and costs¹ Respondent filed an objection and request for oral argument, but did not file an Opening Brief Respondent and counsel for the State Bar were present

Respondent argues that the recommended sanction is overly harsh Respondent maintains that he has made changes in his practice and currently only accepts criminal cases, thereby allowing him to manage his practice more effectively Respondent asserts that probation with a practice monitor is the appropriate sanction

The State Bar argues for acceptance of the Hearing Officer's findings of fact and conclusions of law but asserts that a two-year suspension is warranted based on case law,

¹ Restitution was not recommended in Count Two as the client did not timely provide documentation to support an amount See Report, p 18 ¶ 76.

1 application of the American Bar Association *Standards for Imposing Lawyer Discipline*,
2 and Respondent's prior similar misconduct

3 **Decision**

4 Having found no facts clearly erroneous, the seven members² of the Disciplinary
5 Commission unanimously recommend accepting and incorporating the Hearing Officer's
6 findings of fact and conclusions of law, but modify the recommend sanction to reflect a
7 one year suspension, one year of probation (LOMAP and MAP) upon reinstatement, and
8 costs of these disciplinary proceedings³

9 The Commission determined that a one-year suspension is proportional and more
10 appropriate for knowing misconduct involving lying to clients, misleading the court and
11 the failure to comply with court orders. The one-year probation period shall commence
12 upon the date of the signing of the probation contract by all parties. The terms of
13 probation are as follows

14 **Terms of Probation**

15
16 1 Within 30-days of reinstatement, Respondent shall contact the LOMAP
17 director and undergo a LOMAP audit. Respondent thereafter shall enter into a probation
18 contract based on recommendations made by the LOMAP director or designee, and
19 Respondent shall comply with those recommendations

20
21 2 Within 30-days of reinstatement, Respondent shall contact the MAP
22 director and submit to a MAP assessment. Respondent thereafter shall enter into a
23

24
25 ² One lawyer member seat remains vacant. Commissioners Belleau and Katzenberg did not
participate in these proceedings. Mark Sifferman, Esq., a hearing officer from Phoenix participated
as an ad hoc member

26 ³ A copy of the Hearing Officer's Report is attached as Exhibit A

probation contract based on recommendations made by the MAP director or designee, and

1 Respondent shall comply with those recommendations

2 3 In the event that Respondent fails to comply with any of the foregoing
3 conditions, and the State Bar receives information, bar counsel shall file with the imposing
4 entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz R Sup Ct The
5 Hearing Officer shall conduct a hearing within 30-days after receipt of said notice, to
6 determine whether the terms of probation have been violated and if an additional sanction
7 should be imposed In the event there is an allegation that any of these terms have been
8 violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by
9 clear and convincing evidence

10
11 RESPECTFULLY SUBMITTED this 8th day of September, 2008

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14 
15 Jeffrey Messing, Vice-Chair
Disciplinary Commission

16 Original filed with the Disciplinary Clerk
17 this 8th day of September, 2008

18 Copy of the foregoing mailed
19 this 8th day of September, 2008, to

20 Honorable H Jeffrey Coker
21 Hearing Officer 6R
22 P.O. Box 23578
23 Flagstaff, AZ 86002-0001

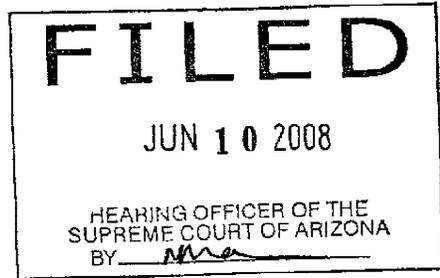
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25 Respondent
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**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**



IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
DANIEL INSERRA,)
Bar No. 017284)
)
)
RESPONDENT.)
_____)

File Nos. 06-1878, 07-0059, 07-0369

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

- 1 Probable cause was found in cause numbers 06-1878 (Hoffman) and 07-0059 (Addeo) on April 17, 2007, and in cause number 07-0369 (Pulido) on October 26, 2007. A Complaint was filed on October 29, 2007, which included these three counts. Service was thereafter accomplished by way of mail to Respondent at his address of record Respondent filed a six line answer to the Complaint on November 28, 2007 Subsequently, an Amended Complaint was filed on February 28, 2008, which added no new counts, but refined allegations in the three previously alleged counts

- 2 Because of the Amended Complaint, the original final hearing date of March 12, 2008, was vacated and, after requesting additional time from the Disciplinary Commission, reset to April 15, 2008 The final hearing was initiated and completed on April 15, 2008

FINDINGS OF FACT

- 3 At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on October 19, 1996.

COUNT ONE (File No.06-1878 Hoffman)

4. Respondent represented Mr. Shannon M. Hoffman, the petitioner, in contempt and child custody modification matters filed in Maricopa County Superior Court case number 2005-050475.
5. Tony Hoffman ("Ms. Hoffman") was the respondent in the contempt and child modification matters Respondent was aware that as of July 5, 2006, Ms. Hoffman represented herself in the custody matter (Joint Pre-hearing Statement [JPS] 2:12-16).¹
- 6 Respondent filed a Petition for Order to Show Cause Re Change of Custody and Contempt ("OSC Petition") on behalf of Mr Hoffman on or about October 11, 2006
7. Respondent was aware that Ms Hoffman's mailing address was 1440 E. Missouri Ave , Suite 115, Phoenix, AZ 85014. However, the OSC mailing certificate indicates that Respondent mailed a copy of the OSC petition to Ms. Hoffman on October 11, 2006, to the wrong address of 1140 E. Missouri Ave, Suite 115, Phoenix, AZ 85014 (JPS 2: 20-23).
8. Respondent had an obligation under the Arizona Rules of Family Law Procedure to serve a copy of the petition and all related documents, including the Order to Show Cause, upon Ms Hoffman.

¹ Referrals to the Joint Pre-hearing Statement are to stipulated facts

- 9 In reviewing the Superior Court website, Ms Hoffman became aware that Respondent had filed the OSC on October 11, 2006. Ms. Hoffman attempted to obtain a copy of the OSC petition from the Court in order to file a response, but was informed it would take several weeks for a copy to become available
- 10 Ms Hoffman contacted Respondent on several occasions to request that he provide her with a copy of the OSC petition Respondent failed to comply with Ms Hoffman's written and verbal requests (Tr 21 19-22.13).
- 11 On November 13, 2006, Ms. Hoffman informed the Court and the State Bar that Respondent had not provided her with a copy of the OSC petition or served her with the order to appear at the hearing scheduled for December 12, 2006.
12. As of November 30, 2006, Respondent had not yet served Ms. Hoffman with the OSC petition or the order to appear (JPS 3: 15-18)
13. Ms Hoffman, on November 30, 2006, filed a motion to continue the OSC, which the Court granted, continuing the hearing to December 28, 2006, and ordering Respondent to serve Ms Hoffman with the OSC petition
14. Respondent contends that he was not sure that the date set by the Court for the OSC would be used because he had a conflict with another criminal matter (Tr. 152 17-153 1). Respondent also contends that he was unaware that Ms Hoffman had not received the incorrectly addressed copy of the Petition for OSC, and after Ms Hoffman made threats that she would go to the Bar, Respondent did not feel it necessary to comply with her request for another copy (Tr. 98:1-99 3 & 153:2-6).

COUNT TWO (File No. 07-0059 Addeo)

15. Lisa Addeo ("Ms. Addeo") hired Respondent to represent her in a personal injury matter related to a car accident that occurred on February 21, 2003. On February 20, 2005, Respondent filed a complaint on Ms. Addeo's behalf alleging battery against the driver of the at fault vehicle (JPS 4:2-8)
16. In July 2005, the Court notified Respondent that the matter would be dismissed on January 17, 2006, unless a motion to set and certificate of readiness was filed. Respondent subsequently filed two motions to extend the time to serve the complaint. The last motion granted gave Respondent until September 6, 2005, to serve the defendant (JPS: 8-15).
17. On September 1, 2005, Respondent filed an Amended Complaint alleging negligence.
18. Respondent failed to respond to the insurance adjuster's repeated efforts to get Ms. Addeo's medical records (Tr. 74:10-78:20)
19. Due to lack of prosecution, the Court entered a Judgment of Dismissal on February 1, 2006, dismissing the case without prejudice (JPS 4 200 1-23). Respondent failed to notify Ms. Addeo that the case had been dismissed (Tr. 105:25-106 8 & 55:18)
20. Prior to and after the case was dismissed, Respondent told Ms. Addeo that the case was ongoing and that the insurance company was on the brink of a settlement. Respondent continued to assure Ms. Addeo as late as November 2006 that he was going to resolve the matter with the insurance company or that he

- would file a complaint with the Arizona Department of Insurance (Tr. 59:1-62.24).
21. Ms Addeo repeatedly tried to contact Respondent during the period that he represented her and Respondent many times would not respond to her (Tr 59:1-12)
- 22 In December 2006, after discovering that her complaint had been dismissed, Ms. Addeo retained new counsel, Jeffrey J. Hernandez ("Mr. Hernandez"), who shortly thereafter sent a letter of representation to Respondent and requested a complete copy of Ms. Addeo's case file. In spite of several requests, Respondent has yet to provide Mr Hernandez a complete copy of Ms Addeo's file (Tr 44 8-18).
- 23 Ms Addeo has been advised by the adjuster for the insurance company that the insurance company would not pay any money on the claim because the statute of limitations has expired
- 24 Respondent contends that the reason it took so long for him to get the medical records to the insurance adjuster was because Ms Addeo was still treating, and she had objections to the open ended nature of the medical release form that the insurance adjuster had submitted to Ms. Addeo (Tr. 99:18-100 4 & 159.1-16).
- 25 Respondent also contends that he could not find the at-fault driver and so could not get him served (103:23- 104 10) Because of the delay in getting the at fault driver served the case was dismissed, but Respondent felt that he could get the case reinstated once he got the driver served (Tr. 99:21-99:4).²

² Ms Addeo indicated at the hearing of this matter that she would provide a list of her out-of-pocket expenses after the hearing This Hearing Officer contacted Bar Counsel and Respondent well after the

COUNT THREE (File No. 07-369 Pulido)

- 26 By court order dated November 15, 2005, Respondent was substituted in as attorney of record for defendant Alfredo Pulido-Castillo [AKA Trujillo] (“Mr. Pulido”) in the criminal case of United States of America vs. Alfredo Pulido-Castillo, United States District Court, District of Arizona, case number CR 05-170-05-PHX-FJM
27. Mr Pulido entered a guilty plea on December 22, 2005, to count one of the indictment, and judgment was entered on September 27, 2006. In the plea agreement, Mr Pulido waived his right to appeal (JPS 5: 11-14) Respondent did not withdraw as attorney of record for Mr. Pulido after the judgment was entered
- 28 Despite the plea agreement, Mr. Pulido filed a notice of appeal with the United States Court of Appeals for the Ninth Circuit on May 9, 2006 Pursuant to Ninth Circuit Rule 4-1, Respondent was obligated to continue representing Mr. Pulido before the Ninth Circuit after the notice of appeal was filed, at least until new counsel is appointed (JPS 5 17-25). Respondent was not licensed to appear before the Ninth Circuit. Respondent acknowledged that he was still Mr Pulido’s attorney after the notice of appeal was filed by Mr. Pulido, but did nothing on Mr. Pulido’s behalf after the change of plea (Tr. 141:1-14)
- 29 In a letter to the Court dated July 17, 2006, Respondent advised the Court that on July 13, 2006, Mr. Pulido advised Respondent that he did not wish to proceed

hearing and inquired about Ms Addeo’s out of pocket expense summary Bar Counsel advised that Ms Addeo had been travelling but would get it filed This Hearing Officer waited until time to submit this Report had expired and still had not received the summary, so restitution cannot be set

with the appeal and that he, Respondent, would obtain written consent to dismiss the appeal from his client within two weeks (Ex. 58).

- 30 In fact, Respondent did not talk to Mr. Pulido (Tr. 131:3-11) rather, because Mr Pulido only speaks Spanish which Respondent does not, Respondent thinks that he talked to Mr Pulido's sister who, he says, agreed that the appeal should be abandoned (Tr. 131 12-18). Respondent contends that, as a result of the plea agreement, Mr. Pulido had no appeal rights (Tr 132:17- 133·2). About the time Respondent sent the letter to the Court about withdrawing the appeal, Mr. Pulido was transferred out of state to a Federal Corrections facility in North Carolina (Tr. 137 3-12). Respondent failed to notify the Court that Mr. Pulido had been moved and failed to subsequently provide the Court with the signed consent (JPS 6 2-8).
- 31 Respondent did not have Mr. Pulido's consent, nor was he given authority by Mr. Pulido, to contact the Court and tell it not to proceed with the appeal after the time that Mr. Pulido filed his appeal.
- 32 On September 1, 2006, and again on October 16, 2006, the United States Court of Appeals for the Ninth Circuit ordered Mr Pulido, represented by Respondent, to file a Motion for Voluntary Dismissal, or a Motion for Appointment of Counsel, or retain counsel and pay the filing and docketing fees (Ex. 40).
- 33 Respondent claims that he changed his mailing address about this time and he is not sure that he received all of the orders from the Federal Court (Tr. 139:7-22) Respondent did not file a notice of change of address with the Federal Court, but rather relied on the fact that his letter to the Court (Ex 58) had his new address listed at the top (139:23-140 9)

- 34 Neither Mr Pulido nor Respondent complied with these orders. The Court issued an order dated December 8, 2006, that required Respondent to show cause in writing within 14 days why the Court should not impose on Respondent monetary sanctions, not less than \$1,000, for failing to comply with the Court's rules and orders (Ex 40).
35. By order filed February 26, 2007, the Court imposed a sanction of \$1,000 on Respondent for failure to comply with the Court's rules and orders and ordered Respondent to pay the sanction within 21 days (Ex 43). A copy of the Court's February 26, 2007, order was sent to and was received by the State Bar of Arizona on March 2, 2007
- 36 The State Bar sent Respondent a letter concerning the Federal Court Order on March 14, 2007, (Ex. 45). In response Respondent advised the State Bar in a letter dated April 25, 2007, that if the Ninth Circuit wanted him to do something he would do it (Ex. 47). However, Respondent failed to comply with the Federal Court order and so, by order filed June 13, 2007, the Court ordered Respondent to comply with its February 26, 2007, order and pay the monetary sanction within 21 days (Ex 49)
37. After an exchange of letters in June and July, 2007, on September 18, 2007, the State Bar asked Respondent to provide, by September 24, 2007, documentation showing that he either paid the \$1,000 sanction, or that the Court vacated the order requiring him to pay the \$1,000 sanction Respondent claims that he did not respond because he had done neither (Tr 149:19-150 8).

38. On December 8, 2006, new counsel, Philip Hantel, was appointed for Mr. Pulido. Through Mr. Hantel, Mr. Pulido continued to pursue his appeal and did not dismiss it with his subsequent counsel. Mr. Pulido also filed a Petition claiming ineffective assistance of counsel by Respondent in the underlying criminal case.

39. Respondent had not, as of the date of the Hearing in this matter, paid the sanction ordered by the Federal Court because he claims that he does not have the money (Tr. 145:24-146:3).

CONCLUSIONS OF LAW

40. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz R Sup Ct. as follows:

41. Count One (Hoffman), ER 4:4(a) in purposely not giving Ms. Hoffman a copy of the Petition for Order to Show Cause after he had made the mistake of sending it to the wrong address. This caused a burden and worry to Ms. Hoffman about the contents of the Petition and that the OSC would take place without her having notice.

42. Count Two (Addeo), ER 1.1 competence; 1.2 abiding by the client's wishes, 1.3 diligence; 1.4 communication with client; 1.6(d) surrendering documents; 3.2 expediting litigation; 8.4(c) misrepresentation; and 8.4(d) conduct prejudicial to the administration of justice.

43. Count Three (Pulido), ER 1.2(a) abiding by client's wishes; 1.4 communication with client, 3.3 candor toward a tribunal, 3.4(c) disobeying an obligation to a tribunal, 8.4(c) misrepresentation, 8.4(d) conduct prejudicial to the administration of justice, and Rule 53(c) violating a rule of court.

ABA STANDARDS

44 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 and mitigating factors.

The Duty Violated

45 The Respondent violated his duty to both his clients and the profession as set forth above.

The Lawyer's Mental State

46 In Count One, Respondent's mental state was negligent in sending Ms. Hoffman's copy of the Petition for OSC to the wrong address. In thereafter refusing to provide Ms Hoffman with a copy of the Petition for OSC, Respondent acted knowingly.

47 In Count Two, Respondent's conduct was both negligent (in his knowledge of personal injury law) and intentional (in allowing the case to be dismissed without notifying his client, thereafter misleading his client, and not taking further action to protect his client's interests)

48 In Count Three, Respondent acted knowingly in misinforming the Court about his client's wishes, negligently in not filing a notice of change of address such that the Court's orders could reach the Respondent, and knowingly in not complying with the Federal Court's order once he was apprised of it

The Injury Caused

49. In Count One, Respondent caused Ms. Hoffman great worry about the substance of the allegations in the Petition and because of her fear that an OSC would take place without her being given adequate notice.
50. In Count Two, Respondent contributed to Ms. Addeo losing her personal injury claim as a result of the expiration of the statute of limitations. At the Hearing of this matter, Ms. Addeo also was visibly upset by Respondent's conduct (Tr 61-1-7).
51. In Count Three, Respondent's conduct prejudiced Mr. Pulido in that the issue of his representation and the appeal was not resolved sooner such that he could proceed with his post-conviction options. Respondent's conduct also caused injury because of his misrepresentation to the Court.

Aggravating and Mitigating Factors:

Aggravating Factors

52. *Standard 9.22(a), Prior Disciplinary Offenses.* On October 24, 2002, Respondent received a censure and two years probation in SB 02-0144-D (case numbers 00-1982 and 00-2433) which was a trust account matter for violating ER 1.15, and Rules 43 and 44. On August 23, 2005, Respondent received a censure and one year of probation in SB 05-0124-D for violating ER's 1.1, 1.2(a), 1.3, 1.4(a), 3.2 and 8.4(d). On November 1, 2006, in 06-0593 Respondent received a six month extension of his probation in 03-0507 for violating ER's 1.2, 1.3 and 1.4.
53. *Standard 9.22(b), Selfish Motive.* In Count One, Respondent refused to provide the opposing party a copy of the Petition for OSC because she threatened to file a

Bar Complaint against him. In Count Two, Respondent misled his client because he had failed to adequately represent her and knew that he had failed to adequately advise her of the status of her case. In Count Three, Respondent simply did not want to do the work necessary to adequately communicate with his client and advise the Court.

54. *Standard 9.22(c), Pattern of Misconduct* Respondent has prior disciplinary matters, which also call into question his competence. In SB 05-0124-D (2005) Respondent was censured for conduct that, although more serious, bear a striking resemblance to his conduct in Count Two. Even after the censure in 2005 for similar conduct, Respondent treated Ms. Addeo's claim and his responsibility to her in a strikingly casual and unprofessional manner similar to his conduct in the previous censure and probation (Ex 60, B/S 285-288).
55. *Standard 9.22(d), Multiple Offenses* Respondent violated numerous ethical rules in three separate Counts with three separate clients.
56. *Standard 9.22(g), Refusal to Acknowledge Wrongful Nature of Conduct.* Respondent's conduct throughout the hearing in this matter conveyed an impression to the undersigned Hearing Officer that Respondent did not take his responsibility to his clients seriously, was intentionally vague about dates and facts, showed a misunderstanding of the rules and the law, and generally did not seem to understand how his conduct adversely affected both his clients as well as the legal system.
57. *Standard 9.22(h), Vulnerability of Victim.* In Count Three, Respondent's client did not speak English and was incarcerated out of state.

58 *Standard 9.22(i)*, Substantial Experience in the Practice of Law. Respondent has
been licensed as an attorney in Arizona since October 19, 1996

59 *Standard 9.22(j)*, Indifference to Making Restitution. Respondent has made no
effort to provide restitution to Ms. Addeo in Count Two.

Mitigating Factors

60 Respondent testified that he was a pro bono attorney for the City of Guadalupe for
two years "during all this" and that he still has "half my practice pro bono
criminal work" (Tr. 63. 15-24) and that his " house is under foreclosure, I spent
\$40,000 of medical bills in the past year... My wife is having twins. I've got to
pay my taxes today." (Tr 156 7-14) These last factors would fall under 9.3 (c),
but the pro bono work merely shows that Respondent has his priorities a little
backwards.

SANCTION ANALYSIS

61 In deciding the appropriate sanction we first determine the most serious
misconduct To the profession, Respondent's misinformation to the Court, in
Count Three, that Mr Pulido wished to abandon his appeal, is the most serious
conduct. To Respondent's clients, the most serious misconduct was to Ms. Addeo
in not adequately advising her of the status of her case. We therefore have
misconduct involving dishonesty, and failure to comply with client wishes

62 *Standard 6.12* provides that Suspension is generally appropriate when a lawyer
knows that false statements . are being submitted to the court. Or that material
information is improperly being withheld, and takes no remedial action, and
causes injury or potential injury to a party to the legal proceeding.

63. *Standard 4 52* provides that: Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent and causes injury or potential injury to a client.

PROPORTIONALITY REVIEW

64. The Supreme Court has held that attorney discipline should be tailored to the individual facts of the case, but that the discipline in each case should be similar to cases with similar facts *In re Wines*, 135 Ariz. 203, 660 P 2d 454 (1983), and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993).
65. In *In re Giezel*, D C. No. 03-1278 (2006), Miss Giezel represented a client in a personal injury matter and allowed the statute of limitations to run on the case. She repeatedly misrepresented the status of the matter to her client and stated that it was successfully settled. Ms. Giezel also prepared fraudulent settlement documents. Ms. Giezel received a one-year suspension and two years of probation for violation of ER's 1 3, 1 4(a), 1 7(b) and 8.4(c). There were two aggravating factors and six mitigating factors in Ms. Giezel's case.
66. In *In re Johnson*, DC Nos. 04 – 0392, et al (2006), Mr. Johnson missed a deadline to remove a personal injury case from the inactive calendar and the case was dismissed. Mr. Johnson misrepresented the status of the matter to his client for approximately 2 years and manufactured a settlement. Mr. Johnson prepared a fake accounting, a fake release, and ultimately issued a check from his private funds to pay the client and concealed that the case had been dismissed. Mr. Johnson received a one-year suspension, plus probation and restitution for

violation of ER's 1.3, 1.4, 1.7, 3.2, 3.3, 3.4, 8.4(c) and (d). There were two aggravating factors and five mitigating factors.

67. In *In re Bjorgaard*, DC No 05-0735, et al, (2007), Mr. Bjorgaard failed to respond to motions and conduct discovery, causing several matters to be dismissed. He failed to communicate with clients and failed to cooperate with the State Bar. Mr. Bjorgaard received a two-year suspension and probation for violations of ER's 1.2, 1.3, 1.4, 1.16(d), 3.2, 3.4, 8.1(b), 8.4(c), 8.4(d) and Rule 53(c) and (f). There were three aggravating factors and three mitigating factors.

RECOMMENDATION

68. This case poses a difficult overlay of misconduct by the Respondent which, if taken in isolation, would probably not result in a very severe sanction. However, when combined with his previous misconduct and sanctions, give cause for greater concern. Respondent has at least excuses for the things that have happened in the various causes. In Count One, Respondent argues that he was not certain that the hearing date was going to go on the date scheduled by the court because of a conflict with another matter on his calendar, so Respondent was justified in not sending Ms. Hoffman a copy of the Petition for Order to Show Cause. In Count Two, Respondent argues that he could not get the at-fault driver served within the time limits imposed by the court and that is the reason that the statute of limitations ran. In Count Three, Respondent argues that Mr. Pulido had waived his appeal rights at the change of plea hearing, and that Respondent had spoken to Mr. Pulido's sister and gotten her permission to withdraw the appeal.

As far as the Federal Court sanction, Respondent argues that the court failed to note the fact that his stationary carried a different address than they had previously been corresponding with him at, and that he did not know of the Federal Court sanction

69 Looking underneath these excuses raises the cause for concern. Respondent admits that he made a mistake in sending a copy of the Petition for Order to Show cause to the wrong address, and that he did not provide Ms Hoffman with a second copy of the Petition for Order to Show Cause because he did not want to be intimidated by Ms Hoffman's threats to report him to the Bar. While the mistake in the address is perhaps excusable, Respondent's unwillingness to check and see why Ms Hoffman did not receive the first copy of the Petition for Order to Show Cause, and then thereafter petulantly refusing to provide her with a copy of the petition, which at least would have informed Ms. Hoffman of the claims that were going to be made in the action, is not only unprofessional, it is undignified and unfair

70. In Ms. Addeo's claim, certainly the difficulty of getting the at-fault driver served is not uncommon. However, Respondent's unwillingness to keep his client informed of the status of her case so that she could make the decision whether to let the court dismiss her complaint or take further action to extend time for service, and then thereafter lying to her about the status of the case is not only misconduct, it acted to the very great prejudice of Ms Hoffman.

71 In Mr Pulido's case, yes, Mr Pulido did waive his rights to appeal in the plea, and yes, Mr Pulido was moved by the federal prison system to another state making it

somewhat more difficult to communicate with him. Even assuming that Respondent is correct that Mr Pulido's sister agreed with Respondent that the appeal should be dismissed, that does not excuse Respondent's false statement to the court nor the fact that he made virtually no effort to try and track down Mr Pulido and explained to him what he was doing and why. Respondent covers his failure to file a notice of change of address with the Federal Court by saying that it was the Court's responsibility to note the different address on his correspondence. As to his failure to pay the sanction, this Hearing Officer is satisfied that Respondent does not have the money to pay the sanction (Tr 156 7-19 & 162.9-17)

72 In both the Addeo and Pulido cases, Respondent displays either an ignorance that the claims belong to the client and not the attorney, and he has a responsibility to do their wishes, or an arrogance that convinces him that he gets to make the decisions regardless of the wishes of the client. Throughout the hearing in this matter this Hearing Officer was struck with Respondent's nonchalant attitude toward his clients, his responsibility to them, and his responsibility as a professional. Respondent seemed to not really care about the negative impact that his actions were having on his clients, Ms Hoffman or his reputation. Once any particular situation became difficult, Respondent seemed to just quit trying and if his client suffered as a result of that, oh well

73. This is further borne out by the tone and tenor of Respondent's Closing Argument after the hearing in this matter. Reference is also made to Respondent's comments during his testimony at the hearing in this matter, stating that he is now only doing

criminal law and that: "I only get in trouble when I try to branch out, which is obvious by this garbage -- not garbage, but my lack of understanding of other areas of law however you want to put it. I like criminal law it's a lot more fun. I feel like when you're concentrating on one thing, it's probably better for me, for the practice, for everything. Doing too many types of law, it's an accident waiting to happen " (Tr 164 17-165 9)

74. While perhaps this statement shows some needed self awareness regarding his competence, it shows remarkably shallow realization that his getting into "trouble" causes harm to his client's and the profession as well
- 75 Respondent has already received censures and a probation grant. The Hearing Officer notes that some of the conduct in these cases occurred while Respondent was on probation in SB-05-0124-D (Order signed on August 23, 2005). Respondent needs some serious retraining on his ethical responsibilities to not only his clients but to the profession as well
- 76 It is recommended that Respondent be suspended for a period of 60 days to be followed by a year of probation, which would include MAPP and LOMAP This Hearing Officer also would impose a restitution order on Respondent. However, it was unclear from the evidence which expenses were reimbursed to Ms. Addeo, and she did not provide the listing of her out-of-pocket expenses as she indicated she would at the hearing in this matter, so establishing a restitution figure is impossible.
77. It is also recommended that Respondent be held responsible for the costs of these proceedings. It is further recommended that in the event that Respondent fails to

comply with the terms of probation and information thereof is received by the State Bar, Bar Counsel shall file a Notice of Non-compliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz R Sup.Ct. The imposing entity may refer the matter to a Hearing Officer to conduct a hearing at the earliest practicable time, but in no event later than thirty days after receipt of notice, to determine whether a term of probation had been breached, and, if so, to recommend an appropriate action and response. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove non-compliance by clear and convincing evidence

DATED this 10th day of June, 2008

Hon. H. Jeffrey Coker /W/M
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 10th day of June, 2008.

Copy of the foregoing mailed
this 11th day of June, 2008, to:

Daniel Inserra
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by Nesta Manelkar