

**FILED**  
OCT 03 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 SUSPENDED MEMBER ) No 07-1484  
OF THE STATE BAR OF ARIZONA, )  
)  
SCOTT W. SCHLIEVERT, )  
Bar No. 003188 ) **DISCIPLINARY COMMISSION**  
) **REPORT**  
)  
RESPONDENT )  
\_\_\_\_\_ )

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 20, 2008, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the Hearing Officer’s Report filed August 4, 2008, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent (“Tender”) and Joint Memorandum in Support of Agreement for Discipline by Consent (“Joint Memorandum”) providing for a 90-day suspension retroactive to May 17, 2007,<sup>1</sup> and costs within 30-days of the date of the final Judgment and Order

**Decision**

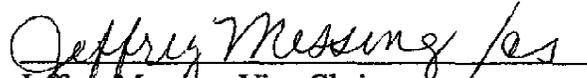
Having found no facts clearly erroneous, the eight members<sup>2</sup> of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer’s findings of fact, conclusions of law, and recommendation for a 90-day suspension

<sup>1</sup> The effective date of Respondent’s suspension in File No 04-1349, 04-2137, 05-1318 and 06-0594

<sup>2</sup> One lawyer member seat remains vacant Commissioner Flores did not participate in these proceedings Daniel P Beeks, Esq , a hearing officer from Phoenix participated as an ad hoc member

retroactive to May 17, 2007, and payment of costs within 30-days of the date of the final  
Judgment and Order including any costs incurred by the Disciplinary Clerk's office<sup>3</sup>

RESPECTFULLY SUBMITTED this 3rd day of October, 2008

  
Jeffrey Messing, Vice-Chair  
Disciplinary Commission

Original filed with the Disciplinary Clerk  
this 3rd day of October, 2008

Copy of the foregoing mailed  
this 6th day of October, 2008, to

Frederick K. Steiner, Jr  
Hearing Officer 8T  
2915 East Sherran Lane  
Phoenix, AZ 85012

Scott W. Schlievert  
Respondent  
21 E Speedway Blvd  
Tucson, AZ 85705-7714

Robert Van Wyck  
Chief Bar Counsel  
State Bar of Arizona  
4201 North 24th Street, Suite 200  
Phoenix, AZ 85016-6288

by   
/mps

<sup>3</sup> A copy of the Hearing Officer's Report is attached as Exhibit A. The State Bar's total costs and expenses incurred are \$775.00.



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**FINDINGS OF FACT**

1. Respondent was a lawyer licensed to practice in the State of Arizona from his admission on September 23, 1972 until his suspension on May 17, 2007.

2. By Judgment and Order of the Supreme Court of Arizona filed on April 17, 2007 in SB 07-0034-D (the "Order of Suspension"), Respondent was suspended from the practice of law for a period of six months and one day, effective thirty days from the date of the Order of Suspension. Respondent was served with the Order of Suspension on April 17, 2007 by certified mail, return receipt requested, and by regular mail.

3. Respondent was further ordered to comply with all of the provisions of Rule 72, Ariz. R. Sup. Ct., including but not limited to Rule 72(a), which required that he notify all of his clients of his inability to represent them; and Rule 72(e), which required that he file an affidavit of compliance with the Disciplinary Commission and the Arizona Supreme Court, both within ten days from the date of the Order of Suspension.

4. Rule 72(a) requires that a respondent notify all clients being represented in pending matters; any co-counsel in a pending matter; any opposing counsel in a pending matter or, in the absence of opposing counsel, the adverse parties themselves; and each court and division in which the respondent

1 has any pending active or inactive matter, of the order or judgment and the fact  
2 that the respondent is disqualified to act as a lawyer after the effective date of  
3 that order or judgment, by registered or certified mail, return receipt requested.

4           5. Rule 72(e) requires that a respondent file an affidavit with the  
5 Disciplinary Commission and the Arizona Supreme Court, with a copy served  
6 upon Bar counsel, stating that he has fully complied with the Order of  
7 Suspension and the applicable rules, in addition to any other requirements.  
8

9           6. At the time of his suspension, Respondent represented clients in court-  
10 appointed juvenile dependency matters and in privately retained domestic  
11 relations and criminal cases.  
12

13           7. Respondent states that he timely notified the Juvenile Court of his  
14 suspension, verbally gave notice to his privately retained clients, and took steps  
15 to, and did officially, withdraw from all pending cases in which he represented  
16 clients.  
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18           8. Notwithstanding the above, Respondent failed to fully comply with the  
19 requirements of Rule 72(a), in that:  
20

21           (a) He did not mail the required written notices to his clients, opposing  
22 counsel or adverse parties;

23           (b) He did not mail the required written notices by registered or  
24 certified mail, return receipt requested.  
25

1 (c) He did not mail the required notices in a timely manner.

2 (d) He did not fully notify his clients, opposing counsel or adverse  
3 parties of the Order of Suspension.

4 (e) He did not fully notify his clients, opposing counsel or adverse  
5 parties that he was disqualified to act as a lawyer after May 17,  
6 2007.  
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8 9. Respondent submitted his required Affidavit of Compliance dated  
9 May 25, 2007, and in it he stated that he had complied with the Order of  
10 Suspension and with Rule 72. While these statements were false and should  
11 have been known by Respondent to be false, he did not act with an intent to  
12 deceive either the Court or the State Bar.  
13

14 10. Respondent sent correspondence to the State Bar on October 4, 2007,  
15 December 3, 2007 and February 21, 2008, on letterhead bearing the words "Law  
16 Offices of Scott Schlievert."  
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18 11. Respondent engaged in the unauthorized practice of law by using the  
19 designation "law offices" when he was not authorized to practice law in this  
20 state. The use of that designation was reasonably likely to induce others to  
21 believe that Respondent was authorized to engage in the practice of law in this  
22 state.  
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1 and 07-1463) and two censures (State Bar case nos. 95-0008 and  
2 00-0476, *et al.*); and he is currently on suspension (Supreme  
3 Court case no. SB 07-0034-D).

4 (b)9.22(1) (substantial experience in the practice of law). Respondent  
5 practiced law in Arizona from September 23, 1972 until May 17,  
6 2007, or a total of about thirty-five years.

7  
8 The Hearing Officer finds that the fact that Respondent's conduct caused  
9 no harm, as he did withdraw from all of his cases, and he did not actually  
10 practice law or solicit clients, should be considered in mitigation pursuant to  
11 *ABA Standard 9.32.*

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13 **PROPORTIONALITY REVIEW**

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15 To have an effective system of professional sanctions, there must be  
16 internal consistency; and it is appropriate to examine sanctions imposed in cases  
17 that are factually similar. *See In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 778  
18 (2002) (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re*  
19 *Wines* 135 Ariz 203, 207, 660 P.2d 454, 458 (1983)). The cases set forth below  
20 demonstrate that a ninety-day suspension is an appropriate sanction in this matter.

21  
22 Most of the cases involving similar facts recommend long-term  
23 suspension. However, these proportional cases involve knowing conduct, the  
24 unauthorized practice of law and failure to fully comply with the requirements of  
25

1 Rule 72. In addition, these cases involve conduct more egregious than that of the  
2 present case, as they also involve multiple ethical offenses and conduct beyond  
3 what is found in the instant matter. *See, e g , In re Turley*, SB 04 0089-D (2004)  
4 (two-year suspension for violations of ERs 1.2, 1.3, 1.4, 1.16(a) and (d), 3.2, 5.5,  
5 7.1(a), 7.5(a), 8.4 (c) and (d) and Rules 31(b), 33(c), 53(a) and (c) and 63(c) and  
6 (d)); *In re Ruiz*, SB 98-0071-D (1999) (two-year suspension for violation of  
7 ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.3, 3.4(c), 5.5, 8.1(b), 8.4 and Rule 63); *In*  
8 *re Manning*, 180 Ariz. 45, 881 P 2d 1150 (1994) (four-year suspension for  
9 violations of ERs 1.3, 1.4, 3.2, 5.5 and 8.4(c) and Rules 51(f), (h) and (i) and  
10 63(a)). For example, in *Manning*, respondent failed to inform his clients of his  
11 suspension. Furthermore, Manning accepted new clients after he was suspended  
12 and then abandoned his practice and failed to take appropriate steps to close his  
13 offices.  
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17 The following are two cases which called for a censure. These cases  
18 describe conduct less egregious than the conduct in this matter.  
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20 In *In re Stevens*, 178 Ariz. 261 (1994), respondent appeared in court and  
21 prepared documents for the court's signature, despite his MCLE suspension.  
22 Stevens had been suspended for less than three weeks, and he engaged in  
23 unauthorized practice one day after filing his MCLE affidavit, but one week prior  
24 to actually being reinstated. Stevens's failure to file his affidavit was intentional,  
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1 as he intended to file a federal challenge to Rule 45. The Disciplinary  
2 Commission found only one aggravating factor and six factors in mitigation.

3 In *In re Bayless*, SB 04-0053-D (2004), respondent served his thirty-day  
4 suspension and complied with the order of suspension and with Rule 63, Ariz. R.  
5 Sup. Ct. by filing his affidavit for reinstatement. He believed that upon filing the  
6 affidavit he could practice law and did not realize that he could not practice until  
7 the Supreme Court ordered reinstatement. Between the time he filed his affidavit  
8 for reinstatement and the filing of the actual order permitting reinstatement,  
9 Bayless had a civil subpoena issued, filed a notice of filing hearing exhibits, and  
10 filed a joint pretrial statement. He also appeared at an arraignment with a client  
11 in a separate matter and filed a notice of appearance. There were two mitigating  
12 and two aggravating factors.  
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16 In *In re Winski*, SB 00-0112 (2000), respondent received an informal  
17 reprimand for violations of ERs 7.1, 7.5 and 8.4 and Rule 63. Winski left his  
18 name in the firm letterhead and used it to send notification letters concerning his  
19 suspension. Winski's notices stated that he was "not currently practicing in  
20 Arizona," but he did not adequately explain that he was suspended for ethical  
21 misconduct. Additionally, Winski announced the merger of his firm with another  
22 in his notification letters, adding to the misleading nature of the correspondence.  
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1 The notices did not specifically inform his clients, co-counsel, opposing counsel  
2 and courts of the specifics of the judgment and order.

3 In this matter, Respondent did not comply with the requirements of  
4 Rule 72. In addition, he continued to use his letterhead while suspended with full  
5 signage on his office window. He has had prior discipline and was on a longer-  
6 term suspension than the censure cases cited above.  
7

8 The listed proportionality cases support, and the Hearing Officer finds, that  
9 imposition of a ninety-day suspension is appropriate under the facts and  
10 circumstances in this matter.  
11

### 12 RECOMMENDATION

13 The purpose of lawyer discipline is not to punish the lawyer, but to  
14 protect the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182,  
15 187, 859 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to  
16 protect the public, the profession and the administration of justice. *In re Neville*,  
17 147 Ariz. 106, 708 P 2d 1297 (1985).  
18

19 In imposing discipline, it is appropriate to consider the facts of the case,  
20 the American Bar Association's *Standards for Imposing Lawyer Sanctions* and  
21 the proportionality of discipline imposed in analogous cases. The presumptive  
22 sanction in this case is suspension.  
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1 Original filed with the Disciplinary Clerk  
this 4<sup>th</sup> day of August, 2008.

2  
3 Copy of the foregoing mailed this  
5<sup>th</sup> day of August, 2008, to:

4 Scott W. Schlievert  
5 21 E. Speedway Blvd.  
6 Tucson, Arizona 85705-7714  
(Respondent)

7  
8 Frederick K. Steiner, Jr., Esquire  
9 Hearing Officer 8T  
2915 E. Sherran Lane  
10 Phoenix, Arizona 85016-7057

11 Copy of the foregoing hand-delivered  
this 5<sup>th</sup> day of August, 2008, to:

12  
13 Lawyer Regulation Records Manager  
State Bar of Arizona  
14 4201 N. 24<sup>th</sup> St., Suite 200  
15 Phoenix, Arizona 85016-6288

16 by: Neta Manalkar  
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