

FILED

DEC 23 2008

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA

*L. D. Anne*

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

8  
9 **IN THE MATTER OF A MEMBER OF  
THE STATE BAR OF ARIZONA**

10 **RAUL GARZA, JR.,**  
11 **Bar No. 021090,**

12 Respondent.

File Nos. 08-0065, 08-0343, 08-0344,  
08-0392, 08-0403, 08-0617,  
08-0792, 08-1087

**HEARING OFFICER REPORT**

(Assigned to Hearing Officer 9J  
Mark S. Sifferman)

13 **PROCEDURAL HISTORY**

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15 The Complaint in this matter was filed September 25, 2008. The Complaint was  
16 served September 29, 2008, by certified mail - restricted delivery to Respondent at the  
17 address of record provided by Respondent to the Membership Records Department of the  
18 State Bar of Arizona. Respondent failed to answer the Complaint within the time frame  
19 set forth in the Rules of the Supreme Court. On October 27, 2008, a Notice of Default  
20 was filed. A Default was entered November 17, 2008.  
21

22 By a Notice filed and mailed November 17, 2008, an aggravation and mitigation  
23 hearing was scheduled for December 19, 2008. Notice of the hearing was provided to  
24 Respondent. At the hearing, the State Bar appeared through its counsel, Matthew  
25 McGregor. Respondent was not present and no counsel appeared for him.  
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**FINDINGS OF FACT**

Based upon the whole record submitted to the Hearing Officer, and based upon the effect of the default entered against Respondent, this Hearing Officer finds:

**RESPONDENT'S BACKGROUND**

1. Respondent was admitted to practice law in this State on October 24, 1992. *Complaint*, ¶ 1.

2. On April 22, 2008, the Supreme Court of Arizona suspended Respondent on an interim basis. As of the date of the aggravation and mitigation hearing in this matter, Respondent had not been reinstated to the practice of law in the State of Arizona. *Complaint*, ¶ 2.

**COUNT ONE (FILE NO. 08-0065)**

3. On August 19, 2007, Rony and Margarita Ghanooni hired Respondent for representation in two separate matters. *Complaint*, ¶¶ 3 – 18.

4. The first matter was a claim against Qwest for property damage (black mold) to these clients' residence. By the time they hired Respondent, Mr. and Mrs. Ghanooni had received a settlement offer in the amount of \$23,054.66 from Qwest's insurance provider, Sedgwick Claims Management Service ("Sedgwick"). *Id.*

5. At Respondent's suggestion, Mr. and Mrs. Ghanooni, at a cost of \$300.00, engaged Restoration Services, Ltd., to inspect their home and estimate the cost to repair the black mold damage. Restoration Services provided a 12-page written report on

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4 September 20, 2007. The cost to repair was estimated at \$63,331.00. Respondent was to  
5 write Sedgwick, provide the Restoration Services' report and suggest that the pending  
6 settlement offer be increased. *Id.*

7           6. Respondent showed Mr. and Mrs. Ghanooni a letter he prepared, dated  
8 October 25, 2007, addressed to Sedgwick, which provided Restoration Services' report  
9 and requested that Sedgwick reconsider its offer of settlement. The letter indicated that a  
10 lawsuit might be filed if a settlement was not reached. *Id.*

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12           7. Respondent never sent this letter to Sedgwick and never contacted  
13 Sedgwick about these clients' claim. *Id.*

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15           8. The second matter for which Respondent was retained concerned an air  
16 conditioner. The contractor who had installed the air conditioner failed to repair it as  
17 obligated and failed to provide a required manufacturer warranty. The clients were  
18 forced to hire another contractor at a cost of \$900.00 to make the repairs to the air  
19 conditioner. *Id.*; *Testimony of Margarita Ghanooni, December 19, 2008.*

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21           9. Respondent was to send the original contractor a letter demanding  
22 reimbursement for the repair and the manufacturer warranty. Respondent failed to send  
23 the demand letter. *Id.*

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25           10. Between October 18, 2007 and December 11, 2007, Mr. and Mrs.  
26 Ghanooni attempted to contact Respondent by telephone on sixteen occasions. In each  
27 instance, they left a voice mail message. Respondent failed to respond to these voice  
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4 mail messages. *Complaint*, ¶¶ 3 – 18.

5 11. Between November 28, 2007, and December 13, 2007, Mr. and Mrs.  
6 Ghanooni attempted to contact Respondent by email on three occasions. Respondent  
7 failed to respond to these emails. *Id.*

8 12. On January 9, 2008, Mr. and Mrs. Ghanooni filed a Bar charge against  
9 Respondent. In his March 10, 2008, informal preliminary response to the State Bar's  
10 Attorney Consumer Assistance Program ("ACAP") inquiry, Respondent admitted:  
11 "Rony and Margarita Ghanooni are correct that I have failed to communicate with them."  
12  
13 *Id.*

14 13. Respondent's failure to provide the legal services for which he was retained  
15 harmed the clients. The neglect in addressing the air conditioner claim resulted in the  
16 claim being time-barred by the time the clients could contact substitute counsel.  
17 Respondent's failure to prosecute the Qwest claim rendered the Restoration Services'  
18 estimate of little value as the mold in the clients' home spread. The clients obtained new  
19 counsel who, on a contingent fee basis, has filed a lawsuit against Qwest. *Complaint*, ¶¶  
20 3 – 18; *Testimony of Margarita Ghanooni, December 19, 2008.*

21 14. When they initially retained Respondent on August 19, 2007, Mr. and Mrs.  
22 Ghanooni paid him \$2,500.00 as a retainer. These funds were not deposited in any trust  
23 account. *Complaint*, ¶¶ 3 – 18, 129(a); *Testimony of Margarita Ghanooni, December 19,*  
24 *2008.*  
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4 emails from Respondent's clients and some opposing counsel requesting communication  
5 from Respondent. Mr. Torres forwarded all information to Respondent's last known  
6 address, but received no response from Respondent. *Id.*

7         25. Respondent failed to inform clients that he was no longer part of TGLG or  
8 their advanced fees had been transferred to a new trust account. *Id.*

9  
10         26. Opposing counsel began to call Mr. Torres because Respondent failed to  
11 enter appearances, respond to settlement offers, or respond to court instructions on  
12 pending cases. *Id.*

13         27. On February 26, 2008, Mr. Torres filed a written Bar charge against  
14 Respondent. In that written Bar charge, Mr. Torres documented ethical misconduct  
15 regarding four additional clients. *Id.*

16  
17         28. According to the information provided by Mr. Torres, John DeMott hired  
18 Respondent to represent him in a construction defect case. Respondent was paid an  
19 initial \$5,000 retainer plus an additional \$5,000.00 on March 28, 2008.<sup>1</sup> Respondent  
20 failed to file required pleadings with the Court, including a Notice of Appearance and  
21 Proposed Jury Instructions.<sup>2</sup> Respondent failed to respond to an offer of settlement made  
22 by opposing counsel. During the representation, Respondent failed to return the client's  
23 phone calls and emails. Due to the Respondent's failings, the Court continued the  
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26         <sup>1</sup> The second payment of \$5,000.00 on March 28, 2008, is reflected on the State  
27 Bar's trust account audit.

28         <sup>2</sup> In his March 10, 2008 informal preliminary response to the State Bar's ACAP  
inquiry, Respondent admitted he failed to appear at a pretrial conference in this matter.

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4 client's trial and the client had to hire another attorney at the cost of \$4,500.00.

5 *Complaint*, ¶¶ 35, 129(d).

6         29. Mr. Torres' submission established that Elisa Serrano hired Respondent to  
7 file a complaint against a third party for which Respondent was given a \$2,500.00  
8 retainer. Respondent informed the client that he had filed the Complaint in Maricopa  
9 County Superior Court and that a Default Judgment had been entered. In fact, no  
10 Complaint had been filed on behalf of the client and no Default Judgment had ever been  
11 obtained. On February 12, 2008, the client was scheduled to meet with the Respondent,  
12 whose representation she had terminated, to pick up her file as well as a check for full  
13 reimbursement of the \$2,500.00 retainer paid. The client waited at Respondent's office  
14 for more than one hour after the scheduled appointment time, but Respondent did not  
15 appear. Ms. Serrano hired another attorney to represent her in retrieving the client file  
16 and retainer from Respondent. In a telephone conversation on February 12, 2008,  
17 Respondent told this new attorney that he had in fact filed a Complaint on behalf of the  
18 client, but Respondent could not provide a case number. Respondent told the new  
19 attorney that he was not going to refund the full \$2,500.00 retainer, but was going to  
20 deduct \$1,500.00 for attorneys' fees and \$249.00 in costs. Respondent committed to  
21 have the client file, an itemized bill, and the reimbursement check to the new attorney by  
22 noon on the following day. Neither the new attorney nor the client ever received the  
23 client file, an itemized bill or a reimbursement check. *Complaint*, ¶¶ 36, 129(c).  
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30. The information provided by Mr. Torres establishes that in March 2006, Antonio Amaya was Respondent's client. On March 17, 2006, Respondent called the Mr. Amaya and asked to borrow \$30,000.00. Mr. Amaya agreed, and on that same day, Respondent brought to Mr. Amaya a Promissory Note and Collateral Agreement. Under the terms of the Note, the \$30,000.00 was to bear interest at a rate of 18.7% with full payment to occur on or before June 15, 2006. As collateral for the loan, Respondent and a co-borrower pledged two vehicles. Respondent and this co-borrower also agreed to provide Mr. Amaya with reasonable accommodations for limousine service. Respondent failed to advise Mr. Amaya in writing to consult with an independent attorney. Respondent failed to obtain the Mr. Amaya's executed informed consent in writing that also described Respondent's role in the transaction. As of February 25, 2008, there was a balance of \$5,610.00 due on the debt. *Complaint*, ¶ 37.

31. The information provided by Mr. Torres establishes that Dan Baldwin hired Respondent for representation of a matter before the Arizona Registrar of Contractors. The client paid a retainer of \$3,000.00 to Respondent. During the representation, Respondent failed to return the client's telephone calls or emails, failed to provide the client with an invoice for work, failed to respond to opposing counsel's request, failed to respond to request for arbitration, and failed to show for a hearing before the Registrar of Contractors. *Complaint*, ¶¶ 38, 129(e).

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4                                   **COUNT FOUR (FILE NO. 08-0392)**

5           32.    On October 25, 2007, John Taillefer had an arbitration award entered  
6 against him in a matter pending in the Maricopa County Superior Court. Respondent was  
7 Mr. Tallefer's attorney of record at the time. *Complaint*, ¶ 45.

8  
9           33.    On November 6, 2007, Respondent filed an appeal of the arbitration award  
10 on behalf of Mr. Taillefer. *Id.*

11           34.    In response, opposing counsel filed a Motion for Order to Show Cause as to  
12 why the case should not be dismissed. A copy of this motion was mailed to Respondent.  
13 Respondent did not file a response to the Motion for Order to Show Cause despite a court  
14 order that a response be filed no later than December 28, 2007. *Id.*

15  
16           35.    On January 8, 2008, the Court dismissed the client's appeal without  
17 prejudice for lack of prosecution. *Id.* The client has not been contacted by Respondent  
18 and has had no contact with Respondent since October 2007. *Id.*

19  
20           36.    On February 22, 2008, opposing counsel mailed a letter to the client  
21 demanding full payment of the arbitration award sum. The client had not been informed  
22 that his appeal had been dismissed until he received that letter. *Id.*

23           37.    The client gave Respondent an initial fee deposit in an unknown amount.  
24 *Id.* The client never received any invoices or accounting statements from Respondent.  
25 *Id.*

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27           38.    The client is now subject to the full \$32,000 arbitration award since the  
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4 appeal was dismissed. *Id.*

5 **COUNT FIVE (FILE NO. 008-0403)**

6 39. In late May 2007, John Duggan was involved in a pending sale of real  
7 property where a cloud on the property's title was hindering the completion of the sale.  
8 Mr. Duggan was referred to Respondent, then an associate with the law firm of Eckley &  
9 Associates. Mr. Duggan met with Respondent and explained to him the title issue and  
10 the need for timely assistance. *Complaint*, ¶¶ 48 – 60; *Testimony of John Duggan*,  
11 *December 19, 2008*.

12  
13 40. On May 29, 2007, Mr. Duggan paid Respondent a \$5,000 retainer via a  
14 check made payable to Respondent, not to Eckley & Associates. Respondent told Mr.  
15 Duggan to whom the check was to be made payable. The retainer check was presented  
16 for payment by Respondent on May 30, 2007. The funds were not placed into any trust  
17 account. *Complaint*, ¶¶ 48 – 60, 129(g); *Testimony of John Duggan, December 19, 2008*.

18  
19 41. Respondent gave Mr. Duggan a copy of a demand letter dated June 4, 2007  
20 and written on "Law Offices of Raul Garza, Jr." letterhead to the opposing party.  
21 Respondent never actually sent this letter to the opposing party. *Complaint*, ¶¶ 48 – 60;  
22 *Testimony of John Duggan, December 19, 2008*.

23  
24 42. Respondent provided Mr. Duggan a typewritten timeline of the estimated  
25 length of representation, which indicated that a Complaint to quiet title would be filed in  
26 July 2007 if the demand letter was unsuccessful in resolving the dispute. The timeline  
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4 also indicated service of the Complaint would be completed by October 31, 2007. This  
5 timeline was typewritten on "Torres Garza Law Group, PLLC" letterhead. *Complaint*, ¶¶  
6 48 – 60, 129(g); *Testimony of John Duggan, December 19, 2008*.

7  
8 43. Respondent provided Mr. Duggan with a copy of a summons in the quiet  
9 title action, indicating that a Complaint has been filed and served. In fact, Respondent  
10 never drafted, filed or served any Complaint in a quiet title action. *Complaint*, ¶¶ 48 –  
11 60; *Testimony of John Duggan, December 19, 2008*.

12  
13 44. During the representation, Respondent failed to return Mr. Duggan's  
14 telephone calls or emails. Respondent also failed to show for scheduled appointments.  
15 *Complaint*, ¶¶ 48 – 60.

16  
17 45. At the expense of \$6,800.00, title to the property was cleared by new  
18 counsel. However, because of the delay caused by Respondent, the pending sale was  
19 cancelled, resulting in a loss to the client. *Testimony of John Duggan, December 19,*  
20 *2008*.

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22 **COUNT SIX (FILE NO. 08-0617)**

23  
24 46. Attorney Hope Kirsch was attorney for the Plaintiff in an action pending  
25 before the Maricopa County Superior Court. Respondent was attorney of record for the  
26 Defendants. *Complaint*, ¶¶ 63 – 67.

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28 47. On March 5 and 6, 2008, Ms. Kirsch attempted to contact Respondent by  
email, certified mail, and regular US Postal Service mail. Ms. Kirsch was attempting to

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4 establish whether or not Respondent was still involved in the case. *Id.*

5 48. Respondent never responded to Ms. Kirsch and all her attempts to contact  
6 Respondent were unsuccessful. *Id.*

7 49. On March 25, 2008, Ms. Kirsch notified the Court of Respondent's  
8 disappearance and her unsuccessful attempts at contacting the Respondent in a pleading.  
9  
10 *Id.*

11 50. On April 8, 2008, Ms. Kirsch filed a written Bar charge against  
12 Respondent. *Id.*

13  
14 **COUNT SEVEN (FILE NO. 008-0792)**

15 51. In September 2007, Richard Spitzer hired Respondent for representation in  
16 a construction defect case. Mr. Spitzer paid Respondent a \$5,000 retainer fee, which was  
17 deposited in the Torres – Garza trust account. *Complaint*, ¶¶ 70 – 84, 129(i).

18 52. During the representation, Respondent failed to respond to emails or phone  
19 calls from Mr. Spitzer. *Id.*

20  
21 53. On November 12, 2007, the parties had scheduled a site visit that was to be  
22 attended by the defendant, Respondent, and several construction and air quality  
23 specialists. Respondent attended the site visit as scheduled. Respondent was tasked with  
24 taking notes of verbal agreements. *Id.*

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26 54. Mr. Spitzer directed Respondent to send a statutorily required notice to the  
27 opposing party pursuant to A.R.S. § 12-1363. Along with this letter, Mr. Spitzer directed  
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4 Respondent to send inspection reports from the construction and air quality specialists to  
5 the opposing party. These inspection reports supported Mr. Spitzer's claims. *Id.*

6 55. Respondent failed to send the statutorily required letter and failed to send  
7 the specialists' inspection reports to the opposing party. *Id.*

8  
9 56. Because Respondent failed to return phone calls or emails, Mr. Spitzer  
10 contacted Respondent's former partner Israel Torres. Mr. Spitzer was informed for the  
11 first time that Respondent and Mr. Torres had severed their relationship. Respondent had  
12 kept Mr. Spitzer's case, but failed to inform Mr. Spitzer of the change. *Id.*

13  
14 57. When the funds attributable to Respondent's clients were distributed from  
15 the Torres – Garza Trust Account on November 2, 2007 and deposited into Respondent's  
16 new trust account on November 21, 2007, see *Finding of Fact 23, supra*, only \$4,674.10  
17 was allocated to Mr. Spitzer. *Complaint*, ¶ 129(i).

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19 58. From December 2007, through February 2008, Mr. Spitzer attempted to  
20 contact Respondent *via* telephone and email without success. *Complaint*, ¶¶ 70 – 84.

21  
22 59. On February 20, 2008, Mr. Spitzer terminated Respondent's representation  
23 by email. Mr. Spitzer requested return of his retainer payment as well as return of the  
24 client file. The retainer was not returned. It is unclear whether the client file was  
25 returned. *Id.*

26 60. Respondent never provided an invoice or accounting of his work. *Id.*

27 61. Mr. Spitzer was left to deal with the construction defect case without any  
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4 formal representation. *Id.*

5 **COUNT EIGHT (FILE NO. 08-1087)**

6 62. On February 14, 2007, Timothy Littleton hired Respondent to represent  
7 Integrated Communications & Electric, Inc., McCorey Electric, and CWC Contracting &  
8 Electric, LLC. Respondent was hired on behalf of all these parties and tasked with  
9 submitting an answer to separate complaints filed against these companies with the  
10 Registrar of Contractors. *Complaint*, ¶¶ 87 – 89, 129(j).

11  
12 63. Mr. Littleton paid Respondent \$4,000.00 to start the representation and file  
13 the appropriate pleadings. These funds were not deposited into any trust account. *Id.*

14  
15 64. The responsive pleadings were due to be filed no later than February 20,  
16 2007. Respondent failed to file the responsive pleadings by February 20, 2007. Instead,  
17 he filed the pleadings with the Registrar of Contractors on February 21, 2007. *Id.*

18  
19 65. As a result of the untimely responsive pleadings, the Registrar of  
20 Contractors issued an order revoking the contracting licenses of Integrated  
21 Communications & Electric, Inc. and CWC Contracting. The effective date of those  
22 revocations was November 11, 2007. *Id.*

23  
24 66. Mr. Littleton requested that Respondent file a motion for rehearing with the  
25 Registrar of Contractors on or about March 8, 2007. Respondent told Mr. Littleton that  
26 there was no need to worry about a revocation order because Respondent had close  
27 friends within the Registrar of Contractors, and that Respondent had been in contact with  
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3 these close friends. Respondent never filed a motion for rehearing. *Id.*  
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5 67. Respondent failed to respond to Mr. Littleton's repeated request for  
6 information, including the scheduling of a meeting with Respondent's "friends" at the  
7 Registrar. *Id.*  
8

9 68. Respondent failed to respond to Mr. Littleton's request for all records and  
10 an accounting of how the \$4,000.00 payment was spent. *Id.*

11 69. In October 2007, Mr. Littleton retained new counsel. This new counsel  
12 was substituted in lieu of Respondent on November 6, 2007. It cost the clients \$9,184.88  
13 in attorneys' fees paid to the new counsel to remedy the situation which Respondent  
14 created. *Id.*  
15

16 **FAILURE TO COOPERATE WITH DISCIPLINARY AUTHORITY**

17 70. The State Bar notified Respondent of each complainant's allegations noted  
18 in the prior eight counts. Notification was accomplished through an initial screening  
19 letter mailed to Respondent at the address of record with the State Bar Membership  
20 records. The State Bar's letter in each instance instructed Respondent to provide a  
21 written response to the Bar charge within twenty days. Respondent failed to submit  
22 written responses to the Bar charge within twenty days. Respondent failed to submit  
23 written responses to the State Bar's screening letters. *Complaint*, ¶ 102, 113.  
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25 71. The State Bar provided Respondent with a second and a third opportunity  
26 to submit written responses to the screening letters. Respondent still failed to respond.  
27 *Complaint*, ¶¶ 115 – 118.  
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4 72. James Lee, Senior Bar counsel at the ACAP, made numerous unsuccessful  
5 attempts to contact Respondent by phone. Respondent did not respond to these multiple  
6 phone calls until March 1, 2008 when Respondent called Mr. Lee and left a message.  
7 Mr. Lee and Respondent spoke personally on March 4, 2008. *Complaint*, ¶ 103.

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9 73. On March 5, 2008, Respondent personally appeared at the State Bar and  
10 was given a letter written by Mr. Lee which requested an informal response from  
11 Respondent in relation to six client complaints which were included with that letter. Mr.  
12 Lee's letter also requested further information from Respondent regarding his clients and  
13 the current status of Respondent's practice of law. Respondent's response was to be  
14 served no later than March 10, 2008. *Complaint*, ¶¶ 104 – 106.

15  
16 74. On March 10, 2008, Respondent faxed to Mr. Lee a four-page informal  
17 written response. Respondent indicated that this was only a preliminary response and  
18 announced his intent to file a supplement with more detailed supporting documentation in  
19 the next few days. Respondent did not provide another written response. *Complaint*, ¶¶  
20 107, 108.

21  
22 75. Respondent failed to respond to subsequent voice mail messages and emails  
23 from State Bar counsel Matthew McGregor. *Complaint*, ¶¶ 108 – 112.

24  
25 76. On April 30, 2008, Respondent once again appeared personally at the State  
26 Bar of Arizona. At this time, he was provided a package of written materials which  
27 included all the written Bar charge submissions to date, screening investigation letters,  
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4 and the Supreme Court's Order of Interim Suspension. *Complaint*, ¶ 120.

5 77. Respondent never provided another address of record to the State Bar's  
6 Membership Records. *Complaint*, ¶ 122.

7 **TRUST ACCOUNT VIOLATIONS**

8  
9 78. The State Bar requested and obtained trust account records from  
10 Respondent's former law partner, Israel Torres, and from Northern Trust Bank.  
11 *Complaint*, ¶¶ 125 – 128.

12 79. Gloria Barr, State Bar Certified Trust Account Examiner, used the trust  
13 account records to reconstruct the client trust accounts for Respondent. *Complaint*, ¶  
14 129.

15  
16 80. Ms. Barr's examination of the records for Respondent's trust accounts  
17 revealed the following irregularities:

- 18 a. There is no record of the \$2,500.00 advance payment made by Mr.  
19 and Mrs. Ghanooni (Count One) ever being deposited into a trust  
20 account maintained by Respondent.  
21  
22 b. There is no record of the \$20,000.00 advance payment made by Mr.  
23 Bullard (Count Two) ever being deposited into a trust account  
24 maintained by Respondent.  
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26 c. There is no record of the \$2,500.00 advance payment made by Ms.  
27 Serrano (Count Three) ever being deposited into a trust account  
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maintained by Respondent.

- d. The initial \$5,000.00 advance payment made by Mr. DeMott (Count Three) was deposited October 15, 2007 into the Torres-Garza IOLTA account, was disbursed to Respondent as part of the November 2, 2007 trust account check in the amount of \$17,174.10 sent to Respondent, which check was deposited into Respondent's new trust account. A second \$5,000.00 retainer payment was made by Mr. DeMott and deposited into Respondent's trust account on March 28, 2008. (Prior to this \$5,000.00 deposit, Respondent's trust account had a negative balance of \$3,142.85.) There is no record of the funds belonging to Mr. DeMott being disbursed on his behalf or refunded to him.
- e. The \$3,000.00 advance payment made by Mr. Baldwin (Count Three) was deposited in the Torres-Garza IOLTA account, distributed to Respondent by the November 2, 2007 trust account check, which was deposited into Respondent's new client trust account. However, there is no record of Mr. Baldwin's funds being disbursed on his behalf or being refunded to him.
- f. There is no record of any payment by Mr. Duggan (Count Five) and Mr. Littleton (Count Eight) ever being deposited into a trust account

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maintained by Respondent.

g. The \$5,000.00 retainer fee paid by Mr. Spitzer (Count Seven) was deposited into the Torres-Garza IOLTA account. Although there are no record of distributions made on behalf of Mr. S., only \$4,674.10 was transferred from the Torres-Garza IOLTA account to Respondent's new trust account. Thereafter, there were no disbursements made on behalf of Mr. Spitzer. and no refund made.  
*Complaint, ¶ 129.*

h. From December 28, 2007 through April 4, 2008, Respondent transferred approximately \$21,100.00 from his client trust account to a separate private account numbered 1911003434. Some of these funds were attributable to clients DeMott, Baldwin and Spitzer.  
*Complaint, ¶¶ 130, 131.*

**CONCLUSIONS OF LAW**

Based upon the complete record generally and the foregoing facts specifically, this Hearing Officer concludes:

1. Respondent was properly served with the Complaint in this matter. Considering Respondent's contacts with the State Bar after charges were filed, Respondent was aware his conduct in these matters was the subject to State Bar investigation. Attorneys are obligated to keep a current mailing address on file with the State Bar.

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2. As to Count One, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.2(a), 1.3, 1.4, 1.5(a), 1.16(d) and 8.4(d).

3. As to Count Two, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.4(a)(3), 1.4(a)(4), 1.5(a), 1.16(d), 4.4(a) and 8.4(d).

4. As to Count Three, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.2(a), 1.3, 1.4(a), 1.5(a), 1.16(d), 3.4(c), 4.1(a), 4.4(a), 8.4(c) and 8.4(d).

5. As to Count Four, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.3, 1.4(a), 1.5, 1.16(d), 4.4(a) and 8.4(d).

6. As to Count Five, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.2, 1.3, 1.4(a), 1.5, 1.16(d), 3.2, 8.4(c) and 8.4(d).

7. As to Count Six, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 4.4(c) and 8.4(d).

8. As to Count Seven, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.2(a), 1.3, 1.4(a), 1.5(a), 1.16(d) and 8.4(d).

9. As to Count Eight, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.2(a), 1.3, 1.4(a), 1.5(a), 1.16(d), 3.2, 8.4(c), 8.4(d) and 8.4(e).

10. In failing to address inquiries from the State Bar, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 8.1(b), plus Rules 32(c)(3), 53(d) and (f), Ariz.R.S.Ct.

11. In regards to the handling of client funds and his trust account, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.15, 8.4(b) and 8.4(c), plus Rules

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4 43(d)(1)(A), 44(a) and 44(b)(4), Ariz.R.S.Ct.

5 12. The following aggravating circumstances exist: multiple offenses, pattern  
6 of misconduct, dishonest motive, bad faith obstruction of the disciplinary proceeding by  
7 intentionally failing to comply with rules or orders of the disciplinary agency, substantial  
8 experience in the law, refusal to acknowledge wrongful nature of conduct, and  
9 indifference to making restitution.  
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11 13. In mitigation, Respondent had no disciplinary history prior to these matters.  
12 Considering the seriousness of Respondent's ethical misconduct, and the harm caused to  
13 clients, this mitigating factor is given little to no weight. This State Bar candidly notes  
14 that in his March 10, 2008 informal initial response, Respondent provided some  
15 information regarding problems experienced with his ex-wife and her care of their two  
16 children. *State Bar's Aggravation and Mitigation Brief*, pg. 54. The information  
17 provided by Respondent is very superficial in addition to being hearsay and lacking  
18 foundation. The mitigating factor of personal or emotional problems is not found  
19 because there is no evidence explaining those alleged problems in sufficient detail.  
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22 **RECOMMENDATION**

23 **CONSIDERATION OF THE ABA STANDARDS**

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25 In determining the appropriate sanction, the American Bar Association's Standards  
26 for Imposing Lawyer Sanctions are to be considered. *In re Clark*, 207 Ariz. 414, 87 P.3d  
27 827 (2004); *In Re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). The Standards are designed  
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4 to promote consistency by identifying relevant factors which should be considered in  
5 determining a sanction, and then applying those factors to situations in which lawyers  
6 have engaged in misconduct. *Standard 1.3, Commentary*. In applying the Standards,  
7 four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state; (3)  
8 the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of  
9 aggravating and/or mitigating factors. *In Re Peasley, supra; In re Spear*, 160 Ariz. 545,  
10 555, 774 P.2d 1335, 1345 (1989).  
11

12 Where the matter involves findings of multiple misconduct, the ultimate sanction  
13 should be at least consistent with the sanction for the most serious instance of misconduct  
14 among the number of violations. The other acts of misconduct should be treated as  
15 aggravating factors. Therefore, where multiple acts of misconduct are found, the  
16 sanction generally should be greater than the sanction for the most serious individual  
17 misconduct. *In Re Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994); *In Re Cassali*, 173  
18 Ariz. 372, 843 P.2d 654 (1992).  
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21 The most serious misconduct involved the duties owed to clients. *ABA Standard*  
22 *4.0. Standard 4.1, Failure to Preserve Client's Property, and Standard 4.4 Lack of*  
23 *Diligence*, are equally applicable. As to both, Respondent's mental state was knowing.  
24 Disbarment is the presumptive sanction under both Standard 4.1 and Standard 4.4.  
25 *Standards 4.11 and 4.41.*  
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27 There is clear and convincing evidence that Respondent received advance payment  
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4 from clients which funds Respondent pocketed without providing the promised legal  
5 services. Such conduct is abhorrent, warranting the most serious sanction.

6 Respondent's failure to respond to State Bar inquiries and to participate in these  
7 proceedings is likewise telling. If Respondent is incapable or unwilling to comply with  
8 the duties he owes in this disciplinary proceeding (including providing some explanation  
9 for his conduct), it is logical to conclude that Respondent is incapable or unwilling to  
10 fulfill any of the obligations owed by an attorney.

11  
12 Respondent poses a present and continuing threat to clients and to the public.  
13 Considering the dangers posed, and in light of the overwhelming aggravating  
14 circumstances, this Hearing Officer believes disbarment is necessary and warranted.  
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#### 16 PROPORTIONALITY ANALYSIS

17 The purpose of professional discipline is twofold: (1) to protect the public, the  
18 legal profession, and the justice system, and (2) to deter others from engaging in similar  
19 misconduct. *In Re Neville*, 147 Ariz. 106, 116, 708 P.2d 1297, 1307 (1985); *In Re*  
20 *Swartz*, 141 Ariz. 266, 277, 686 P.2d 1236, 1247 (1984). Disciplinary proceedings are  
21 not to punish the attorney. *In Re Peasley*, 208 Ariz. 27, 39, 90 P.3d 764, 776 (2004); *In*  
22 *Re Beren*, 178 Ariz. 400, 874 P.2d 320 (1994).  
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25 The discipline in each situation must be tailored to the individual facts of the case  
26 in order to achieve the purposes of discipline. *In Re Wines*, 135 Ariz. 203, 660 P.2d 454  
27 (1983); *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993). To have an effective system of  
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professional sanctions, there must be internal consistency and it is therefore appropriate to examine sanctions imposed in cases that are factually similar: *In re Shannon*, 179 Ariz. 52 (1994); *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988).

The sanction recommended by this Hearing Officer is consistent with the discipline ordered in the following similar cases: David Apker (SB-04-0094), Alexander Sierra (SB-04-0074), George Brown (SB-05-0054), David Son (SB-05-0173) and Cindy L. Wagner (SB-05-0175). These cases involved attorneys who knowingly failed to diligently represent clients, and where many of the aggravating circumstances found in this case were present. These cases also involved a default being taken against the respondent attorney who did not cooperate in disciplinary proceedings. In these cases, disbarment was ordered by the Disciplinary Commission, with the Supreme Court declining review.

**RESTITUTION**

Based upon the evidence, this Hearing Officer believes that the Respondent should be ordered to make the following restitution:

|                             |              |
|-----------------------------|--------------|
| Rony and Margarita Ghanooni | \$ 2,800.00  |
| Larry Bullard               | \$ 20,000.00 |
| John DeMott                 | \$ 14,500.00 |
| Elisa Vasquez Serrano       | \$ 2,500.00  |
| Antonio S. Amaya            | \$ 5,610.00  |

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| Dan Baldwin                         | \$ 3,000.00  |
| John Duggan                         | \$ 11,800.00 |
| Richard Spitzer                     | \$ 5,000.00  |
| Timothy Littleton and his companies | \$ 13,184.88 |

**CONCLUSION**

Upon consideration of the facts, application of the Standards, including aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer recommends that:

1. Respondent be disbarred;
2. the cost and expenses of this proceeding be taxed against Respondent; and
3. Respondent provide the restitution set forth in the preceding paragraph.

DATED this \_\_ day of December, 2008.

  
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Mark S. Sifferman  
Hearing Officer

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Original filed with the  
Disciplinary Clerk of the  
State Bar of Arizona, this  
23<sup>rd</sup> day of December 2008,  
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