

FILED

SEP 23 2008

BEFORE A HEARING OFFICER OF
THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED
MEMBER OF THE STATE BAR OF
ARIZONA,

No 07-2159, 08-0406

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA

HEARING OFFICER'S REPORT

Christopher L May,
Bar No. 022583

(Assigned to Hearing Officer 8W,
Thomas M Quigley)

Respondent.

The undersigned hearing officer recommends suspension for one year, payment of restitution and costs and submits the following report

I. PROCEDURAL HISTORY

The State Bar filed a complaint on May 29, 2008. The complaint alleged two counts, discussed below: Respondent Christopher L. May having failed to answer, a notice of default was entered on June 27, 2008. No answer being received, default was entered on July 18th, 2008. The State Bar requested an aggravation/mitigation hearing and that hearing was held on August 8, 2008. However, the State Bar did not present additional evidence. Respondent did not appear at the aggravation/mitigation hearing.

II. FINDINGS OF FACT¹

COUNT ONE (Perry)

1. Respondent was admitted to practice law in Arizona on December 16, 2003. Complaint ¶ 1.

2. During August 2007, Kimberly Perry ("Perry") hired Respondent to represent her in a child custody matter. Complaint ¶ 2.

3. Perry initially paid Respondent \$1,300.00 for the representation. Perry later paid Respondent an additional \$500.00, and later yet paid an additional \$450.00, for a total of \$2,250.00 for the representation. Complaint ¶ 3.

4. On August 29, 2007, Respondent filed his Notice of Appearance for Perry.

¹ No answer being filed, the material factual allegations of the complaint are accepted as true.

1 Complaint ¶ 4.

2 5 An evidentiary hearing took place on August 31, 2007, during which Perry
3 was ordered to appear for a deposition and to respond to interrogatories on or before
4 September 13, 2007. The court set another evidentiary hearing for October 30, 2007.

5 Complaint ¶ 5

6 6. Perry's deposition was taken on October, 12, 2007. However, Respondent
7 arrived 35 minutes late to the deposition. Complaint ¶ 6

8 7 Respondent was also late for the October 30, 2007 evidentiary hearing,
9 eventually appearing telephonically. Complaint ¶ 7.

10 8 The trial court's minute entry dated October 30, 2007 advised that "failure
11 to comply with the Court orders may result in sanctions being imposed" against
12 Respondent regarding his tardiness and defects in compliance with discovery orders

13 Complaint ¶ 8

14 9. On December 11, 2007, the court issued judgment arising from the October
15 30 evidentiary hearing. The court found *inter alia*, that

16 a Perry failed to timely answer the uniform interrogatories,

17 b Perry and Respondent arrived almost 30 minutes late to Perry's
18 deposition;

19 c When Perry did answer the interrogatories, the answers were
20 evasive, incomplete and unverified.

21 d. Perry's conduct unnecessarily increased the opposing party's
22 attorney's fees. Complaint ¶ 9

23 10. Perry was found in contempt of court for willful failure to comply with
24 discovery orders and ordered to pay \$1,500.00.² Complaint ¶ 10

25 11 Respondent failed to inform Perry about the December 11, 2007, judgment.
26 Perry learned about the judgment when she accessed the public records for her case

27 _____
28 ² The State Bar asserts that, of the \$1,500.00 amount, only \$1,300.00 is attributable to conduct
by Respondent

1 Complaint ¶ 11

2 12 On December 27, 2007, the State Bar received a complaining letter from
3 Perry about Respondent's conduct, including his tardiness at deposition and hearing, his
4 failure to timely serve the interrogatories and his failure to prepare and file motions Perry
5 had requested Complaint ¶ 12.

6 13 In a letter dated January 10, 2008, the State Bar sent a copy of Perry's
7 complaining letter to Respondent and requested his response to the allegations within 20
8 days of the date of the letter. Respondent failed to respond to the State Bar's January 10,
9 2008, request for information Complaint ¶ 13.

10 14 In letter dated February 15, 2008, the State Bar again informed Respondent
11 of Perry's complaining letter and requested his response to the allegations and to provide
12 a copy of his client trust account records within 20 days of the date of the letter
13 Respondent failed to respond to the State Bar's February 15, 2008, request for
14 information. Complaint ¶ 14

15 15. On March 21, 2008, a probable cause order was filed in File No 07-2159
16 Complaint ¶ 15

17 **COUNT TWO (Willis)**

18 16 In August 2006, Rob Willis (Willis"), the president of the Hillside Terrace
19 Homeowner's HOA (the "HOA") hired Respondent to represent the HOA in a matter
20 Complaint ¶ 18

21 17. Respondent sent the HOA an engagement agreement on August 26, 2006
22 Complaint ¶ 19

23 18 In November 2006, Respondent sent demand letters to the opposing party
24 stating the HOA's position. Respondent informed the HOA that he had received no
25 response. Complaint ¶ 20

26 19. In April 2007, the HOA and Respondent decided that a lawsuit should be
27 filed Respondent did not timely draft or file the complaint Respondent made numerous
28 excuses to the HOA for the delay such as having filed the complaint in the wrong venue

1 Complaint ¶ 21

2 20 On August 23, 2007, Respondent filed the complaint. Complaint ¶ 22.

3 21 On September 7, 2007, the attorney for the opposing party filed a notice of
4 appearance and answer. Complaint ¶ 23.

5 22 On September 17, 2007, the HOA requested an update on the litigation
6 Complaint ¶ 24

7 23. On September 17, 2007, Respondent replied that he was "in conference"
8 but provided no other update. Complaint ¶ 25

9 24 After September 17, 2007, the HOA made several attempts to contact
10 Respondent. Respondent's email, phone numbers and voice-mailboxes no longer worked
11 or were disconnected. Complaint ¶ 26

12 25 On October 1, 2007, the HOA's property management company received a
13 faxed invoice from Respondent and a request for a check in the amount of the invoice
14 Complaint ¶ 27

15 26 On October 2, 2007, the HOA terminated Respondent's representation
16 Complaint ¶ 29

17 27. On October 3, 2007, the HOA paid the balance of the invoice and requested
18 its file. Complaint ¶ 30.

19 28 Respondent failed to return the HOA's file. Respondent took no action to
20 protect the HOA's interests regarding the litigation. Complaint ¶ 31

21 29 On November 11, 2007, the HOA located an ad and email address for
22 Respondent's firm on the internet. The HOA requested the return of its file via the listed
23 email address. Complaint ¶ 32

24 30. On November 12, 2007, the HOA received an email promising that the
25 HOA's file would be mailed as soon as an address for the HOA was provided
26 Complaint ¶ 33

27 31 On November 14, 2007, the HOA provided an address via telephone. The
28 file was not returned to the HOA. Complaint ¶ 34

1 32 On November 30, 2007, the HOA again emailed a request for the return of
2 its file Complaint ¶ 35.

3 33. On November 30, 2007, the HOA hired an attorney to check on the status
4 of the litigation and attempt to retrieve the HOA's file from Respondent. Complaint ¶ 36

5 34 On December 7, 2007, Respondent caused the HOA's file to be returned,
6 two months after the HOA's first request Complaint ¶ 37

7 35 On January 8, 2008, the HOA's new attorney was able to determine that.

8 a The court had dismissed the HOA's case without prejudice on
9 September 25, 2007, because the check Respondent issued to pay the filing fee
10 was returned as insufficient funds and Respondent thereafter failed to pay the
11 filing fee, and,

12 b. The court awarded attorney fees against the HOA on November 15,
13 2007, in the amount of \$1,624 00, plus costs Complaint ¶ 38.

14 36 On January 3, 2008, the opposing party's attorney sent Respondent a letter
15 stating that the HOA now owed \$2,352 40 on the judgment, with interest. Complaint ¶
16 39

17 37 On February 6, 2008, the HOA received an email from the opposing party's
18 attorney stating that the HOA now owed \$2,723.00, to pay the judgment with interest
19 Complaint ¶ 40.

20 38. On February 27, 2008, the HOA received an email from the opposing
21 party's attorney stating that the HOA now owed \$2,877 00, to pay the judgment with
22 interest Complaint ¶ 41.

23 39 As of March 10, 2008, the HOA had paid \$1,419 00, to Respondent for the
24 initial representation; \$2877 00 to pay the judgment with interest and \$408.50 to an
25 attorney to investigate the status of the litigation after Respondent abandoned the
26 representation. Complaint ¶ 42

27 40 On March 10, 2008, the State Bar received a letter dated March 5, 2008,
28 from the HOA regarding Respondent's conduct Complaint ¶ 43

1 41 In a letter dated March 19, 2008, the State Bar sent a copy of the HOA's
2 complaining letter and requested Respondent to respond to the allegations within 20 days
3 of the date of the letter. Respondent failed to respond to the State Bar's March 19, 2008,
4 request for information. Complaint ¶ 44.

5 42 By letter dated April 14, 2008, the State Bar again informed Respondent of
6 the HOA's complaining letter and requested his response to the allegations within 10
7 days of the date of the letter. Respondent failed to respond to the State Bar's April 14,
8 2008, request for information. Complaint ¶ 45

9 43. On May 5, 2008 a probable cause order was filed in File No 08-0406.
10 Complaint ¶ 46

11 **III. CONCLUSIONS OF LAW**

12 Based upon the above findings of fact, which are undisputed due to Respondent's
13 default, the following conclusions of law are appropriate.

14 44 Respondent twice violated ER 1.1 "A lawyer shall provide competent
15 representation to a client. Competent representation requires the legal knowledge, skill,
16 thoroughness and preparation reasonably necessary for the representation." Respondent
17 failed to assist Perry in providing proper responses to interrogatories, and failed to timely
18 appear for a deposition and a court hearing. Respondent also filed the HOA's complaint
19 without proper filing fees and then failed to rectify the failure

20 45. Respondent twice violated ER 1.3: "A lawyer shall act with reasonable
21 diligence and promptness in representing a client." In the Perry matter, Respondent was
22 late to his client's deposition and late again to an evidentiary hearing. Respondent also
23 provided late answers to interrogatories, which the court noted were "evasive, incomplete
24 and unverified."

25 With respect to the HOA, Respondent delayed several months to file the
26 complaint, failed to pay the filing fee after his first check was returned NSF, and failed to
27 take any action to prevent the complaint from being dismissed and having a judgment
28 entered against the client. Further, Respondent failed to timely return the client's file or

1 provide an update on the litigation

2 46 Respondent twice violated ER 1.4(a) A lawyer shall. (3) keep the client
3 reasonably informed about the status of the matter, (4) promptly comply with reasonable
4 requests for information Respondent failed to inform Perry about the December 11,
5 2007 judgment Respondent also did not inform Perry why he did not file the motions
6 she requested

7 With respect to the HOA, Respondent failed to inform his client that its case had
8 been dismissed and that judgment had been entered against it

9 47 Respondent once violated ER 1.15(c). A lawyer shall deposit into a client
10 trust account legal fees and expenses that have been paid in advance, to be withdrawn by
11 the lawyer only as fees are earned or expenses incurred. . . ." Respondent failed to hold
12 Perry's funds separately from his own and failed to provide any accounting for such
13 funds when requested to do so by the State Bar

14 48. Respondent once violated ER 1.16(d) "Upon termination of
15 representation, a lawyer shall take steps to the extent reasonably practicable to protect a
16 client's interests . . ." Respondent failed to return the HOA's file.

17 49 Respondent once violated ER 3.2: "A lawyer shall make reasonable efforts
18 to expedite litigation consistent with the interests of the client." Respondent waited
19 several months before filing the complaint requested by the HOA. Respondent even then
20 failed to pay the filing fee which delayed the litigation.

21 50. Respondent once violated ER 3.4(c): "A lawyer shall not knowingly
22 disobey an obligation under the rules of a tribunal except for an open refusal based on an
23 assertion that no valid obligation exists; ." In the Perry matter, Respondent was under
24 an obligation to timely attend the deposition of his client and timely serve interrogatory
25 answers

26 51 Respondent twice violated ER 8.1(b). "a lawyer in connection with a bar
27 admission application or in connection with a disciplinary matter, shall not knowingly
28 fail to respond to a lawful demand for information from an admissions or disciplinary

1 authority . . .” In both of the counts in this matter, Respondent failed to respond to
2 requests for information

3 52 Respondent twice violated ER 8 4 “It is professional misconduct for a
4 lawyer to . (c) engage in conduct involving dishonesty, fraud, deceit or
5 misrepresentation; (d) engage in conduct that is prejudicial to the administration of
6 justice, .” In the matter involving Perry, Respondent was chronically tardy and
7 therefore delayed the administration of justice In the HOA matter, Respondent’s failure
8 to pay the filing fee and his failure to monitor the case was also prejudicial to the
9 administration of justice in that his conduct caused dismissal of his client’s case

10 53. Respondent twice violated Ariz. Sup Ct. R. 53 by failing to cooperate and
11 furnish information relating to these proceedings.³

12 **IV. RECOMMENDED SANCTION**

13 The purpose of lawyer discipline is not to punish the lawyer, but to protect the
14 public and deter future misconduct *In re Fioramonti*, 176 Ariz 182, 187, 859 P.2d
15 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the
16 profession and the administration of justice *In re Neville*, 147 Ariz 106, 708 P.2d 1297
17 (1985) Yet another purpose is to instill public confidence in the bar’s integrity *Matter*
18 *of Horwitz*, 180 Ariz 20, 29, 881 P.2d 352, 361 (1994)

19 In imposing discipline, it is appropriate to consider the facts of the case, the
20 American Bar Association’s *Standards for Imposing Lawyer Sanctions* (“Standards”) and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178
21 Ariz 283, 286, 872 P.2d 1235, 1238 (1994)

23 **A. The ABA Standards for Imposing Lawyer Sanctions**

24 ABA *Standard 3 0* provides that four criteria should be considered when imposing
25 discipline (1) the duty violated, (2) the lawyer’s mental state and (3) the actual or
26 potential injury caused by the lawyer’s misconduct; and (4) the existence of aggravating
27

28 ³ The State Bar alleged other violations which this hearing officer declines to find, by clear and convincing evidence, from the admitted factual allegations

1 or mitigating factors. The ABA *Standards* indicate that the “ultimate sanction imposed
2 should at least be consistent with the sanction for the most serious instance of misconduct
3 among a number of violations, it might well be and generally should be greater than the
4 sanction for the most serious” *Matter of Taylor*, 180 Ariz. 290, 292; 883 P 2d 1046
5 (1994)

6 1. The Duty Violated

7 Respondent did not adequately represent his clients, then essentially abandoned
8 his clients, and finally refused to respond to State Bar inquiries Pursuant to ABA
9 *Standard* 4.4, suspension is appropriate when a lawyer knowingly fails to perform
10 services for a client and causes injury or potential injury to a client or a lawyer engages in
11 a pattern of neglect and causes injury or potential injury to a client *Standard* 4 42

12 2 The Lawyer’s Mental State

13 It is certainly conceivable that Respondent would have been able to present
14 evidence of negligent behavior as opposed to knowing behavior However, given the
15 undisputed and unexplained facts admitted by default, this hearing officer must conclude
16 that Respondent acted knowingly—at the very least in failing to pay the filing fee and
17 allowing judgment to be entered against the HOA, and in failing to inform Perry of the
18 judgment against her.

19 3. Actual or Potential Injury.

20 Here, the potential injuries actually occurred. In Perry’s matter, Respondent’s
21 client rather predictably incurred sanctions after Respondent was late and did not comply
22 with the court’s orders regarding discovery In the HOA matter, respondent’s conduct
23 resulted in a judgment dismissing his client’s claim. Respondent’s inaction then
24 contributed to the award of attorneys’ fees and costs against his client, and quite possibly,
25 unnecessary interest on the judgment, plus additional fees for a subsequent attorney

26 4 Aggravating and Mitigating Factors.

27 In this case, the following aggravating factors are present

28 *Standard* 9 22(c) a pattern of misconduct,

1 Standard 9 22(d) multiple offenses,
2 Standard 9 22(e) obstruction of the disciplinary proceeding by intentionally
3 failing to comply with rules or orders of the disciplinary agency ⁴

4 There is one mitigating factor in this case, the absence of a prior disciplinary
5 record. Standard 9.32(a).

6 **B. Proportionality Analysis**

7 Sanctions against lawyers must have internal consistency to maintain an effective
8 and enforceable system; therefore the court looks to cases that are factually similar to the
9 case before it. *In re Pappas*, 159 Ariz. 516, 526, 268 P 2d 1161, 1171, (1988)

10 In *In re Bryn* SB-04-2228, et. al., Respondent abandoned his clients and engaged
11 in a pattern of neglect He failed to cooperated with and respond to the State Bar's
12 investigation, including a subpoena duces tecum to produce trust account records The
13 aggravating factors in the case were dishonest or selfish motive, a pattern of misconduct,
14 multiple offenses and bad faith obstruction of the disciplinary process Mitigating factors
15 included absence of a prior disciplinary record, personal and emotional problems and
16 inexperience in the practice of law. The hearing officer recommended a 90 day
17 suspension and two years probation. However, the Disciplinary Commission changed it
18 to a six month and one day suspension and two years probation

19 In *In re Weich* SB-05-2252, et al., Respondent was suspended for two years,
20 ordered to make restitution, placed on probation (LOMAP) and required to have a
21 practice monitor. Respondent failed to diligently represent clients, failed to communicate
22 with them, failed to return phone calls and failed to abide by their wishes and requests.
23 Respondent further failed to furnish information or respond to requests from the State
24 Bar Aggravating factors included a pattern of misconduct, multiple offenses, bad faith
25 obstruction of the disciplinary process, substantial experience in the practice of law and
26

27 ⁴ The State Bar also requested a finding of dishonest or selfish motive pursuant to Standard
28 9 22(b) This hearing officer declines to find that aggravating factor, but notes that the
recommended sanction would not be different even if that aggravated factor existed.

1 indifference to making restitution The fact that Respondent had no prior disciplinary
2 record was a mitigating factor

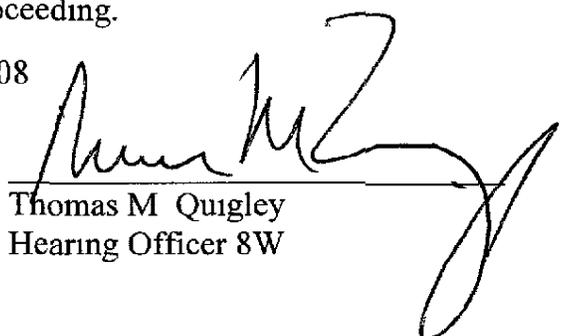
3 In *In re Clark*, SB-04-0086-D (2004), Clark was suspended for six months and
4 one day, placed on probation for two years and ordered to pay restitution or participate in
5 fee arbitration He failed on several occasions to appear at hearings on behalf of clients,
6 failed to communicate with his clients and failed to return the client's file at the end of
7 the representation He also failed to re-submit a court filing fee causing the dismissal of
8 his client's case On all counts he failed to respond to the State Bar's requests for
9 information. Clark had prior discipline which included a censure and a suspension that
10 included charges of failing to cooperate The Hearing Officer found six aggravating
11 factors: prior discipline, pattern of misconduct, multiple offenses, bad faith obstruction
12 of the disciplinary process; substantial experience in the practice of law and indifference
13 to making restitution There were no mitigating factors

14 **V. CONCLUSION**

15 A sanction of one year suspension is recommended based on the multiple
16 instances of misconduct, including abandonment of clients and refusal to respond to State
17 Bar inquiries

18 Restitution should be ordered in the following amounts: on Count One, \$2,250.00
19 in fees and \$1,300.00 of the \$1,500.00 in sanctions for a total of \$3,550.00, payable to
20 Perry, on Count Two, \$1,419.00 in fees, payable to Hillside Terrace Homeowner's
21 Association⁵ In addition, Respondent should be ordered to pay all costs and expenses
22 incurred by the State Bar in this disciplinary proceeding.

23 DATED this 23rd day of September, 2008

24
25 
26 Thomas M Quigley
Hearing Officer 8W

27
28 ⁵ The State Bar conceded at the aggravation hearing that it was not seeking restitution of the
judgment against the HOA or fees for the replacement attorney Transcript at p. 7, l 5 to p. 8,
l 13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Original filed this 23rd day of September,
2008 with the Disciplinary Clerk of the Supreme Court

Copy of the foregoing mailed this 23rd
day of September, 2008, to:

Edward W Parker
Staff Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 200
Phoenix, Arizona 85016-6288

Christopher May
Respondent
7335 6th Ave #3
Scottsdale, AZ 85251

By 