

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

FILED
MAR 13 2008
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
W. J. [Signature]

IN THE MATTER OF A SUSPENDED)
MEMBER OF THE STATE BAR OF)
ARIZONA,)
)
)
)
JOHN G. MORRISON,)
Bar No. 006192)
)
RESPONDENT.)

File Nos. 06-1931, 07-0004, 07-0990,)
07-1103, 07-1250, 07-1328,)
07-1440, 07-1540)

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

- 1 Probable cause orders were signed on Counts One through Four on September 25, 2007, and on Counts Five through Eight on October 19, 2007. An eight count Complaint was filed on October 26, 2007, and Notice of Service sent to Respondent at his address of record on October 29, 2007.
2. The undersigned Hearing Officer was appointed on November 20, 2007. Respondent failed to answer or otherwise appear, and Notice of Default was filed on November 27, 2007. Thereafter, on December 17, 2007, Respondent filed a two sentence Answer generally denying the allegations of the Complaint and stating that within the "next several weeks" he would seek to amend his Answer. On December 20, 2007, the State Bar filed a Motion to Strike Respondent's Answer. After waiting almost 30 days from the filing of Respondent's Answer and approximately two weeks from the filing of the Motion to Strike, and no further word from Respondent, the undersigned Hearing Officer granted the State Bar's Motion to Strike on January 14, 2008.

3. In the original Case Management Order, sent out December 27, 2007, this matter was set for Final Hearing on January 28, 2008. On Thursday, January 24, 2008, Respondent faxed a Motion to Reconsider to the undersigned Hearing Officer requesting reconsideration of the Order granting the State Bar's Motion to Strike
4. In that Respondent's Motion to Reconsider was short on any details, and given that the final hearing was set only four days hence, on Friday the 25th of January, 2008, the Hearing Officer attempted to hold a telephonic conference with the Respondent and Bar Counsel to address Respondent's Motion for Reconsideration. The phone number listed in Respondent's Motion for Reconsideration did not answer and the "mailbox" was full.
5. The undersigned Hearing Officer denied Respondent's Motion to Reconsider and the ruling was e-mailed to Respondent along with notification that the Aggravation/Mitigation/Default Hearing on the Bar's Complaint would proceed on the final hearing date, January 28, 2008.
6. Respondent failed to appear, either in person or by counsel, for the Aggravation/Mitigation Hearing held on January 28, 2008.

FINDINGS OF FACT

7. At all times relevant hereto, Respondent was an attorney licensed to practice law in Arizona, having been admitted to practice law in Arizona on May 10, 1980. Respondent was suspended from the practice of law for one year as a result of a prior disciplinary action, and that suspension commenced on July 27, 2006. Since his suspension in July 2006, Respondent has not applied for reinstatement pursuant to Rule 65, Ariz.R.Sup.Ct , so he remains a suspended member of the State Bar. The remaining findings of fact are

from the complaint, which are deemed admitted because of the default that was entered, the testimony given at the aggravation/mitigation hearing and exhibits thereto

COUNT ONE (File No. 06-1931):

8 On or about November 22, 2006, Respondent deposited a settlement check in the amount of \$9,500 00 into his trust account. The trust account balance at the time of the deposit was \$2 59. The settlement check was not a Rule 43(d)(3)(A) limited risk deposit.

9 Respondent was provided a deposit receipt that contained a disclaimer, "Further review may result in delayed availability of this deposit." On information and belief, the bank placed a temporary hold on the deposit, delaying its availability.

10 On or about November 24, 2006, Respondent requested the bank issue a certified check in the amount of \$5,200 00 from his trust account. This check was Respondent's client's disbursement from the settlement.

11 At the same time, Respondent withdrew \$4,300 00 from the trust account for his fees, using a bank withdrawal slip to accomplish the withdrawal. The bank provided a certified check and withdrawal funds to Respondent.

12 Due to the hold on the deposit funds, the bank registered an overdraft, charged a \$25 00 overdraft fee, and then posted the \$9,500 00 deposit later on the same day, leaving the trust account with a negative balance of minus \$22 41.

13 On or about November 28, 2006, the bank sent notice to the State Bar of Arizona regarding the overdraft.

14 On January 11, 2007, the State Bar requested Respondent provide copies of trust account statements, ledgers, and checks for the period in question.

- 15 On or about February 15, 2007, Respondent provided the requested information. A
review of the information revealed the trust account violations listed below.
- 16 Respondent did not maintain an administrative funds ledger for his trust account for the
relevant periods. Without an administrative funds ledger, Respondent was unable to
perform the required three-way reconciliation.
- 17 Respondent only kept \$12.59 of his own funds in the trust account for administrative fees
during the relevant period.
- 18 The individual ledger for client Morrison showed a \$2.56 deduction for a personal
expense not related to representation.
- 19 Respondent violated one or more of the Rules of Professional Conduct as follows:
Respondent failed to adequately safekeep client property, disbursed against uncollected
funds, failed to exercise due professional care, failed to record all transactions promptly
and completely, disbursed funds without using a pre-numbered check or by electronic
transfer, did not maintain a record of such disbursements in accordance with the
requirements, and failed to deposit funds reasonably sufficient to pay service or other
charges or fees imposed by the financial institution.
- 20 Respondent's conduct as described in this count violated Rule 42, Ariz R Sup Ct,
specifically, ER 1.15–Safekeeping Client Property, Rule 43–Trust Account Verification,
and Rule 44–Duty to Deposit Client Funds, Ariz R Sup Ct.

COUNT TWO (File No. 07-0004):

- 21 In or about September of 2004, Charles Feedback (“Mr. Feedback”) retained Respondent to
represent him in a slip and fall.

- 22 In or about May of 2006, Respondent negotiated a settlement in Mr. Feedback's case in the amount of \$12,500.00 On or about June 9, 2006, Respondent deposited the settlement check into his trust account
- 23 Respondent did not notify Mr Feedback that he had received the settlement funds
24. On information and belief, Medicare had a lien for an undisclosed amount on the settlement funds
- 25 On or about June 12, 2006, Respondent transferred the settlement funds from his trust account into a separate interest-bearing account
- 26 Respondent did not inform Mr Feedback that he was making this transfer of funds,
- 27 On or about June 20, 2006, Respondent wrote to Medicare requesting the amount being asserted against these settlement funds
- 28 In or about September of 2006, Medicare wrote back to Respondent indicating that a third-party contractor would be handling the claim
- 29 In or about October of 2006, Respondent wrote to the third-party Medicare contractor providing them with the same information he had provided Medicare
- 30 On information and belief, Respondent took no further action to resolve the outstanding Medicare lien or pay the settlement funds to Mr. Feedback
- 31 Respondent did not inform Mr Feedback that he was suspended from the practice of law
- 32 Mr Feedback left multiple messages for Respondent requesting a status update, but Respondent did not return Mr Feedback's calls
- 33 On information and belief, the Medicare lien is still outstanding and no settlement funds have been distributed to Mr Feedback

34. Respondent violated one or more of the Rules of Professional Conduct as follows
Respondent failed to act with reasonable diligence and promptness in representing a client, failed to reasonably consult with a client about the means by which the client's objectives were to be accomplished, failed to keep the client reasonably informed about the status of the matter, failed to promptly comply with reasonable requests for information, failed to consult with the client about any relevant limitation on Respondent's conduct when Respondent knew that the client expected assistance not permitted by the Rules of Professional Conduct or other law, upon receiving funds in which a client had an interest, failed to promptly notify the client, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, committed a criminal act that reflected adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, failed to make reasonable efforts to expedite litigation consistent with the interests of the client, and failed to within 10 days notify all clients being represented in pending matters of Respondent's suspension

35 Respondent's conduct as described in this count violated Rule 42 Ariz R Sup.Ct , specifically ERs 1 3-Diligence, 1 4-Communication with Client, 1 15-Safekeeping of Property, 3.2-Expediting Litigation, and Rule 44-Duty to Deposit Client Funds, and Rule 72-Notice to Clients, Ariz R Sup Ct

COUNT THREE (File No. 07-0990):

36 In or about May of 2001, Richard Delutri ("Mr Delutri") retained Respondent to represent him in a slip and fall case

37 In or about June of 2005, Mr Dilutri was awarded \$22,500 pursuant to a binding arbitration judgment

- 38 On or about October 24, 2005, Mr Dilutri endorsed the settlement check that was made out to both he and Respondent Respondent deposited the settlement check into his trust account
- 39 Medicare had a lien for an undisclosed amount on the settlement funds
- 40 Respondent did not inform Mr Dilutri that he had been suspended from the practice of law
- 41 Respondent took no action to resolve the outstanding Medicare lien or pay the settlement funds to Mr Delutri
- 42 On or about June 12, 2007, Mr Delutri filed a complaint with the State Bar about Respondent's lack of action in his case
43. On June 19, 2007, the State Bar forwarded Mr Delutri's complaint to Respondent at his address of record, along with a request that he submit a response no later than July 9, 2007 Respondent failed to respond by July 9, 2007
44. On July 24, 2007, the State Bar sent a follow-up letter to Respondent at his address of record advising him that he had failed to respond by the previously stated deadline, and directing Respondent to submit a response to the complaint no later than August 3, 2007 Respondent failed to respond by the August 3, 2007, deadline
- 45 Respondent never submitted any type of response to the State Bar's investigation of Mr Delutri's complaint On information and belief, the Medicare lien is still outstanding and no settlement funds have been distributed to Mr Delutri
- 46 Respondent violated one or more of the Rules of Professional Conduct as follows Respondent failed to act with reasonable diligence and promptness in representing a client, failed to reasonably consult with a client about the means by which the client's

objectives were to be accomplished, failed to keep the client reasonably informed about the status of a matter, failed to consult with a client about any relevant limitation on Respondent's conduct when Respondent knew that the client expected assistance not permitted by the Rules of Professional Conduct or other law, upon receiving funds in which a client had an interest, failed to promptly notify the client, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, committed a criminal act that reflected adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, failed to make reasonable efforts to expedite litigation consistent with the interests of the client, knowingly failed to respond to a lawful demand for information from a disciplinary authority, failed to furnish information to or respond promptly to an inquiry or request from Bar Counsel, and failed, within 10 days, to notify all clients being represented in pending matters of his suspension

47 Respondent's conduct as described in this count violated Rule 42 Ariz R.Sup Ct , specifically, ERs 1 3-Diligence, 1 4-Communication with Client, 3 2-Expediting Litigation, 8 1(b)-Failure to Respond to a Demand for Information by a Disciplinary Authority, Rule 53(f)-Failure to Furnish Information, and Rule 72-Notice to Clients, Ariz.R.Sup Ct

COUNT FOUR (File No. 07-1103):

48 Respondent was retained to represent Joseph Federico ("Mr Federico") in a personal-injury action

49 Mr Federico was covered under the Wells-Fargo self-funded health plan, which was pursuing subrogation through a third-party vendor, Ingenix , an insurance company

50 Ingenix was represented in the matter by Nathan Krahn ("Mr Krahn") Respondent
never informed Mr Krahn or Ingenix that he was suspended from the practice of law

51 On or about February 5, 2007, Respondent sent a letter to Ingenix regarding the pending
claim for subrogation

52 Respondent's letter was on letterhead entitled, "Morrison and Morrison Attorneys at
Law "

53 The letterhead listed Respondent as a "Certified Specialist -- Injury and Wrongful Death
Litigation "

54 The letter listed Mr Federico as "Our Client"

55 The letter argued that Ingenix' subrogation claim was "contrary to Arizona law" and
concluded, " it is our position that your plan is likely not entitled to reimbursement
under federal law "

56 The letter contained legal arguments against Ingenix' subrogation attempt, and cited
numerous legal cases.

57 The letter contained the typed name "John G Morrison" in the signature block, but was
unsigned

58 The letter contained the typist's initials "JGM/kb" in the bottom left corner

59 On or about May 18, 2007, Respondent sent another letter to Ingenix regarding the
pending claim for subrogation

60 Respondent's letter was on letterhead entitled "Morrison and Morrison Attorneys at
Law"

61 The letterhead listed Respondent as a "Certified Specialist -- Injury and Wrongful Death
Litigation "

62 The letter listed Mr Federico as “Our Client”

63 The letter argued that, “ it continues to be our position that your plan is not entitled to reimbursement under federal law ”

64 The letter contained legal argument against Ingenix’ subrogation attempt, and cited numerous legal cases

65 The letter contained the typed name “John G Morrison” in the signature block, and was signed

66 On information and belief, it is Respondent's signature that appears in the signature block of the letter

67 The letter contained the typist’s initials “JGM/kb” in the bottom left hand corner

68 Neither of the letters indicated that Respondent was suspended from the practice of law

69 On or about June 29, 2007, Mr. Krahn submitted a complaint to the State Bar regarding Respondent's actions in the case

70 On July 12, 2007, the State Bar forwarded Mr Krahn's complaint to Respondent at his address of record, along with a request that he submit a response no later than August 1, 2007 Respondent did not respond by the August 1, 2007, deadline

71. On August 8, 2007, the State Bar sent a follow-up letter to Respondent at his address of record, advising him that he had failed to respond by the previously stated deadline and directed Respondent to submit a response to the complaint no later than August 18, 2007 Respondent did not respond by the August 18 deadline

72 Respondent never provided any type of response to the State Bar regarding Mr Krahn's Complaint

73 Respondent violated one or more of the Rules of Professional Conduct as follows
Respondent practiced law in the state or represented in any way that he may practice law
in this state when he was not an active member of the State Bar, practice law in any
jurisdiction in violation of the regulation of the legal profession in this jurisdiction,
engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, knowingly
failed to respond to a lawful demand for information from a disciplinary authority, and
failed to furnish information to or respond promptly to an inquiry or request from Bar
Counsel

74 Respondent's conduct as described in this count violated Rule 31 Ariz R Sup Ct , Rule 42
Ariz R Sup Ct , specifically, ERs 5 5-Unauthorized Practice of Law, 8 1(b)-Failure to
Respond to a Demand for Information by a Disciplinary Authority, 8 4-Misconduct, and
Rule 53(f)-Failure to Furnish Information, Ariz R.Sup Ct

COUNT FIVE (File No. 07-1250):

75 Respondent was retained to represent Curtis Sanchez ("Mr Sanchez") in a personal
injury action involving State Farm Insurance

76 Respondent did not inform Mr Sanchez that he was suspended from the practice of law

77 Respondent continued to represent Mr Sanchez and negotiate with State Farm during his
suspension

78 In or about September of 2006, Respondent negotiated and obtained a \$15,000
settlement from State Farm Insurance

79 Mr Sanchez did not authorize the settlement

80 Mr Sanchez did not sign the insurance company release paperwork (See transcript page
16, lines 7-11)

- 81 Mr Sanchez did not sign the settlement check or draft (See transcript page 20, lines 11-20.)
82. Respondent falsely signed Mr. Sanchez's signature to the release and check (See transcript page 17, lines 5-23)
83. Respondent cashed and deposited the settlement check and took possession of the full amount
- 84 Respondent did not pay any of the medical liens in the case (See transcript of hearing page 20, lines 5-10)
- 85 Respondent made no effort to distribute the settlement funds to Mr Sanchez (See transcript page 18, lines 10-12)
- 86 Mr Sanchez retained Scott Ambrose ("Mr Ambrose") as subsequent counsel to represent him
- 87 On or about May 29, 2007, Mr Ambrose sent a request to Respondent for the full file, a complete accounting, and any settlement funds Respondent did not respond to Mr Ambrose's request
- 88 On or about July 26, 2007, Mr Ambrose sent a second request to Respondent for the full file, a complete accounting, and any settlement funds Respondent did not respond to Mr Ambrose's second request
- 89 On or about July 26, 2007, Mr Ambrose sent a complaint to the State Bar of Arizona about Respondent's conduct in the case
- 90 On August 3, 2007, the State Bar forwarded Mr Ambrose's complaint to Respondent at his address of record, along with a request that he submit a response no later than August 23, 2007 Respondent did not provide a response by August 23, 2007

91. On September 7, 2007, the State Bar sent a follow-up letter to Respondent at his address of record, advising him that he had failed to respond by the previously stated deadline, and directing Respondent to submit a response to the complaint no later than September 17, 2007. Respondent did not provide a response by the September 17, 2007, deadline.
92. Respondent never provided any type of response to Mr. Ambrose's complaint.
93. Respondent violated one or more of the Rules of Professional Conduct as follows: Respondent practiced law in the state or represented in any way that he may practice law in the state when he was not an active member of the State Bar, practiced law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, failed to abide by the client's decisions concerning the objectives of the representation, failed to consult with a client as to the means by which the objectives of representation were to be pursued, failed to abide by the client's decision whether to settle the matter, failed to keep the client reasonably informed about the status of the matter; failed to promptly comply with reasonable requests for information, failed to consult with a client about any relevant limitation on his conduct when he knew that the client expected assistance not permitted by the Rules of Professional Conduct, charged an unreasonable fee; failed to hold property of clients or third persons that was in his position separate from his own property, failed to promptly notify the client upon receiving funds in which the client had an interest, failed to take steps to the extent reasonably practicable to protect a client's interests, such as surrendering documents and property to which the client was entitled and refunding any advanced payment of a fee that had not been earned, failed to provide the client with all of the client's documents and all documents reflecting work performed for the client upon request, made a false statement of material fact or law to a third

person in the course of representing a client, committed a criminal act that reflected adversely on the lawyers honesty, trustworthiness or fitness as a lawyer in other respects, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, engaged in conduct that was prejudicial to the administration of justice; knowingly failed to respond to a lawful demand for information from a disciplinary authority, failed to furnish information to, or respond promptly to, an inquiry or request from Bar Counsel, failed to maintain complete records of the handling, maintenance and disposition of all funds, securities and other assets of a client that came into his possession, failed to maintain client funds in a trust account separate and apart from his personal and business accounts, failed to deposit funds of clients in one or more identifiable interest-bearing trust accounts maintained as required in Rule 44 Ariz R Sup Ct , and failed to, within 10 days, notify all clients being represented in pending matters of his suspension

94 Respondent's conduct as described in this count violated Rule 31 and Rule 42 Ariz R Sup Ct., specifically, ERs 1 2-Scope of Representation, 1 4-Communication with Client, 1 5-Unreasonable Fees, 1 15-Safekeeping of Property, 1 16-Declining Representation, 4 1-Truthfulness in Statements to Others, 5 5-Unauthorized Practice of Law, 8 1(b)-Failure to Respond to a Demand for Information by a Disciplinary Authority, 8 4-Misconduct, Rule 43-Trust Account Verification, Rule 44-Duty to Deposit Client Funds, Rule 53(f)-Failure to Furnish Information, and Rule 72-Notice to Clients, Ariz R Sup Ct

COUNT SIX (File No. 06-1328):

95 In or about July of 2003, Respondent was retained to represent Nadine Marogil ("Ms Marogil") (now Sanchez, see transcript page 22, lines 3-6) in a personal-injury action

96. In or about October of 2006, Respondent negotiated a settlement in the amount of \$9,500 on Ms Marogil's behalf
- 97 In or about October 2006, Respondent informed Ms Marogil that another attorney, John Pain ("Mr. Pain"), would be finalizing the documents in Ms Marogil's case
- 98 Respondent did not inform Ms Marogil that he had been suspended from the practice of law
- 99 On or about October 17, 2006, Ms Marogil contacted Respondent to inquire as to the status of her settlement
- 100 Respondent informed Ms Marogil that she would receive her settlement check within two weeks
- 101 Ms. Marogil did not receive her settlement check as promised (See transcript page 27, lines 2-6)
- 102 On information and belief, Respondent is still in possession of the full amount of the settlement funds Respondent took no steps to ensure that Ms Marogil was paid her settlement funds
- 103 On or about August 6, 2007, Ms Marogil sent a complaint to the State Bar about Respondent's conduct in her case
- 104 On August 17, 2007, the State Bar forwarded Ms Marogil's complaint to Respondent at his address of record, along with a request that he submit a response no later than September 6, 2007 Respondent did not provide a response by the September 6, 2007, deadline
105. On September 20, 2007, the State Bar sent a follow-up letter to Respondent at his address of record, advising him that he had failed to respond by the previously stated deadline,

and directing Respondent to submit a response to the complaint no later than September 30, 2007 Respondent did not provide a response by the September 30, 2007, deadline

106 Respondent never provided any type of response to the complaint by Ms Marogil.

107 On information and belief, Respondent is still in possession of the full settlement and has made no efforts to distribute the funds to Ms Marogil

108 Respondent violated one or more of the Rules of Professional Conduct as follows
Respondent practiced law in the state or represented in any way that he may practice law in this state when he was not an active member of the State Bar, practiced law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, failed to abide by the client's decisions concerning the objectives of representation, failed to consult with a client as to the means by which the objectives of representation were to be pursued, failed to abide by the clients decision whether to settle the matter, failed to keep the client reasonably informed about the status of the matter, failed to promptly comply with reasonable requests for information, failed to consult with a client about any relevant limitation on his conduct when he knew that the client expected assistance not permitted by the Rules of Professional Conduct, charged an unreasonable fee, failed to hold property of a client or third person that was in his position separate from his own property; failed to promptly notify the client upon receiving funds in which the client had an interest, failed to take steps to the extent reasonably practicable to protect a client's interests, such as surrendering documents and property to which the client was entitled and refunding any advance payment of a fee that had not been earned, failed to provide the client with all of the client's documents and all documents reflecting work performed for the client upon request, made a false statement of material fact or law to a third

person in the course of representing a client, committed a criminal act that reflected adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, engaged in conduct that was prejudicial to the administration of justice, knowingly failed to respond to a lawful demand for information from a disciplinary authority; failed to furnish information to or respond promptly to an inquiry or request from Bar Counsel, failed to maintain complete records of the handling, maintenance and disposition of all funds, securities and other assets of a client that came into his possession, failed to maintain client funds in a trust account separate and apart from his personal and business accounts, failed to deposit funds of a client in one or more identifiable interest-bearing trust accounts maintained as provided in Rule 44 Ariz R Sup Ct., and failed to, within 10 days, notify all clients being represented in pending matters of his suspension

109 Respondent's conduct as described in this count violated Rule 31 Ariz R Sup Ct., and Rule 42 Ariz R Sup Ct, specifically ERs 1 2-Scope of Representation, 1 4-Communication with Client, 1 5-Unreasonable Fees, 1 15-Safekeeping of Property, 1 16-Declining Representation, 4 1-Truthfulness in Statements to Others, 5 5-Unauthorized Practice of Law, 8 1(b)-Failure to Respond to a Demand for Information by a Disciplinary Authority, 8 4-Misconduct, Rule 43-Trust Account Verification, Rule 44-Duty to Deposit Client Funds, Rule 53(f)-Failure to Furnish Information, and Rule 72-Notice to Clients, Ariz R Sup Ct

COUNT SEVEN (07- 1440):

- 110 In or about February of 2000, Alicia Gillum ("Ms Gillum") retained Respondent to represent her in a personal-injury action. In or about January of 2001, Respondent negotiated a settlement on Ms Gillum's behalf in the amount of \$5,991.79.
- 111 Respondent dispersed settlement funds to Ms Gillum in the amount of \$1,691.79 for her property damage claim.
- 112 On or about January 17, 2001, Respondent sent a letter to Ms Gillum asking her to sign and return an attached release form. This letter indicated that Respondent would disperse the additional \$4,300 to Ms Gillum upon receipt of the signed release. There was no release form attached to the letter.
- 113 Ms Gillum made numerous attempts to contact Respondent by telephone, but he returned none of her calls.
- 114 Respondent made no further efforts to disperse Ms Gillum's settlement funds to her.
- 115 Respondent is still in possession of \$4,300 of Ms Gillum's settlement funds.
- 116 On or about August 28, 2007, Ms Gillum sent a complaint to the State Bar about Respondent's conduct in her case.
- 117 On August 31, 2007, the State Bar forwarded Ms Gillum's complaint to Respondent at his address of record along with a request that he submit a response no later than September 10, 2007. Respondent did not provide a response prior to the September 10, 2007, deadline.
- 118 On September 27, 2007, the State Bar sent a follow-up letter to Respondent at his address of record, advising him that he had failed to respond by the previously stated deadline,

and directing Respondent to submit a response to the complaint no later than October 7, 2007 Respondent did not provide a response prior to the October 7, 2007, deadline

119 Respondent never provided any type of response to Ms Gillum's complaint

120 Respondent violated one or more of the Rules of Professional Conduct as follows Respondent failed to keep the client reasonably informed about the status of the matter, failed to promptly comply with reasonable requests for information, failed to consult with the client about any relevant limitation on his conduct when he knew that the client expected assistance not permitted by the Rules of Professional Conduct, charged an unreasonable fee, failed to hold property of clients or third persons that was in his possession separate from his own property, failed to promptly notify the client upon receiving funds in which the client had an interest, failed to take steps to the extent reasonably practicable to protect the client's interests, such as surrendering documents and property to which the client was entitled and refunding any advance payment of a fee that had not been earned, failed to provide the client with all of the client's documents and all documents reflecting work performed for the client upon request, made a false statement of material fact or law to a third person in the course of representing a client, committed a criminal act that reflected adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, engaged in conduct that was prejudicial to the administration of justice, knowingly failed to respond to a lawful demand for information from a disciplinary authority, failed to furnish information to or respond promptly to an inquiry or request from Bar Counsel, failed to maintain complete records of the handling, maintenance and disposition of all funds, securities and other assets of a client that came

into his possession, failed to maintain client funds in a trust account separate and apart from his personal and business accounts; failed to deposit funds of clients in one or more identifiable interest-bearing trust accounts maintained as provided in Rule 44 Ariz R Sup Ct , and failed to, within 10 days, notify all clients being represented in pending matters of his suspension

121 Respondent's conduct as described in this count violated Rule 42 Ariz R Sup Ct , specifically ERs 14-Communication with Client, 15-Unreasonable Fees, 115-Safekeeping of Property, 41-Truthfulness in Statements to Others, 55-Unauthorized Practice of Law, 81(b)-Failure to Respond to a Demand for Information by a Disciplinary Authority, 84-Misconduct, and Rules 43-Trust Account Verification, 44-Duty to Deposit Client Funds, and 53(f)-Failure to Furnish Information, Ariz R.Sup Ct

COUNT EIGHT (File No. 07-1540):

122 Tina Cavagnaro ("Ms Cavagnaro") retained Respondent to represent her in her personal injury action

123 On or about May 27, 2006, Respondent filed a Civil Tort Complaint initiating the formal process

124 Respondent did no further work to investigate or advance the case between May 28, 2006, and June 22, 2007

125 Ms. Cavagnaro made numerous calls to Respondent to obtain an update on the status of her case, but Respondent did not return the calls

126 On or about June 23, 2007, Respondent sent a fax to Ms Cavagnaro informing her of an upcoming deposition and advising her that attorney Mike Arenz ("Mr Arenz") would meet her at the deposition

- 127 Respondent never informed Ms Cavagnaro that he had been suspended from the practice of law
- 128 On or about June 26, 2007, Ms Cavagnaro traveled from California to Arizona in order to attend the scheduled deposition
- 129 When Ms Cavagnaro arrived, Respondent did not meet her, but another attorney, Mr Arenz, did
130. Ms Cavagnaro asked Mr Arenz where Respondent was, and Mr Arenz informed Ms Cavagnaro that Respondent was suspended from the practice of law and that Mr Arenz would be handling her case
- 131 On or about October 30, 2006, Respondent faxed a copy of his previously drafted and filed Complaint in the case to Ms Cavagnaro The fax cover sheet was on letterhead entitled, "Morrison and Morrison . Attorneys at Law"
- 132 The letterhead listed Respondent as a "Certified Specialist -- Injury and Wrongful Death Litigation "
- 133 On or about December 14, 2006, Respondent sent an e-mail to Ms Cavagnaro asking her to sign an attached Stipulation for Substitution of Counsel. In the e-mail Respondent informed Ms Cavagnaro that American Family had expressed a desire to settle and that he expected her case to resolve fairly quickly
- 134 On or about September 14, 2007, Ms Cavagnaro sent a complaint to the State Bar about Respondent's conduct in her case
- 135 On September 20, 2007, the State Bar forwarded Ms Cavagnaro complaint to Respondent at his address of record, along with a request that he submit a response no

later than September 30, 2007 Respondent did not provide a response prior to September 30, 2007

136 Respondent never provided a response to Ms Cavagnaro's complaint

137 Respondent violated one or more of the Rules of Professional Conduct as follows
Respondent practiced law in the same state or represented in any way that he may practice law in this state when he was not an active member of the State Bar, practiced law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction; failed to act with reasonable diligence and promptness in representing a client, failed to consult with a client as to the means by which the objectives of representation were to be pursued, failed to keep the client reasonably informed about the status of the matter, failed to promptly comply with reasonable requests for information, failed to consult with a client about any relevant limitation on his conduct when he knew that the client expected assistance not permitted by the Rules of Professional Conduct, failed to take steps to the extent reasonably practicable to protect a client's interests, such as surrendering documents and property to which the client was entitled and refunding any advance payment of a fee that had not been earned, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, engaged in conduct that was prejudicial to the administration of justice; knowingly failed to respond to a lawful demand for information from a disciplinary authority, failed to furnish information to or respond promptly to an inquiry or request from Bar Counsel, and failed to, within 10 days, notify all clients being represented in pending matters of his suspension

138 Respondent's conduct as described in this count violated Rule 31 and Rule 42, Ariz R Sup Ct., specifically ERs 1 2-Scope of Representation, 1 3-Diligence, 1 4-

Communication with Clients, 1.15-Safekeeping of Property, 1.16-Declining Representation, 4.1-Truthfulness in Statements to Others, 5.5-Unauthorized Practice of Law, 8.1(b)-Failure to Respond to a Demand for Information by a Disciplinary Authority, 8.4-Misconduct, Rule 53(f)-Failure to Furnish Information, and Rule 72-Notice to Clients, Ariz R Sup Ct

CONCLUSIONS OF LAW

139 The undersigned Hearing Officer finds that the State Bar has proven by clear and convincing evidence the specific violations set forth in each of the counts set forth above

ABA STANDARDS

140 *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:

141. As more specifically set forth above, the Respondent violated his duty to his clients and the profession on multiple occasions. Respondent's conduct implicates three *Standards*

142. *Standard 4.11*, Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client

143 *Standard 4.41* Disbarment is generally appropriate when
(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client

144 *Standard 7.1*, Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer . . . and causes serious or potentially serious injury to a client, the public, or the legal system

The Lawyer's Mental State:

145 The Hearing Officer concludes that the State Bar has proven by clear and convincing evidence that Mr Morrison's conduct was intentional

Actual or Potential Injury:

146 Respondent's conduct constitutes theft from his clients in at least Counts 2, 3, 5, 6, and 7 (Count One is a trust account violation, and Counts Four and Eight allege practicing law while suspended.) The amounts converted by the Respondent are as follows

Count 2 \$ 8,186 65 (See State Bar's Exhibit A)

Count 3 \$ 14,850 00 (See State Bar's Exhibit B)

Count 5 \$ 15,000 00 (minus Respondent's fee) (See State Bar's Exhibit D)

Count 6 \$ 9,500 00 (minus Respondent's fee)

Count 7 \$ 5,991 79 (minus Respondent's fee) (See State Bar's Exhibit C)

147. In Count Four, Respondent presented himself as an attorney and tried to represent Mr Federico In Count Eight, Respondent presented himself as an attorney and tried to represent Ms Cavagnaro The extent to which Mr Federico and Ms Cavagnaro suffered actual injury as a result of Respondent's presentation of himself as a licensed attorney when he was suspended was not proven to the undersigned Hearing Officer What is clear is that Respondent created real injury to at least five clients, and to the profession in all counts There was at least potential injury in counts one, four and eight

Respondent, by his refusal to respond to the Bar's inquiry, and these disciplinary proceedings, caused harm to the profession and the administration of justice

Aggravating and Mitigating Factors:

148 The undersigned Hearing Officer considered the following aggravating and mitigating factors

Aggravating Factors 9.22:

149 a) Prior Disciplinary Offenses On November 15, 1983, in File Number 83-0359, Respondent received an Informal Reprimand, DR 1-102 (A)(6)

150. On June 27, 2006, in SB-06-0068-D, DC File No's 04-0392 and 04-1462, Respondent was suspended from the practice of law for one year for violating Rule 42, ERs 1 3, 1 4, 1 7, 3 2, 3 3, 3 4, 8.4(c) & (d)

151 b) Dishonest or Selfish Motive Respondent stole approximately \$43,000 00 from his clients

152 d) Multiple Offenses Respondent created numerous victims over a period of many months while suspended from the practice of law Respondent has been suspended previously for violating ERs violated herein (1 4 and 8 4)

153 e) Bad Faith Obstruction of the Disciplinary Proceeding Respondent intentionally did not respond to numerous inquiries from the State Bar and did not participate in the disciplinary process, except to file a clearly insufficient Answer and then a Motion to Reconsider

154. i) Substantial Experience in the Practice of Law Respondent was admitted to the practice of law in the State of Arizona on May 10, 1980

155 k) Illegal Conduct Respondent's conduct can be characterized as nothing less than theft

PROPORTIONALITY

156. To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar *Peasley*, 208 Ariz at 35, 90 P 3d at 778, *In re Wines*, 135 Ariz. 203, 660 P 2d 454 (1983) The cases set forth below demonstrate that disbarment is the most appropriate sanction in this matter
- 157 In *In re Bower*, SB-07-0054-D (2007), Respondent was convicted of misdemeanor harassment and failed to appear for court dates in his criminal matters Respondent sent highly offensive and harassing facsimiles to opposing counsel in his divorce proceedings In addition, Respondent abandoned his clients, failed to obey court orders and failed to abide by his terms of criminal probation Respondent further failed to respond or cooperate with the State Bar's investigation Respondent was disbarred Respondent was found to have violated ERs 1 2, 1 3, 1 4, 1 5, 1 15, 1 16, 3 4, 3 4(c), 4 4(a), 8 1(b), 8 4(b), 8 4(c), 8 4(d) and Rules 41(g), 53(c) and (f)
- 158 In *In re Coe*, SB-06-0154-D (2007), in multiple counts, Respondent failed to competently and diligently represent and to adequately communicate with clients Respondent abandoned clients and failed to appear at court hearings Respondent further engaged in the unauthorized practice of law while summarily suspended and failed to cooperate with the State Bar's investigation Respondent was disbarred Respondent was found to have violated ERs 1 1, 1 2, 1 3, 1 4, 1.5, 1.16, 3 2, 3 3, 3 4(c), 5 5(a), 7 3, 8 1(b), 8 4(c) and 8 4(d) and Rule 31(b), 53(c), 53(d) and 53(f)
- 159 In *In re Rodgers*, SB-07-0128-D (2007), Respondent was summarily suspended for failure to comply with MCLE requirements and engaged in the unauthorized practice of

law while suspended Respondent further engaged in a pattern of neglect of clients by failing to perform legal services for which he was retained Respondent virtually abandoned clients and a conservator was appointed. Respondent also failed to respond or cooperate with the State Bar's investigation Respondent was disbarred Respondent was found to have violated ERs 1.3, 1.4, 1.5, 3.2, 8.4(d) and Rules 31(b) and 53(d) and (f)

RECOMMENDATION

- 160 The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, and the administration of justice It is also the purpose to deter future misconduct, and instill public confidence in the Bar's integrity *In re Fioramonti*, 176 Ariz 182, 187, 859 P.2d 1315, 1320 (1993) *In re Neville*, 147 Ariz 106, 708 P.2d 1297 (1985) *Matter of Horwitz*, 180 Ariz 20, 29, 881 P.2d 352, 361 (1994)
- 161 In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Associations Standards for Imposing Lawyer Sanctions and the proportionality of discipline imposed in analogous cases, *Matter of Bowen*, 178 Ariz 283, 286, 872 P.2d 1235, 1238 (1994)
- 162 After weighing the Respondent's conduct, the violation of the *Standards*, the injury caused, and all of the aggravating factors, the Hearing Officer concurs with the State Bar's recommendation of disbarment

DATED this 13th day of March, 2008

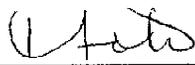
Hon H Jeffrey Coker /cs
H Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 13th day of March, 2008

Copy of the foregoing mailed
this 1st day of March, 2008, to:

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by: 

/cs