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NOV 03 2008

BEFORE A HEARING OFFICER OF  
THE SUPREME COURT OF ARIZONA

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *[Signature]*

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

JESSE PAUL SUPLIZIO,  
Bar No. 022720

Respondent.

No. 07-2079, 08-0236, 08-0408,  
08-0409, 08-0449, 08-0618

HEARING OFFICER'S REPORT  
AND RECOMMENDATION

(Assigned to Hearing Officer 9R  
Robert J. Stephan, Jr.)

Pursuant to Rule 57(j), Ariz.R.Sup.Ct., the undersigned Hearing Officer recommends Mr. Jesse Paul Suplizio ("Respondent") be disbarred from the practice of law, pay restitution, and payment of all costs and expenses in these disciplinary proceedings.

**PROCEDURAL HISTORY**

The State Bar filed its complaint in this matter on May 6, 2008. The complaint was served on Respondent by certified restricted mail/delivery and regular first class mail pursuant to Rule 47(c), Ariz.R.Sup.Ct. A Notice of Default was issued on June 3, 2008, pursuant to Rule 57(d), Ariz.R.Sup.Ct. Respondent failed to file an answer or otherwise defend against the allegations contained in the State Bar's complaint. A default was entered against Respondent in this matter on June 24, 2008. On June 26, 2008, the State Bar

1 requested an Aggravation/Mitigation Hearing, which was held on September  
2 16, 2008.

3  
4 **FINDINGS OF FACT**

5 The undersigned Hearing Officer finds the following facts have been  
6 proven beyond the clear and convincing evidence standard:

7 1. At all times relevant, Respondent was a lawyer licensed to  
8 practice law in the state of Arizona having been first admitted to practice in  
9 Arizona on March 4, 2004.

10  
11 **COUNT ONE (File no. 07-2079 (Freundlich))**

12 2. In June 2007, Mr. Jeff Freundlich (“Mr. Freundlich”) hired  
13 Respondent for legal representation regarding trademark preparation for  
14 Whirled Music Publishing, Inc. and Trifecta Holdings, LLC.

15 3. Mr. Freundlich paid Respondent a total of \$8,835.00 for  
16 Respondent’s legal representation.

17 4. Between August 2007 to November 2007, Mr. Freundlich  
18 attempted to contact Respondent numerous times regarding the legal  
19 representation.

20 5. Respondent failed to respond to Mr. Freundlich or to otherwise  
21 communicate with him regarding his legal matters.  
22  
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24  
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1           6.     On October 31, 2007, Mr. Freundlich mailed a certified letter to  
2 Respondent, at Respondent's listed address, requesting a status report on his  
3 legal matter and an accounting of the money he had entrusted to Respondent as  
4 an advance payment for the completion of his legal work.  
5

6           7.     On November 2, 2007, Mr. Freundlich's certified letter was  
7 accepted and signed for by an individual named "Julie."  
8

9           8.     Mr. Freundlich's certified letter requested a response from  
10 Respondent within five days.

11           9.     Respondent failed to respond to Mr. Freundlich.

12           10.    Respondent failed to fully perform the legal services for which  
13 Mr. Freundlich paid.  
14

15           11.    On December 6, 2007, Mr. Freundlich brought Respondent's  
16 conduct to the attention of the State Bar of Arizona ("State Bar").  
17

18           12.    By letter dated January 29, 2008, mailed to Respondent at his  
19 address of record, the State Bar made Respondent aware of the allegations  
20 against him.

21           13.    The letter requested Respondent respond, in writing, to  
22 Complainant's charge within twenty days of the date of the letter.  
23

24           14.    Respondent failed to respond.  
25

1           15. By letter dated February 27, 2008, mailed to Respondent at his  
2 address of record, the State Bar again requested that Respondent provide a  
3 response in writing to Mr. Freundlich's allegations. Respondent's response  
4 was requested within ten days of the date of the letter.  
5

6           16. Respondent failed to respond.

7                           **COUNT TWO (File no. 08-0236 (Trust Account))**  
8

9           17. On February 4, 2008, a debit in the amount of \$38.19 attempted to  
10 pay against Respondent's JP Morgan Chase Bank client trust account.

11           18. JP Morgan Chase Bank paid the debit and charged a \$25 overdraft  
12 fee leaving a negative balance of \$63.19.  
13

14           19. By letter dated February 12, 2008, mailed to Respondent at his  
15 address of record, State Bar Records Examiner ("Records Examiner") notified  
16 Respondent of the receipt of the overdraft notice and requested an explanation  
17 regarding the overdraft.  
18

19           20. The February 12, 2008, letter requested that Respondent provide a  
20 written response explaining the overdraft within thirty days of the date of the  
21 letter.  
22

23           21. On March 4, 2008, a debit in the amount of \$5.95 attempted to  
24 pay against Respondent's JP Morgan Chase Bank client trust account.  
25

1           22.   JP Morgan Chase Bank paid the debit and charged a \$32 overdraft  
2 fee leaving a negative balance of \$126.14.

3  
4           23.   By letter dated March 7, 2008, mailed to Respondent at his  
5 address of record, State Bar Staff Examiner notified Respondent of receipt of  
6 the March 4, 2008 overdraft notice, and requested that Respondent respond and  
7 explain both overdrafts by March 10, 2008.

8           24.   Respondent failed to respond.

9  
10          25.   On March 11, 2008, a debit in the amount of \$32.00 attempted to  
11 pay against Respondent's JP Morgan Chase Bank client trust account when  
12 there were insufficient funds in the account, leaving a negative balance. JP  
13 Morgan Chase Bank paid the debit and charged a \$32 overdraft fee.

14  
15          26.   By letter dated March 13, 2008, mailed to Respondent at his  
16 address of record, the Records Examiner requested that Respondent provide an  
17 explanation of Respondent's February 4, 2008 overdraft and March 4, 2008  
18 overdraft, within ten days of the date of the letter.

19  
20          27.   By letter dated March 14, 2008, mailed to Respondent at his  
21 address of record, the Records Examiner requested that Respondent provide, by  
22 March 24, 2008, a written explanation of Respondent's overdrafts of February  
23 12, 2008, March 6, 2008, and March 11, 2008.

24  
25

1           28. On March 13, 2008, a debit in the amount of \$32 attempted to pay  
2 against Respondent's JP Morgan Chase Bank client trust account when there  
3 were insufficient funds in the account.  
4

5           29. JP Morgan Chase Bank paid the debit and charged a \$35 overdraft  
6 fee leaving a negative balance of \$225.14 in Respondent's client trust account.  
7

8           30. On March 18, 2008, a debit in the amount of \$35 attempted to pay  
9 against Respondent's JP Morgan Chase Bank client trust account when there  
10 were insufficient funds in the account.

11           31. JP Morgan Chase Bank paid the debit and charged a \$35 overdraft  
12 fee resulting in a negative balance of \$260.14 in Respondent's client trust  
13 account.  
14

15           32. On March 20, 2008, a debit in the amount of \$35 attempted to pay  
16 against Respondent's JP Morgan Chase Bank client trust account when there  
17 were insufficient funds in the account.  
18

19           33. JP Morgan Chase Bank paid the debit and charged a \$35 overdraft  
20 fee leaving a negative balance of \$295.14, in Respondent's client trust account.  
21

22           34. On March 24, 2008, a debit in the amount of \$35 attempted to pay  
23 against Respondent's JP Morgan Chase Bank client trust account when there  
24 were insufficient funds in the account.  
25





1           53. The September 13, 2007, email from Respondent to Mr. Roth was  
2 the last contact Mr. Roth had with Respondent.

3  
4           54. On November 1, 2007, Mr. Roth sent Respondent an email  
5 requesting a status update concerning his legal matter.

6           55. Respondent did not respond.

7  
8           56. On January 16, 2008, Mr. Roth sent Respondent an email  
9 requesting a status update.

10          57. Respondent did not respond.

11          58. On January 25, 2008, Mr. Roth sent Respondent an email  
12 requesting information on how to contact Respondent.

13          59. Responded did not respond.

14  
15          60. Mr. Roth called Respondent but discovered that Respondent's  
16 phone number had been disconnected.

17          61. Respondent did not fully complete his representation of Mr. Roth.

18  
19          62. By letter dated March 6, 2008, Mr. Roth advised the State Bar of  
20 Respondent's conduct.

21          63. By letter dated March 19, 2008, the State Bar of Arizona mailed to  
22 Respondent at his address of record, the State Bar advised Respondent of Mr.  
23 Roth's allegations and requested a response in writing within 20 days of the  
24 date of the letter.  
25

1           64. Respondent failed to respond.

2                                   **COUNT FIVE (File no. 08-0409(Dater))**

3  
4           65. In March 26, 2007, Christie Dater (“Ms. Dater”) and Dawn  
5 Hayashi (“Ms. Hayashi”) hired Respondent for legal representation and  
6 assistance in securing a trade name and copyright for a new product for their  
7 business The ThinkHer, LLC.

8  
9           66. All amounts Ms. Dater and Ms. Hayashi paid to Respondent were  
10 for work on behalf of their business, The ThinkHer, LLC.

11           67. The ThinkHer, LLC paid Respondent a total of \$16,076.00 over  
12 the course of Respondent’s representation.

13  
14           68. In January 2008, Ms. Dater called Respondent and found that  
15 Respondent’s phone had been disconnected.

16           69. In January 2008, Ms. Dater attempted to email Respondent. The  
17 emails were undeliverable.

18  
19           70. Ms. Dater had no contact with Respondent beginning in January  
20 2008, despite her attempts at communication with him.

21           71. Respondent did not fully complete the work he was hired to  
22 perform for The ThinkHer, LLC.

23  
24           72. By submission dated March 12, 2008, Ms. Dater notified the State  
25 Bar of Arizona of Respondent’s conduct.

1           73. By letter dated March 19, 2008, mailed to Respondent at his  
2 address of record, the State Bar notified Respondent of Ms. Dater's allegations  
3 and requested a written response within 20 days of the date of the letter.  
4

5           74. Respondent failed to respond.

6                           **COUNT SIX (File no. 08-0618(Schade))**

7           75. On October 23, 2006, Wendy Schade ("Ms. Schade") hired  
8 Respondent to conduct a comprehensive trademark search.  
9

10           76. Ms. Schade entered into a fee agreement with Respondent for the  
11 legal services and paid Respondent \$395 to conduct the comprehensive  
12 trademark search.  
13

14           77. In June 2007, Ms. Schade called Respondent requesting a status  
15 update regarding the representation, was unable to reach him by telephone, and  
16 left voicemail messages.  
17

18           78. Respondent did not return Ms. Shade's phone calls.

19           79. On July 14, 2007, Ms. Schade mailed a letter to Respondent at his  
20 office address requesting a status update regarding her representation.  
21

22           80. On September 27, 2007, Ms. Schade called Respondent and left a  
23 voicemail message requesting that Respondent return her phone call and  
24 provide a status update.  
25



1 **COUNT TWO**

2 Respondent's conduct violated Rule 42, Ariz.R.Sup.Ct., specifically  
3 ERs. 1.15 and 8.1(b), and Rules 43, 44, and 53, Ariz.R.Sup.Ct.  
4

5 **COUNT THREE**

6 Respondent's conduct violated Rule 42, Ariz.R.Sup.Ct., specifically  
7 ERs 1.2, 1.3, 1.4, 1.16(d), and 8.1(b) and Rule 53, Ariz.R.Sup.Ct.  
8

9 **COUNT FOUR**

10 Respondent's conduct violated Rule 42, Ariz.R.Sup.Ct., specifically  
11 ERs 1.2, 1.3, 1.4, 1.16(d), and 8.1(b) and Rule 53, Ariz.R.Sup.Ct.  
12

13 **COUNT FIVE**

14 Respondent's conduct violated Rule 42, Ariz.R.Sup.Ct., specifically  
15 ERs. 1.2, 1.3, 1.4, 1.16(d), and 8.1(b) and Rule 53, Ariz.R.Sup.Ct.  
16

17 **COUNT SIX**

18 Respondent's violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.2,  
19 1.3, 1.4, 1.16(d), and 8.1(b) and Rule 53, Ariz.R.Sup.Ct.  
20

21 **ABA STANDARDS**

22 The American Bar Association's *Standards for Imposing Lawyer*  
23 *Sanctions* ("Standards") are a "useful tool in determining the proper  
24 sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035  
25 (1990). In determining an appropriate sanction, the Hearing Officer and

1 the Disciplinary Commission consider the duty violated, the lawyer's  
2 mental state, the presence or absence of actual or potential injury, and the  
3 existence of aggravating and mitigating factors. *In re Tarletz*, 163 Ariz.  
4 548, 789 P.2d 1049 (1990); *see also Standard 3.0*.

6 In this case, Respondent violated his duties to his clients and the  
7 legal profession. Respondent acted knowingly by agreeing to perform  
8 work for his clients, taking the clients' money, and then abandoning the  
9 client and his practice before completing the work. Respondent caused  
10 serious injury or serious potential injury to his clients. Respondent  
11 converted a total of \$31,718.50, in client funds when he did not fully  
12 complete the work in which they hired him to perform, while keeping the  
13 funds. Further, Respondent's conduct caused serious injury to the public  
14 and profession. Respondent's misconduct reflects poorly on the profession  
15 as a whole, as a self-regulated profession and may have the effect of  
16 causing the public to doubt the integrity of other members of the  
17 profession.  
18  
19  
20

21 *Standard 4.0* (Violations of Duties Owed to Clients) is applicable in  
22 determining the appropriate sanction warranted by Respondent's conduct.  
23 *Standard 4.41* (Lack of Diligence) states, "Disbarment is generally  
24 appropriate when:  
25

- 1 (a) a lawyer abandons the practice and causes serious or  
2 potentially serious injury to a client; or  
3  
4 (b) a lawyer knowingly fails to perform services for a client  
5 and causes serious or potentially serious injury to a client;  
6 or  
7  
8 (c) a lawyer engaged in a pattern of neglect with respect to  
9 client matters and causes serious or potentially serious  
10 injury to a client.”

11 *Standard 7.0 (Violations of Other Duties Owed as a Professional)*  
12 also applies. *Standard 7.1* states, “Disbarment is generally appropriate  
13 when a lawyer knowingly engages in conduct that is a violation of a duty  
14 owed as a professional with the intent to obtain a benefit for the lawyer or  
15 another, and causes serious or potentially serious injury to a client, the  
16 public, or the legal system.”  
17

18 “The *Standards* do not account for multiple charges of misconduct.  
19 The ultimate sanction imposed should at least be consistent with the  
20 sanction for the most serious instance of misconduct among a number of  
21 violations; it might well be and generally should be greater than the  
22 sanction for the most serious misconduct.” *Standards* at 7. The  
23  
24  
25

1 presumptive sanction in this case is disbarment. The following are factors  
2 that should be considered in aggravation of the presumptive sanction:

3  
4 Standard 9.22(a) Prior disciplinary offense: On July 23, 2008, in  
5 State Bar File No. 08-0727, the Probable Cause Panelist issued an Order of  
6 Restitution against Respondent for violation of Rule 42, specifically E.R.s  
7 1.2, 1.3, 1.4, 1.16(d), 8.1(b), and Rule 53, Ariz.R.Sup.Ct. Respondent was  
8 ordered to pay \$915.00 to the Complainant.  
9

10 Standard 9.22(b) Dishonest or selfish motive: Respondent took  
11 \$31,718.50 of the clients' money, failed to complete the work for which he  
12 was retained, and abandoned his clients and his practice.  
13

14 Standard 9.22(c) Pattern of misconduct. Respondent was hired by  
15 five clients in this case. In each count in which a client was involved,  
16 Respondent's conduct formed a pattern. Respondent was hired, was paid,  
17 and then abandoned the client without fully completing the work and  
18 without refunding all or part of the funds entrusted to him for payment.  
19

20 Standard 9.22(d) Multiple offenses: Respondent violated multiple  
21 ethical rules, duties, and *Standards*.  
22

23 Standard 9.22(e) Bad faith obstruction of the disciplinary proceeding  
24 by intentionally failing to comply with rules or orders of the disciplinary  
25 agency: Respondent failed to comply with his ethical obligation to respond

1 to the State Bar's screening investigation in each of the six counts.  
2 Further, Respondent did not file an answer to the formal complaint and did  
3 not participate in the formal proceedings  
4

5 Standard 9.22(g) Refusal to acknowledge wrongful nature of  
6 conduct: Respondent has never acknowledged the wrongful nature of his  
7 conduct.

8 Standard 9.22(j) Indifference to making restitution: Respondent has  
9 not made any efforts to make restitution to the clients that he harmed.  
10

11 No evidence was presented that would warrant a finding of a  
12 mitigating factor.  
13

#### 14 **PROPORTIONALITY REVIEW**

15 In the imposition of lawyer sanctions, the Court is guided by the  
16 principle that an effective system of professional sanctions must have internal  
17 consistency. *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988). Therefore, a  
18 review of cases that involve conduct of a similar nature is warranted. To  
19 achieve internal consistency, it is appropriate to examine sanctions imposed in  
20 cases that are factually similar. *In re Shannon*, 179 Ariz. 52, 876 P.2d 548  
21 (1994). However, the discipline in each situation must be tailored for the  
22 individual case as neither perfection or absolute uniformity can be achieved. *In*  
23 *re Riley*, 142 Ariz. 604 (1984).  
24  
25

1           In *In re Beskind*, SB-07-0155-D (2007), Beskind was disbarred from the  
2 practice of law and ordered to pay restitution. Beskind took retainers from  
3 clients and then failed to adequately or fully perform the legal services as  
4 promised. Beskind failed to attend hearings, trials, failed to communicate with  
5 clients, and failed to provide a written fee agreement. Beskind further failed to  
6 respond or cooperate with the State Bar's investigation. Beskind's mental state  
7 was found to be intentional or knowing and he was found to have caused  
8 actual injury. There were eight aggravating factors: *Standard 9.22(b)*  
9 Dishonest or selfish motive, *Standard 9.22(c)* Pattern of misconduct, *Standard*  
10 *9.22(d)* Multiple offenses, *Standard 9.22(e)* Bad faith obstruction of the  
11 disciplinary proceeding by intentionally failing to comply with the rules or  
12 orders of the disciplinary agency, *Standard 9.22(f)* Submission of false  
13 Evidence, false statements, or other deceptive practices during the disciplinary  
14 process, *Standard 9.22(g)* Refusal to acknowledge wrongful nature of conduct,  
15 *Standard 9.22(i)* Substantial experience in the practice of law, and *Standard*  
16 *9.22(j)* Indifference to making restitution. There was one mitigating factor:  
17 *Standard 9.32(a)* Absence of a prior disciplinary record. Beskind's conduct  
18 was found to have violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4,  
19 1.5, 3.4(c), 8.4(d), and Rules 53(d), 53(e), and 53(f) Ariz.R.Sup.Ct  
20  
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1 In *In re Hoover*, SB-06-0027-D (2006), Hoover was disbarred from the  
2 practice of law and ordered to pay restitution. Hoover engaged in a pattern of  
3 neglect of clients by failing to diligently represent and communicate with  
4 clients. Hoover abandoned the practice of law after charging fees for services  
5 that were not performed or were of little or no value to the clients. Hoover also  
6 failed to cooperate with the State Bar's investigation. Hoover's mental state  
7 was found to be knowing and he was found to have caused serious injury.  
8 There were five aggravating factors: *Standard 9.22(a)* Prior disciplinary  
9 offenses, *Standard 9.22(c)* Pattern of misconduct, *Standard 9.22(d)* Multiple  
10 offenses, *Standard 9.22(h)* Vulnerability of victim, and *Standard 9.22(i)*  
11 Substantial experience in the practice of law. There were no mitigating factors.  
12 Hoover was sanctioned for violation of Rule 42, Ariz.R.Sup.Ct., specifically  
13 ERs 1.2, 1.3, 1.4, 1.5(c), 1.15, 1.16, 3.2, 3.2(c)(3), 8.1(b), 8.4(d), and Rules  
14 53(d) and 53(f) Ariz.R.Sup.Ct.

15 In *In re Son*, SB-05-0173-D (2006), Son was disbarred from the practice  
16 of law and ordered to pay restitution. Son abandoned his law practice and  
17 engaged in a pattern of neglect with respect to client matters. Son failed to  
18 perform any contracted services for clients after accepting fees, and a  
19 conservator was appointed to handle Son's client files and trust account. Son  
20 also failed to cooperate with the State Bar's investigation. Son's mental state  
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1 was found to be knowing and he was found to have caused actual injury. There  
2 were three aggravating factors: *Standard 9.22(c)* Pattern of misconduct,  
3 *Standard 9.22(d)* Multiple offenses, and *Standard 9.22(e)* Bad faith obstruction  
4 of the disciplinary proceeding by intentionally failing to comply with the rules  
5 or orders of the disciplinary agency. There was one mitigating factor:  
6 *Standard 9.32(a)* Absence of a prior disciplinary record. Son was sanctioned  
7 for violation of Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 1.5,  
8 1.15, 1.16, 3.2, 8.1(b), and Rules 53(d) and 53(f) Ariz.R.Sup.Ct.  
9

#### 11 RECOMMENDATION

12 The Supreme Court “has long held that ‘the objective of disciplinary  
13 proceedings is to protect the public, the profession and the administration  
14 of justice and not to punish the offender.’” *In re Alcorn*, 202 Ariz. 62, 74,  
15 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294,  
16 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter  
17 future misconduct. *In Re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993).  
18 It is also a goal of lawyer regulation to protect and instill public confidence  
19 in the integrity of individual members of the State Bar. *Matter of Horwitz*,  
20 180 Ariz. 20, 881 P.2d 352 (1994).  
21  
22

23  
24 Upon consideration of the facts, the ethical rules violated, the  
25 applicable *Standards*, the aggravating and mitigating factors, and an

1 analysis of proportional cases, this Hearing Officer recommends the  
2 following sanction:

- 3 1. Respondent shall be disbarred from the practice of law.
- 4 2. Respondent shall, within thirty days of the date of the final  
5 judgment and order, pay restitution to:
  - 6 a. Mr. Jeff Freundlich in the amount of \$8,835.00;
  - 7 b. Mr. Art Roth in the amount of \$5,157.50;
  - 8 c. The ThinkHer LLC in the amount of \$16,076.00;
  - 9 d. Ms. Wendy Schade in the amount of \$395;
  - 10 e. Ms. Patricia Camacho in the amount of \$1,255.
- 11 3. Respondent shall pay all costs and expenses incurred by the  
12 State Bar in bringing this disciplinary proceeding. In addition,  
13 Respondent shall pay all costs and expenses incurred in this  
14 matter by the Disciplinary Commission, the Supreme Court,  
15 and the Disciplinary Clerk's Office.
- 16 4. Should Respondent be reinstated to the practice of law,  
17 Respondent shall be placed on probation for two years, with  
18 the terms and conditions of probation to be determined at the  
19 time of reinstatement.  
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