

FILED
 JUN 02 2008
 HEARING OFFICER OF THE
 SUPREME COURT OF ARIZONA
 BY: *[Signature]*

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

IN THE MATTER OF A MEMBER)	Nos 07-0665, 07-1224, 07-2012,
OF THE STATE BAR OF ARIZONA,)	08-0140, and 08-0450
)	
WILLIAM TIFFT,)	HEARING OFFICER'S
Bar No 003022,)	REPORT AND
)	RECOMMENDATION
RESPONDENT.)	
_____)	

I. PROCEDURAL HISTORY

On August 31, 2007, State Bar of Arizona ("State Bar") Probable Cause Panelist, Edward Novak filed a Probable Cause Order in case # 07-0665, finding probable cause existed to issue a Complaint against Respondent William Tift ("Respondent") for violations of Rule 42, Ariz R. S Ct, including but not limited to violations of ER's 1 3, 3 2, 3 4(a & c), 8 1(a), and Rule 53(c & d). Approximately three months later, on November 30, 2007, the State Bar filed a Complaint against Respondent in cases # 06-0665 and 07-1224, alleging two counts of violating those ethics rules, one count representing each case. The State Bar served the Complaint on Respondent by mail on December 3, 2007 Respondent timely filed his Answer on December 28, 2007. On January 16, 2008, the State Bar filed its Notice of Intent to Use Prior Discipline ¹

¹ That notice included (1) Notice of Censure dated February 16, 1979 in file # 77-0132 (finding he failed to return calls/letters from clients, and wrote a dishonest letter to a client regarding the prosecution of his case), (2) Notice of Censure dated November 11, 1983 in file # 82-0421 (finding he improperly secured a quiet title judgment on a party and, when sued to correct this, failed to inform the Superior Court judge of his being sued in correcting it), (3) Order of Informal Reprimand dated January 16, 1986 in file # 85-1421 (finding he lost client documents and refused to return her file), and, Order of Diversion to LOMAP dated July 12, 2007 in file # 06-1923

An initial case management conference was held where standard scheduling orders were entered. The parties exchanged disclosure. The matter was assigned to Philip Haggerty for settlement conference. A settlement conference was scheduled on February 13, 2008, but was continued by the joint request of parties to allow Respondent to secure records as well as allow a third case (new filing, case # 08-0140) to be filed and consolidated with the two existing cases. The settlement conference was therefore continued.

On March 7, 2008, the State Bar filed its formal Complaint in the third (*i.e.*, new) case, file # 08-0140. This file was based on facts contained in a prior disciplinary case, file # 06-1923 (a LOMAP diversion case), and cited violation of Rule 53(e). Three days later, the State Bar moved to consolidate the new case with the two existing cases. File # 07-2012 added violations of ER's 1.4(a)(3), 1.7, 1.15(a), 8.1(b), and 8.4(d), in addition to the other rules violated mentioned above regarding Count One. File # 08-0450 was based on violations of ER's 1.3, 1.7, 3.2, and 3.4(a & c). As a global settlement of the three cases (and two additional files that had not gone to formal Complaint yet, files # 07-2012 & 08-0450) was being worked out, and because there was no objection from Respondent, that motion was granted.² The case management conference was vacated upon notice of settlement on March 17, 2008.

The Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent, as well as the Tender of Admissions and Agreement for Discipline by Consent, were filed by the parties on April 11, 2008. The same day, Respondent filed

² Incidentally, with the consolidation of this new case, the one-hundred and fifty-day time for concluding disciplinary cases started afresh for the consolidated three cases.

certain records that this Hearing Officer sealed. On May 1, 2008, the State Bar filed a Notice of Errata correcting a detail in the Tender of Admissions.

In their Tender of Admissions, the parties agreed to conditional admissions as well as conditional dismissals of violations. Respondent conditionally admits that his conduct violated, with respect to Count One and File No. 07-2012 Rule 42, Ariz R Sup Ct., specifically, ERs 1 3, 1 4(a)(3), 1 7, 1.15(a), 3 2, 3 4(a), 3 4(c), 8 1(b), and 8 4(d), and Rule 53(c), Ariz R Sup Ct, Rule 53(d), Ariz.R Sup Ct., and Rule 53(f), Ariz R.Sup Ct ; in regard to Count Two Rule 42, Ariz R Sup Ct , specifically, ERs 1 3, 1 4(a)(3), 1.4(a)(4), and 8 1(b), and Rule 53(d) Ariz R.Sup.Ct., and Rule 53(f), Ariz R.Sup Ct; in regard to Count Three Rule 53(e), Ariz R Sup Ct.; and in regard to File No. 08-0450, Rule 42, Ariz R Sup Ct , specifically, ERs 1 3, 1 7, 3 2, 3.4(a), and 3 4(c) Respondent's admissions are being tendered in exchange for the form of discipline contained in this agreement. The State Bar conditionally agrees, for purposes of this agreement only, with regard to Count One and File No 07-2012 to dismiss the alleged violations of Rule 42, Ariz R.Sup Ct., specifically ER 8 4(c); and with regard to Count Two Rule 42, Ariz R Sup.Ct., specifically, ERs 1 2, 1 4(a)(3), 1 5(a), 1 15(d), 1 16(d), 8.4(c), and 8 4(d) based on evidentiary concerns and in exchange for this agreement. The reasons for these dismissals are set forth in the facts section, above, and are based on Respondent's explanations provided in his Answer, his subsequent disclosure, and evidence provided from Respondent, Complainant, and other sources.

A telephonic status conference was set for April 24, 2008 At that conference, the parties and Hearing Officer discussed the proposed terms of settlement, and whether any

further evidentiary hearing was needed to provide the Hearing Officer with evidence beyond what was in the pleadings and the supplemental filing under seal. All agreed that no further evidence or argument would be needed for this Hearing Officer to make her findings of fact and law, so no hearing on the matter was scheduled. In an abundance of caution, the Hearing Officer moved for an extension of time to file her Report to June 13, 2008

II. FINDINGS OF FACT

I find the following facts, by clear and convincing evidence, based on the parties' stipulation to them and the reasonableness of such stipulation, given the facts and circumstances before this Hearing Officer.

FACTS

1 At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona, having been first admitted to practice in Arizona on September 23, 1972.

2 A formal complaint was filed against Respondent in File Nos 07-0665 and 07-1224 on November 30, 2007

3. A formal complaint was filed against Respondent in File No 08-0140 on March 7, 2008.

4. File No. 08-0140 was based on facts relayed in File No 06-1923 which are incorporated into the formal complaint in File No 08-0140

5 The complaints referenced in paragraphs 2 and 3, above, were consolidated on March 19, 2008.

6. No formal complaint has been filed in File Nos 07-2012 and 08-0450

COUNT ONE (07-0665) AND FILE No. 07-2012

7. Respondent represented Herbert Henson (Mr Henson), individually and as Trustee of the MFC holding Trust in a civil matter filed by Grace and Lonnie Johnson (the Johnsons) in Maricopa County Superior Court, PB2002-002367

8 Sometime in October 2003, PB2002-002367 settled and a Settlement Agreement was filed with the Court.

9 On or about July 11, 2005, the Johnsons filed further proceedings in PB2002-002367 for breach of the Settlement Agreement.

10. If this matter were to proceed to a hearing, Respondent would assert that PB2002-002367 had been dismissed with prejudice and that the Court had no jurisdiction to proceed with the Johnsons' complaint

11 The Johnsons alleged that Mr. Henson failed to account for trust activities and failed to disburse monies to trust beneficiaries pursuant to the Settlement Agreement

12 By Minute Entry dated September 9, 2005, Respondent was ordered to meet with the Johnsons' counsel and provide them discovery relating to the information referred to in paragraph 11, above.

13 If this matter were to proceed to a hearing, Respondent would testify that on or about September 27, 2005, he provided voluminous documents to the Johnsons' counsel regarding the information referred to in paragraph 11, above

14 On or about September 18, 2006, the Johnsons again accused Mr Henson of breaching the Settlement Agreement

15. Among other issues, the Johnsons claimed Respondent had failed to provide a complete and accurate accounting of the trust, that Mr. Henson had used trust funds to pay Respondent unearned fees, and that Mr Henson had failed to disburse monies to trust beneficiaries.

16. By Minute Entry dated November 8, 2006, Respondent was ordered to meet with the Johnsons' and the beneficiaries' (the plaintiffs) attorneys to resolve the issues raised in paragraph 15, above

17. On or about November 16, 2006, Respondent met with the plaintiffs' attorneys, but did not bring any documentation relating to the issues raised in paragraph 15, above

18. Respondent said he would provide such documentation by November 30, 2006

19. By letter dated November 30, 2006, Respondent said he would provide such documentation by December 8, 2006.

20. By letter dated December 13, 2006, Respondent said he would be unable to provide the documentation until December 20, 2006

21. As Respondent failed to provide the documents to the plaintiffs' counsel by December 20, 2006, they moved to set an Order to Show Cause hearing

22. The Court scheduled an Order to Show Cause hearing for February 20, 2007

23. On or about February 6, 2007, depositions were set for Respondent and Mr Henson

24. The depositions were scheduled for February 19, 2007

25 Both Respondent and Mr Henson were served with a subpoena duces tecum to bring documentation of the issues referred to in paragraph 15, above, to the depositions

26 Respondent failed to appear at the depositions on February 19, 2007.

27 Respondent failed to appear at the Order to Show Cause hearing held on February 20, 2007

28 If this matter were to proceed to a hearing, Respondent would testify that he was in the hospital and unable to attend the Order to Show Cause hearing and that he called the Court to inform them as such prior to the hearing

29 By Minute Entry dated February 20, 2007, the Order to Show Cause hearing was continued to March 13, 2007.

30 By Minute Entry dated February 20, 2007, the Court ordered Respondent to provide the documents referred to in the subpoena duces tecum to the plaintiffs' counsel by March 6, 2007.

31. By Minute Entry dated February 20, 2007, the Court ordered Respondent to provide documentation of his hospitalization to the Court by March 13, 2007.

32 Respondent failed to provide the subpoenaed documents to plaintiff's counsel by March 6, 2007

33. By Minute Entry dated March 8, 2007, Respondent was ordered to provide the documents referred to in the subpoena duces tecum to plaintiffs' counsel by 5 00 p.m on March 9, 2007.

34 Respondent failed to provide the subpoenaed documents by 5 00 p m on March 9, 2007.

35 By Minute Entry dated March 13, 2007, Respondent was ordered to appear at a deposition on March 20, 2007

36 By Minute Entry dated March 13, 2007, Respondent was ordered to provide the documents referred to in the subpoena duces tecum to plaintiffs' counsel by 5.00 p.m on March 16, 2007

37 By Minute Entry dated March 13, 2007, Respondent was ordered to provide the Court with a record or a doctor's affidavit regarding his time of admission to the hospital on February 20, 2007

38 The Court continued the Order to Show Cause hearing to May 10, 2007.

39 Respondent failed to appear at the deposition on March 20, 2007

40 On or about March 23, 2007, plaintiffs' counsel filed a Motion for Sanctions Including an Order of Contempt for Issuance of a Civil Arrest Warrant (Motion for Sanctions)

41. The Court scheduled oral argument on the Motion for Sanctions for April 24, 2007.

42. Respondent failed to appear at the April 24, 2007 oral argument

43. By Minute Entry dated April 24, 2007, the Court found that Respondent had knowledge of, understood, and willfully failed to comply with the Court's orders.

44 By Minute Entry dated April 24, 2007, Respondent was found to be in contempt of Court

45. By Minute Entry dated April 24, 2007, plaintiffs' Motion for Sanctions was granted and the Johnsons were awarded reasonable attorney's fees

46 By Minute Entry dated April 24, 2007, the Court found Respondent jointly and severally responsible with Mr. Henson for the awarded attorney's fees.

47. By Minute Entry dated April 27, 2007, the Court ordered a Civil Arrest Warrant would be issued against Respondent

48 By Minute Entry dated April 30, 2007, the Court issued a Civil Arrest Warrant against Respondent

49 By Minute Entry dated April 30, 2007, the Court set a cash bond for Respondent in the amount of \$37,663.74

50 Respondent failed to appear at the May 10, 2007 continuation of the Order to Show Cause hearing.

51 By Minute Entry dated May 10, 2007, Respondent was ordered not to destroy any trust documents.

52 By Minute Entry dated May 10, 2007, Respondent was ordered to turn over all documents related to the trust in his possession to plaintiffs' counsel

53 By Minute Entry dated May 10, 2007, the Court directed the Maricopa County Sheriff's Office (MCSO) to provide a copy of Respondent's Civil Arrest Warrant to the Pinal County Sheriff's Office (PCSO) for service

54. Respondent failed to produce any of the documents referred to in paragraph 52, above, to plaintiffs' counsel

55 Mr Henson attended a deposition with plaintiffs' counsel on July 16, 2007.

56 Mr Henson testified during his deposition that Respondent had not provided Mr Henson with a bill for the fees Respondent was paid out of the trust

57. Mr Henson testified during his deposition that the amount of the fees Respondent billed out of the trust totaled approximately \$108,000 00

58 Mr Henson testified during his deposition that Respondent told him to ignore the Court's orders for Mr Henson to attend depositions and court hearings

59. By Minute Entry dated August 10, 2007, the Court ordered Respondent's law office to turn over all documents relating to the trust to plaintiffs' counsel.

60 Respondent failed to provide the documents to plaintiffs' counsel referred to in paragraph 59, above

61 By Minute Entry dated September 9, 2007, the Court ordered Respondent's legal assistant, Jennifer Baroldy (Ms Baroldy) to appear at a deposition on September 14, 2007

62 By letter dated September 13, 2007, Respondent informed plaintiffs' counsel that his office would not be available for Ms. Baroldy's deposition because Respondent would not be in the office due to ongoing treatment for asthma and pneumonia

63 Ms. Baroldy appeared for her deposition on September 14, 2007, with counsel

64 At her deposition, Ms Baroldy testified that Respondent removed the trust file from Respondent's office sometime in early 2007.

65. At her deposition, Ms Baroldy testified that she had not seen the trust file in the office after Respondent had removed it

66. Respondent posted his bond amount on or about November 21, 2007.

67 On February 7, 2008, Respondent appeared for a deposition and provided plaintiffs' counsel with all trust documents

68 The State Bar was notified regarding Respondent's conduct via Minute Entry dated April 24, 2007

69 By letter dated May 23, 2007, the State Bar requested a written response from Respondent addressing the conduct found by the Court. The State Bar's letter was sent to Respondent's address as maintained by membership records.

70. Respondent failed to respond to the State Bar's letter.

71 By letter dated June 22, 2007, the State Bar requested a written response from Respondent addressing the conduct found by the Court. The State Bar's letter was sent to Respondent's address as maintained by membership records.

72 The State Bar's June 22, 2007 letter warned respondent that failure to cooperate with a disciplinary investigation was, by itself, grounds for discipline under Ariz R Sup Ct 53(d) and (f)

73 Respondent failed to respond to the State Bar's letter.

74 During this timeframe, Respondent was suffering severe depression and was twice hospitalized for treatment

75. If this matter were to proceed to a hearing, Respondent would testify that due to his medical infirmity, he was unable to meet his obligations to comply with the State Bar's requests after March 2007

COUNT TWO (07-1224)

76 On or about April 19, 2007, Donald Woods met with Respondent regarding a tax lien foreclosure matter

77 On or about April 19, 2007, Mr Woods retained Respondent for \$1000 00.

78. If this matter were to proceed to a hearing, Respondent would testify that he advised Mr Woods at the April 19, 2007 meeting that it would take a minimum of 60 days to file a case and serve the parties involved

79. If this matter were to proceed to a hearing, Respondent would testify that he performed subsequent research into Mr Woods' foreclosure matter and discovered that, due to several liens on the property in question, the matter was more complex than Respondent initially anticipated.

80 If this matter were to proceed to a hearing, Ms Baroldy would testify that she contacted Mr Woods and informed him that the matter was more complex than initially anticipated and that it would therefore take longer to resolve

81 On or about June 15, 2007, Mr Woods contacted Respondent for an update on Mr Wood's case

82 Respondent failed to respond to Mr Woods' request

83 If this matter were to proceed to a hearing, Respondent would testify that he was unable to respond to Mr Woods' request due to a medical infirmity he suffered from at the time.

84 Mr Woods continued to make several requests to Respondent for information on Mr. Woods' case.

85 Respondent failed to respond to Mr Woods' requests

86 Respondent failed to file any action with the Gila County Superior Court pursuant to Mr Woods' expectations

87 By letter dated July 20, 2007, Mr Woods fired Respondent.

88. By letter dated July 20, 2007, Mr Woods requested a full refund of his retainer.

89. Respondent failed to respond to Mr Woods' July 20, 2007 letter

90. Respondent asserts, and for purposes of this agreement the State Bar does not dispute, he was unable to respond to Mr. Woods' letter due to his then existing disability

91. By letter dated July 20, 2007, Mr Woods filed a bar complaint with the Arizona State Bar (State Bar) alleging the conduct in paragraphs 76 through 90, above

92. By letter dated July 30, 2007, the State Bar requested a written response from Respondent to Mr Woods' allegations. The State Bar's letter was sent to Respondent's address as maintained by membership records

93. Respondent failed to respond to the State Bar's July 30, 2007 letter.

94. By letter dated September 7, 2007, the State Bar requested a written response from Respondent to Mr Woods' allegations. The State Bar's letter was sent to Respondent's address as maintained by membership records.

95. The State Bar's September 7, 2007 letter warned respondent that failure to cooperate with a disciplinary investigation was, by itself, grounds for discipline under Ariz R Sup Ct 53(d) and (f).

96. Respondent failed to respond to the State Bar's September 7, 2007 letter

97. If this matter were to proceed to a hearing, Respondent would testify that he was unable to respond to the State Bar's inquiries due to his disability.

98. If this matter were to proceed to a hearing, Respondent would testify that he met with Mr. Woods and refunded his \$1000.00 retainer in full on November 27, 2007

COUNT THREE (08-0140)

99. On or about March 28, 2006, Respondent was retained by Lynn O'Leary (Mr O'Leary) to probate property belonging to his deceased sister, Patsy Bradley (Ms Bradley)

100 Mr O'Leary filed a bar complaint alleging communication problems he had with Respondent

101. Mr O'Leary's bar complaint was received on or about November 27, 2006

102. The State Bar opened an investigation into the conduct alleged in Mr O'Leary's bar complaint in File No 06-1923

103 As a result of its investigation, the State Bar recommended Respondent be placed into a diversion program for violations of Rule 42, Ariz R.Sup Ct , specifically ER 14

104. By an Order of Diversion (Order) dated July 9, 2007, Respondent was ordered into a diversion program for the conduct alleged in File No 06-1923

105 Respondent's terms of diversion required him to contact the State Bar's Law Office Management Assistance Program (LOMAP) for a consultation regarding client communication and calendaring.

106 Respondent was ordered to contact LOMAP within 20 days from the date the Order was mailed

107 A copy of the Order was mailed to Respondent on or about July 12, 2007

108 Respondent did not file an objection to the Order

109. Respondent was required to contact LOMAP by August 1, 2007

110 Respondent failed to contact LOMAP by August 1, 2007

111 Maria Bahr (Ms Bahr) was the director of LOMAP at the time Respondent was ordered into diversion.

112 By letter dated August 6, 2007, Ms Bahr requested Respondent contact her to schedule his ordered LOMAP consultation

113 The letter referenced in paragraph 112, above, was mailed to Respondent's last known address as maintained by membership records.

114. Sometime between August 6, 2007, and August 23, 2007, Respondent contacted LOMAP.

115. Respondent scheduled an appointment to meet with Ms Bahr at 10 00 a m on September 14, 2007, to conduct Respondent's ordered LOMAP consultation

116 Ms Bahr agreed to conduct the consultation at Respondent's law office in Globe, Arizona

117 By letter dated August 23, 2007, the date, time, and location of the LOMAP consultation was confirmed with Respondent

118 The letter referenced in paragraph 117, above, was mailed to Respondent's last known address as maintained by membership records

119 Sometime on or after August 23, 2007, Respondent requested to reschedule the LOMAP consultation

120. The LOMAP consultation was rescheduled to September 26, 2007.

121 Respondent canceled the September 26, 2007, LOMAP consultation.

122. Sometime on or after September 26, 2007 and between, on, or before October 12, 2007, Respondent scheduled the LOMAP consultation for the third time

123 Ms. Bahr again agreed to conduct the LOMAP consultation at Respondent's office in Globe, Arizona

124 Respondent's LOMAP consultation was scheduled to take place on October 25, 2007

125 By letter dated October 12, 2007, the date, time, and location of the LOMAP consultation was confirmed with Respondent

126. The letter referenced in paragraph 125, above, was mailed to Respondent's last known address as maintained by membership records

127. Respondent cancelled the October 25, 2007 LOMAP consultation.

128 Respondent failed to attend a LOMAP consultation as required per the Order

129 By motion dated December 4, 2007, the State Bar requested Respondent be found in violation of the Order

130 By order dated January 16, 2008, Respondent was found to have violated his terms of diversion

FILE No. 08-0450

131. On August 15, 2005, William Phillips (Mr. Phillips) filed a lawsuit against Cobre Valley Country Club (Country Club) in Gila County Superior Court, CV2005-202

132 Due to judicial conflicts regarding the case, CV2005-202 was transferred to Graham County Superior Court on June 5, 2007.

133 Respondent was the attorney of record for the Country Club.

134 On or about June 16, 2007, Mr Phillips' attorney filed a First Amended Verified Complaint, expanding the number of named defendants to include both the Country Club and 24 other individuals

135. Respondent assumed responsibility for 20 of the 24 individual defendants

136 The Court set a Status Conference for October 22, 2007.

137 Respondent had Jerry DeRose (Mr DeRose) stand in for him at the Status Conference.

138. At the Status Conference, Mr. DeRose informed the Court that Respondent was unable to appear due to medical concerns.

139 The Court continued the Status Conference to December 17, 2007

140 Respondent appeared telephonically at the December 17, 2007 Status Conference

141 During the Status Conference, Respondent informed the Court he was in the process of talking to his clients to find them other counsel due to his personal medical concerns

142. During the December 17, 2007 hearing, Respondent agreed to Bates stamp, copy, and mail all board minutes and other business records being requested by opposing counsel by January 11, 2008.

143 Respondent failed to Bates stamp, copy, and mail the documents described in paragraph 142, above, by January 11, 2008.

144 The Court set a Review Hearing for January 28, 2008

145 Respondent failed to appear at the Review Hearing

146. Opposing counsel informed the Court that Respondent had not provided them with discovery and requested sanctions

147 Opposing counsel requested that Respondent be removed from the case.

148 The Court found Respondent had failed to provide discovery.

149 The Court set a hearing to address the issue of sanctions for February 5, 2008 (sanctions hearing)

150. Respondent appeared at the sanctions hearing

151 At the sanctions hearing, Respondent informed the Court he did not recall participating in the December 17, 2007 hearing due to medication he had been on at the time for diabetes and emotional problems

152 At the sanctions hearing, Respondent informed the Court that his staff had not calendared the Review Hearing.

153 The Court ordered Respondent to meet with opposing counsel in Globe, Arizona, to review the documents requested at the County Club on February 16, 2008

154 Respondent reviewed the documents with opposing counsel and co-defendant's counsel at the Country Club on February 16, 2008.

III. CONCLUSIONS OF LAW

1 The State Bar bears the burden to prove by clear and convincing evidence of the violations of ethics rules. It therefore must prove that it is highly probable that its allegations referenced above are true

2 As to Count One and file # 07-2012, Respondent failed to act with reasonable diligence and promptness, failed to keep his client reasonably informed about the status of that client's case, failed to avoid a conflict of interests (between his own

interests and those of his clients), failed to safe keep his client's property, failed to make reasonable efforts to expedite litigation, obstructed another party's access to evidence, and disobeyed a court order. I further find that he failed to respond to a lawful demand for information from the State Bar, engaged in conduct prejudicial to the administration of justice, violated a Court order, refused to cooperate with the State Bar, and failed promptly to respond to Bar inquiries and supply the requested information to Bar counsel

3 As to Count Two, Respondent also failed to act with reasonable diligence and promptness, and failed to reply promptly to his clients' reasonable requests for information. Furthermore, I find that he failed to respond to a lawful demand for information from the State Bar, and failed promptly to respond to Bar inquiries and supply the requested information to Bar counsel

4 As to Count Three, Respondent violated conditions of his diversion originally granted in file # 06-1923 by committing the above violations of Counts One and Two

5. Regarding file # 08-0450, Respondent failed to act with reasonable diligence and promptness, failed to avoid a conflict of interests (between his own interests and those of his clients), failed to make reasonable efforts to expedite litigation, obstructed another party's access to evidence, and disobeyed court rules

IV. RECOMMENDATION

A. ABA Standards

1 Count One (07-0665) and File No 07-2012

The Hearing Officer agrees that the most serious misconduct in this count was Respondent's failure to comply with Court orders and failure to supply opposing counsel with

documents ordered disclosed by the Court Respondent's conduct, in violation of Ariz R Sup Ct 42, specifically, ERs 3.4(a) and 3.4(c), both implicates *Standard 6 2* *Standard 6 22* provides "[s]uspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury to a client or a party, or interference or potential interference with a legal proceeding "

The Hearing Officer agrees that *Standard 6 22* applies. Respondent admits that he did not comply with a number of Court orders regarding the surrender of certain trust documents to opposing counsel Respondent was first ordered to informally provide the documents as early as November 2006, and formally ordered to do so, through the Court's grant of a subpoena duces tecum, in February 2007 Respondent did not comply until February 2008, invoking contempt proceedings and a civil arrest warrant in the meantime This delay caused interference with the legal proceedings, injured the opposing by party by delaying discovery for approximately a year, and injured Respondent's client by provoking a civil arrest warrant to be issued against him as well as being assessed opposing counsel's reasonable attorney's fees The presumptive sanction for Count One, therefore, is a suspension.

2 Count Two (07-1224)

The Hearing Officer agrees that the most serious misconduct in this count was Respondent's failure to respond to the State Bar's investigation Respondent's conduct, in violation of Rule 42, Ariz R Sup Ct , specifically, ER 8 1(b); and Rule 53(d), Ariz R Sup.Ct., and Rule 53(f), Ariz.R Sup Ct., implicates *Standard 7 2* *Standard 7 2* provides "[s]uspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system "

The Hearing Officer agrees that *Standard 7.2* applies. Respondent was fully aware of the bar complaint lodged against him by Mr Woods. Though Respondent asserts, and for purposes of this agreement the State Bar does not dispute, that he was unable to reply himself due to medical concerns, he did ask a relative to contact the State Bar on his behalf regarding this, and other, complaints. Such action demonstrates knowledge of the State Bar's inquiries into Respondent's conduct. And despite the relative's involvement, Respondent failed to provide any information to the State Bar regarding Mr Woods' bar complaint, and did not respond until a formal complaint was filed in this matter. Such conduct reflects carelessness and a disregard for the legal system that calls into question Respondent's fitness to practice. Such a concern is amplified by the fact that Respondent failed to respond to not just Count Two, but also Count One and Count Three. The presumptive sanction in Count Two, therefore, is a suspension.

3 Count Three (08-0140)

The Hearing Officer agrees that the most serious misconduct in this count was Respondent's failure to comply with his ordered diversion terms. Respondent's conduct, in violation of Rule 53(e), Ariz R Sup Ct, implicates *Standard 6.2*, as discussed above.

The Hearing Officer agrees that *Standard 6.2.2* applies. Respondent was clearly aware of the Order of Diversion, signed by the Probable Cause Panelist, and went so far as to schedule, and cancel, three different meetings with Maria Bahr in three months, and then ceased all further communications. Respondent therefore demonstrated knowledge of the Order of Diversion, and caused a delay that interfered with the disciplinary proceedings in File No. 06-1923. The presumptive sanction in Count Three, therefore, is a suspension.

4 File No 08-0450

The Hearing Officer agrees that the most serious misconduct in this count was Respondent's failure to comply with Court orders. Respondent's conduct, in violation of Rule 42, Ariz R Sup Ct, specifically ER 3 2(c), implicates *Standard 6 2*, as discussed above.

The Hearing Officer agrees that *Standard 6 22* applies. Respondent was well aware of his medical issues by this point and delayed Court proceedings to accommodate them. Despite the delay, however, Respondent avowed to the Court he would Bates stamp and copy all documents pertaining to the issues in the case to all other interested counsel and then failed to do so. Respondent then missed the next hearing, and later stated that he could not remember the earlier proceedings or his avowal to the Court due to medications he was taking. Respondent's actions caused a delay in the proceedings that interfered with their normal course. And while his actions in this case are not as extreme as those in Count One and File No 07-2012, they do provide cause for alarm given the similarities between Respondent's conduct in these two matters. The presumptive sanction for File No 08-0450 is, therefore, a suspension.

B. Aggravation and Mitigation

1. Aggravation

This Hearing Officer then considered aggravating and mitigating factors in this case, pursuant to *Standards 9 22* and *9 32*, respectively. This Hearing Officer found the following five factors are present in aggravation:

Standard 9 22(a) Prior Disciplinary Offenses Respondent was censured on February 16, 1979, for failing to respond to his client's calls and letters, and also for writing dishonest letters to his client. Respondent was censured again on November 11, 1983, for making an

improper request for an amended judgment and for failing to inform the Court of a second ongoing lawsuit when requesting the amended judgment. Finally, Respondent received an informal reprimand on January 16, 1986, for losing client documents and failing to return files to his client

Standard 9 22(c) Pattern of Misconduct Throughout the underlying matters at issue in Respondent's cases, he routinely missed court dates and refused to comply with court orders despite being given several chances to comply Respondent also demonstrated communication issues with his clients, the Court, and the State Bar by disappearing without word or reason at several points in the underlying matters

Standard 9 22(d) Multiple Offenses Respondent's misconduct affected several clients over the course of four different cases, two different courts, at least four different attorneys representing Respondent's opposing counsel, and disrupted an investigation by the State Bar twice

Standard 9 22(e) Obstruction of the Disciplinary Proceeding Respondent was aware of and did not appeal the Order of Diversion Yet, he failed to comply with its terms despite repeated efforts to accommodate Respondent's problems Respondent also failed to respond to the State Bar's investigation into two other matters when he knew the State Bar was conducting an investigation

Standard 9 22(i) Substantial Experience in the Practice of Law. Respondent was admitted to practice in the State of Arizona on September 23, 1972, giving him 34 years of experience in 2006 when the underlying matters took place.

2. Mitigation

This Hearing Officer also found the following four factors are present in mitigation

Standard 9.32(c) Personal or Emotional Problems; and Standard 9.32(i) Mental Disability or Chemical Dependency. Respondent is submitting medical information under seal which describes, in detail, the personal, medical, and emotional problems he was experiencing at the time of the events at issue

Standard 9.32(k) Imposition of Other Penalties or Sanctions. In Count One and File No. 07-2012, Respondent had a civil arrest warrant and was ordered to submit a \$33,663.74 bond. Respondent was further held jointly and severally liable for opposing counsel's attorney's fees in that matter

Standard 9.32(l) Remorse Respondent has expressed his remorse regarding his misconduct and how it affected those around him. Respondent also refunded Mr. Woods' fees in total

Standard 9.32(m) Remoteness of Prior Offenses Respondent's most recent prior discipline was ordered on January 16, 1986, over ten years prior to the majority of Respondent's misconduct in the current matters

C. Proportionality Analysis

The Supreme Court has held that in order to achieve proportionality when imposing discipline, the discipline in each situation must be tailored to the individual facts of the case in order to achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983), *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993). Because no two cases are

alike, using a proportionality review is “an imperfect process” *In re Owens*, 182 Ariz 121, 127, 893 P 2d 1284, 1290 (1995).

Nonetheless, for an effective system of professional sanctions, internal consistency is necessary to ensure fair treatment as well as preserve respect for this system of justice. It is therefore proper to consider sanctions given in factually similar cases in deciding the propriety of the sanction contemplated here. *See In re Peasley*, 208 Ariz 27, 90 P 2d 764, 772 (2004). Hence, the Court has consulted other related cases to ensure that any sanction is roughly proportional to sanctions given for similarly situated lawyers. *In re Struthers*, 179 Ariz. 216, 226, 887 P 2d 789, 799 (1994).

The cases set forth below demonstrate that a long-term suspension of six months and one day is an appropriate sanction in this matter.

In *In re Martin*, SB-06-0174-D (2006), Mr. Martin agreed to a censure with two years of probation. Mr. Martin was retained by his clients for \$1000.00, but did no work on their case and promised them a full refund at the conclusion. Mr. Martin failed to return his client's money until after the State Bar began its investigation. Mr. Martin failed to respond to the State Bar's investigation. There were two aggravating factors that were considered: a prior disciplinary history and substantial experience. There were four mitigating factors considered: the absence of a dishonest or selfish motive, personal or emotional problems based in alcoholism, remorse, and the remoteness of Mr. Martin's prior offenses.

In *In re Hyndman*, SB-06-0170-D (2007), Mr. Hyndman agreed to a 90-day suspension with one year of probation. Mr. Hyndman failed to comply with the terms of his probation in the first count. In the second count, Mr. Hyndman failed to provide

previously ordered court documents, and then failed to file a withdrawal motion when instructed to so by the Court. Mr. Hyndman failed to appear in court for an order to show cause hearing, failed to pay the subsequently ordered sanction, and later failed to respond to the State Bar's investigation. There were two aggravating factors considered: a prior disciplinary history and a pattern of misconduct. There were four mitigating factors considered: the absence of a dishonest or selfish motive, personal or emotional problems based on both financial problems and depression, the imposition of other penalties or sanctions, and remorse. Only evidence supporting a potential injury was found.

In *In re Schlievert*, SB-07-0034-D (2007), Mr. Schlievert agreed to a six-month-and-a-day suspension with two years of probation. In the first count, Mr. Schlievert failed to communicate with his client, failed to show up at an order to show cause hearing, and failed to turn over his client file to the client's new lawyer. In a second count, Mr. Schlievert failed to file a court ordered affidavit and failed to appear at another order to show cause hearing. Then, in a third matter not formally filed, Mr. Schlievert failed to keep his client informed about his case and pending hearings. Finally, in a fourth matter also not formally filed, Mr. Schlievert was hired by a client and then did no work on the case, failed to communicate with the client, and, when fired, failed to timely return the retainer. There were four aggravating factors that were considered: a prior disciplinary history, a pattern of misconduct, multiple offenses, and substantial experience. There was one mitigating factor, that being the absence of a dishonest or selfish motive. Both potential and actual injuries were found.

While none of the above cases are exactly on point, a combined reading of each provides support for the proposed sanction in this matter. Each of the above cases shares

similar allegations with Respondent's current complaint *Martin* shares similarities to Count Two, including the \$1000 00 retainer and lack of a refund to the client until a State Bar investigation began. However, *Martin* does not include the additional charge of failing to respond to the State Bar's inquires like Count Two in this matter does *Martin* therefore suggests an appropriate sanction floor to be a censure and probation.

Hyndman shares common issues with Count One and File No 07-2012, and a similar allegation to Count Three. Mr Hyndman, like Respondent, missed court hearings and was sanctioned by the court. Mr Hyndman, like Respondent, also failed to provide discovery and failed to respond to the State Bar's inquiries. *Hyndman* therefore suggests Count One, File No 07-2012, and Couth Three support application of at least a short-term suspension. However, *Hyndman* is distinctive from Respondent's matter as it addressed only two formal cases, as opposed to Respondent's five matters (six if one were to include the case Respondent's diversion order was based upon), and only potential injury was found. In Respondent's case, there was actual injury suffered by Respondent's client, Mr. Henson, and by the legal proceedings in suffering nearly a year-long delay in the disclosure of discovery.

Schlievert shares similarities with all of Respondent's counts, and includes terms for unfiled complaints. Like Respondent, Mr. Schlievert demonstrated difficulties in communicating with his client, failed to show up at court hearings, failed to surrender paperwork to another attorney, failed to comply with court orders, and failed to do any substantive work on one of his client's cases. *Schlievert* therefore provides support that when Respondent's cases are viewed together, a suspension for six-months and one-day is appropriate.

D. Discussion of Appropriate Sanction

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

In selecting the appropriate attorney disciplinary sanction, it is appropriate to consider the facts of the case, the Standards, and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz 283, 286, 872 P.2d 1235, 1238 (1994). I have considered all these factors.

Based on that case law and *Standards*, as well as the facts of Respondent's case, including the mitigating and aggravating factors, this Hearing Officer concludes that the appropriate sanction is that stipulated by the parties:

- pay all costs and expenses incurred by the State Bar in these proceedings pursuant to Rule 60(b), Ariz R S Ct within thirty days of the Supreme Court's final Judgment and Order in these cases,
- suspension for six months plus one day;
- upon successful reinstatement to the practice of law, probation for one year, including these terms;
- undergo and cooperate with a full LOMAP assessment, and,
- cooperate with and participate in the MAP program,

Dated this 2nd day of June, 2008

Donna Lee Elm /NM

Donna Lee Elm
Hearing Officer 6N

Original filed with the Disciplinary Clerk
this 2nd day of June, 2008

Copies of the foregoing mailed
this 2nd day of June, 2008, to

Steven P Sherick
Respondent's Counsel
Sherick Law Office
222 North Court Avenue
Tucson, AZ 85701-3939

Russell J Anderson
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

By Neeta Mankar