

**FILED**

SEP 02 2009

**BEFORE THE DISCIPLINARY COMMISSION OF THE  
OF THE SUPREME COURT OF ARIZONA**  
DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA  
BY *M. S. Smith*

1		
2		
3		
4	IN THE MATTER OF A MEMBER )	Nos. 08-1383, 08-1766, 08-1796,
5	OF THE STATE BAR OF ARIZONA, )	08-1828, 08-1829
6	<b>WILLIAM M. LABUDA,</b> )	
7	<b>Bar No. 022216</b> )	<b>DISCIPLINARY COMMISSION</b>
8	<b>RESPONDENT.</b> )	<b>REPORT</b>
9	_____ )	

10 This matter came before the Disciplinary Commission of the Supreme Court of  
 11 Arizona on August 8, 2009, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the  
 12 Hearing Officer's Report filed July 15, 2009, recommending acceptance of the Tender of  
 13 Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum  
 14 in Support of Tender of Admissions and Agreement for Discipline by Consent ("Joint  
 15 Memorandum") providing for a six-month and one-day suspension, participation in the  
 16 State Bar's Fee Arbitration Program ("Fee Arbitration") with the Complainants in Counts  
 17 One and Two, restitution to the Complainants in Counts Three, Four and Five within 60  
 18 days of the date of the final Judgment and Order, and costs. The Hearing Officer further  
 19 recommends upon reinstatement, two years of probation with the State Bar's Law Office  
 20 Management Assistance Program ("LOMAP"), and Member Assistance Program  
 21 ("MAP"), if probation is not imposed in *Matter of Labuda*, File No. 08-1081.<sup>1</sup>

**Decision**

24 Having found no facts clearly erroneous, the nine members of the Disciplinary

26 <sup>1</sup> See Hearing Officer's Report, p. 17, fn. 2. A final Judgment and Order imposing censure and probation was filed on September 2, 2009. See *Matter of Labuda*, SB-09-0085-D (2009).

1 Commission unanimously recommend accepting and incorporating the Hearing  
2 Officer's findings of fact, conclusions of law, and recommendation for a six-month and  
3 one-day suspension, participation in Fee Arbitration in Counts One and Two, restitution,  
4 which is to be paid within 60 days from the date of the final Judgment and Order, and costs  
5 of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk's  
6 office.<sup>2</sup> The amount of restitution is as follows:

7 **Restitution**

8 Richard Springer	\$ 4,157.00
9 James Palliser	\$ 5,000.00
Deigh Deprez	\$ 1,000.00
<b>TOTAL:</b>	<b>\$10,157.00</b>

10 Respondent shall contact the Fee Arbitration Program within 20 days from the date  
11 of the final Judgment and Order to obtain and submit the forms necessary to participate in  
12 fee arbitration.

13  
14 RESPECTFULLY SUBMITTED this 2nd day of September, 2009.

15  
16  
17   
18 Jeffrey Messing, Chair  
Disciplinary Commission

19 Original filed with the Disciplinary Clerk  
20 this 2nd day of September, 2009.

21 Copy of the foregoing mailed  
22 this 3rd day of September, 2009, to:

23 Neal C. Taylor  
24 Hearing Officer 8I  
25 Burns, Nickerson & Taylor  
3033 North Central, Suite 555  
Phoenix, AZ 85012

26 <sup>2</sup> The Hearing Officer's Report is attached as Exhibit A.

J. Scott Rhodes  
Respondent's Counsel  
1 *Jennings, Strouss & Salmon, P.L.C.*  
201 East Washington Street, 11<sup>th</sup> Floor  
2 Phoenix, AZ 85004-2385

3 Edward W. Parker  
4 Bar Counsel  
State Bar of Arizona  
5 4201 North 24th Street, Suite 200  
Phoenix, AZ 85016-6288

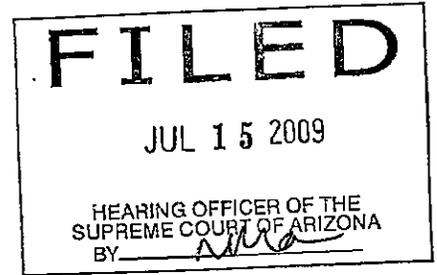
6  
7 by: *W. J. ...*

8 /mps

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

# **EXHIBIT**

**A**



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

IN THE MATTER OF A MEMBER ) No. 08-1383, 08-1766, 08-1796,  
OF THE STATE BAR OF ARIZONA, ) 08- 1828, 08-1829  
)  
**WILLIAM M. LABUDA,** ) **HEARING OFFICER'S REPORT**  
**Bar No. 022216** )  
)  
RESPONDENT. )  
\_\_\_\_\_ )

**PRECEDURAL HISTORY**

1. Probable Cause was found in 08-1829 (Deprez), 08-1796 (Springs), 08-1766, and 08-1383 on January 28, 2009, and thereafter in 08-1828 (Palliser) on February 4, 2009. A Complaint was filed by the State Bar on March 5, 2009, and served on the Respondent on March 9, 2009. The matter was assigned to the undersigned Hearing Officer on March 11, 2009, and an Initial Case Management Conference was held on April 4, 2009. Respondent thereafter filed an Answer on April 27, 2009. The matter was originally set for Final Hearing on June 8, 2009. Thereafter, a Notice of Settlement was filed on May 27, 2009, and a hearing was held on the Agreement on June 17, 2009, wherein Respondent, Bar Counsel and Hal Nevitt appeared.

**FINDINGS OF FACT**

2. 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 July 22, 2003.

**COUNT ONE** (File No. 08-1383, Coffin)

3. On or about January 20, 2008, Dawnia Coffin, ("Ms. Coffin") hired Respondent for representation in a child custody matter. Ms. Coffin paid Respondent a total of \$1,800.
4. On or about March 10, 2008, Respondent and Ms. Coffin were to meet and confer regarding the preparation of pleadings in a child custody matter.
5. Ms. Coffin appeared at Respondent's office for the appointment, however, Respondent was not there. Ms. Coffin waited for Respondent to appear for 20 minutes and called Respondent twice while she waited. Respondent did not appear.
6. On or about March 14, 2008, Ms. Coffin terminated Respondent's representation.
7. Respondent did not file a Motion to Withdraw in Ms. Coffin's matter.
8. Ms. Coffin requested a full accounting of the time Respondent worked on her matter and the money expended ("accounting").
9. On or about March 24, 2008, Ms. Coffin and Respondent met. The purpose of the meeting was that Respondent was to turn over a copy of the file to Ms. Coffin and to provide an accounting to her
10. Respondent turned over a copy of the file to Ms. Coffin.
11. The accounting Respondent attempted to give Ms. Coffin, however, was inaccurate and Respondent promised Ms. Coffin he would provide an accurate accounting before the end of the week.
12. Respondent did not provide the complete and accurate accounting as promised.

13. On or about April 2, 2008, Respondent was to appear at a Court hearing so that the Court could formally terminate his representation. Respondent failed to appear.
14. On or about April 15, 2008, Ms. Coffin telephoned Respondent. Respondent did not answer or return Ms. Coffin's telephone call.
15. On or about June 12, 2008, Ms. Coffin telephoned Respondent. Respondent did not answer or respond to Ms. Coffin's telephone call.
16. By letter dated June 12, 2008, mailed to Respondent, Ms. Coffin demanded a full and complete accounting of the time Respondent expended, an explanation of the funds expended, and a refund by June 27, 2008.
17. Respondent failed to provide an accounting to Ms. Coffin by June 27, 2008, or otherwise respond.
18. By letter dated August 5, 2008, mailed to Respondent, Ms. Coffin again demanded an accounting and refund within five days of the date of the letter.
19. Respondent failed to provide the accounting and a refund or otherwise respond.
20. On or about August 15, 2008, Ms. Coffin submitted a bar charge to the State Bar of Arizona regarding Respondent's conduct.
21. By letter dated October 27, 2008, mailed to Respondent's address of record, Bar Counsel advised Respondent of the allegations of ethical misconduct relating to Respondent's representation of Ms. Coffin and instructed Respondent to respond in writing within 20 days of the date of the letter.
22. Respondent knowingly failed to respond to the State Bar's October 27, 2008, letter.

23. By letter dated January 7, 2009, mailed to Respondent's address of record, Bar Counsel reminded Respondent of his duty to respond and cooperate with the State Bar, and advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to reply within 10 days of the date of the letter.
24. Respondent knowingly failed to respond to the State Bar's January 7, 2009, letter within the allotted time.
25. On January 28, 2009, the Probable Cause Panelist for the State Bar of Arizona issued a Probable Cause Order in the matter. A copy of the Probable Cause Order was mailed to Respondent at his address of record.
26. On or about February 9, 2009, Respondent mailed his response to Ms. Coffin's bar charge.  
**COUNT TWO** (File No. 08-1766, McCann).
27. On or about August 22, 2008, Scott McCann ("Mr. McCann") hired Respondent for representation in a child custody modification matter.
28. Mr. McCann and Respondent entered into a fee agreement that called for Mr. McCann to initially pay \$500, and a total flat fee of \$1,500. Mr. McCann paid the required \$500.
29. Respondent did not file any pleadings in Mr. McCann's matter.
30. Shortly after Respondent was retained, Mr. McCann telephoned Respondent's office to obtain information regarding Respondent's representation.

31. It is the State Bar's position that Mr. McCann would testify that Respondent failed to respond to Mr. McCann's request for information. Respondent affirmatively asserts, and the State Bar does not contest, that Respondent did respond to Mr. McCann's request for information.
32. Respondent affirmatively asserts that he interviewed Mr. McCann, reviewed the prior child custody order and pleadings, interviewed the children in question, and informed Mr. McCann of Respondent's conclusion that it was not in Mr. McCann's best interest to file for child custody modification. For purposes of the agreement which was reached by the parties, the State Bar does not contest Respondent's assertion.
33. In or around September 2008, Mr. McCann terminated Respondent's representation by letter.
34. After Mr. McCann terminated Respondent, Mr. McCann telephoned Respondent numerous times requesting a refund.
35. Respondent failed to respond to Mr. McCann's telephone calls.
36. On or about October 6, 2008, Mr. McCann submitted a bar charge to the State Bar of Arizona regarding Respondent's conduct.
37. By letter dated October 10, 2008, sent to Respondent's address of record, Bar Counsel advised Respondent of Mr. McCann's allegations and instructed Respondent to provide a written response within 20 days of the date of the letter.
38. Respondent knowingly failed to provide a response.
39. By letter dated November 11, 2008, sent to Respondent's address of record, Bar Counsel reminded Respondent of his duty to respond and cooperate with the State

Bar and advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to reply within 10 days of the date of the letter.

40. Respondent knowingly failed to respond.
41. By letter dated December 9, 2008, sent to Respondent's address of record, Bar Counsel again reminded Respondent of his duty to respond and cooperate with the State Bar, and advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to reply within 15 days of the date of the letter.
42. Respondent knowingly failed to respond or otherwise cooperate with the State Bar's investigation.

**COUNT THREE ( File No. 08-1796, Springs)**

43. In or around September 2006, Richard Springs ("Mr. Springs") hired Respondent for representation in civil litigation regarding Mr. Spring's home.
44. Mr. Springs paid Respondent \$2,500 for the legal representation.
45. In or around April 2008, Mr. Springs terminated Respondent's representation.
46. Respondent failed to file a motion to withdraw from the representation.
47. Respondent affirmatively asserts that in or around April 2008, Respondent provided a copy of the file to Mr. Springs. The State Bar does not contest this assertion.
48. On or about May 19, 2008, the opposing attorney filed a Motion for Partial Summary Judgment and mailed a copy of the motion to Respondent.

49. Respondent failed to file a response to the Motion for Partial Summary Judgment. Respondent asserts that he attempted to contact Mr. Springs regarding the motion but was unable to speak to Mr. Springs. Although the State Bar anticipates that Mr. Springs would deny that Respondent tried to contact him, based on the nature of the evidence, for purposes of the agreement between the parties, the State Bar does not contest Respondent's assertion.
50. Respondent affirmatively asserts, and the State Bar does not contest this assertion, that in or around June 2008, Respondent provided Mr. Springs with a copy of the opposing party's Motion for Partial Summary Judgment.
51. On or about June 26, 2008, the Court, by minute entry, granted the Motion for Partial Summary Judgment against Mr. Springs since no timely response was filed. The minute entry recites that Respondent received a copy.
52. On or about September 9, 2008, the opposing attorney filed an application and affidavit in support of attorney's fees and costs. Respondent received a copy of the application.
53. Also, on or about September 9, 2008, the opposing attorney lodged an order for the opposing attorney fees against Mr. Springs. Respondent received a copy of the notice of lodging.
54. Respondent did not file a response to the lodged order for the opposing attorney fees against Mr. Springs.
55. On or about September 30, 2008, the Court ordered Mr. Springs to pay the opposing party's attorney fees in the amount of \$4,157, and further ordered the home in question partitioned and sold.

56. On or about October 10, 2008, Mr. Springs submitted a bar charge to the State Bar of Arizona regarding Respondent's conduct.
57. By letter dated October 15, 2008, mailed to Respondent's address of record, Bar Counsel advised Respondent of Mr. Spring's allegations and instructed Respondent to provide a written response within 20 days of the date of the letter.
58. Respondent knowingly failed to respond.
59. By letter dated November 19, 2008, mailed to Respondent's address of record, Bar Counsel reminded Respondent of his duty to respond and cooperate with the State Bar, and advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to reply within 10 days of the date of the letter.
60. Respondent knowingly failed to respond.
61. By letter dated December 9, 2008, mailed to Respondent's address of record, Bar Counsel again reminded Respondent of his duty to respond and cooperate with the State Bar, and again advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to reply within 15 days of the date of the letter.
62. Respondent knowingly failed to provide a response or otherwise cooperate with the State Bar's investigation.

**COUNT FOUR** (File No. 08-1828, Palliser)

63. On or about November 8, 2006, James Palliser ("Mr. Palliser") hired Respondent for representation in a civil matter concerning the destruction of Mr. Palliser's semi-truck.

64. On or about December 8, 2006, Mr. Palliser paid Respondent a total of \$5,000 for the representation.
65. Mr. Palliser, on numerous occasions during the representation, telephoned Respondent. Respondent did not return a significant number of Mr. Palliser's phone calls.
66. Mr. Palliser would testify that in or around April 2008, Respondent informed Mr. Palliser he was going to fax documents for Mr. Palliser and Mr. Palliser's wife to sign and that Respondent failed to fax the documents. Respondent affirmatively asserts that he did not promise to fax documents to Mr. Palliser for his or his wife's signature. For purposes of the agreement between the parties, and based on the nature of the evidence, the State Bar does not contest Respondent's assertion.
67. In or about October 2008, Mr. Palliser submitted a bar charge to the State Bar of Arizona regarding Respondent's conduct during the representation.
68. By letter dated October 23, 2008, mailed to Respondent's address of record, Bar Counsel advised Respondent of Mr. Palliser's allegations and instructed Respondent to provide a written response within 20 days of the date of the letter.
69. Respondent knowingly failed to respond.
70. On or about October 31, 2008, Respondent filed a Complaint in Mr. Palliser's case in the Mohave County Superior Court. The verification for the Complaint appears to be signed by Mr. Palliser and is dated April 16, 2007.
71. By letter dated November 19, 2008, mailed to Respondent's address of record, Bar Counsel reminded Respondent of his duty to respond and cooperate with the State Bar, and advised him that his failure to respond was, in itself, grounds for

discipline. Respondent was instructed to reply within 10 days of the date of the letter.

72. Respondent knowingly failed to respond.
73. By letter dated December 9, 2008, mailed to Respondent's address of record, Bar Counsel again reminded Respondent of his duty to respond and cooperate with the State Bar, and again advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to reply within 15 days of the date of the letter.
74. Respondent knowingly failed to respond.
75. On November 27, 2009, Respondent, by means of a process server, served the named defendants in the Complaint filed October 31, 2008.

**COUNT FIVE** (File No. 18-1829, Deprez)

76. On or about March 13, 2008, Deigh Deprez ("Ms. Deprez") hired Respondent for representation regarding an easement matter against Bullhead City, Arizona.
77. Respondent and Ms. Deprez entered into a fee agreement and Ms. Deprez paid Respondent \$1,000 pursuant to the agreement.
78. Respondent and Ms. Deprez agreed that Respondent was to immediately file a Notice of Claim and meet with city officials. Respondent affirmatively asserts that he met with Bullhead City officials concerning Ms. Deprez's matter. For purposes of the agreement between the parties, the State Bar does not contest this assertion.
79. Ms. Deprez contacted Respondent and sought information regarding the status of her matter.

80. Respondent failed to respond to Ms. Deprez's request for information.
81. In or about June 2008, was the last time Ms. Deprez spoke to Respondent. Respondent affirmatively asserts that he conducted research on Ms. Deprez's matter, which led him to believe that a Notice of Claim could not be timely filed. For purposes of the agreement between the parties, the State Bar does not contest this assertion. Respondent admits that he did not communicate his findings to Ms. Deprez.
82. In or about October 2008, Ms. Deprez requested from Respondent the return of her paperwork previously provided to Respondent.
83. Respondent failed to return Ms. Deprez's paperwork to her.
84. By written submission dated October 9, 2008, Ms. Deprez submitted a bar charge to the State Bar of Arizona regarding Respondent's conduct during and after the representation.
85. By letter dated October 23, 2008, mailed to Respondent's address of record, Bar Counsel advised Respondent of Ms. Deprez's allegations and instructed Respondent to provide a written response within 20 days of the date of the letter.
86. Respondent knowingly failed to respond.
87. By letter dated November 19, 2008, mailed to Respondent's address of record, Bar Counsel reminded Respondent of his duty to respond and cooperate with the State Bar, and advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to reply within 10 days of the date of the letter.
88. Respondent knowingly failed to respond.

89. By letter dated December 9, 2008, mailed to Respondent's address of record, Bar Counsel again reminded Respondent of his duty to respond and cooperate with the State Bar, and again advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to reply within 15 days of the date of the letter.
90. Respondent knowingly failed to respond.
91. Respondent testified at the hearing on the agreement that he grew up in Washington D.C. and went to Law School in San Diego, Tr. 18:24 – 20:10. He was not only not familiar with people in Bullhead City, he tried to work his practice without any assistance. Respondent also testified that he quit taking his medications for depression, Tr. 15:14 – 16:21. The combination of these factors with his alcohol dependence and depression, according to Respondent and Hal Nevitt, Director of Member Assistance for the State Bar, led to Respondent's violations in these cases, Tr. 32:3 – 34:15.
92. Hal Nevitt testified that Respondent had been supervised for one year prior to the violations set forth herein and Respondent responded to that supervision and treatment. It was only after Respondent was no longer being supervised that these violations occurred, Tr. 16:18 – 21; 32:11 – 19; 33:1 - 17.

#### **CONCLUSIONS OF LAW**

93. The parties submitted a Tender of Admissions and Joint Memorandum which included numerous conditional admissions. Based upon the documents provided

and the Respondent's testimony, the Hearing Officer finds that there is clear and convincing evidence that Respondent violated the following Rules and ERs:

**Count One**

94. Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4, 1.16(d), 3.4(c), 8.1(b), 8.4(d), and Rules 53(d) and 53(f), Ariz.R.Sup.Ct.

**Count Two**

95. Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.4, 1.16(d), 8.1(b), and Rules 53(b) and 53(f), Ariz.R.Sup.Ct.

**Count Three**

96. Rule 42 Ariz.R.Sup.Ct., specifically ERs 1.16, 8.1(b), 8.4(d), and Rules 53(d) and 53(f) Ariz.R.Sup.Ct.

**Count Four**

97. Rule 42 Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 8.1(b), 8.4(d), and Rules 53(d) and 53(f), Ariz.R.Sup.Ct.

**Count Five**

98. Rule 42 Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 1.16, 8.1(b), and Rules 53(d) and 53(f), Ariz.R.Sup.Ct.

**Summary of Violations:**

99. Respondent admits that he engaged in professional misconduct that would be found to be a violation of his duty of diligence by failing to timely respond to his client's requests for information and by failing to expedite his client's matters. Respondent also admits that he engaged in professional misconduct that would be found to be a violation of a duty that he owed to the legal profession by failing to

attend court hearings he was ordered to attend. Respondent also admits that he engaged in professional misconduct that would be a violation of his duty owed as a professional by failing to respond to the Bar's investigations and failing to take reasonable steps to protect his client's interests upon termination of his representation.

**Dismissals:**

100. The State Bar conditionally dismisses the allegation that Respondent violated ER 3.2 of Rule 42 in Count One, and ERs 1.2 and 1.3 of Rule 42 in Count Two because of concerns that the State Bar could not prove these violations by clear and convincing evidence.

**ABA STANDARDS**

101. *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; and (4) the existence of aggravating and mitigating factors.

**The Duty Violated:**

102. Respondent admits that he violated his duty of diligence to his clients, his duty owed as a professional, and his duty owed to the legal profession. Given these admissions, the most applicable *Standards* are:
103. *Standard 4.4, Lack of Diligence. Standard 4.42* provides: "Suspension is generally appropriate when (a) a lawyer knowingly fails to perform services for

client, and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

104. *Standard 6.0, Duties Owed to the Legal System: Standard 6.22* provides: "Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding."
105. *Standard 7.0, Duties Owed as a Professional: Standard 7.2* provides: "Suspension 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."
106. While the *Standards* do not account for multiple charges of misconduct, the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct among a number of violations. Therefore, the presumptive sanction in this case is suspension.

**The Lawyer's Mental State:**

107. The parties stipulate, and the Hearing Officer concurs, that Respondent's mental state was "knowing".

**Actual or Potential Injury:**

108. The parties stipulate, and the Hearing Officer concurs, that Respondent's conduct caused "actual" injury to his clients. Respondent has agreed to pay restitution to his former clients as follows:

Richard Springs \$4,157

James Palliser \$5,000

Deigh Deprez \$1,000<sup>1</sup>

**Aggravating and Mitigating Factors:**

**Aggravating Factors:**

109. *Standard 9.22(c), Pattern of Misconduct:* Respondent demonstrated a pattern of not performing his services for his clients and also failing to respond to the five State Bar investigations.
110. *Standard 9.22(d), Multiple Offenses:* Respondent is charged with five counts in this matter arising out of five separate representations.
111. *Standard 9.22(e), Bad Faith Obstruction:* Respondent obstructed the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency.

**Mitigating Factors:**

112. *Standard 9.32(a), Absence of Prior Disciplinary Record:* While Respondent had not been previously sanctioned he has a case, 08-1081, that is presently pending within the disciplinary process. The assigned Hearing Officer has issued a report recommending acceptance of a Tender of Admissions and Joint Memorandum, which provided that Respondent should be censured, pay all costs and two years of probation. This matter was to be recently considered by the Disciplinary Commission of the Supreme Court on June 13, 2009. Because of the pending matter, the parties submit, and the Hearing Officer concurs, that this mitigating factor should not be given much weight.

---

<sup>1</sup> Respondent has agreed to participate in the State Bar's Fee Arbitration Program with Ms. Coffin and Mr. McCann.

113. *Standard 9.32(b)*, Absence of a Dishonest or Selfish Motive: the Hearing Officer could find no evidence that Respondent acted in a selfish or dishonest way, (Transcript of Hearing “Tr.” 25:5 – 27:5).
114. *Standard 9.32(c)*, Personal or Emotional Problems: Respondent has recently been diagnosed with a thyroid disorder. Additionally, Respondent was diagnosed as clinically depressed and an alcoholic in 2006, but has not been in treatment for his depression or alcoholism since 2007, Tr. 32:5 – 15.
115. *Standard 9.32(g)*, Character or Reputation: This Mitigating factor was contained within the Tender of Admissions, but no proof was offered at the Hearing on the Agreement and, therefore, was not given any weight by the Hearing Officer.

**Recommended Sanction:**

116. The recommended sanction in this matter is for the Respondent to be suspended from the practice of law for a period of six months and one day, pay all costs and expenses of the disciplinary proceedings, participate in the State Bar's Fee Arbitration Program with the complainants in Counts One and Two, and payment of restitution to the complainants in Counts Three, Four and Five within 60 days of the issuance of the Judgment and Order in this matter if not paid prior to that time.<sup>2</sup>

---

<sup>2</sup> There is no mention in the Tender and Joint Memorandum of Respondent serving a period of probation upon his reinstatement to the practice of law. Presumably this is because in the matter already pending in the disciplinary process, File Number 08-1081, Respondent will receive a censure and the imposition of two years of probation. If for some reason Respondent does not receive a period of probation in the currently pending matter, this Hearing Officer certainly recommends that upon his application for reinstatement Respondent be subject to the standard terms and conditions of a period of probation for no less than two years, with participation in MAP and LOMAP.

## PROPORTIONALITY REVIEW

117. The Supreme Court has held that while the discipline in each situation should be tailored to the individual facts of the case, one of the goals of the disciplinary process is to achieve proportionality when imposing discipline in cases with similar facts, *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983) and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993). The following cases were cited as cases that are proportional and show that the proposed sanction is consistent with sanctions in other similar cases:
118. In *In re Huynh*, SB-07-0078-D (2008), Huynh was suspended for six months and one day, placed on probation, and ordered to pay restitution. Huynh engaged in a pattern of neglect with respect to clients by failing to diligently represent and adequately and honestly communicate with them. Huynh further failed to respond or cooperate with the State Bar's investigation. There were three aggravating factors: 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, and 9.22(e) bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary agency. There were two mitigating factors: 9.32(a) absence of prior disciplinary record and 9.32(f) inexperience in the practice of law. Huynh was sanctioned for violation of Rule 42 Ariz.R.Sup.Ct., specifically ER's 1.2, 1.3, 1.4, 8.1(b), 8.4(d), and Rules 53(d) and 53(f) Ariz.R.Sup.Ct.
119. In *In re Bjorgaard*, SB-07-0081-D, Bjorgaard was suspended for two years and placed on probation upon reinstatement. Bjorgaard engaged in a pattern of neglect with clients including failing to respond to motions and conduct discovery,

thereby causing several matters to be dismissed. Bjorgaard further failed to communicate with clients, properly withdraw from representation, and cooperate with the State Bar's investigation. There were three aggravating factors: 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, and 9.22(e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency. There were three mitigating factors: 9.32(a) absence of prior disciplinary record, 9.32(c) personal or emotional problems, and 9.32(k) imposition of other penalties or sanctions.

120. In *In re McDaniel*, SB-05-0134-D (2005), McDaniel was suspended for six months and one day and placed on probation upon reinstatement. McDaniel failed to exercise due diligence and competence by failing to act timely and with candor. McDaniel failed to keep his clients informed and to pursue their legitimate interests in an appropriate manner. McDaniel also failed to cooperate with the State Bar's inquiries and respond to the charges. There were seven aggravating factors: 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, 9.22(g) refusal to acknowledge wrongful nature of conduct, 9.22(h) vulnerability of the victim, 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution. There were six mitigating factors: 9.32(b) absence of a dishonest or selfish motive, 9.32(c) personal or emotional problems, 9.32(g) character or reputation, 9.32(h) physical disability, 9.32(i) mental disability or chemical dependency including alcoholism or drug abuse, and 9.32(l) remorse. McDaniel was

sanctioned for violation of Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.1, 1.2(a), 1.3, 1.4(a), 1.4(b), 1.5(a), 1.15(d), 3.2, 3.3(a)(1), 8.1(b), 8.4(c), 8.4(d), and Rules 53(b), 53(b), 53(d) and 53(f), Ariz.R.Sup.Ct.

121. The parties submit that, under the specific facts of this case, the agreed-upon sanction is both proportionate and appropriate.

### RECOMMENDATION

122. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice, and deter future misconduct. It is also the purpose of lawyer discipline to instill public confidence in the Bar's integrity. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993), *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985), *Matter of Horwitz* 180 Ariz. 20, 881 P.2d 352 (1994).
123. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's *Standards for Imposing Lawyer Sanctions* and the proportionality of discipline imposed in analogous cases, *Matter of Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994).
124. There was ample evidence that Respondent was in a situation that he was unfamiliar with and ill suited to thrive in given his problems. Not having grown up in a small town, not having a network of friends or family in Bullhead City and trying to run a sole practice without assistance, coupled with alcohol dependence and depression, resulted in a toxic combination that lead to violations of his duties as a professional, his duties to his clients, and his duties to the profession.

125. Hal Nevitt confirmed that Respondent suffers from alcohol dependence and depression which causes him to avoid his responsibilities, Tr. 32:3 – 10. Respondent confirms that when he is not in treatment and pressed with the demands of a sole practice and the subsequent inquiries from the State Bar, he simply “shuts down”, Tr. 15:14 – 16:21 and 17:5 – 18:8.
126. In response to inquiry from this Hearing Officer about what he had learned from this experience and what he would do to assure that there were no further problems, Respondent replied that, except for a few lingering cases that he would complete soon, he had shut down his practice and would no longer try to be a sole practitioner in a small town, Tr. 19:14 – 20:18. Respondent is also now taking his medications for depression, Tr. 22:10 – 23:2.
127. While Respondent seems to have some self awareness about his problems and how he got here, both this Hearing Officer and Hal Nevitt have concerns that Respondent does not have a full appreciation of his underlying problems such that he can stay focused on fixing himself rather than the circumstances he is in. Unless addressed on a permanent basis, Respondent’s alcohol dependence and depression will eventually come to haunt him again regardless of where he goes in the legal profession because of the stressful nature of the work.
128. Mr. Nevitt did testify that with appropriate supervision, Respondent’s conditions which lead to avoidance and violations of his duties, can be addressed, Tr. 34:5 – 15. While clinically this is probably correct, this Hearing Officer has concerns that Respondent’s past conduct (receiving treatment, then stopping that treatment and subsequently getting into the circumstances of this case) do not bode well for

him unless there is adequate supervision. As mentioned previously, while it is not specifically part of this case, the period of probation called for in the previous case is very necessary in this case to assure that Respondent not let his conditions yet again overwhelm him and lead to more victims and an even harsher sanction for Respondent.

129. Given his conduct in this case, this Hearing Officer concurs that the proposed sanction is appropriate, proportional and serves the purposes of discipline, with the added caveat that when Respondent reapplies for admission the State Bar a period of two years of probation be required.
130. Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer recommends the following:
  1. Respondent shall be suspended from the practice of law for six months and one day;
  2. Respondent shall pay all costs incurred by the State Bar in connection with these disciplinary proceedings. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court of Arizona, and the Disciplinary Clerk's Office in this matter.
  3. Respondent shall participate in the State Bar's Fee Arbitration program in regards to Counts One and Two, State Bar File Numbers 08-1383, and 08-1766. Respondent shall contact the Fee Arbitration Program Coordinator within 20 days from the date of the final judgment and order to obtain and

submit the forms necessary to participate in the Fee Arbitration. Respondent shall timely pay any award entered in the Fee Arbitration proceeding;

4. Respondent shall, within 60 days of the date of the final Judgment and Order, pay restitution to:

- a. Mr. Richard Springs (Count Three, State Bar File Number 08-1796) in the amount of \$4,157;
- b. Mr. James Palliser (Count Four, State Bar File Number 08-1828) in the amount of \$5,000; and
- c. Ms. Deigh Deprez (Count Five, State Bar File Number 08-1829) in the amount of \$1,000.

DATED this 15<sup>th</sup> day of July, 2009.

Hon. H. Jeffrey Coker/WM  
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk  
this 15<sup>th</sup> day of July, 2009.

Copy of the foregoing mailed  
this 15<sup>th</sup> day of July, 2009, to:

Honorable H. Jeffrey Coker  
Hearing Officer 6R  
P.O. Box 23578  
Flagstaff, AZ 86002-0001

William Labuda  
Respondent  
2970 Camino Del Rio  
Bullhead City, Arizona 86442

Jason Easterday  
Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 200  
Phoenix, AZ 85016-6288

by: Quelyn Joga