

FILED

JUL 06 2009

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

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4 IN THE MATTER OF A MEMBER) No. 08-1081
5 OF THE STATE BAR OF ARIZONA,)
6 **WILLIAM M. LABUDA,**)
7 **Bar No. 022216**) **DISCIPLINARY COMMISSION**
8 **RESPONDENT.**) **REPORT**

9 This matter came before the Disciplinary Commission of the Supreme Court of
10 Arizona on June 13, 2009, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the
11 Amended Hearing Officer's Report filed May 19, 2009, recommending acceptance of the
12 Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint
13 Memorandum in Support of Agreement for Discipline by Consent ("Joint Memorandum")
14 providing for censure, two years of probation with the State Bar's Law Office Management
15 Assistance Program ("LOMAP") and Member Assistance Program ("MAP") and costs.

16
17 **Decision**

18 Having found no facts clearly erroneous, the seven¹ members of the Disciplinary
19 Commission unanimously recommend accepting and incorporating the Hearing Officer's
20 findings of fact, conclusions of law, and recommendation for censure, two years of
21 probation (LOMAP, MAP), and costs of these disciplinary proceedings including any costs
22 incurred by the Disciplinary Clerk's Office.² The Terms of Probation are as follows:
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25 ¹ Commissioners Todd, Gooding and Horsley did not participate in these proceedings. Mary Carlton, a public
26 member from Phoenix, participated as an ad hoc member.

² The Amended Hearing Officer Report is attached as Exhibit A.

Terms of Probation

1 1. Respondent shall contact the Director of LOMAP at 602-340-7313 within
2 30 days of the date of the final Judgment and Order. Respondent shall submit to a
3 LOMAP examination of his office's procedures, including, but not limited to, compliance
4 with ERs 3.4(c), 8.1, 8.4(d), and Rule 53(d) and 53(f), Ariz.R.Sup.Ct. The Director of
5 LOMAP shall develop "Terms and Conditions of Probation," and those terms shall be
6 incorporated herein by reference. The probation period will begin to run at the time of
7 Judgment and Order and will conclude two years from the date on which Respondent signs
8 the "Terms and Conditions of Probation." Respondent shall be responsible for any costs
9 associated with LOMAP.
10

11 2. Respondent shall contact the Director of MAP at 602-340-7334 within 30
12 days of the date of the final Judgment and Order. Respondent shall submit to a MAP
13 assessment. The Director of MAP shall develop "Terms and Conditions of Probation" if
14 he determines that the results of the assessment so indicate, and the terms shall be
15 incorporated herein by reference. The probation period will begin to run at the time of the
16 final Judgment and Order, and will conclude two years from the date that Respondent has
17 signed the "Terms and Conditions of Probation." Should the director of MAP conclude
18 that no MAP probation terms are necessary, probation shall conclude two years from the
19 entry of the final Judgment and Order. Respondent shall be responsible for any costs
20 associated with MAP.
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22 3. Respondent shall refrain from engaging in any conduct that would violate
23 the Rules of Professional Conduct or other rules of the Supreme Court of Arizona.
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William M. Labuda
Respondent
1 *The Law Office of William M. Labuda*
2461 Miracle Mile, Suite 200
2 Bullhead City, AZ 86442

3 Jason B. Easterday
4 Bar Counsel
State Bar of Arizona
5 4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

6 by: *W. M. Labuda*
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EXHIBIT

A

BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

FILED
MAY 19 2009
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY AM

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
WILLIAM M. LABUDA,)
Bar No. 022216)
)
RESPONDENT.)
_____)

No. 08-1081

**AMENDED
HEARING OFFICER'S REPORT**

Procedural History

1. Probable cause was found on this matter on September 10, 2008. The Complaint was filed on September 29, 2008, and the Respondent was served by mail on September 30, 2008. On November 10, 2008, Respondent filed an Answer to the Complaint.

2. On January 15, 2009, the parties submitted a Tender of Admissions and Agreement for Discipline by Consent (hereafter, "Tender".) On January 26, 2009 a hearing was held on the Tender of Admissions for Discipline by Consent. On January 26, 2009, an amended joint tender was submitted.

Findings of Fact

3. 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. In or around 2005, Respondent volunteered to serve on the State Bar Arbitration Committee.

4. Respondent's duties as a member of the Fee Arbitration Committee were to appoint and/or serve as an arbitrator in fee disputes. Respondent, by agreeing to serve on the committee, agreed to those terms.

5. On or about June 9, 2006, Peggy Alford ("Ms. Alford"), acting within the scope of her duties as the State Bar's Fee Arbitration Coordinator, mailed Fee Arbitration Case Number 06-B092 ("05-B092") and an explanatory letter to Respondent. Ms. Alford's letter directed Respondent to choose an arbitrator for the matter and mail the file to the chosen arbitrator. Respondent was also directed to notify the State Bar and parties in the fee arbitration the person Respondent had selected to act as arbitrator.

6. Respondent failed to select an attorney to act as an arbitrator in 06-B092.

7. On or about July 10, 2006, Ms. Alford wrote to Respondent stating the State Bar had not received notification from Respondent that Respondent had selected an arbitrator.

8. Respondent did not respond to Ms. Alford's July 10, 2006, letter and also again failed to select an attorney to act as an arbitrator in 06-B092.

9. On or about August 9, 2006, Ms. Alford wrote to Respondent again, stating that the State Bar had not received notification from Respondent that Respondent had selected an arbitrator in 06-B092.

10. Respondent did not respond to Ms. Alford's September 11, 2006, letter and continued in his failure to select an arbitrator in 06-B092.

11. On or about September 11, 2006, Ms. Alford wrote to Respondent stating that the State Bar had not received notification from Respondent that Respondent had selected an arbitrator in 06-B092.

12. Respondent did not respond to Ms. Alford's September 11, 2006, letter and continued in his failure to select an arbitrator in 06-B092.

13. On or about October 10, 2006, Ms. Alford emailed Respondent stating that the State Bar had not received notification from Respondent that he had selected an arbitrator in 06-B092.

14. Respondent did not respond to Ms. Alford's email and failed to select an arbitrator in 06-B092.

15. On or about October 18, 2006, Ms. Alford again wrote to Respondent stating that the State Bar had not received notification from Respondent that he had selected an arbitrator in 06-B092.

16. On or about October 20, 2006, Respondent selected himself to act as arbitrator in 06-B092 and so notified the State Bar and the parties.

17. On or about November 9, 2006, Ms. Alford wrote to Respondent informing him that neither party objected to Respondent serving as the arbitrator in 06-B092. Ms. Alford further requested the Respondent to schedule a fee arbitration hearing date at his earliest convenience.

18. On or about November 9, 2006, Respondent mailed and faxed a letter dated October 20, 2006, to Ms. Alford stating that since neither party objected to

Respondent's selection of himself to act as the arbitrator, he was prepared to proceed with the arbitration proceedings.

19. The Rules of Arbitration of Fee Disputes ("Rules") required that a hearing be scheduled within ninety (90) days of the date of appointment of the arbitrator.

20. Respondent had been previously provided with a copy of the Rules at the time he volunteered to serve on the Fee Arbitration Committee.

21. Respondent failed to schedule a time, date, and location for the arbitration hearing.

22. On or about December 5, 2006, Ms. Alford wrote to Respondent stating the State Bar had not received notification from Respondent of the time, date, and location of the hearing. Ms. Alford's letter further requested Respondent to advise the parties and the State Bar of the time, date, and location of the fee arbitration hearing.

23. Respondent failed to schedule a time, date, and location for the arbitration hearing.

24. On or about January 8, 2007, Ms. Alford wrote to Respondent again stating that the State Bar had not received notification from Respondent of the time, date, and location of the hearing. Ms. Alford's letter further requested Respondent to advise the parties and the State Bar of the time, date, and location of the fee arbitration hearing.

25. Subsequent to the State Bar sending the above request, Respondent failed to select a time, date, and location for the arbitration hearing.

26. Respondent failed to hold a hearing within ninety days from the date of Respondent's appointment of himself to act as arbitrator as mandated by the Rules of Arbitration of Fee Disputes.

27. On or about February 6, 2007, Ms. Alford wrote to Respondent stating the State Bar had not received notification as to the time, date, and location of the hearing. Ms. Alford's letter further requested Respondent to advise the parties and the State Bar of the time, date, and location of the fee arbitration hearing.

28. Respondent failed to select a time, date, and location for the arbitration hearing.

29. On or about March 13, 2007, Ms. Alford wrote to Respondent again stating the State Bar had not received notification from Respondent of the time, date, and location of the hearing. Ms. Alford further advised Respondent that it had been over one hundred and twenty (120) days from the time at which Respondent should have scheduled the hearing. As Respondent had failed to do so, Ms. Alford directed Respondent to return the file to the State Bar for reassignment to another arbitrator.

30. Respondent did not respond to Ms. Alford's March 13, 2007, letter, and failed to return the fee arbitration file to the State Bar.

31. By letter dated April 11, 2007, John Furlong ("Mr. Furlong"), acting in his duties as General Counsel for the State Bar of Arizona, advised Respondent that he

had been made aware that Respondent failed to notify the Bar the time, date, and location of the hearing and that Respondent failed to return the file for reassignment.

32. On or about May 11, 2007, Respondent wrote to the parties and Ms. Alford, and set the arbitration hearing to be conducted at Respondent's Office on May 31, 2007, at 10:00 a.m.

33. The fee arbitration hearing was continued to June 28, 2007, at 10:00 a.m., at the Respondent's office to accommodate a party in the fee arbitration matter.

34. On or about June 28, 2007, Respondent conducted the fee arbitration hearing in 06-B092.

35. On or about June 29, 2007, Ms. Alford emailed Respondent inquiring whether Respondent conducted the fee arbitration hearing. Ms. Alford also stated that if the hearing had occurred, the fee arbitration award ("arbitration award") was due in twenty days from the date of the hearing.

36. On or about July 2, 2007, Respondent replied to Ms. Alford's email stating the hearing had occurred on June 28th, and that he would issue the arbitration award in the next week.

37. By email on or about July 3, 2007, Ms. Alford informed Respondent that he was to send his arbitration award only to Ms. Alford, and not to the parties.

38. Respondent failed to issue the arbitration award within twenty days from the date of the hearing as mandated by the Rules of Arbitration of Fee Disputes.

39. On or about July 30, 2007, Ms. Alford wrote to Respondent stating the State Bar had not received the arbitration award. Ms. Alford requested Respondent to advise the State Bar of the status of the arbitration award at Respondent's earliest convenience.

40. Respondent failed to respond to Ms. Alford's July 31, 2007, letter and also failed to issue the arbitration award.

41. On or about August 6, 2007, Michael Frame ("Mr. Frame"), a party in the fee arbitration matter, emailed Respondent and Ms. Alford stating that he had not received the arbitration award.

42. On or about August 27, 2007, Ms. Alford wrote to Respondent stating the State Bar had not received the arbitration award. Ms. Alford requested that Respondent advise the State Bar of the status of the arbitration award at his earliest convenience.

43. Respondent failed to respond to Ms. Alford's August 27, 2007, letter and also failed to issue the arbitration award.

44. On or about October 1, 2007, Ms. Alford wrote to Respondent again stating the State Bar had not received the arbitration award. Ms. Alford again requested Respondent to advise the State Bar of the status of the award at Respondent's earliest convenience.

45. Respondent failed to respond to Ms. Alford's October 1, 2007, letter and again failed to issue the arbitration award on the matter.

46. On or about October 4, 2007, Mr. Frame again emailed Respondent and Ms. Alford stating he had not received the award.

47. On or about October 5, 2007, Ms. Alford emailed Respondent reminding him that the arbitration award had been due on July 18, 2007. Ms. Alford requested Respondent to send the award to the State Bar by October 12, 2007.

48. Respondent did not respond to Ms. Alford's email and failed to send the award in the fee arbitration matter to Ms. Alford by October 12, 2007.

49. On or about October 29, 2007, Mr. Furlong again wrote to Respondent, stating the State Bar had not received the arbitration award. Mr. Furlong directed Respondent to send the award to the State Bar by November 5, 2007.

50. Respondent did not respond to Mr. Furlong's October 29, 2007, letter and failed to send the arbitration award to the State Bar by November 5, 2007.

51. On or about November 14, 2007, Ms. Alford wrote to Respondent again, stating that the State Bar had not received the arbitration award. Ms. Alford also reminded the Respondent that the award had been due twenty days from the dates of the hearing, June 28, 2007, and directed Respondent to send the award to her at once.

52. On or about November 14, 2007, Mr. Frame again emailed Ms. Alford, stating he had not received the award from Respondent and inquired on how to proceed.

53. Respondent did not respond to Ms. Alford's November 14, 2007, letter and failed to send the arbitration award to the State Bar.

54. On or about January 14, 2008, Mr. Furlong emailed Respondent informing Respondent that the State Bar had received complaints from the parties in the fee arbitration matter and asked Respondent when he would finalize the fee arbitration award. Mr. Furlong offered to assist the Respondent if he required assistance, and requested that Respondent provide a date by which the award would be finalized, and also requested that Respondent respond to Mr. Furlong's email.

55. Respondent did not respond to Mr. Furlong's January 14, 2008 email and failed to send the award to the State Bar.

56. On or about February 7, 2008, Mr. Frame emailed Ms. Alford stating he was waiting on the arbitration award.

57. On or about February 14, 2008, Ms. Alford spoke to Respondent regarding the arbitration award. In the conversation, Respondent informed Ms. Alford he would send the award to Ms. Alford the next day.

58. Respondent failed to send the arbitration award to the State Bar.

59. On or about February 19, 2008, Mr. Furlong emailed Respondent indicating the State Bar had still not received the award. Mr. Furlong offered to have the State Bar assist Respondent, and requested that Respondent provide a date on which Respondent would provide the award.

60. Respondent failed to respond to Mr. Furlong's February 19, 2008, email and failed to send the award to the State Bar.

61. On or about February 22, 2008, Ms. Alford called Respondent and left a telephonic message directing Respondent to contact Ms. Alford.

62. Respondent failed to respond to Ms. Alford's message and failed to send the award to the State Bar.

63. On or about March 3, 2008, Ms. Alford called Respondent and left a voice-mail message stating that the State Bar needed the arbitration award immediately and requested that Respondent contact Ms. Alford.

64. Respondent failed to respond to Ms. Alford and failed to provide the arbitration award to the State Bar.

65. On or about March 11, 2008, Ms. Alford called Respondent and left another message for Respondent. Ms. Alford's message requested that Respondent contact her.

66. Respondent failed to respond to Ms. Alford's March 11, 2008, message.

67. On or about March 24, 2008, Ms. Alford called Respondent and left another message for him. Ms. Alford's message requested that Respondent call her and that Respondent return the fee arbitration file to the State Bar for reassignment.

68. Respondent failed to respond to Ms. Alford's March 24, 2008, message and failed to return the fee arbitration file.

69. On or about April 1, 2008 Ms. Alford called Respondent and left a message for him. Ms. Alford's message asked that Respondent return the fee arbitration matter to the State Bar for reassignment.

70. Respondent failed to return the fee arbitration file to the State Bar.
71. On or about April 10, 2008, Ms. Alford spoke to Respondent by telephone. Respondent informed Ms. Alford that he would email the arbitration award to her later the same day.
72. Respondent failed to email the arbitration award as promised in his April 10, 2008, conversation with Ms. Alford.
73. On or about April 11, 2008, Ms. Alford spoke to Respondent by telephone. Respondent informed Ms. Alford he was in the process of drafting the arbitration award and would email it to Ms. Alford later that same day.
74. Respondent failed to email the arbitration award to Ms. Alford as had promised in their April 11, 2008, conversation.
75. On or about April 14, 2008, Respondent emailed Ms. Alford and stated that he was still working on the award and would have it done by the end of the day.
76. Respondent failed to send the award to the State Bar.
77. On or about April 25, 2008, Ms. Alford emailed Respondent requesting Respondent send the award and requested an email response from Respondent that same day. Ms. Alford offered to help Respondent complete the fee arbitration award if he required assistance. Respondent failed to respond to Ms. Alford's April 25 2008, email and failed to send the award to the State Bar.
78. On or about April 28, 2008, Ms. Alford called Respondent's office and left a message with Respondent's secretary, asking that Respondent contact Ms.

Alford. Respondent failed to respond to Ms. Alford's April 28, 2008, message and request.

79. On or about May 8, 2008, Ms. Alford called Respondent and left a message with him at his office. Ms. Alford's message stated she needed to speak to Respondent concerning the arbitration award. Respondent failed to return Ms. Alford's May 28, 2008, phone call.

80. On or about May 20, 2008, Ms. Alford called Respondent and left a message for him. Ms. Alford's message requested Respondent to contact Ms. Alford concerning the arbitration award. Respondent failed to return Ms. Alford's May 20, 2008, phone call.

81. On or about May 30, 2008, Patricia Sallen ("Mrs. Sallen"), acting in her duties as the State Bar's Ethics Counsel, wrote to Respondent stating the award was late and directed Respondent to send the award immediately to the State Bar. Respondent failed to send the arbitration award to the State Bar.

82. Respondent's actions in 06-B092, were referred to the State Bar's Lawyer Regulation Department. By letter dated July 10, 2008, sent to Respondent at his address of record, Bar Counsel advised Respondent of the allegations of ethical misconduct relating to the arbitration matter and instructed Respondent to respond in writing within twenty days of the date of the letter.

83. Respondent knowingly failed to respond to the State Bar's July 10, 2008, letter.

84. By letter dated August 16, 2008, the State Bar notified Respondent and Bar Counsel reminded Respondent of his duty to respond and cooperate with the State Bar. Respondent was also advised that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to reply within ten days of the date of the letter.

85. Respondent knowingly failed to respond to the State Bar's August 19, 2008, letter.

86. The Respondent's conduct in failing to respond to inquiries by the State Bar, was avoidant behavior that was symptomatic of his depression and alcohol dependence. *Reporter's Transcript of Proceedings for January 26, 2009 (hereafter, RTP), 8:9-17:19¹*

Conclusions of Law

87. Respondent's conduct violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 3.4(c), 8.1, 8.4(d), and Rules 53(d) and 53(f).

ABA Standards

88. In determining the appropriate sanctions, Respondent and the State Bar considered both the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards" or "Standard _____") and applicable case law. The ABA *Standards for Imposing Lawyer Sanctions* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and

then applying these factors to situations where lawyers have engaged in various types of misconduct. *Standard 1.3, Commentary*. The court and commission consider the *Standards* a suitable guideline. *In re Peasley*, 427 Ariz. Adv. Rep. 23, 90 P.3d 764, §§ 23, 33 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

89. The ABA *Standards* list the following factors to consider in imposing the appropriate sanction: (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 or mitigating circumstances. ABA *Standard 3.0*.

90. **The Duty Violated.** Respondent violated his duty to the legal system and his duty owed as a professional.

91. **The Lawyer's Mental State.** Respondent's mental state in this matter was "knowing".

92. **Actual or Potential Injury.** This Hearing Officer finds there was actual injury due to the excessive delay in this matter.

Applicable Standards

93. The applicable *Standards* are *Standard 6.2*, "Abuse of the Legal Process" and *Standard 7.0* "Violations of Other Duties Owed as a Professional." *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." *Standard 7.2* provides:

¹ Page Numbers are to the left of the colon; line numbers are to the right of the colon.

“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.”

94. “The *Standards* do not account for multiple charges of misconduct. The ultimate sanction imposed should be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct.” *Standards* at 7. The presumptive sanction in this case, therefore, is suspension.

95. Having determined the presumptive sanction is suspension, the applicable aggravating and mitigating circumstances are then considered.

Aggravating Factors

96. This Hearing Officer finds the following aggravating factors:

Standard 9.22(c) Pattern of Misconduct. Respondent demonstrated a pattern of not being timely in setting a hearing, issuing the award, and responding to the State Bar’s investigation.

Standard 9.22(d) multiple offenses. Respondent violated ethical rules and duties in this matter.

Mitigating Factors

97. This Hearing Officer finds that the following mitigating factors:

Standard 9.32(a) absence of a prior disciplinary record. Respondent has no prior or informal discipline.

Standard 9.32(f) inexperience in the practice of law. Respondent was first admitted to practice on July 22, 2003.

Standard 9.32(i) mental disability or chemical dependency. On September 18, 2006, Mr. Hal Nevitt, Director of the State Bar's Member Assistance Program, evaluated Respondent. Mr. Nevitt diagnosed Respondent as having depression and alcoholism. The Respondent's conditions caused the previously noted misconduct.

Standard 9.32(l) remorse. Respondent is remorseful for the delay and injuries his conduct has caused.

Proportionality Review

98. Sanctions against lawyers must have internal consistency to maintain an effective and enforceable system; therefore, the court looks to cases that are factually similar to the case before it. *In re Pappas*, 159 Ariz. 516, 526, 768 P.2d 1161, 1171, (1988). However, the Supreme Court has noted that the concept of proportionality review is an imperfect process because no two cases "are ever alike". *Matter of Owens*, 182 Ariz. 121, 127, 893 P.2d 1284, 1290 (1995).

99. In *In re Gregan*, SB-08-0057-D (2008), Gregan was censured and placed on two years of probation. Gregan failed to obey a court order by refusing to serve as a court appointed arbitrator in a civil matter. The one aggravating factor found was 9.22(i) substantial experience in the practice of law. There were six mitigating factors: 9.32(a) absence of a prior disciplinary record, 9.32(b) absence of a dishonest or selfish motive,

9.32(e) cooperative attitude toward proceedings, 9.32(g) character or reputation, 9.32(k) imposition of other penalty, and 9.32(l) remorse. The Hearing Officer found, and the Commission and Court agreed, a reduction of the presumptive sanction of suspension was warranted given the mitigating factors involved. Gregan was sanctioned for violation of Rule 42, Ariz.R.Sup.Ct., specifically ERs 3.4(c), 8.4(d), and Rule 53(c), Ariz.R.Sup.Ct.

100. In *In re Davis*, SB-04-0033-D (2004), Davis was censured and placed on two years of probation. Davis was appointed as an arbitrator in a Maricopa County Superior Court case. Davis failed to set the arbitration hearing within the time ordered by the court and failed to appear at the first order to show cause hearing on the matter. Davis did appear at the second hearing and was held in contempt. Davis also failed to respond to repeated demands from the State Bar requesting information about the matter. There were three aggravating factors: 9.22(a) prior disciplinary 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, and 9.22(i) substantial experience in the practice of law. There were five mitigating factors: 9.32(b) absence of a dishonest or selfish motive, 9.32(c) personal or emotional problems, 9.32(k) imposition of other penalties or sanctions, 9.32(l) remorse, and 9.32(m) remoteness of prior offenses. The Hearing Officer found, and the Commission and Court agreed, a reduction of the presumptive sanction of suspension was warranted given the mitigating factors involved.

Davis was sanctioned for violation of Rule 32, Ariz.R.Sup.Ct., specifically ERs 3.4(c), 8.1, 8.4(d), and Rules 52(e), 51(h), 51(i), and 51(k), Ariz.R.Sup.Ct.

101. In *In re Bingham*, SB-02-004D (2002), Bingham was suspended for six months and one day. Bingham was appointed as a court arbitrator and failed to conduct a hearing, despite being granted several continuances to do so. The Court removed Bingham and scheduled a show cause hearing. Bingham failed to appear for the show cause hearing and failed to respond to the State Bar's inquiries. Bingham's conduct was deemed admitted by default. There were two aggravating factors: 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency and 9.22(i) substantial experience in the practice of law. The one mitigating factor found was 9.32(a) absence of a prior disciplinary record. Bingham was sanctioned for violation of Rule 42, Ariz.R.Sup.Ct., specifically ERs 8.1(b), 8.4(d), Rule 51(h), 51(i), and 51(k), Ariz.R.Sup.Ct. Although the conduct in *Bingham* was similar to the conduct in the instant matter, under the facts and circumstances of that matter there were no significant mitigating factors, such as those present in the instant matter.

Recommendation

102. The objective 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). Yet another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

103. This Hearing Officer has considered the facts of this case, the duty violated, the aggravating and mitigating factors as well as proportionality cases. This officer agrees that the stipulated discipline contained in the Tender in this case is appropriate. Therefore, it is recommended that:

1.) Respondent receive a Censure;

2.) Respondent be placed on two years probation under the following terms and conditions:

- a. Respondent shall contact the Director of LOMAP at 602-340-7313 within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 3.4(c), 8.1, 8.4(d), and Rule 53(d) and 53(f), Ariz.R.Sup.Ct. The Director of LOMAP shall develop "Terms and Conditions of Probation," and those terms shall be incorporated herein by reference. The probation period will begin to run at the time of the judgment and order and will conclude two years from the date on which Respondent signs the "Terms and Conditions of Probation." Respondent shall be responsible for any costs associated with LOMAP.
- b. Respondent shall contact the director of the State Bar's Member Assistance Program (MAP) at 602-340-7334 within 30 days of the date of the final judgment and order. Respondent shall submit to a

MAP assessment. The director of MAP shall develop "Terms and Conditions of Probation" if he determines that the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will begin to run at the time of the judgment and order, and will conclude two years from the date that Respondent has signed the "Terms and Conditions of Probation." Should the director of MAP conclude that no MAP probation terms are necessary, probation shall conclude two years from the entry of judgment and order. Respondent shall be responsible for any costs associated with MAP.

- c. In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practicable date, but in no event later than 30 days after receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall

be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

3.) Respondent pay all costs and expenses relating to this disciplinary proceeding.

DATED this 19th day of May, 2009.

Neal Taylor / NIM
Neal C. Taylor
Hearing Officer 8I

Original filed with the Disciplinary Clerk
this 19th day of May, 2009.

Copy of the foregoing mailed
this 20th day of May, 2009, to:

Jason B. Easterday
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

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

By: Valery Loza