

**FILED**

APR 03 2009

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *L. D. Amore*

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

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

**WILLIAM D. HOWELL,**  
Bar No. 020188

Respondent.

File Nos. 08-1184, 08-1378, 08-1517, 08-  
1725

**HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

The State Bar filed a formal Complaint in this matter on December 24, 2008. Respondent did not answer. A Notice of Default was issued on January 27, 2009. Formal Default was entered on February 18, 2009. On March 3, 2009, the Hearing Officer held an Aggravation/Mitigation Hearing, but Respondent failed to appear. Respondent was notified of the date and time of the Aggravation/Mitigation Hearing. (Hearing Transcript "TR", page 4, lines 7-14, "4:7-14")

**FINDINGS OF FACT<sup>1</sup>**

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 26, 2000.

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<sup>1</sup> The facts are found in either the State Bar's Post-Hearing Memorandum or in the transcript of the Aggravation/Mitigation Hearing.

**COUNT ONE – MANN (File no. 08-1184)**

2. On or about February 11, 2008, attorney Robert Mann (“Mr. Mann”) filed a civil tort action against Respondent and his law firm, The Howell Law Firm, LLC (“Respondent’s firm”), on behalf of Mr. Mann’s clients.
3. Mr. Mann checked the State Bar’s website and saw that it indicated Respondent had malpractice insurance.
4. Mr. Mann also learned that Respondent was pending the imposition of a possible six month and one day suspension from the practice of law.
5. Concerned that Respondent’s malpractice insurance may lapse should the suspension take effect, Mr. Mann determined that he needed to make a claim or put Respondent’s malpractice insurer on notice of his claim prior to the suspension taking effect.
6. On or about June 20, 2008, Mr. Mann served a Request for Production upon Respondent seeking the identity of Respondent’s malpractice insurer.
7. On or about June 24, 2008, Mr. Mann sent Respondent a letter indicating that it was his understanding that Respondent had reported to the State Bar that he had malpractice insurance, but that Mr. Mann suspected Respondent may not have malpractice insurance.

8. In this letter, Mr. Mann also requested that Respondent provide his malpractice insurance information by June 27, 2008, so that Mr. Mann could make a claim prior to Respondent's suspension taking effect.
9. On or about June 30, 2008, Respondent responded to Mr. Mann in writing, stating that his "submissions to the State Bar are accurate" and that he would provide the "information regarding the status of any malpractice insurance according to the applicable rules" regarding requests for production.
10. Respondent did not include any insurance information with his June 30, 2008 letter.
11. On or about June 30, 2008, Mr. Mann responded to Respondent in writing, again reiterating his need for the insurance information and urging Respondent to put his insurance carrier on notice of the claim.
12. On or about June 30, 2008, Mr. Mann filed a Motion to Expedite Discovery with the Court in order to force Respondent to produce his malpractice insurance information.
13. On or about July 10, 2008, Respondent filed a Response in Opposition to Mr. Mann's Motion to Expedite Discovery.
14. In his July 10<sup>th</sup> Response, Respondent stated, "[u]ndersigned Counsel asserts that there is insurance covering the events in question," but Respondent did not provide any insurance information in his Response.

15. On or about July 10, 2008, Judge George Nielsen (“Judge Nielsen”) conducted a hearing on the Motion to Expedite Discovery.
16. During the hearing, Respondent told Judge Nielsen that he had not had malpractice insurance for at least 24 months and that he had no insurance that would cover the allegations in the tort action filed by Mr. Mann.
17. Judge Nielsen ordered Respondent to produce his premises liability policy and details about his most recent malpractice insurance policy by July 11, 2008.
18. Respondent did not produce his premises liability policy or the details of his most recent malpractice insurance policy by the July 11, 2008 deadline.
19. On or about July 11, 2008, Respondent sent a letter to Mr. Mann indicating that he could not locate the documents he was ordered to produce, but would continue to look for them.
20. On or about July 16, 2008, Respondent sent another letter to Mr. Mann indicating that he still could not locate the documents he was ordered to produce, but would continue to look for them.
21. On or about July 16, 2008, Mr. Mann sent a bar charge to the State Bar of Arizona informing it of Mr. Howell’s actions in the underlying case and including copies of the relevant letters and pleadings.

22. On or about August 6, 2008, Mr. Mann sent a letter to Respondent advising him that he had violated the court-ordered deadline for disclosure of his insurance information and demanding Respondent produce the information no later than August 7, 2008.
23. On or about August 8, 2008, Respondent responded to Mr. Mann by letter indicating that he still could not find his policies or even determine what companies they were through. He indicated he would continue to look for them.
24. On or about August 8, 2008, the State Bar sent a copy of Mr. Mann's bar charge and attachments to Respondent's address of record, along with a request that he respond to the allegations within 20 days.
25. Respondent did not provide a response within the 20-day deadline.
26. On or about August 29, 2008, Mr. Mann filed a Motion to Compel and for Sanctions with the Court regarding Respondent's non-compliance with the Court order to produce the insurance information.
27. On or about September 9, 2008, Respondent sent a letter to the State Bar indicating that he could not respond to the allegations because he was unable to locate copies of his filings in the underlying civil case and because hackers had gotten into his firm's server and crashed it.

28. Respondent also informed the State Bar that he had closed his former office and that his new address was 7119 E. Shea Blvd, #109.
29. On information and belief, 7119 E. Shea Blvd, #109 is a post-office box at The UPS Store.
30. On or about September 11, 2008, the State Bar sent a letter to Respondent's new address again providing him with a copy of Mr. Mann's bar charge and relevant attachments. Respondent was instructed to reply no later than September 26, 2008.
31. Respondent did not provide a response to the allegations by the September 26, 2008 deadline.
32. On or about September 19, 2008, Respondent filed a Response in Opposition to Mr. Mann's Motion to Compel and for Sanctions.
33. Respondent attached his policy information to the Response and indicated he had discovered the insurance policies on September 18, 2008.
34. The policies confirmed that Respondent had not carried malpractice insurance for over two years.
35. On or about September 30, 2008, the State Bar sent a third request to Respondent for a response to Mr. Mann's allegations. Respondent was instructed to respond in writing no later than October 9, 2008.

36. Respondent did not provide a response to the allegations by the October 9, 2008 deadline.
37. On or about October 2, 2008, Judge Nielsen issued an order sanctioning Respondent \$500 for his non-compliance, to be paid to Mr. Mann no later than October 5, 2008.
38. Respondent did not pay the sanction by the October 5, 2008 deadline, nor has he paid the sanction to this day.
39. On or about October 14, 2008, Respondent provided his untimely response to State Bar.
40. In his response, Respondent did not address his earlier avowals to Mr. Mann and to the Court that he had malpractice insurance covering the events in question, or his failure to pay the court-ordered sanction.
41. Respondent violated one or more of the Rules of Professional Conduct as follows:
  - a. Respondent failed to provide the State Bar a current street address.  
Rule 32(c)(3) Ariz.R.Sup.Ct.
  - b. Respondent failed to make reasonable efforts to expedite litigation consistent with the interests of the client. Rule 42 Ariz.R.Sup.Ct. ER

- c. Respondent made a false statement of fact or law to a tribunal or failed to correct a false statement of material fact or law previously made to the tribunal by the lawyer. ER 3.3
- d. Respondent unlawfully obstructed another party's access to evidence. ER 3.4(a)
- e. Respondent knowingly disobeyed an obligation under the rules of a tribunal. ER 3.4(c)
- f. Respondent made a false statement of material fact or law to a third person. ER 4.1(a)
- g. In representing a client, Respondent used means that had no substantial purpose other than to embarrass, delay, or burden any other person. ER 4.4(a)
- h. Respondent engaged in dishonesty, fraud, deceit or misrepresentation. ER 8.4(c)
- i. Respondent engaged in conduct prejudicial to the administration of justice. ER 8.4(d)
- j. Respondent willfully violated a rule or order of the court. Rule 53(c)
- k. Respondent refused to cooperate with officials and staff of the State Bar. Rule 53(d)

1. Respondent failed to furnish information to or respond promptly to an inquiry or request from Bar Counsel. Rule 53(f)

**COUNT TWO – TRUST ACCT (File no. 08-1378)**

42. On or about August 4, 2008, a debit in the amount of \$115.84 and a debit in the amount of \$5.95 attempted to pay against Respondent's JP Morgan Chase Bank Arizona Bar Foundation Client Trust Account ("Respondent's trust account").
43. The balance of Respondent's trust account at the time of the debits was only \$45.15.
44. The bank paid the debits and did not charge an overdraft fee, thereby leaving Respondent's trust account with a negative balance of -\$76.64.
45. On or about August 6, 2008, JP Morgan Chase Bank sent notice to the State Bar of Arizona regarding the overdrafts in Respondent's trust account.
46. On or about August 11, 2008, the State Bar sent a letter to Respondent's address of record asking him to explain the overdraft.
47. The August 11th letter also requested Respondent provide copies of his trust account bank statements for the period of July 1, 2008 through August 31, 2008, copies of the cancelled checks that correspond to the above referenced statements, copies of the duplicate deposit slips that correspond to the above

referenced statements, copies of the individual client ledgers and the administrative funds ledger that correspond to the above reference statements, and copies of the general ledger that corresponds to the above referenced statements.

48. This letter provided a 30-day deadline in which to provide the response and documents.
49. On or about September 9, 2008, Respondent sent a response indicating the overdraft was the result of the bank subtracting credit card fees.
50. Respondent's letter provided no additional details, supporting documentation, or any of the requested documents.
51. On or about September 16, 2008, the State Bar granted Respondent an additional 20 days to provide his response and the requested documents, giving him until October 6, 2008.
52. The September 16<sup>th</sup> letter again specifically requested the documents listed above in paragraph 48.
53. Respondent did not provide a response or the requested documents prior to the October 6, 2008 deadline.
54. On or about October 13, 2008, Respondent sent a letter to the State Bar indicating he would provide a response "by next Monday."

55. On or about October 15, 2008, a Probable Cause Panelist of the State Bar of Arizona signed a Subpoena Duces Tecum (“the subpoena”) directing Respondent to produce the documents listed above in paragraph 48 no later than October 31, 2008.
56. A State Bar Investigator attempted to personally serve the subpoena upon Respondent, but was unable to since Respondent had closed his office and was using a PO Box for his address of record with the State Bar.
57. On or about October 21, 2008, a copy of the subpoena was mailed to Respondent’s PO Box address of record.
58. On or about October 21, 2008, Kevin McBay (“Mr. McBay”), a Staff Investigator with the State Bar of Arizona personally served the subpoena upon Respondent at the Maricopa County Southeast Facility courthouse.
59. Respondent provided none of the subpoenaed documents by the October 31, 2008 deadline.
60. On or about November 3, 2008, Respondent provided bank statements, canceled checks and withdrawal slips to the State Bar of Arizona.
61. Respondent did not produce the requested and subpoenaed duplicate deposit slips, individual client ledgers, administrative funds ledger, or general ledger.

62. On or about November 10, 2008, the State Bar sent a follow up letter to Respondent again requesting an explanation of the overdraft, the individual client ledgers, administrative funds ledger, general ledger, and three way reconciliations.
63. The November 10<sup>th</sup> letter demanded a response within 10 days.
64. Respondent did not provide a response or the requested documents by the November 20, 2008 deadline.
65. On or about November 24, 2008, the State Bar sent a fifth request for the documents to Respondent's address of record, requesting the documents no later than 10 days from the date of request.
66. Respondent did not provide a response or the requested documents by the December 4, 2008 deadline.
67. Respondent has not, to this day, provided a more detailed explanation of the overdraft, or any of the outstanding requested and subpoenaed documents.
68. Respondent violated one or more of the Rules of Professional Conduct as follows:
  - a. Respondent failed to appropriately identify and safeguard client property. ER 1.15
  - b. Respondent failed to maintain complete records of client property. ER 1.15(a)

- c. Respondent knowingly disobeyed an obligation under the rules of a tribunal. ER 3.4 (c)
- d. Respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority. ER 8.1(b)
- e. Respondent engaged in conduct prejudicial to the administration of justice. ER 8.4(d)
- f. Respondent failed to maintain complete records of the handling, maintenance and disposition of all funds, securities and other assets of clients that have at any time come into Respondent's possession. Rule 43(a), Ariz.R.Sup.Ct.
- g. Respondent failed to keep client funds separate and apart from Respondent's personal and business accounts. Rule 43(d)
- h. Respondent failed to exercise due professional care in the performance of his duties regarding his trust account. Rule 43(d)
- i. Respondent failed to maintain adequate internal controls to safeguard funds or other property held in trust. Rule 44(b)
- j. Respondent failed to record all transactions promptly and completely. Rule 44(b)
- k. Respondent failed to retain a duplicate deposit slip or equivalent for each deposit of client funds. Rule 44(b)

- l. Respondent failed to maintain or cause to be maintained an account ledger or the equivalent for each client, person or entity for whom monies have been received in trust. Rule 44(b)
- m. Respondent failed to make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and trust account bank statement. Rule 44(b)
- n. Respondent failed to maintain complete records of all funds, securities, and other properties of a client coming into Respondent's possession. Rule 44(b)
- o. Respondent failed to furnish information to or respond promptly to an inquiry or request from Bar Counsel. Rule 53(f)

**COUNT THREE – CHW (File no. 08-1517)**

- 69. In or about January of 2006, Respondent was retained to pursue a wrongful death claim against Catholic Healthcare West North State (“CHW”) on behalf of several children for the death of their mother.
- 70. On or about February 9, 2007, Respondent filed a malpractice action against CHW for the death.
- 71. On or about March 23, 2007, counsel for CHW sent a letter to Respondent with medical record authorizations attached.

72. The letter requested Respondent have his clients sign the authorizations and return them to CHW's counsel.
73. On or about March 26, 2007, counsel for CHW sent Respondent another letter with additional medical record authorizations attached.
74. The letter requested Respondent have his clients sign the authorizations and return them to CHW's counsel.
75. On or about March 29, 2007, CHW served Uniform Interrogatories, Non-Uniform Interrogatories, and Requests for Production upon Respondent.
76. These discovery requests sought medical information and records of the deceased, and provided a deadline of May 14, 2007.
77. Respondent did not provide the requested medical records or signed medical record authorizations.
78. By letter dated March 26, 2007, which date is believed to be in error, counsel for CHW referenced her earlier requests for medical record authorizations and directed Respondent to provide signed authorizations. She attached another complete copy of the authorizations.
79. Respondent still did not provide the requested medical records or signed medical record authorizations.

80. On or about May 9, 2007, counsel for CHW sent another letter to Respondent referencing Respondent's failure to produce the authorizations and medical records.
81. On or about May 16, 2007, Respondent sent a letter to counsel for CHW stating that the "medical records you are requesting are not within my control" and that the authorizations were "too general and need to be tailored to the scope of discovery you are seeking."
82. On or about May 23, 2007, counsel for CHW sent a letter to Respondent informing him that the deadline for response to the Interrogatories and Request for Production had past. Counsel for CHW asked Respondent to comply with the discovery requests.
83. Respondent did not provide the requested answers, medical records, or signed medical authorizations.
84. On or about May 29, 2007, counsel for CHW sent another letter to Respondent pointing out his ongoing failure to comply with the discovery requests. This letter set a new deadline of June 10, 2007.
85. On or about May 31, 2007, counsel for CHW sent another letter to Respondent urging him to provide the signed medical authorizations. Counsel for CHW attached another full copy of the authorizations to this letter.

86. On or about June 7, 2007, Respondent sent a letter to counsel for CHW stating that he did not have the authority to release medical records of the deceased because her estate had not been probated and no personal representative had been appointed.
87. Respondent indicated in his letter that once he had a chance to look at the records, he would provide those records that were "relevant and pertinent" to the lawsuit.
88. On or about June 8, 2007, counsel for CHW sent a letter to Respondent pointing out that his claim was clearly false since the probate court had granted Respondent's Motion to Compel production of the records and ordered Respondent to obtain them back in May of 2006, over a year prior to Respondent's letter claiming he had no authority to review or release the records. Counsel for CHW also pointed out that the personal representatives of the estate had already been established.
89. These supporting court orders were attached to CHW's June 8<sup>th</sup> letter to Respondent.
90. In the June 8th letter, counsel for CHW set yet another deadline for Respondent to produce the records or authorizations, this time by June 11, 2007.

91. On or about June 11, 2007, Respondent sent a letter to counsel for CHW stating, "your authorizations are far too broad for purposes of this litigation."
92. Respondent still did not produce the medical records or signed authorizations.
93. On or about June 14, 2007, counsel for CHW wrote to Respondent again explaining why her requests were relevant and indicating that Respondent had never explained to them why he felt the requests were overbroad.
94. Respondent did not respond to the June 14<sup>th</sup> letter from CHW's counsel.
95. On or about June 18, 2007, counsel for CHW filed a Motion to Compel production of the medical records and authorizations.
96. In response, the Court ordered the parties to work together in an attempt to resolve the issue.
97. The parties met, but a resolution was not achieved as Respondent refused to provide any medical records to counsel for CHW.
98. On or about November 20, 2007, the Court held a telephonic status conference regarding discovery.
99. During the status conference, and by minute order following the conference, the Court granted CHW's Motion to Compel and ordered Respondent to provide the signed authorizations no later than December 15, 2007.

100. On or about November 21, 2007, counsel for CHW re-sent the medical authorizations to Respondent for his clients' signatures.
101. Respondent did not provide the ordered authorizations prior to the Court ordered December 15, 2007 deadline.
102. On or about December 17, 2007, the parties participated in a discovery conference with the Special Discovery Master appointed to the case.
103. The Special Discovery Master ordered Respondent to provide the executed authorizations to counsel for CHW.
104. Respondent did not provide the executed authorizations to counsel for CHW.
105. On or about January 8, 2008, Respondent wrote to counsel for CHW indicating that he would provide the executed authorizations only if the parties agreed to enter a stipulation that the records would be used only for the purposes of that litigation and would be destroyed at the conclusion of the case.
106. On or about January 8, 2008, counsel for CHW wrote back to Respondent indicating that Respondent had no right or authority to impose conditions on the release of the authorizations.
107. On or about January 15, 2008, Respondent wrote back to counsel for CHW indicating that he would not be providing the executed authorizations, but rather would be filing a Motion for Protective Order.

108. Respondent did not produce the executed authorizations, nor did he file a Motion for Protective Order.
109. On or about February 13, 2008, counsel for CHW filed a Motion for Dismissal and Rule 37 Sanctions for Respondent's failure to comply with the Court's orders.
110. On or about May 29, 2008, the Court conducted a hearing on CHW's Motion to Dismiss.
111. The Court took the matter under advisement and issued a ruling on or about July 3, 2008.
112. In the July 3rd order, the Court dismissed the case with prejudice.
113. In explaining its' ruling, the Court expressed concern with Respondent's actions in the case; specifically, his failure to comply with discovery requests and the fact that he was complicit in the plaintiff's keeping of relevant information and an important witness from the defendants.
114. The Court ordered Respondent to pay defendant's attorneys fees in the amount of \$54,650.48.
115. Respondent violated one or more of the Rules of Professional Conduct as follows:
116. Respondent failed to make reasonable efforts to expedite litigation consistent with the interests of the client. Rule 42 Ariz.R.Sup.Ct. ER 3.2

117. Respondent unlawfully obstructed another party's access to evidence. ER 3.4(a)
118. Respondent knowingly disobeyed an obligation under the rules of a tribunal. ER 3.4(c)
119. Respondent made a false statement of material fact or law to a third person. ER 4.1(a)
120. In representing a client, Respondent used means that had no substantial purpose other than to embarrass, delay, or burden any other person. ER 4.4(a)
121. Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. ER 8.4(c)
122. Respondent engaged in conduct prejudicial to the administration of justice. ER 8.4(d)
123. Respondent's conduct as described in this count violated Rule 41(c) Ariz.R.Sup.Ct., Rule 42 Ariz.R.Sup.Ct., ERs 3.2, 3.4, 4.1 4.4, 8.4(c) and 8.4(d).

**COUNT FOUR – SWIFT (File no. 08-1725)**

124. In or about 2006, Respondent hired Lorraine Lewis ("Ms. Lewis") as an expert witness in a case Respondent was handling.

125. Ms. Lewis provided expert services to Respondent, but Respondent failed to pay Ms. Lewis for her services.
126. On or about May 23, 2006, attorney Thomas Swift ("Mr. Swift") brought suit against Respondent and Respondent's firm on behalf of Ms. Lewis for the debt.
127. On or about July 6, 2007, judgment was entered against Respondent in the amount of \$6,961.06.
128. On or about October 9, 2007, a writ of garnishment was served upon Respondent's firm.
129. On or about November 2, 2008, Respondent appeared for a Debtor Exam.
130. At the Debtor Exam, Respondent testified, under oath, that Respondent's firm is a limited liability company owned by Respondent and his sisters.
131. On information and belief, Respondent's sisters are not attorneys.
132. On or about May 13, 2008, the Court entered an Order for Appearance requiring that either Respondent or Respondent's firm appear for a Judgment Debtor Exam on June 20, 2008.
133. This order also required Respondent or Respondent's firm to produce its most recent tax return for Respondent, bank statements on all checking and savings accounts maintained by or on behalf of Respondent along with all cancelled checks and check books thereon for a period of one year

immediately preceding the appearance date, a current listing of all accounts receivable due to Respondent, and all payroll reports.

134. On or about May 19, 2008, the Order for Appearance was personally served upon Respondent.
135. On or about June 20, 2008, the date set for the Judgment Debtor Exam, Respondent filed a Motion to Continue the Exam for 30 days.
136. As a result of Respondent's Motion to Continue, the Court ordered the Judgment Debtor Examination to be reset to July 11, 2008.
137. On July 11, 2008, Elija Howell ("Respondent's son") appeared at the Judgment Debtor Exam and represented that he was the current office manager for Respondent's firm.
138. Respondent's son did not produce any of the required documents.
139. On August 18, 2008, Respondent was personally served with a Petition for Order to Show Cause Re: Contempt.
140. This Petition for Order to Show Cause required Respondent to appear before the Court on August 21, 2008.
141. On August 21, 2008, Respondent failed to appear at the Order to Show Cause Hearing.

142. On August 22, 2008, process server Tracey Lloyd filed an Affidavit of Service indicating that she had personally served Respondent with the Petition for Order to Show Cause on August 18, 2008.
143. The Affidavit contained a physical description of Respondent that substantially matches Respondent's known physical appearance.
144. On or about August 28, 2008, the Court issued a Citation of Contempt against Respondent that provided Respondent could purge himself of the contempt by delivering the required documents to Mr. Swift no later than September 15, 2008, and filing a certificate of delivery with the court.
145. Respondent did not produce the documents by the September 15, 2008 deadline.
146. On information and belief, Respondent has not, to this day, produced the required documents or purged himself of the contempt citation.
147. On or about October 27, 2008, Respondent filed a Motion to Vacate Judgments with the Court.
148. In his Motion, Respondent claimed that he had never been served with notice of the August 21, 2008 Order to Show Cause Hearing.
149. Respondent violated one or more of the Rules of Professional Conduct as follows:

150. Respondent failed to maintain the respect due to courts of justice and judicial officers. Rule 41(c) Ariz.R.Sup.Ct.
151. Respondent failed to make reasonable efforts to expedite litigation consistent with the interests of the client. Rule 42 Ariz.R.Sup.Ct. ER 3.2
152. Respondent knowingly made a false statement of fact or law to a tribunal.  
ER 3.3
153. Respondent unlawfully obstructed another party's access to evidence. ER 3.4(a)
154. Respondent knowingly disobeyed an obligation under the rules of a tribunal.  
ER 3.4(c)
155. In representing a client, Respondent used means that had no substantial purpose other than to embarrass, delay, or burden any other person. ER 4.4(a)
156. Respondent formed a partnership with a non-lawyer where any of the activities of the partnership consisted of the practice of law. ER 5.4(b)
  - i. (Or in the alternate, Respondent, in the course of representing a client, knowingly made a false statement of material fact or law to a third person, and/or Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.) ER 4.1 and ER 8.4(c)

157. Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. ER 8.4(c)
158. Respondent engaged in conduct prejudicial to the administration of justice. ER 8.4(d)
159. Respondent's conduct as described in this count violated Rule 41(c) Ariz.R.Sup.Ct., Rule 42 Ariz.R.Sup.Ct., ERs 3.2, 3.3, 3.4, 4.4, 5.4(b) (or in the alternate, 4.1 and 8.4(c)), 8.4(c) and 8.4(d).

### **CONCLUSIONS OF LAW**

Because the matter has been resolved via default, the allegations of the Complaint are deemed admitted. Therefore the Hearing Officer finds clear and convincing evidence exists to support the following violations : Rule 32(c)(3), Rule 41(c), ERs 1.15, 3.2, 3.3, 3.4, 4.1, 4.4, 8.1(b), 8.4(c), 8.4(d), Rules 43(a), Rule 43(d), Rule 44(b), Rule 53(c), Rule 53(d) and Rule 53(f).

### **ABA STANDARDS**

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035(1990). In determining an appropriate sanction matters to be considered include the duty violated, the lawyer's mental state, the presence or absence of actual or

potential injury, and the existence of aggravating and mitigating factors. *In re Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); *see also Standard 3.0*.

### **THE DUTY VIOLATED**

In this case, Respondent violated his duties to his client and the legal profession. In Count One Respondent violated his duty to the legal system by not being honest about his lack of legal malpractice insurance and by delaying the litigation. In Count Two he violated his duties to his clients and to the legal system by not keeping accurate records of his Trust Account and by not responding in a timely manner to the Bar's requests for information. In Count Three Respondent violated his duties to the client by refusing to provide opposing counsel with medical records authorizations. His clients' complaint was dismissed with prejudice due to the conduct of Respondent. He also violated his duty to the legal system by delaying and obstructing the proceedings and refusing to comply with the court's directive. In Count Four he violated his duty to the legal system by failing to provide opposing counsel with information about Respondent's ability to pay a judgment.

### **THE LAWYER'S MENTAL STATE**

Respondent acted knowingly in all four Counts. He knew he was lying about having insurance in Count One. (TR 9:6-20) He knew he did not have accurate records of his Trust Account and that he was not giving the

appropriate records to the Bar in a timely fashion in Count Two. (TR 9:21 through 12:20) In Count Three he knew he was not giving opposing counsel medical records authorizations even after he had been ordered to comply by the court. (TR 12:24 through 16:2) In Count Four Respondent knew he was not providing information on his ability to pay a judgment that the collecting party was entitled to receive in a Judgment Debtor Examination. Respondent knew he had been served with notice of the Order to Show Cause Hearing re: Contempt directing his appearance on August 21, 2008, knew that he did not attend the hearing and knew that he lied about not being personally served when he filed his Motion to Vacate Judgments. (TR 16:3 through 18:19)

### **THE ACTUAL OR POTENTIAL INJURY**

Respondent's conduct caused serious injury and potentially serious injury to his clients and to the profession. In Count One Respondent's conduct was damaging to the plaintiff. The plaintiff was suing Respondent for legal malpractice. Respondent strung plaintiff along by lying to plaintiff. While Respondent led plaintiff to believe that Respondent had malpractice insurance plaintiff spent considerable time and money relying on this lie. Because Respondent did not have legal malpractice insurance plaintiff's lawsuit was a wasted effort. (TR 22:12 through 23:22) Respondent lied in his Response to a Motion to Expedite Discovery when he asserted that he had insurance covering

the events in question. This lie could have had a potentially significant adverse effect if the court had denied the Motion based on Respondent's deliberate falsehood. (TR 23:22 through 24:2) In Count Two Respondent's carelessness with his Trust Account could have caused injury to a client. However the record does not show that a specific client was harmed. In Count Three Respondent caused injury to his client when through his misconduct his client's lawsuit was dismissed with prejudice. In Count Four Respondent lied when he avowed that he had not been served with the Order to Show Cause re: Contempt. Respondent's lie could have had a potentially significant effect on the court's action regarding the contempt issue. The court might have been misled into not finding the Respondent in contempt. Respondent also included this lie in his Motion to Vacate Judgments which could have misled the judge into vacating the judgments to the detriment of the judgment creditor. (TR 24:3-19)

### **RESTITUTION**

No restitution is called for in the Counts of the Complaint. The record does not demonstrate what expenses were incurred by the plaintiff Mann in Count One. (TR 5:10) In Count Two there is no evidence that a specific client lost money when the Respondent's Trust Account was overdrawn. (TR 5:19 through 6:2) Although the Respondent's clients in Count Three lost their

claim when their lawsuit against Catholic Healthcare West was dismissed with prejudice, the record contains no evidence that the clients would have prevailed in the lawsuit. There is no evidence in the record as to the value of the clients' claim even if they had prevailed in the lawsuit. (TR 6:3-19) In Count Four a judgment had already been entered against Respondent for money he owed to an expert witness. Respondent's conduct was delaying the collection of that judgment. (TR 6:20 through 7:17) The record does not support a conclusion that further money damage was caused to a victim.

### **THE MOST SERIOUS MISCONDUCT**

The most serious misconduct in this case involves the Respondent making false statements to the court. In Count One Respondent filed a Response in Opposition to Mr. Mann's Motion to Expedite Discovery. Respondent falsely told the court that he had insurance coverage for the event in question. In Count Four Respondent was personally served with the Petition for Order to Show Cause Re: Contempt. Even though Respondent knew of his court date of August 21, 2008, Respondent failed to appear. Then Respondent lied to the court when he filed a Motion to Vacate Judgments and avowed that he had never been served with notice of the August 21, 2008 hearing. (TR 18:21 through 19:11)

*Standard 6.11 (False Statements)* states, “Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.”

In Count One, Respondent knowingly made a false statement to the court in his Response to a Motion that he had insurance to cover the claims at hand, knowing he actually had no such insurance. Respondent made this false statement with the intent of deceiving the court and opposing counsel and to delay the proceedings. This lie had the actual effect of seriously dragging on and delaying proceedings that had no other purpose to continue. In Count Four, Respondent knowingly made false statements to the Court when he denied being served with process. This lie was intended to deceive the court and release Respondent from his responsibility for non-compliance with prior court orders. The presumptive sanction in this case is Disbarment.

### **AGGRAVATING AND MITIGATING FACTORS**

Several aggravators are present in this case:

*Standard 9.22(a)* – Prior Discipline. Respondent has a significant

disciplinary history. This includes:

- #06-0230, #06-1633, #07-0013 – (December 2008) – Respondent received a six month and one day Suspension with two years of probation for violations of ERs 1.7, 1.15, 4.5, 8.1, 8.4, Rule 43(a), Rule 44(d), Rule 44(a), Rule 53(d) and Rule 53(f). In a three count Complaint the Hearing Officer found in Count One that the Respondent failed to deposit a retainer in a trust account, failed to deposit proceeds from the sale of a house into the trust account, and failed to hold disputed funds in a trust account until the dispute was resolved. In Count Two Respondent represented clients with conflicting interests without obtaining written consent. In all three counts involving separate clients Respondent failed to keep the required trust account records. In each Count Respondent failed to disclose a fact, knowingly failed to respond to a lawful demand for information from the Bar and refused to cooperate with officials and staff of the State Bar. Respondent has established a pattern of ignoring the Bar's requests for information to investigate charges of misconduct against him. The Hearing Officer described at paragraphs 26 through 51 the Respondent's five-month delay in not responding to the Bar's requests for information on Count One. The Hearing Officer stated in paragraph 49, "Respondent's arguments are not only disingenuous, they are stunning in the betrayal of his lack of understanding of the rules. Just because the Bar was exceedingly patient with Respondent, does not mean that it waives the right to

receive the documents requested in a timely fashion, (documents that Respondent ultimately never provided) and Respondent is not the person that gets to dictate what information the Bar is to receive.” (Hearing Officer’s Report filed March 12, 2008, page 12, paragraph 49)

- #03-1404, #03-1444, #04-0326 – (November 2007) – Respondent received an Informal Reprimand for violations of ERs 1.3 and 1.4.
- #02-1548, #02-2379, #03-0499, #03-1213, #04-0910, #04-1282, #05-0375, #05-1984, #05-1991 – (February 2007) – Respondent received a Censure with 6 months of probation for violation of ER 5.5 and Rule 53(e). Respondent appeared in court while he was summarily suspended from January 21, 2005 until February 17, 2005 for failure to comply with mandatory continuing legal education requirements. The State Bar accepted Respondent’s assertion that he failed to receive notice of suspension in a timely manner because Respondent had changed his address. Respondent also violated conditions of his previously imposed (September 10, 2004 Order of Reprimand in File Numbers 03-1404, 03-1444 and 04-0326) probation and diversion by not obtaining a Practice Monitor and not submitting quarterly reports to LOMAP.
- #02-2009 – (October 2003) – IR for violation of ER 3.4.

*Standard 9.22(b)* – Dishonest or Selfish Motive. Respondent’s misconduct was for his own benefit and protection.

*Standard 9.22(c)* – Pattern of Misconduct. Respondent is accused of violations in this matter that are the same or similar in nature to the violations he was found to have committed in his prior discipline. This includes ER 1.15, 3.4, 8.1, 8.4, Rule 43, Rule 44 and Rule 53 violations.

*Standard 9.22(d)* – Multiple Offenses. Respondent is charged with four counts in this matter stemming from four different acts of malfeasance.

*Standard 9.22(e)* – Bad Faith Obstruction of Disciplinary Proceedings. Respondent failed to respond to the State Bar and defaulted in the formal disciplinary case. Respondent did not appear at the Aggravation/Mitigation Hearing after notice had been mailed to his official address.

The Hearing Officer has found no mitigating factors pursuant to *Standard 9.32*. A mitigating factor under *Standard 9.32 (k)* – imposition of other penalties or sanctions – was considered. Respondent was sanctioned \$500 by the court in Count One. However, Respondent did not pay the sanction. This factor would not be mitigating.

### **Proportionality Case Law**

In the imposition of lawyer sanctions, the Court is guided by the principle that an effective system of professional sanctions must have internal consistency. *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988). Therefore, a review of cases that involve conduct of a similar nature is warranted. To achieve internal

consistency, it is appropriate to examine sanctions imposed in cases that are factually similar. *In re Shannon*, 179 Ariz. 52, 876 P.2d 548 (1994). However, the discipline in each situation must be tailored for the individual case as neither perfection nor absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604 (1984).

In *In re Franklin*, SB-08-0135-D (2008), Franklin was disbarred from the practice of law. In multiple counts, Respondent accepted retainers from clients and then failed to perform any legal services, virtually abandoning clients. Respondent further misled a judge and failed to cooperate with the State Bar's investigation. ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15(d), 1.16(d), 3.3, 3.4(c), 4.1, 8.1(b), 8.4(c), 8.4(d) and Rules 53(d) and 53(f)

In *In re Blasingim-Stenzel*, SB-03-0127-D (2004), Blasingim-Stenzel was disbarred from the practice of law. Respondent converted settlement proceeds or other funds for her own personal use. Respondent also accepted retainers from clients and then failed to perform the contracted services and to provide refunds upon request from the clients. Respondent virtually abandoned her clients and failed to respond or cooperate with the State Bar's investigation. ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, 3.3, 3.4, 4.1, 5.3, 5.5, 8.1, 8.4 and SCRs 31, 41, 43, 44, 51 and 63.

In *In re Griffith*, SB-01-0041-D (2001), Griffith was disbarred from the practice of law. Respondent neglected his clients, failed to follow the intent of the representation, failed to keep his clients informed, failed to communicate with them, failed to appear at scheduled hearings, and violated a court order.

Respondent failed to provide adequate representation, knowingly made a false statement of material fact to the judge, and failed to respond or cooperate with the State Bar's investigation of these matters. ER 1.2, ER 1.3, ER 1.4, ER 1.5, ER 1.16, ER 1.16(d), ER 3.2, ER 3.3(a)(1), ER 3.4(c), ER 8.1(a), ER 8.1(b), ER 8.4(c), ER 8.4(d), SCR 51(e), SCR 51(h), SCR 51(i), SCR 51(k).

Although several recent cases resulting in disbarment included allegations of misappropriating or mishandling clients' funds or abandoning clients, allegations not stated here, at least two of these cases also included findings of misleading the court or disobeying court orders. *In re Odneal* SB-08-0063-D involved Ms. Odneal abandoning clients and failing to communicate with them. In one instance even though the court ruled in favor of her client on an award of attorney fees Ms. Odneal did not comply with a court order to submit an affidavit of attorney fees. In the instant case Respondent failed to follow the court's directive to transmit medical records authorizations to counsel for Defendants.

A common thread in several disbarment cases is failing to respond to and cooperate with the State Bar's investigation. See *In re Jerry L. Smith* SB-08-0042-

D and *In re John Morrison* SB-0097-D. Respondent in this matter has failed to 1) respond to numerous State Bar inquiries, 2) answer the Complaint and 3) appear at the Initial Case Management Conference or the Aggravation/Mitigation Hearing.

### **Conclusion**

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

Respondent had already been sanctioned with Informal Reprimands (October 2003, and November 2007) and Censure and probation (February 2007) before the current proceeding. In December 2008 Respondent was suspended for conduct that occurred in 2006 and 2007. The four counts of the current complaint describe Respondent’s conduct from May 2006 through December 2008. He has convinced the Hearing Officer by his long pattern of misconduct that he will not conform to the rules of ethical practice.

In the current matter he lied to two different courts in an effort to obtain decisions that would be a perversion of justice if his misrepresentations were not discovered. He misled opposing counsel merely for the purpose of delaying proceedings so that plaintiff in Count One would waste his time and the court's time pursuing a legal malpractice action against Respondent when Respondent knew he had no insurance. In Count Four Respondent's falsehoods were designed to buy him more time to avoid paying a judgment. In Count Three Respondent stubbornly refused to have his clients sign authorizations for the release of their medical records to the defendants when this is standard procedure for plaintiffs in a personal injury case. *Bain v. Superior Court*, 148 Ariz. 331, 334, 714 P.2d 824, 827 (1987)

Respondent refused to give the Bar relevant information when his misconduct was being investigated. This has been his practice in past disciplinary proceedings. In the current proceeding he simply did not participate. Respondent is too much of a danger to potential clients, opponents, the profession and the legal system to continue to practice law.

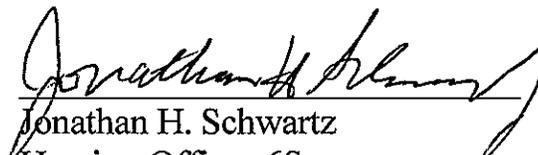
Upon consideration of the facts, the ethical rules violated, the applicable *Standards*, the aggravating and mitigating factors, and an analysis of

proportional cases, the Hearing Officer recommends that the following sanction is appropriate and proportional:

1. Respondent shall be disbarred from the practice of law.
2. Respondent shall pay all costs and expenses incurred by the State Bar in bringing this disciplinary proceeding. In addition, Respondent shall pay all costs and expenses incurred in this matter by the Disciplinary Commission, the Supreme Court, and the Disciplinary Clerk's Office.

Such a sanction is proportionate and appropriate in accordance with the relevant ABA Standards, comparable case law, and will adequately protect the public from Respondent's misconduct.

DATED this 30<sup>th</sup> day of April, 2009.

  
Jonathan H. Schwartz  
Hearing Officer 6S

Original filed this 3<sup>rd</sup> day  
of April, 2009, with:

The Disciplinary Clerk  
of the Supreme Court of Arizona

Copies of the foregoing mailed this 3<sup>rd</sup> day  
of April, 2009, to:

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