



1 Respondent shared office space with Spence during the time in question. Complaint  
2 ¶ 2.

3 3. Respondent represented Forte in a Chapter 13 Bankruptcy case. The  
4 Chapter 13 involved an attempt by Forte to keep her house. Complaint ¶ 3; Ex. 1.

5 4. Spence represented Forte in a Special Action in Maricopa County  
6 Superior Court in an attempt to remove a cloud on the title to her house. Complaint ¶ 5;  
7 Ex. 1.

8 5. On February 20, 2007, Spence filed the Special Action in Maricopa  
9 County Superior Court seeking to clear title to the house by removing a deed of trust  
10 recorded against the property by Charles Saint George Kirkland ("Charles"), Victor  
11 Kirkland ("Victor") and/or Ivy Properties ("Ivy"). Complaint ¶ 6.

12 6. In the Special Action, Forte alleged that she had engaged Charles as a  
13 mortgage broker to obtain refinancing on her home and that he had failed to perform.  
14 Complaint ¶ 7.

15 7. Forte acknowledged that Charles advanced \$11,000.00 to stave off  
16 foreclosure but claimed that no note had been executed to document that loan. As a  
17 result, she alleged the recording by Charles of a "naked" deed of trust purporting to  
18 secure the non-existent note was wrongful and had impaired her ability to obtain  
19 refinancing from a third party source. Complaint ¶ 8.

20 8. On February 21, 2007, Respondent filed the Chapter 13 Petition with the  
21 Bankruptcy Court. Complaint ¶ 9.

22 9. On June 15, 2007, Respondent filed an Adversarial Complaint in the  
23 Bankruptcy Court to resolve the same lien dispute at issue in the Special Action,  
24 alleging virtually identical facts as alleged in the Special Action petition. Complaint  
25 ¶ 10.

26 10. Respondent was seeking, on behalf of Forte, a declaration that the deed of  
27 trust filed by Charles was invalid because of lack of an underlying promissory note.  
28 Complaint ¶ 11.

1           11. In the early stages of the case, the Bankruptcy Court directly confronted  
2 the issue of how best to address and resolve the lien dispute given the pendency of the  
3 Special Action. Complaint ¶ 12.

4           12. At the September 12, 2007 hearing, the Bankruptcy Court decided, with  
5 the concurrence of Respondent, that the issue would be resolved in Bankruptcy Court.  
6 Complaint ¶ 13.

7           13. Respondent agreed to and was ordered by the Bankruptcy Court to file a  
8 Motion for Summary Judgment on the issue of whether the deed of trust was invalid for  
9 lack of a note, even though consideration had been paid. Complaint ¶ 14.

10           14. Respondent failed to file the Motion for Summary Judgment prior to the  
11 next hearing held on October 31, 2007. Complaint ¶ 15.

12           15. Respondent informed the Bankruptcy Court at the October 31, 2007  
13 hearing that he had not filed the Motion for Summary Judgment because Spence's  
14 paralegal, who was drafting the motion, was not allowed to proceed because Spence  
15 now wanted to resolve the case in the Special Action because Victor was in default in  
16 that proceeding for failing to respond to service by publication. Complaint ¶ 16.

17           16. The Bankruptcy Court stated in its Order that the "strategy [of seeking a  
18 default for failure to appear] apparently adopted by both [Spence and Respondent] for  
19 Forte is particularly distasteful given that Victor . . . stated repeatedly that he had been  
20 in contact with Spence by phone and email numerous times and in fact had answered  
21 the amended complaint in bankruptcy court." Ex. 1 at p. 4, ls. 13-16.

22           17. During the October 31, 2007 hearing, and after ascertaining that no factual  
23 disputes on the purportedly dispositive issue existed, the Bankruptcy Court set an  
24 accelerated schedule for the filing of summary judgment motions. Complaint ¶ 18.

25           18. The Bankruptcy Court also ordered Spence to not file any further  
26 pleadings in the Superior Court case and ordered Respondent to file a Notice with the  
27 Superior Court Judge to that effect. Complaint ¶ 19.

28

1           19. Respondent filed the Motion for Summary Judgment in Bankruptcy Court  
2 on November 7, 2007, but abandoned his prior arguments and requested summary  
3 judgment on a theory not pled. Ex. 1 at p. 5, ls. 10-21.

4           20. Since Respondent had failed to plead the "fraudulent scheme theory" in  
5 the Adversarial Complaint, the Bankruptcy Court granted Victor's Motion for Summary  
6 Judgment and denied Forte's Motion for Summary Judgment. Complaint ¶ 21.

7           21. In its December 14, 2007 Order, the Bankruptcy Court gave Respondent  
8 20 days to "amend the complaint in this adversary proceeding. If no amended  
9 complaint is filed by January 3, 2008, this adversary proceeding will be dismissed."  
10 Complaint ¶ 22.

11           22. Respondent did not file a Motion for Leave to Amend the Complaint.  
12 Complaint ¶ 23.

13           23. During a February 13, 2008, hearing, Respondent informed the  
14 Bankruptcy Court that he and Spence had purposely decided not to amend within the  
15 twenty day period so the adversarial proceeding would be dismissed. Complaint ¶ 24.

16           24. Notwithstanding the Bankruptcy Court's clear direction in earlier hearings  
17 and Respondent's agreement with those directions, Respondent took the position at the  
18 February 13, 2008 hearing that the Bankruptcy Court's December 14, 2007 Order meant  
19 that following the dismissal, the matter could proceed in Superior Court. Complaint  
20 ¶ 25.

21           25. Respondent argued at the February 13, 2008 hearing he would need  
22 additional discovery before he could file a second amended complaint in Bankruptcy  
23 Court, in effect admitting that he did not yet have sufficient evidence for alleging his  
24 new fraudulent scheme theories. Complaint ¶ 26.

25           26. Notwithstanding his assertions to the Bankruptcy Court during the  
26 February 13, 2008 hearing, Respondent filed a second amended complaint on February  
27 18, 2008, alleging his "fraudulent schemes theory" without benefit of any additional  
28 factual development. Complaint ¶ 27.



1           32. Respondent's filing of the Motion for Summary Judgment with the  
2 Bankruptcy Court was frivolous and was not filed in good faith.

3           33. Respondent's filing of the Motion to file the Second Amended Complaint  
4 with the Bankruptcy Court was frivolous and was not filed in good faith.

5           34. Respondent attempted to delay the proceeding for no substantial purpose  
6 other than delay when he told the Bankruptcy Court he needed additional discovery  
7 before he could file a Second Amended Complaint.

8           35. Respondent knowingly disobeyed an obligation under the rules of the  
9 tribunal when he failed to file the Motion for Summary Judgment on the issues outlined  
10 by the Bankruptcy Court.

11           36. Respondent knowingly disobeyed an obligation under the rules of the  
12 tribunal when he failed to stop the Special Action proceedings as ordered and failed to  
13 litigate the Note issue in the Bankruptcy Court.

14           37. Respondent engaged in conduct prejudicial to the administration of justice  
15 when he took the position at the February 13, 2007 hearing that following dismissal in  
16 the Bankruptcy Court, he was allowed to proceed in the Superior Court.

17           38. Respondent's actions in this matter, attempting to manipulate two  
18 simultaneous Court proceedings in a manner designed to avoid a decision on the merits  
19 while at the same time attempting to obtain favorable result on the underlying issues on  
20 a non-merits basis, was prejudicial to the administration of justice.

21           39. Respondent willfully violated the Bankruptcy Court's order when he  
22 failed to file the Notice with the Superior Court to prevent further pleadings being filed  
23 with it.

24           40. Respondent's conduct as described in Count II violated Rule 72(a), as he  
25 failed to give notice of his suspension to clients, adverse parties, other counsel and the  
26 courts.

27 . . . . .  
28 . . . . .

1 **IV. RECOMMENDED SANCTION**

2 The purpose of lawyer discipline is not to punish the lawyer, but to protect the  
3 public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d  
4 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the  
5 profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297  
6 (1985). Yet another purpose is to instill public confidence in the bar's integrity. *Matter*  
7 *of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

8 In imposing discipline, it is appropriate to consider the facts of the case, the  
9 American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards")  
10 and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178  
11 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

12 **A. The ABA Standards for Imposing Lawyer Sanctions**

13 ABA *Standard* 3.0 provides that four criteria should be considered when  
14 imposing discipline: (1) the duty violated; (2) the lawyer's mental state and (3) the  
15 actual or potential injury caused by the lawyer's misconduct; and (4) the existence of  
16 aggravating or mitigating factors. The ABA *Standards* indicate that the "ultimate  
17 sanction imposed should at least be consistent with the sanction for the most serious  
18 instance of misconduct among a number of violations; it might well be and generally  
19 should be greater than the sanction for the most serious." *Matter of Taylor*, 180 Ariz.  
20 290, 292; 883 P.2d 1046 (1994).

21 1. The Duty Violated.

22 The Respondent violated ERs 3.4, 4.4, and 8.4(d). Pursuant to ABA  
23 *Standard* 6.22: "Suspension is appropriate when a lawyer knowingly violates a court  
24 order or rule, and there is injury or potential injury to a client or a party, or interference  
25 or potential interference with a legal proceeding."

26 2. The Lawyer's Mental State.

27 Respondent acted knowingly.

28 3. Actual or Potential Injury.

1 Here, the potential injuries actually occurred. Respondent's client suffered a  
2 dismissal with prejudice; the legal proceeding was interfered with; and a party suffered  
3 needless litigation.

4 4. Aggravating and Mitigating Factors.

5 In this case, the following aggravating factors are present:

6 *Standard 9.22(a)* prior disciplinary offenses. Respondent is currently on a six  
7 month and 1 day suspension. He could have applied for reinstatement as of September  
8 14, 2008, but has not done so.

9 *Standard 9.22(e)* bad faith obstruction of disciplinary process. Respondent has  
10 failed to respond in the formal matter.

11 *Standard 9.22(i)* substantial experience in the practice of law. Respondent has  
12 been an Arizona attorney for 15 years.

13 There are no mitigating factors.

14 **B. Proportionality Analysis**

15 Sanctions against lawyers must have internal consistency to maintain an effective  
16 and enforceable system; therefore, the court looks to cases that are factually similar to  
17 the case before it. *In re Pappas*, 159 Ariz. 516, 526, 768 P.2d 1161, 1171, (1988).

18 The State Bar presented the following matter, which this hearing officer finds  
19 sufficiently similar to demonstrate proportionality. In *In re Cayce*, SB-06-0177-  
20 D(2007), the lawyer filed a Guardianship Petition and appeared at the hearing without  
21 giving prior notice to the mother. She filed incomplete and misleading documents with  
22 the court and thereafter, failed to take reasonable measures to remedy the situation. Ms.  
23 Cayce violated ERs 1.1, 1.4(a), 1.4(b), 3.1, 3.3, 3.4, 4.1 and 4.4(a). In aggravation: she  
24 had substantial experience in the practice of law. In mitigation, she: had no prior  
25 disciplinary record, she made a timely good faith effort to rectify the consequences of  
26 her misconduct, there was full and free disclosure, other penalties and sanctions were  
27 imposed and she was remorseful. Her mental state was "knowingly" and there was  
28 actual and potential injury. Ms. Cayce was suspended for 90-days, and placed on one

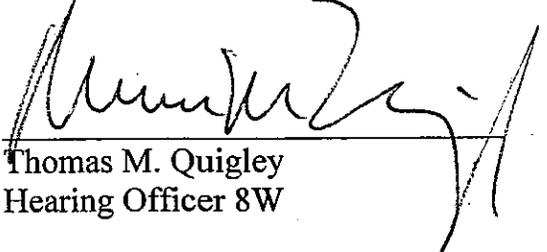
1 year probation.

2 The conduct in Count One involved here is somewhat similar to *Cayce*.  
3 However, here, Respondent has prior discipline, and made no efforts to rectify his  
4 actions or participate in this matter. Moreover, Respondent also has failed to comply  
5 with his professional obligations arising out of his prior discipline.

6 **V. CONCLUSION**

7 Upon consideration of the facts, application of the *Standards*, including  
8 aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer  
9 recommends suspension for one year, imposition of two years probation upon  
10 reinstatement with such conditions as may be appropriate to be determined upon  
11 reinstatement, and be ordered to pay all costs and expenses herein.

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

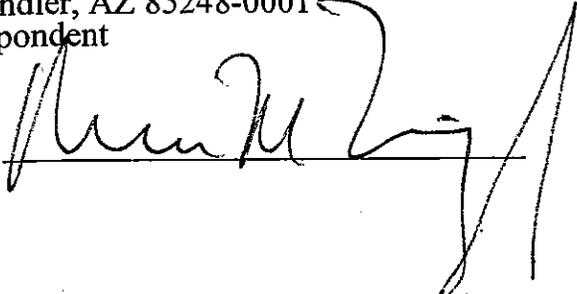
13  
14   
15 Thomas M. Quigley  
Hearing Officer 8W

16 Original filed this 15<sup>th</sup> day of January,  
17 2009 with the Disciplinary Clerk of the Supreme Court

18 Copy of the foregoing mailed this 15<sup>th</sup>  
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