



BEFORE A HEARING OFFICER OF
OF THE SUPREME COURT OF ARIZONA

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

No. 09-1328, 09-2453

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its initial complaint on January 27, 2010, in SBA File Number 09-1328. The complaint and initial disclosure statement were served on William M. Labuda ("Respondent") by certified restricted mail/delivery and regular first class mail pursuant to Rules 47(c) and 57(e), Ariz. R. Sup. Ct. On February 11, 2010, this Hearing Officer was assigned to this case. A telephonic Initial Case Management Conference was held on February 18, 2010. Respondent appeared and participated at the conference.

Respondent was to file an Answer by February 23, 2010. Respondent did not file an Answer. A Notice of Default was issued on February 25, 2010. On February 26, 2010, the SBA filed its First Amended Complaint in which it added SBA File Number 09-2453 pursuant to Rule 47(b)(2), Ariz. R. Sup. Ct. The First Amended Complaint and Amended Disclosure Statement were served on Respondent at his address of record by certified restricted mail/delivery and regular first class mail pursuant to Rules 47(c) and 57(e), Ariz. R. Sup. Ct. Respondent did not file an Answer to the SBA's First Amended Complaint; a Notice of Default was issued on March 23, 2010, and was mailed by the Disciplinary Clerk to Respondent at his address of record. Respondent failed to file an Answer or otherwise defend against the allegations contained in the SBA's First Amended Complaint. Default was entered against Respondent in the matter on April

13, 2010. Pursuant to a Notice of Hearing issued on April 27, 2010, a hearing on mitigation and aggravation was held on May 3, 2010. Respondent did not appear at the hearing.

FINDINGS OF FACT

The facts listed below are those set forth in the State Bar's complaint, and were deemed admitted by Respondent's default.

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 July 22, 2003.¹ (Complaint² ¶1.)

COUNT ONE (File no. 09-1328)

2. On or about the morning of June 23, 2009, Respondent left Gabriel Ruiz, the minor son of Respondent's live-in girlfriend, home alone so Respondent could gamble at a nearby casino. (Compl. ¶2.)
3. Upon information and belief, Gabriel Ruiz called the police on or about June 23, 2009, after having been left alone by Respondent. (Compl. ¶3.)
4. On or about June 23, 2009, Officer Robin Holstrom of the Bullhead City Police Department responded to Respondent's residence and found Gabriel Ruiz home alone. (Compl. ¶4.)

¹ Respondent is currently suspended from the practice of law in Arizona by Order of the Supreme Court of Arizona in File No. SB-09-0108-D, filed December 2, 2009, effective January 1, 2010.

² References to the Complaint in this matter will be hereinafter noted as "Compl." followed by reference to the appropriate paragraph(s) number(s). References to State Bar exhibits will be noted as "SB Ex." followed by the exhibit number and Bates Stamp numbers, "SB Ex. #:SBA ##."

5. Later in the day on or about June 23, 2009, Teresa Ramirez (“Ms. Ramirez”), Respondent’s live-in girlfriend and mother of Gabriel Ruiz, returned to the residence she and Gabriel shared with Respondent. (Compl. ¶5.)
6. At about 2:00 p.m. on or about June 23, 2009, Officer Robin Holstrom returned to Respondent’s address to provide victim right’s forms to Ms. Ramirez. (Compl. ¶6.)
7. Officer Holstrom and Ms. Ramirez spoke. Ms. Ramirez informed Officer Holstrom she found a powder-like substance in a bathroom of the residence that Respondent told Ms. Ramirez was cocaine. (Compl. ¶7.)
8. Officer Holstrom asked Ms. Ramirez if she could look in the bathroom, Ms. Ramirez allowed Officer Holstrom to search the bathroom, and Officer Holstrom located a white crystalline substance inside a small plastic packet. (Compl. ¶8.)
9. The white crystalline substance was field-tested by Officer Holstrom. The test indicated the substance Officer Holstrom found in Respondent’s bathroom contained methamphetamine. (Compl. ¶9.)
10. The substance was later tested by Jennifer Shirley (“Ms. Shirley”), a criminalist with Arizona’s Department of Public Safety, and found to be a useable quantity of methamphetamine. (Compl. ¶10.)
11. On or about the afternoon of June 23, 2009, Respondent returned to the home and spoke with Officers Holstrom and Andersen. (Compl. ¶11.)
12. Respondent informed the officers he left Gabriel Ruiz at home alone so that Respondent could go to a nearby casino. (Compl. ¶12.)
13. Officer Holstrom then asked Respondent about the white crystalline substance found earlier that day. Respondent informed the officers the substance was his methamphetamine, that he

purchased the methamphetamine for about \$100, and that he uses methamphetamine every couple of months when he is feeling down. (Compl. ¶13.)

14. The officers then arrested Respondent for Child Neglect, a class one (1) misdemeanor, in violation of A.R.S. § 13-3619. (Compl. ¶14.)
15. On or about August 26, 2009, Respondent was charged with Possession of Dangerous Drugs a class four (4) felony, in violation of A.R.S. § 13-3407, and Possession of Drug Paraphernalia a class six (6) felony, in violation of A.R.S. § 13-3415. The criminal complaint was later amended to include additional charges of Permitting Life, Health or Morals of Minor to be Imperiled, a class one (1) misdemeanor, in violation of A.R.S. § 13-3619, and Child Abuse, a class one (1) misdemeanor, in violation of A.R.S. § 13-3623(B)(3). (Compl. ¶15.)
16. On or about December 1, 2009, Respondent pled guilty to Possession of Drug Paraphernalia as a class one (1) misdemeanor, in violation of A.R.S. § 13-3415. The remaining criminal charges were dismissed pursuant to the plea agreement. (Compl. ¶16.)

COUNT TWO (File no. 09-2453)

17. In or around March 2009, Ms. Laura Denny (“Ms. Denny”) hired Respondent for representation in her existing dissolution of marriage matter. (Compl. ¶19.)
18. On or about March 26, 2009, Respondent filed his Notice of Appearance in the Mohave County Superior Court on behalf of Ms. Denny in the dissolution matter. (Compl. ¶20.)
19. Ms. Denny provided Respondent documents in preparation and use in the representation and Final Dissolution Hearing previously scheduled for May 12, 2009. (Compl. ¶21.)

20. On or about May 12, 2009, a Final Dissolution Hearing was held in the matter. Respondent appeared, on Ms. Denny's behalf, as did Ms. Denny. Ms. Denny's husband, Mr. Michael Denny ("Mr. Denny"), appeared telephonically. (Compl. ¶22.)
21. At the conclusion of the Final Dissolution Hearing, Respondent was directed by the Court to lodge a decree of dissolution. (Compl. ¶23.)
22. Also at the conclusion of the hearing, Ms. Denny requested Respondent to return her documents she previously provided to Respondent. (Compl. ¶24.)
23. Respondent has not returned Ms. Denny's documents. (Compl. ¶25)
24. After the Final Dissolution Hearing, Ms. Denny telephoned and wrote to Respondent regarding Mr. Denny's alleged failure to pay the ordered mediation fees, Mr. Denny's alleged failure to pay the child-in-common's schooling, and Mr. Denny's alleged failure to transfer title in a vehicle. (Compl. ¶26.)
25. Respondent failed to respond to Ms. Denny. (Compl. ¶27.)
26. On or about July 10, 2009, Ms. Denny filed a *pro se* Request for Hearing regarding Mr. Denny's alleged failure to pay the ordered mediation fees, Mr. Denny's alleged failure to pay the child-in-common's schooling, and Mr. Denny's alleged failure to transfer title in a vehicle. (Compl. ¶28.)
27. On or about July 14, 2009, the Court issued a minute entry stating it would take no action on Ms. Denny's *pro se* Request for Hearing dated July 10, 2009, because Respondent was still her counsel of record. The Court also noted there was no Decree of Dissolution. (Compl. ¶29.)

28. Respondent failed to lodge a decree of dissolution as he was directed to do by the Court.
(Compl. ¶30.)
29. In or around November 2009, Mr. Denny lodged a *pro se* Decree of Dissolution. (Compl. ¶31.)
30. On or about November 12, 2009, the Court signed Mr. Denny's *pro se* Decree of Dissolution and the decree was filed with the Clerk's Office on or about November 13, 2009. (Compl. ¶32.)
31. On or about December 10, 2009, Ms. Denny submitted a bar charge to the State Bar of Arizona regarding Respondent's conduct. (Compl. ¶33.)
32. By letter dated December 21, 2009, mailed to Respondent's address of record, bar counsel advised Respondent of the allegations of ethical misconduct relating to Respondent's representation of Ms. Denny and instructed Respondent to respond in writing within twenty (20) days of the date of the letter. (Compl. ¶34.)
33. Respondent knowingly failed to respond to the State Bar's December 21, 2009, letter. (Compl. ¶35.)
34. By letter dated January 20, 2010, sent to Respondent's address of record, bar counsel reminded Respondent his duty to respond and cooperate with the State Bar, and advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to reply within ten (10) days of the date of the letter. (Compl. ¶36.)
35. Respondent knowingly failed to respond to the State Bar's January 20, 2010, letter. (Compl. ¶37.)

CONCLUSIONS OF LAW

36. Respondent failed to file an answer or otherwise defend against the allegations in the State Bar's First Amended Complaint. Default was properly entered. The allegations are therefore deemed admitted pursuant to Rule 57(d), Ariz. R. Sup. Ct. This Hearing Officer finds Respondent violated the following by clear and convincing evidence:

COUNT ONE (File no. 09-1328)

37. Respondent's conduct, as described in this count, violated Rule 41(b), Ariz. R. Sup. Ct. and Rule 42, Ariz. R. Sup. Ct., specifically ER 8.4(b) (commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness).

COUNT TWO (File no. 09-2453)

38. Respondent's conduct, as described in this count, violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2 (scope of representation), 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property), 3.2 (expediting litigation), 3.4(c)(knowingly disobey an order of a court), 8.1(b)(knowingly fail to respond to lawful demand for information from disciplinary authority), 8.4(d)(engage in conduct that is prejudicial to the administration of justice), and Rules 53(c)(knowing violation of any rule or order of a court), 53(d) (refusal to cooperate in disciplinary proceeding), and 53(f) (failure to furnish information in disciplinary proceeding), Ariz. R. Sup. Ct.

ABA STANDARDS

39. 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, the Hearing Officer and the Disciplinary Commission consider 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*.

Duties Violated

40. In Count One, Respondent violated his duty owed to the general public by engaging in criminal behavior.

The most fundamental duty which a lawyer owes the public is the duty to maintain the standards of personal integrity upon which the community relies. The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when lawyers engage in illegal conduct.

Standard 5.0 at 38.

41. In Count Two, Respondent violated his duties to his client, the legal system, and profession. Respondent failed to act diligently in Ms. Denny's matter by failing to lodge the ordered decree thereby delaying Ms. Denny's divorce. Respondent further failed to timely respond to Ms. Denny's letters and phone calls and further failed to return Ms. Denny's documents. Respondent failed to expedite the dissolution matter by failing to lodge the ordered decree thereby violating his duty to the legal system. Lastly, Respondent failed to cooperate and respond to the SBA's investigatory letters and also failed to file an answer in the disciplinary matter thereby violating his duty as a professional.

Mental State and Injury

42. In Count One, Respondent engaged in criminal conduct thereby implicating *Standard 5.1*.

When the police officers confronted Respondent about the methamphetamine, Respondent acknowledged the packet of methamphetamine was his and admitted his past use. Respondent's conduct was knowing. *Standards 5.11* and *5.12* are implicated by knowing criminal conduct. *Standard 5.11* provides that disbarment is generally appropriate when a lawyer engages in serious criminal conduct, a necessary element of which includes specifically identified types of such conduct, or when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. Respondent's conviction on December 1, 2009 for the class one (1) misdemeanor of possession of drug paraphernalia is not one of the specifically identified types of criminal conduct in *Standard 5.11*.

43. Instead, *Standard 5.12* applies to other criminal conduct like that of Respondent which also seriously adversely reflects on Respondent's fitness to practice: "Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard 5.11* and that seriously adversely reflects on the lawyer's fitness to practice." Therefore, *Standard 5.11* is the appropriate standard.

44. *Standard 5.12* states, "Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard 5.11* and that seriously adversely reflects on the lawyer's fitness to practice." Respondent's conduct did not include intentional interference with the administration of justice, false swearing,

misrepresentation, fraud, extortion, misappropriation, theft, sale of controlled substances, or the intentional killing of another. Therefore, *Standard 5.12* is the appropriate standard.

45. Respondent's conduct in Count Two implicated multiple *Standards*. Respondent engaged in a pattern by not diligently lodging the required proposed decree of dissolution and by failing to return Ms. Denny's phone calls or letters. Respondent's dilatory actions caused actual injury in that Ms. Denny's divorce was not completed as quickly as it should have been. Respondent's conduct implicates *Standard 4.4*. Respondent knew he was ordered by the court to lodge the decree and he failed to do so. Further, Ms. Denny called and wrote Respondent. Respondent's mental state was knowing. *Standard 4.42* states, Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Standard 4.42 is the appropriate *Standard* to evaluate Respondent's violation of ERs 1.2, 1.3, and 1.4.

46. Respondent further failed to return Ms. Denny's documents upon her request in violation of ER 1.15. Ms. Denny called and wrote to Respondent requesting a return of her documents and Respondent failed to do so; showing Respondent acted with a knowing mental state. Respondent caused actual injury by depriving Ms. Denny of her property. *Standard 4.1* is implicated when an attorney acts improperly in dealing with a client's property. *Standard 4.12*, which is most applicable, states, "Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client."

47. *Standard 6.2* is implicated when an attorney abuses the legal process. Respondent was ordered by the court to lodge a dissolution of marriage decree. Respondent knowingly did not file the decree. Mr. Denny thereafter lodged the decree, which was eventually signed by the court six months after the trial. Respondent's conduct caused injury to his client because her divorce was not finalized as quickly as it should have been and the Court was injured because the matter languished on its docket for an extra six months. Respondent did not receive a benefit from his failure to file the decree. *Cf. Standard 6.21. Standard 6.22* states, "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." Therefore, *Standard 6.22* is the appropriate *Standard* to evaluate this issue.

48. Lastly, Respondent violated his duty to the profession by failing to respond to the SBA's investigation and by his failure to file an Answer or otherwise defend in the formal discipline proceedings. *Standard 7.0* is implicated when an attorney violates his duty owed as a professional. As deemed admitted in the First Amended Complaint, Respondent knowingly failed to respond to the SBA's investigatory letters. Respondent was also aware of the formal matter as evidenced by his telephonic appearance and participation in the Initial Case Management Conference. Respondent acted with a knowing mental state.

49. It does not appear that Respondent engaged in the conduct for a benefit for himself. *Cf. Standard 7.1*. As a member of a self-regulatory profession, it is incumbent for all attorneys to respond to investigations and participate in the disciplinary process. When an attorney does not cooperate, it tarnishes the profession's reputation. Therefore, Respondent caused actual injury to the legal system. *Standard 7.2*, the most appropriate *Standard*, states, "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.”

50. “The *Standards* do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations. “Standards at 7. *Standards* 4.12, 4.42, 6.22, 5.12 and 7.2 each call for suspension. Therefore, the presumptive sanction in this case is suspension.

Aggravating and Mitigating Factors:

Aggravating Factors:

51. Standard 9.22(a) Prior disciplinary offense: On September 2, 2009, in SB-09-0085-D (2009), after the State Bar and Respondent had submitted a Tender of Admissions and Agreement for Discipline by Consent, Respondent was censured and placed on probation for violation of Rule 42, Ariz. R. Sup. Ct., specifically ERs 3.4(c), 8.1, 8.4(d), and Rules 53(d) and 53(f), Ariz. R. Sup. Ct. *See* SB Ex. 1:SBA000001; *see also* SB Ex. 1:SBA000020.
52. On December 2, 2009, in SB-09-0108-D (2009), after the State Bar and Respondent had reached an Agreement, Respondent was suspended for six (6) months and one (1) day, ordered to pay restitution, and ordered to participate in the SBA’s Fee Arbitration Program for violation of Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 1.16, 3.4(c), 8.1(b), 8.4(d), and Rules 53(d) and 53(f), Ariz. R. Sup. Ct. *See* SB Ex. 2:SBA000029; *see also* SB Ex. 2:SBA000047.

53. Standard 9.22(c) Pattern of misconduct: Respondent displayed a pattern of lack of diligence. He did not diligently contact his client, did not diligently return client property, did not diligently lodge the decree as ordered, and did not respond to the SBA's investigation in Count Two. Respondent's conduct in Count Two is similar to his conduct in his prior discipline matters.
54. Standard 9.22(d) Multiple offenses: Respondent violated multiple ethical rules, duties, and *Standards* as set forth in this two-count matter.
55. Standard 9.22(e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency: Respondent failed to comply with his ethical obligation to respond to the SBA's investigation Count Two. "Failure to respond to inquiries from the State Bar shows 'a disregard for the Rules of Professional Conduct and borders on contempt for the legal system.'" *Matter of Davis*, 181 Ariz. 263, 266, 889 P.2d 621, 624 (1995)(quoting *In re Galusha*, 164 Ariz. 503, 505, 794 P.2d 136, 138 (1990)). Further, Respondent did not file an answer to the formal complaint and did not participate in the formal proceedings, even after participating in the initial case management conference and being advised of all deadlines and settings.
56. Standard 9.22(k) Illegal conduct: Respondent, in violation of Arizona's criminal statutes, possessed methamphetamine and drug paraphernalia. Respondent pled guilty to Possession of Drug Paraphernalia in violation of A.R.S. § 13-3415.

Mitigating Factor:

57. Standard 9.32(b) Absence of a dishonest or selfish motive: From the admitted facts, Respondent's conduct was not motivated by dishonesty or greed.

58. Standard 9.32(k) Imposition of other penalties or sanctions; Respondent's misdemeanor conviction creates a criminal conviction record for Respondent. However, little weight is given to this factor because Respondent provided no information regarding any court ordered consequences for his conviction.
59. The multiple aggravating factors greatly outweigh the mitigating factors. Therefore, the appropriate discipline in this matter is suspension.

PROPORTIONALITY REVIEW

60. 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 or absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604, 691 P.2d 695 (1984).
61. In *In re Reckling*, SB-08-0052-D (2008), Reckling was suspended for eighteen (18) months, retroactive to the date of his interim suspension, and placed on probation upon reinstatement. Reckling pled guilty to Possession of Drug Paraphernalia as a class 6 designated felony. There were three aggravating factors: *Standards* 9.22(a) prior disciplinary offenses, 9.22(i) substantial experience in the practice of law, and 9.22(k) illegal conduct. There were four mitigating factors: *Standards* 9.32(b) absence of a dishonest or selfish motive, 9.32(c) personal or emotional problems, 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings, and 9.32(k) imposition of other penalties or

sanctions. Reckling was sanctioned for violation of Rule 42, Ariz. R. Sup. Ct., specifically ER 8.4(b).

62. In *In re Ware*, SB-08-0009-D (2008), Ware was suspended for two (2) years, ordered to pay restitution, and placed on probation upon reinstatement. Ware's conduct was deemed admitted by default. Ware failed to provide competent and diligent representation, charged an unreasonable fee and failed to respond or cooperate with the State Bar's investigation. There were seven aggravating factors: *Standards* 9.22(b) dishonest or selfish motive, 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, 9.22(h) vulnerability of victim, 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution. The sole mitigating factor was *Standard* 9.32(a) absence of prior disciplinary record. Ware was sanctioned for violation of Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 8.4(d) and Rules 32(c)(3), 43(d)(2) and 53(f), Ariz. R. Sup. Ct.

63. In *In re Weich*, SB-07-0156-D (2007), Weich was suspended for two (2) years, ordered to pay restitution, and placed on probation upon reinstatement. Weich's conduct was deemed admitted by default. Weich failed to diligently represent clients, failed to adequately communicate with multiple clients, failed to return phone calls from clients, and failed to abide the clients' requests. Weich further failed to cooperate and respond to the State Bar's investigation. There were five aggravating factors: *Standards* 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceeding by failing to comply with rules and orders of the disciplinary agency, 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution. The sole

mitigating factor was *Standard* 9.32(a) absence of prior disciplinary record. Weich was sanctioned for violation of Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.2, 1.3, 1.4, 1.5, and Rules 53(d), 53(e), and 53(f), Ariz. R. Sup. Ct.

64. The above listed cases are similar to the matter at bar. However, in *Reckling*, Reckling, unlike Respondent, participated in his disciplinary matter. Also, Reckling's matter only had the one count of criminal conduct. In the instant matter, Respondent violated the ethical rules in connection to his representation of a client as well as committed criminal conduct. Therefore, the eighteen (18) month suspension represents the extreme low-end of an appropriate sanction.

65. At the hearing on mitigation and aggravation, the State Bar urged that Respondent be ordered to participate in the SBA's Fee Arbitration Program. This Hearing Officer advised the SBA to address in its post-hearing memorandum the reasons why Respondent should be ordered to participate in the Program. Tr. 52:20-21. This Hearing Officer recognizes as does the State Bar, that Respondent represented Ms. Denny in the dissolution of marriage proceedings up through the dissolution hearing, but failed to submit the court ordered decree. As noted by the State Bar, it may be that Respondent is entitled to be paid fees for the work he performed in Ms. Denny's divorce matter. Conversely, it might be that Ms Denny is entitled to a partial refund if any fee agreement payment covered the preparation and submittal of the final decree. However, the State Bar has not presented any information that Ms. Denny or Respondent currently disputes the fee in their case. The Complaint did not notify Respondent that the State Bar or Ms Denny were seeking relief in the form of restitution or through the Fee Arbitration program. Under these circumstances, this Hearing Officer denies the State Bar's request that Respondent be ordered to participate in the Fee Arbitration

program. This denial is without prejudice to Ms Denny or Respondent pursuing the Fee Arbitration Program on their own outside of this disciplinary proceeding.

RECOMMENDATION

66. 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).
67. In Respondent’s earlier suspension for six months and one day, effective January 2, 2010, in SB-09-0108-D (Exhibit D, SBA000055 and SBA0000566) the prior Hearing Officer noted that Respondent’s prior conduct in that matter (receiving substance abuse/dependency treatment then stopping that treatment) led to violations involving lack of diligence and failing to expedite litigation and to respond to disciplinary investigations. Respondent absented himself from these proceedings and was defaulted. This hearing Officer finds that the recommended suspension will not only protect the public and profession but will hopefully provide the Respondent with the time and opportunity to address and hopefully overcome any substance abuse problem or psychological treatment needs.
68. Upon consideration of the facts, the ethical rules violated, the applicable *Standards*, the aggravating and mitigating factors, and an analysis of proportional cases, this Hearing

Officer finds that the sanction described below is appropriate and proportional. This Hearing Officer recommends the following sanction:

1. Respondent shall be suspended from the practice of law for two (2) years.
2. Should Respondent seek, and be granted, reinstatement to the practice of law, Respondent shall be placed on probation for a period of two (2) years beginning on the date he is reinstated. The probation terms are to be determined upon reinstatement.
3. Respondent shall pay all costs and expenses incurred by the SBA in bringing this disciplinary proceeding. In addition, Respondent shall pay all costs and expenses incurred in this matter by the Supreme Court and the Disciplinary Clerk's Office.
4. Respondent shall provide Ms. Denny a copy of her client file and return all of Ms. Denny's original documents within thirty (30) days of the date of the judgment and order, if Respondent has not already done so.

DATED this 4th day of June, 2010.


Louis A. Araneta, Hearing Officer 6U

Original filed with the Disciplinary Clerk
this 7th day of June, 2010.

Copy of the foregoing mailed
this 4 day of June, 2010.

William Labuda
Respondent
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Bullhead City, AZ 86442

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by: Deann Baird