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JAN 10 2005

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *Williams*

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

IN THE MATTER OF A SUSPENDED) Nos. 02-1151, 02-1590, 02-1676
MEMBER OF THE STATE BAR) 02-1694, 03-0586, 03-0843
Of ARIZONA,) 03-1608
)
)

ADAM P. WEBER,
Bar No. 017546

) **HEARING OFFICER'S REPORT**
)
) **RESPONDENT.**)
)

PROCEDURAL HISTORY

The State Bar filed a Complaint on July 2, 2004. Respondent filed an Answer on August 31, 2004. Before the scheduled hearing was to begin, the parties were allowed time to discuss settlement, and the parties were able to reach a settlement. The parties discussed the settlement with the hearing officer and then they filed a Tender of Admissions and Agreement for Discipline by Consent (Tender) and a Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memo) on November 24, 2004.

FINDINGS OF FACT

This hearing officer accepts the Facts agreed upon by the parties, as follows:

1 1. At all times relevant, Respondent was an attorney licensed to
2 practice law in the State of Arizona, having been admitted to practice in Arizona
3 on October 19, 1996.
4

5 **COUNT ONE (File No. 02-1151)**

6 2. In or about September 1999, Linda Klunder ("Ms. Klunder")
7 retained Respondent to represent her in a personal injury case regarding an
8 automobile accident.
9

10 3. On or about October 19, 2001, an Arbitration Hearing was held in
11 Ms. Klunder's case.

12 4. The arbitrator ruled in Ms. Klunder's favor, and the defendant
13 insurance company, Allstate, appealed.
14

15 5. Thereafter, Ms. Klunder attempted to contact Respondent via
16 telephone (on his cell, work, and home phones) and e-mail to obtain a case status
17 update.
18

19 6. In her complaint, Ms. Klunder claims that Respondent did not return
20 her telephone calls or respond to her e-mail messages. Respondent admits that he
21 did not respond to all of Ms. Klunder's telephone calls or e-mail messages but
22 asserts that he did respond to some.
23
24
25

1 7. In or about April 2002, Ms. Klunder finally reached Respondent and
2 informed him that she was unhappy with his unresponsiveness and advised him of
3 her intention to file a complaint against him with the State Bar of Arizona.
4

5 8. During the April 2002 conversation, Respondent promised Ms.
6 Klunder that he would be more consistent and provide her with regular case status
7 updates.
8

9 9. Thereafter, Respondent failed to abide by his promise and, as of June
10 2002, Ms. Klunder did not know what was going on with her case.

11 10. On June 12, 2002, Ms. Klunder filed a complaint against Respondent
12 with the State Bar of Arizona.
13

14 11. On June 25, 2002, the Attorney/Consumer Assistance Program
15 Director ("A/CAP Director") for the State Bar of Arizona sent Respondent a letter
16 informing him of the complaint and directing him to contact Ms. Klunder within
17 15 days and to provide the State Bar of Arizona with a copy of his
18 correspondence to her or an explanation of how he handled the matter.
19

20 12. By letter dated July 10, 2002, Ms. Klunder contacted the State Bar of
21 Arizona and stated that Respondent had not contacted her.
22

23 13. On July 18, 2002, the A/CAP Director wrote Respondent again
24 directing him to contact Ms. Klunder within 15 days and to provide the State Bar
25

1 of Arizona with a copy of his correspondence to her or an explanation of how he
2 handled the matter.

3
4 14. On July 26, 2004, the State Bar of Arizona received a letter dated
5 July 24, 2002, addressed to Respondent from Ms. Klunder. In the letter, Ms.
6 Klunder states that she has not yet heard from Respondent regarding her case.

7
8 15. On August 28, 2002, State Bar of Arizona Staff Bar Counsel ("Bar
9 Counsel") sent Respondent a letter informing him that the matter had been
10 referred to the Lawyer Regulation Department of the State Bar for formal
11 investigation, and requesting that he respond to the allegations contained in the
12 complaint within 20 days.

13
14 16. By letter dated September 30, 2002, Bar Counsel reminded
15 Respondent that he had not responded to the August 28, 2002 letter, reminded
16 him of his obligation to comply, and gave him 10 days in which to submit a
17 response.

18
19 17. By letter dated January 3, 2003, Respondent submitted his response
20 via counsel.

21
22 18. In his response dated January 3, 2003, Respondent asserted that his
23 representation of Ms. Klunder was up to professional standards, admitted that
24 communication with her could have been better, and expressed an interest in the
25 State Bar of Arizona's Diversion Program.

1 19. On August 12, 2003, the Probable Cause Panelist signed an Order of
2 Diversion (LOMAP) ordering Respondent to contact the Director of the Lawyer
3 Assistance Program within 20 days for development of a Memorandum of
4 Understanding.
5

6 20. Respondent signed the Memorandum of Understanding on
7 September 25, 2003.
8

9 21. Thereafter, Respondent ceased communicating with the State Bar of
10 Arizona and the Lawyer Assistance Program staff.

11 22. On February 23, 2004, Bar Counsel filed a Notice of Non-
12 Compliance with Memorandum of Understanding.
13

14 23. On March 3, 2004, the Probable Cause Panelist signed an Order
15 directing Respondent to respond to the Notice of Non-Compliance within 20
16 days.
17

18 24. Respondent failed to respond as directed by the March 3, 2004 order.

19 25. Respondent conditionally admits that his conduct as set forth in
20 paragraphs two (2) through twenty-four (24) above constitute a failure to keep his
21 client reasonably informed about the status of the matter, to promptly comply
22 with reasonable requests for information, to explain the matter to the extent
23 reasonably necessary to permit his client to make informed decisions regarding
24 the representation, and to furnish information or to respond promptly to an
25

1 inquiry or request from bar counsel made pursuant to the Arizona Rules of the
2 Supreme Court for information relevant to the complaint, grievance, or matter
3 under investigation concerning the conduct of Respondent.
4

5 **COUNT TWO (File No. 02-1590)**

6 26. In or about April 2000, William Jaegers ("Mr. Jaegers") retained
7 Respondent to send a demand letter regarding the repossession of his automobile.
8 At a later date, Mr. Jaegers instructed Respondent to file a lawsuit (in addition to
9 the demand letter). Mr. Jaegers paid Respondent \$250.00 initially, and an
10 additional \$500.00 later, for a total of \$750.00.
11

12 27. Respondent did not file the lawsuit regarding the automobile
13 repossession until August 2001.
14

15 28. Thereafter, Respondent failed to perfect service on the defendant and
16 Mr. Jaeger's case was subsequently dismissed in April 2002.
17

18 29. In or about August 2000, Mr. Jaegers received a notice for parking
19 violations that occurred five months after his vehicle was repossessed. As he was
20 not in possession of the vehicle at the time the violations occurred, Mr. Jaeger
21 refused to pay the fines.
22

23 30. If called to testify at hearing, Mr. Jaegers would testify, and the State
24 Bar would assert, that Mr. Jaegers requested assistance from Respondent
25

1 regarding the parking ticket, and that Respondent indicated that he would assist
2 Mr. Jaegers with the parking violations. Respondent would deny this allegation.

3
4 31. Respondent did nothing to assist Mr. Jaeger with the parking
5 violations, with the result that the unpaid fines were reported against Mr. Jaeger's
6 credit to the credit reporting agencies. If called to testify, Respondent would
7 agree that he did not assist Mr. Jaegers with the parking ticket but deny that he
8 had any obligation to do so.
9

10 32. During the course of representation Respondent failed to
11 communicate with Mr. Jaeger.

12 33. Mr. Jaeger requested an accounting and refund of the unused portion
13 of his retainer fee, and Respondent has failed to provide either.
14

15 34. On August 15, 2002, Mr. Jaeger filed a complaint against
16 Respondent with the State Bar of Arizona.
17

18 35. On September 20, 2002, State Bar of Arizona Bar Counsel ("Bar
19 Counsel") sent Respondent a letter notifying him of the complaint and requesting
20 a response within 20 days.
21

22 36. Respondent failed to respond to Bar Counsel's letter dated
23 September 20, 2002.
24
25

1 37. On October 29, 2002, Bar Counsel sent Respondent another letter
2 advising him of the complaint, reminding him of his obligation to comply, and
3 giving him another 10 days in which to respond.
4

5 38. Respondent provided a response on January 3, 2003.

6 39. On August 12, 2003, the Probable Cause Panelist signed an Order of
7 Diversion (LOMAP and Fee Arbitration) ordering Respondent to contact the
8 Director of the Lawyer Assistance Program within 20 days for development of a
9 Memorandum of Understanding and to contact the State Bar's Fee Arbitration
10 Coordinator within 20 days to obtain and complete the forms necessary to
11 participate in fee arbitration.
12

13 40. Respondent signed the Memorandum of Understanding on
14 September 25, 2003.
15

16 41. Thereafter, Respondent ceased communicating with the State Bar of
17 Arizona and the Lawyer Assistance Program staff.
18

19 42. On February 23, 2004, Bar Counsel filed a Notice of Non-
20 Compliance with Memorandum of Understanding.

21 43. On March 3, 2004, the Probable Cause Panelist signed an Order
22 directing Respondent to respond to the Notice of Non-Compliance within 20
23 days.
24

25 44. Respondent failed to respond as directed by the March 3, 2004 order.

1 48. On or about April 24, 2002, Mr. Brazell directed Respondent to
2 cancel the demand letter and instead file suit against AES in Justice Court.

3
4 49. On or about May 3, 2003, Respondent advised Mr. Brazell that he
5 would need to pay Respondent an additional \$400 to proceed with the lawsuit
6 against AES.

7 50. On or about May 9, 2002, Respondent e-mailed Mr. Brazell the
8 proposed complaint against AES for review and again requested the payment of
9 the additional \$400.

10
11 51. On or about May 10, 2002, Mr. Brazell sent Respondent a check for
12 \$400.

13
14 52. On or about May 19, 2002, Mr. Brazell sent Respondent an e-mail
15 inquiring if Respondent had received the \$400 payment, and if Respondent had
16 filed the complaint.

17 53. On or about May 25, 2002, Respondent informed Mr. Brazell that
18 the complaint had been filed.

19
20 54. On May 29, 2002, Mr. Brazell's son Nathan sent Respondent an e-
21 mail requesting the exact date on which the complaint was filed.

22 55. Respondent did not respond to Nathan's e-mail dated May 29, 2002.

23
24 56. Thereafter, Mr. Brazell and/or Nathan attempted to contact
25 Respondent via e-mail on June 12, 17, 18, and 25, 2002, and made multiple

1 telephone calls to Respondent's mobile number, leaving a voice message with
2 each call.

3
4 57. On or about June 26, 2002, Respondent responded and advised Mr.
5 Brazell that he was unable to confirm the exact date the complaint was filed.

6 58. On or about July 5, 2002, Nathan contacted the South Phoenix
7 Justice Court and discovered that Respondent filed Mr. Brazell's complaint on
8 June 27, 2002.

9
10 59. On or about July 12, 2002, Mr. Brazell sent Respondent an e-mail
11 requesting that Respondent keep him updated regarding the status of the case.

12 60. On or about July 15, 2002, Respondent sent Mr. Brazell an e-mail
13 stating that his process server gave him incorrect information regarding service of
14 the complaint, and that they would need to re-schedule the inspection of Mr.
15 Brazell's vehicle.

16
17 61. On or about July 16, 2002, Mr. Brazell advised Respondent that AES
18 had sent him a letter stating that they had shut down their business on June 30,
19 2002, were leaving Mr. Brazell's truck in front of their business, and intended to
20 file for bankruptcy. Mr. Brazell further advised Respondent that he had the
21 vehicle towed to his house and informed Respondent of the vehicle's condition.
22
23
24
25

1 62. On or about July 17, 2002, Respondent informed Mr. Brazell that
2 AES had done the right thing by releasing the vehicle to Mr. Brazell, and that
3 pursuing the claim in bankruptcy would be prohibitively expensive.
4

5 63. On or about August 8, 2002, Mr. Brazell sent Respondent a letter
6 advising of his dissatisfaction with Respondent's services and requesting an
7 accounting and/or refund of his paid fees.
8

9 64. Respondent failed to provide the requested accounting and/or refund
10 of Mr. Brazell's paid fees.

11 65. On or about August 27, 2002, Mr. Brazell filed a complaint against
12 Respondent with the State Bar of Arizona.
13

14 66. On September 18, 2002, State Bar of Arizona Bar Counsel ("Bar
15 Counsel") sent Respondent a letter notifying him of the complaint and requesting
16 a response within 20 days.
17

18 67. Respondent failed to respond to Bar Counsel's letter dated
19 September 18, 2002.

20 68. On October 17, 2002, Bar Counsel sent Respondent another letter
21 advising him of the complaint, reminding him of his obligation to comply, and
22 giving him another 10 days in which to respond.
23

24 69. Respondent provided a response via his attorney on January 3, 2003,
25 in which he admitted that his "communication with Mr. Brazell should have been

1 better” and that “no direct benefit resulted to Mr. Brazell from [Respondent’s]
2 services.”

3
4 70. In his January 3, 2003, response, Respondent also stated that he
5 would refund one-half of his fees to Mr. Brazell, and expressed an interest in the
6 State Bar’s Diversion Program.

7
8 71. By letter dated January 14, 2003 Respondent provided additional
9 information to Bar Counsel. Attached to this is a letter from Mr. Brazell dated
10 January 13, 2003, wherein Mr. Brazell informs Respondent’s counsel that he
11 considers that matter “fully resolved, pending receipt of the rebate of fees from
12 [Respondent] (\$325.00).”

13
14 72. On August 12, 2003, the Probable Cause Panelist signed an Order of
15 Diversion (LOMAP) ordering Respondent to contact the Director of the Lawyer
16 Assistance Program within 20 days for development of a Memorandum of
17 Understanding.

18
19 73. Respondent signed the Memorandum of Understanding on
20 September 25, 2003.

21
22 74. Thereafter, Respondent ceased communicating with the State Bar of
23 Arizona and the Lawyer Assistance Program staff.

24
25 75. On February 23, 2004, Bar Counsel filed a Notice of Non-
Compliance with Memorandum of Understanding.

1 81. Respondent advised Mr. Graham that the judge had ordered the
2 parties to mediate the matter.

3
4 82. For several months thereafter, Respondent ceased communicating
5 with Mr. Graham despite Mr. Graham's attempts to reach him via telephone and
6 facsimile transmittals.

7
8 83. The defendant in the contract action subsequently filed a Motion to
9 Dismiss for Failure to Mediate.

10 84. On June 4, 2002, the judge dismissed Mr. Graham's case without
11 prejudice.

12 85. Respondent has never provided billing statements or an accounting
13 of the retainer to Mr. Graham.

14
15 86. On August 29, 2002, Mr. Graham filed a complaint against
16 Respondent with the State Bar of Arizona.

17
18 87. By letter dated September 9, 2002, Bar Counsel for the
19 Attorney/Consumer Assistance Program of the State Bar of Arizona ("A/CAP
20 Counsel") directed Respondent to contact Mr. Graham within 15 days of the date
21 of the letter.

22
23 88. Respondent failed to contact Mr. Graham or respond to A/CAP
24 Counsel's letter, so the matter was sent for formal screening.

1 89. On October 15, 2002, State Bar of Arizona Bar Counsel ("Bar
2 Counsel") sent Respondent a letter notifying him of the complaint and requesting
3 a response within 20 days.
4

5 90. Respondent provided a response on January 3, 2003 and expressed
6 an interest in the State Bar's Diversion Program.

7 91. On August 12, 2003, the Probable Cause Panelist signed an Order of
8 Diversion (LOMAP and Fee Arbitration) ordering Respondent to contact the
9 Director of the Lawyer Assistance Program within 20 days for development of a
10 Memorandum of Understanding and to contact the State Bar's Fee Arbitration
11 Coordinator within 20 days to obtain and complete the forms necessary to
12 participate in fee arbitration.
13
14

15 92. Respondent signed the Memorandum of Understanding on
16 September 25, 2003.
17

18 93. Thereafter, Respondent ceased communicating with the State Bar of
19 Arizona and the Lawyer Assistance Program staff.

20 94. On February 23, 2004, Bar Counsel filed a Notice of Non-
21 Compliance with Memorandum of Understanding.
22

23 95. On March 3, 2004, the Probable Cause Panelist signed an Order
24 directing Respondent to respond to the Notice of Non-Compliance within 20
25 days.

1 101. The Defendant's motions to exclude evidence regarding emotional
2 distress, punitive damages, and an "alleged break in" by Defendant were granted
3 by the Court August 13, 2002. The Court stated that Respondent had never
4 responded to the motions, although he claimed to the Court that he "thought he
5 had done so."
6

7 102. Thereafter, Respondent reached a settlement with the Defendant that
8 would require the Boyds to pay the dealership \$1,227 to release a lien on their
9 car.
10

11 103. The Boyds were not amenable to this settlement but eventually
12 agreed. The Boyds then requested that Respondent return their file.
13

14 104. If called to testify, the Boyds would testify consistent with their
15 complaint, that Respondent agreed to return the Boyds' file to them within 30
16 days, but failed to do so. Respondent would deny that allegation and testify that
17 he told them he would keep the file for a short time as described in paragraph 106
18 below.
19

20 105. On or about March 28, 2003, the Boyds filed a complaint against
21 Respondent with the State Bar of Arizona.
22

23 106. In Respondent's response via counsel, Respondent states that he had
24 intended to hold the file for a short time in case the opposing party raised any
25 post-settlement issues; however, before he could return it, the Boyds filed their

1 complaint with the State Bar so Respondent decided to keep the file so that he
2 could defend himself in the Bar matter.

3
4 107. On November 10, 2003, the Probable Cause Panelist signed an Order
5 of Diversion (EEP) ordering Respondent to contact the Ethics Enhancement
6 Program Coordinator within 20 days.

7
8 108. Respondent failed to contact the Program Coordinator as directed,
9 and failed to respond to repeated telephone messages left by Bar staff.

10
11 109. On February 23, 2004, Bar Counsel filed a Notice of Non-
12 Compliance with Memorandum of Understanding.

13
14 110. On March 3, 2004, the Probable Cause Panelist signed an Order
15 directing Respondent to respond to the Notice of Non-Compliance within 20
16 days.

17
18 111. Respondent failed to respond as directed by the March 3, 2004 order.

19
20 112. Respondent conditionally admits that his conduct as set forth in this
21 Count constitutes a failure to act with reasonable diligence and promptness in
22 representing his client and a failure upon termination of representation to take
23 steps to the extent reasonably practicable to protect his clients' interests by failing
24 to surrender documents and property to which the clients are entitled.
25

1 **COUNT SIX (03-0843)**

2 113. Mr. and Mrs. Profitt ("the Profitts") own a home in Maricopa
3 County, which they leased and/or sold to Courtney Smith and Manna Properties
4 ("the Defendants") so they could move to Colorado.
5

6 114. After the Profitts moved to Colorado, the tenant/buyer allegedly
7 stopped making timely payments to the Profitts and allegedly made false claims
8 of repairs that needed to be made on the home.
9

10 115. The Profitts paid \$100 to Respondent for a telephonic consultation
11 while they lived in Colorado.

12 116. The Profitts paid Respondent a \$500 retainer fee to assist them in a
13 breach of contract and forcible entry and detainer (FED) matter.
14

15 117. Respondent filed the FED on or about January 11, 2002.

16 118. Respondent then contacted the Profitts and advised them that the
17 court hearing would be held on January 17, 2002, at the North Valley Justice
18 Court.
19

20 119. The Profitts traveled to Arizona at their own expense to attend the
21 January 17, 2002 court hearing.
22

23 120. On January 17, 2002, the Defendants filed a Motion to Dismiss for
24 lack of subject matter jurisdiction.
25

1 121. On January 17, 2002, the Defendants requested a change of judge
2 and the case was transferred to the Northwest Phoenix Justice Court.

3 122. The Profitts returned to Colorado after the January 17, 2002 hearing.

4 123. Shortly thereafter, Respondent contacted the Profitts and advised
5 them that a new pretrial hearing date had been set for January 23, 2002 at the
6 Phoenix Northwest Justice Court.
7

8 124. Respondents returned to Arizona at their own expense to attend the
9 January 23, 2002 pre-trial hearing. At the pre-trial hearing, the court set the
10 matter for trial at noon on January 24, 2004.
11

12 125. On January 24, 2002, the Defendants filed an Answer to the FED
13 and a Counterclaim for breach of contract and bad faith.
14

15 126. Respondent did not file a written answer to Defendants'
16 counterclaim.
17

18 127. At the January 24, 2002 pretrial trial, the judge granted Defendant's
19 oral motion for directed verdict on the FED and awarded the Defendant's their
20 attorney's fees for the FED action.

21 128. If called to testify, the Profitts would testify consistent with their
22 complaint, that after the January 24, 2002 trial concluded, they were confused and
23 attempted to discuss what had occurred with Respondent. Respondent provided
24 them with a brief response, saying something like he had filed too soon, and
25

1 would talk to them later, and he left the courthouse. Respondent disputes this
2 allegation and would testify that he did discuss the matter with them. For
3 purposes of this consent agreement, the State Bar does not dispute Respondent's
4 assertion.
5

6 129. On February 24, 2002 the Defendants filed a Motion to Set Trial
7 Date on Counterclaim.
8

9 130. Defendants mailed a copy of the Motion to Set Trial Date on
10 Counterclaim to Respondent's address.

11 131. The Court set the matter for trial on March 29, 2002, and mailed a
12 copy of the notice of court date to Respondent's address.
13

14 132. On March 14, 2002 the Defendants filed an Application for Entry of
15 Default – Counterclaim and an Application for Attorney's Fees Incurred – Manna
16 Properties, Inc. and Courtney L. Smith.
17

18 133. On March 20, 2002, a judgment awarding the Defendants attorney's
19 fees for the pre-trial hearing was entered against the Profitts in the amount of
20 \$1,474.50.
21

22 134. On March 29, 2002, the trial regarding the Defendants' counterclaim
23 was held, but neither Respondent nor the Profitts attended.

24 135. On April 2, 2002 the Defendants filed an Application for Attorney's
25 Fees.

1 136. On April 25, 2002, a judgment in the amount of \$11,529.99 was
2 entered against the Profitts. This judgment consisted of \$9,999.99 in Defendant's
3 damages, and \$1,530.00 for attorneys' fees.
4

5 137. Respondent did not advise the Profitts of the March 29, 2002 trial
6 date.
7

8 138. Respondent did not advise the Profitts of the \$11,529.99 judgment
9 entered against them.
10

11 139. The Profitts subsequently moved back to Arizona to reoccupy their
12 home. Respondent has no personal knowledge of this fact but does not dispute it
13 for purposes of this consent agreement.
14

15 140. Upon returning, the Profitts found the house in shambles and applied
16 for a refinancing loan to pay for the repairs. Respondent has no personal
17 knowledge of this fact but does not dispute it for purposes of this consent
18 agreement.
19

20 141. Thereafter, the Profitts discovered that they were ineligible for a loan
21 due to the outstanding judgment. Respondent has no personal knowledge of this
22 fact but does not dispute it for purposes of this consent agreement.
23

24 142. Upon learning of the judgment entered against them, the Profitts
25 obtained new counsel to try and get the judgment set aside. Respondent has no

1 personal knowledge of this fact but does not dispute it for purposes of this
2 consent agreement.

3
4 143. The Profitts filed a complaint with the State Bar on April 28, 2003.
5 In his response dated July 8, 2003, Respondent claimed he had never received
6 notice of the March 29, 2002 court date. Respondent did not explain why he did
7 not inform the Profitts about the resulting judgment.

8
9 144. Respondent conditionally admits that his conduct as set forth in this
10 Count constitutes a failure to act with reasonable diligence and promptness in
11 representing his clients and a failure to keep his clients reasonably informed about
12 the status of the matter, to promptly comply with reasonable requests for
13 information and to explain the matter to the extent reasonably necessary to permit
14 his client to make informed decisions regarding the representation.
15

16 **COUNT SEVEN (03-1608)**

17
18 145. Nathan Travanti ("Mr. Travanti") retained Respondent to assist him
19 in a tort case.

20 146. Mr. Travanti paid Respondent \$250 in advance filing fees.

21
22 147. At some point after March 2001, Mr. Travanti began to experience
23 difficulty in contacting Respondent.

24
25 148. Mr. Travanti attempted to contact Respondent via e-mail, regular
mail, and telephone calls to obtain a case status update.

1 149. Respondent failed to respond to Mr. Travanti's attempts to contact
2 him.

3
4 150. On or about August 27, 2003, Mr. Travanti filed a complaint against
5 Respondent with the State Bar of Arizona.

6 151. On or about September 23, 2003, State Bar of Arizona Bar Counsel
7 ("Bar Counsel") sent Respondent a letter notifying him of the complaint and
8 requesting a response within 20 days.

9
10 152. Respondent failed to submit a response to the State Bar.

11 153. Respondent conditionally admits that his conduct as set forth in this
12 Count constitutes a failure to act with reasonable diligence and promptness in
13 representing his client; a failure to keep his client reasonably informed about the
14 status of the matter, to promptly comply with reasonable requests for information,
15 to explain the matter to the extent reasonably necessary to permit his client to
16 make informed decisions regarding the representation; a failure upon termination
17 of representation to take steps to the extent reasonably practicable to protect his
18 client's interests by failing to surrender documents and property to which the
19 client was entitled; and to furnish information or to respond promptly to an
20 inquiry or request from bar counsel made pursuant to the Arizona Rules of the
21 Supreme Court for information relevant to the complaint, grievance, or matter
22 under investigation concerning the conduct of Respondent.
23
24
25

1 **COUNT EIGHT**

2 154. During the formal proceedings in this matter, Respondent failed to
3 submit his disclosure statement on or before September 30, 2004, as required by
4 the parties Case Management Order dated September 8, 2004. If called to testify,
5 Respondent would state that he did this under the understanding that there would
6 be a settlement reached with the State Bar. The State Bar would assert that
7 because Respondent failed to comply with deadlines to reach settlement, he knew
8 no settlement was pending and that he was required to comply with disclosure
9 requirements. For purposes of this Agreement, Respondent does not dispute the
10 State Bar's position.
11
12

13
14 155. On October 19, 2004, Respondent was personally served with a
15 Subpoena Duces Tecum ordering him to produce documents for inspection and
16 copying at the State Bar by October 29, 2004. Respondent failed to comply with
17 the Subpoena Duces Tecum. If called to testify, Respondent would state that he
18 faxed the requested information to the State Bar on October 29, 2004. The State
19 Bar would assert that no such information was received. For purposes of this
20 Agreement, Respondent does not dispute the State Bar's position.
21
22

23 156. Respondent conditionally admits that his conduct as set forth in this
24 Count constitutes a violation of his obligations under the rules of the tribunal in
25 violation of ER 3.4(c); a failure to respond to a lawful demand for information

1 from a disciplinary authority in violation of ER 8.1(b); and a failure to furnish
2 information or to respond promptly to an inquiry or request from bar counsel
3 made pursuant to the Arizona Rules of the Supreme Court for information
4 relevant to the complaint, grievance, or matter under investigation concerning the
5 conduct of Respondent in violation of Rule 53(d), Ariz. R. S. Ct.
6

7
8 **CONDITIONAL ADMISSIONS**

9 Respondent has conditionally admitted that his conduct, as set forth above,
10 violated the following Rules of Professional Conduct and Rules of the Supreme
11 Court:

12 ER 1.3	6 violations (Counts 2-7)
13 ER 1.4	6 violations (Counts 1-4, 6-7)
14 ER 1.16(d)	5 violations (Counts 2-5, 7)
15 ER 3.4(c)	1 violation (Count 8)
16 ER 8.1(b)	1 violation (Count 8)
17 Rule 51(h) ¹	5 violations (Counts 1-4, 7)
18 Rule 53(d)	1 violation (Count 8)

19
20 **DISMISSED ALLEGATIONS**

21 The State Bar and Respondent agreed, for purposes of their agreement, to
22 dismiss the alleged violations of ERs 1.1, 1.2, 1.5, 1.16(a)(1), 3.2, 4.1, 8.1(a) and
23

24 ¹ Rule 51(h) was amended effective December 3, 2003, and is now designated as Rule 53(f),
25 Ariz. R. S. Ct. Because this matter took place prior to the rule amendments, the former
numbering will be used, with the exception of Count 8, which took place subsequent to the
amendments.

1 8.4(c) & (d), and Rule 51(i), Ariz. R. S. Ct. Based upon discovery conducted
2 during the formal proceedings, the State Bar conditionally admits it cannot prove
3 these alleged rule violations by clear and convincing evidence.
4

5 RESTITUTION

6
7 The parties also agreed on restitution, and this hearing agrees that the
8 restitution is appropriate and based on the facts.

9 In Count One, no restitution is necessary as Ms. Klunder received her
10 settlement check.

11 In Count Two, Respondent has agreed to pay restitution to Mr. Jaegers in
12 the amount of \$350.00.
13

14 In Count Three, no restitution is necessary because Respondent has already
15 paid Mr. Brazell \$325.00 and Mr. Brazell stated that he considered the matter
16 resolved upon receipt of that rebate of fees.
17

18 In Count Four, no restitution is necessary as Respondent settled the matter
19 with Mr. Graham in the fee arbitration process.

20 In Count Five, the parties agreed on an amount different than what the
21 Boyds believed they were owed. As noted, the Boyds felt that they would not
22 have had to pay the car dealership \$1227.00 to release the lien if Respondent had
23 responded to the defendants' motions on a timely basis. Respondent did not
24 concede that point, but for purposes of the Agreement, Respondent is willing to
25

1 pay the Boyds half of the amount they had to pay. Specifically, Respondent
2 agreed to pay the Boyds \$613.50. For purposes of their Agreement the State Bar
3 conceded that it could not prove by clear and convincing evidence that the
4 \$1227.00 amount was entirely due to Respondent. Under such circumstances,
5 this hearing officer finds that the agreement amount is appropriate..
6

7 Count Six is the most difficult. The Profitts have suffered approximately
8 \$18,000.00 in costs (including the opposing party's attorneys' fees and interest)
9 that they believe are the direct result of Respondent's unsatisfactory
10 representation). Respondent denies that those costs are attributable to his actions
11 or lack thereof. The State Bar concedes that it could not prove that the full
12 amount of costs were the direct result of Respondent's ethical violations and
13 concedes that the State Bar is obviously not in the business of pursuing
14 malpractice actions. Nevertheless, the State Bar believes it could prove, from the
15 court records admitted in evidence, and the Profitts' testimony, that some portion
16 of the \$1,530.00 in attorneys' fees assessed against the Profitts in the second
17 action were the direct result of Respondent's failure to alert the Profitts of that
18 action, failure to participate in settlement negotiations with the opposing counsel,
19 and failure to defend against that action. For purposes of this Agreement,
20 Respondent is willing to pay the Profitts \$1,530.00.
21
22
23
24
25

1 This hearing officer does not disagree with this approach so long as it is
2 clear that the Profits are not somehow limited in the damages they can recover, if
3 they seek to sue Respondent, by accepting the \$1530.
4

5 7. In Count Seven, Respondent accepted the matter on a contingency
6 basis, and the record shows that he did work on the case. Although Mr. Travanti
7 strongly feels that the judgments awarded against him (in the court records that
8 the State Bar submitted as Exhibit 89) are a result of Respondent's unsatisfactory
9 work, Respondent denies that allegation. Respondent believes that there was
10 substantial evidence supporting the judgment against Mr. Travanti
11 notwithstanding Respondent's acts or omissions. The State Bar admits that it
12 could not prove Mr. Travanti's allegations concerning the judgments by clear and
13 convincing evidence. Under such circumstances, this hearing officer finds that
14 the agreed upon restitution is justified and appropriate.
15
16

17 ABA STANDARDS

18 The *ABA Standards* list the following factors to consider in imposing the
19 appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the
20 actual or potential injury caused by the lawyer's misconduct, and (4) the
21 existence of aggravating or mitigating circumstances. *ABA Standard 3.0*.
22
23

24 In determining the appropriate sanction, this hearing officer has considered
25 both the American Bar Association's *Standards for Imposing Lawyer Sanctions*

1 (“Standards”) and Arizona case law. The *Standards* provide guidance with
2 respect to an appropriate sanction in this matter. The Court and Commission
3 consider the *Standards* a suitable guideline. *In re Peasley*, 427 Ariz. Adv. Rep.
4 23, 90 P.3d 764, §§ 23, 33 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d
5 1037, 1040 (1990).

7 Given the conduct in this matter, it is appropriate to consider *Standards* 4.4
8 (Diligence and Communication), 6.2 (Abuse of the Legal Process) and 7.0
9 (Violations of Other Duties Owed as a Professional).

11 **4.4 Lack of Diligence**

12 4.42

13 Suspension is generally appropriate when:

- 14 (a) a lawyer knowingly fails to perform services for a
15 client and causes injury or potential injury to a client;
16 or
17 (b) a lawyer engages in a pattern of neglect and causes
18 injury or potential injury to a client.

18 **6.0 Abuse of the Legal Process**

19 6.22

20 Suspension is appropriate when a lawyer knowingly violates a
21 court order or rule, and there is injury or potential injury to a client
22 or a party, or interference or potential interference with a legal
23 proceeding.

23 **7.0 Violations of Other Duties Owed as a Professional**

24 7.2

25 Suspension is generally appropriate when a lawyer knowingly
engages in conduct that is a violation of a duty owed as a

1 professional, and causes injury or potential injury to a client, the
2 public, or the legal system.

3 Respondent has conditionally admitted that he failed to act with reasonable
4 diligence and promptness; failed to keep his clients reasonably informed about
5 the status of their matters; failed to promptly comply with his clients' reasonable
6 requests for information and failed to explain the matters to the extent reasonably
7 necessary to permit the clients to make informed decisions regarding the
8 representations. In addition, Respondent conditionally admitted that he failed to
9 surrender documents and property to which the clients were entitled, and that he
10 failed to comply with a lawful demand for information from a disciplinary
11 authority, as evidenced by his failure to respond to requests by the State Bar.
12 Respondent's clients suffered actual injury. Respondent also disobeyed his
13 obligations under the rules of the tribunal in this matter, by failing to submit the
14 required disclosure statement or to comply with a duly issued subpoena.
15
16
17

18 Based on the foregoing, the presumptive sanction for the admitted conduct
19 under the *Standards* is suspension.
20

21 **AGGRAVATING AND MITIGATING FACTORS**

22 This Hearing Officer then considered aggravating and mitigating factors in
23 this case, pursuant to *Standards* 9.22 and 9.32, respectively. This Hearing Officer
24 agrees with the parties that two aggravating factors apply and should be
25 considered in this matter: (c) a pattern of misconduct and (d) multiple offenses.

1 This Hearing Officer agrees with the parties that four factors are present in
2 mitigation: (a) - absence of a prior disciplinary record: Respondent has no prior
3 discipline with the State Bar; (b) absence of a dishonest or selfish motive; (c) -
4 personal or emotional problems; See sealed Appendix to Joint Memo.; and (l) -
5 remorse. The hearing officer does not agree with the parties as to the fifth claimed
6 mitigating factor, (d) timely good faith effort to make restitution or to rectify
7 consequences of misconduct. While it is commendable that Responded has now
8 agreed to make restitution, the record does not reflect this effort is at all timely.

11 This Hearing Officer agrees with the parties that a six month and one day
12 suspension, to be followed by probation, is the appropriate sanction. The conduct
13 here was serious and sometime egregious, which justifies a suspension of greater
14 than six months. The process of reinstatement that is required after a suspension
15 of greater than six months, will protect the public.

17 This hearing officer did object to the initial agreement between the parties
18 to the extent that it provided for a one year probation on reinstatement. However,
19 the parties subsequently agreed that the terms of probation would be set on
20 reinstatement. This hearing officer informed the parties that it seemed better to
21 tailor any probation, both as to terms and to duration, based on what is learned
22 when reinstatement is sought. That way the most flexibility is given to those
23 involved in the reinstatement. While one year may very well be an appropriate
24
25

1 term for probation on reinstatement, this hearing officer felt it better to provide
2 that reinstatement may be conditioned on terms of probation, and those terms and
3 duration will be set on readmission. The parties agreed on this modification.
4

5 PROPORTIONALITY REVIEW

6 To have an effective system of professional sanctions, there must be
7 internal consistency, and it is appropriate to examine sanctions imposed in cases
8 that are factually similar. *Peasley, supra*, ¶¶ 33, 61. However, the discipline in
9 each case must be tailored to the individual case, as neither perfection nor
10 absolute uniformity can be achieved. *Id.* at ¶ 61 (citing *In re Alcorn*, 202 Ariz.
11 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454,
12 458 (1983)).
13
14

15 A case that is relevant to the matter at hand is *In re Counce*, Supreme
16 Court No. SB-03-0071-D, Discipline Commission No. 01-2359 (2003). The
17 *Counce* case proceeded by default after Counce failed to respond to the State
18 Bar's complaint. The facts of the complaint were deemed admitted and the
19 Hearing Officer found that Counce had violated ERs 1.1, 1.2, 1.3, 1.4, 1.16(d),
20 3.2, 8.1 and Rule 51(h) and (i). Similarly to the case at hand, Counce failed to
21 act with reasonable diligence and promptness, failed to keep his client
22 reasonably informed and failed to explain matter to the extent reasonably
23 necessary so that his client could make informed decisions concerning the
24
25

1 representation. Counce also failed to return his client's file and to expedite the
2 litigation. Finally, Counce failed to respond to demands for information from
3 the State Bar and failed to cooperate with the State Bar staff.
4

5 Finding only one mitigating factor (no prior disciplinary history) but four
6 aggravating factors, including bad faith obstruction and refusal to acknowledge
7 wrongful nature of conduct, the Hearing Officer recommended a suspension of
8 six months and one day, to be followed by probation for a period of two years.
9 Notably, *Counce* only involved one client file, whereas Respondent here has
10 seven. However, contrary to the *Counce* case, Respondent did not engage in
11 bad faith obstruction and does show remorse, and despite the repetitive nature
12 of his offenses, the balance tips toward mitigating factors and a sanction no
13 more severe than that handed down in *Counce*.
14
15

16 Another relevant case is *In re Crown*, Supreme Court No. SB-03-0129-D,
17 Disciplinary Commission Nos. 01-0732, 01-1524, 02-1476 and 02-1533 (2003).
18 In that case, Crown was also suspended for six months and one day, with two
19 years probation upon reinstatement and payment of costs. Crown failed to file
20 an answer and a default was entered, but Crown later attended a continued
21 hearing on aggravation and mitigation. The State Bar filed eight counts against
22 Crown for violation of ERs 1.2, 1.3, 1.4, 1.15, 1.16(b), 3.2, 4.1, 8.1(b) 8.4 (c)
23 and (d), as well as Rules 43 and 44, and Rule 51(h) and (i), Ariz. R. S. Ct.
24
25

1 There were four client files involved—the other counts related to Crown’s non-
2 compliance. The hearing officer found four factors in aggravation including
3 multiple offenses, bad faith obstruction, failure to cooperate with the State Bar
4 and refusal to acknowledge wrongful nature of the conduct for failing to
5 participate in the proceedings until the aggravating/mitigation stage and
6 Crown’s attitude in his failure to accept responsibility for his conduct. In
7 addition, the Hearing Officer found that Crown had substantial experience in
8 the practice of law. Only two factors were found in mitigation, specifically,
9 absence of a prior disciplinary record and absence of a dishonest or selfish
10 motive.
11
12

13
14 In *Matter of Blaine*, SB-02-0071-D (2002), Blaine was suspended for six
15 months and one day and placed on two years probation for failing to consult
16 with clients concerning the objectives of their representation, failing to abide by
17 the clients’ decisions, failing to act with reasonable diligence, failing to
18 communicate with his clients, and failing to cooperate in the disciplinary
19 process. Blaine was found to have violated ERs 1.2, 1.3, 1.4, 8.1 and 8.4, and
20 Supreme Court Rules 51(h) and (i). There were three aggravating factors and
21 two mitigating factors.
22

23
24 *Matter of Yates*, SB-01-0127-D (2001), is very similar to the case at
25 hand. Yates was suspended for six months and one day for failing to act

1 diligently by failing to file a client's petition in a civil action. Yates failed to
2 return his client's telephone calls and failed to tell his client that her petition
3 had not been filed. He failed for a period of time to return the client's file and
4 he failed to participate in the disciplinary proceedings. Yates was found to have
5 violated ERs 1.1, 1.3, 1.4, 1.16, 3.2, 8.1(b) and 8.4, and Supreme Court Rules
6 51(h) and (i). There were four aggravating factors and one mitigating factor.
7

8
9 Finally, in *In re Kobashi*, 177 Ariz. 584, 870 P.2d 402 (1994), Kobashi
10 was suspended for six months and one day for failing to diligently file a lawsuit
11 on his client's behalf, failing to respond to the client's requests for information
12 and to return personal documents. Kobashi, like Counce, failed to cooperate in
13 the disciplinary proceedings. The Hearing Officer found that Kobashi had
14 violated ERs 1.1, 1.3, 1.4(a), and 8.1(b), as well as Supreme Court Rule 51(h)
15 and (i). The *Kobashi* Commission indicated that the duties violated required
16 proof of rehabilitation for reinstatement.
17

18
19 The instant case involves multiple complaints by several of Respondent's
20 clients alleging multiple violations of ethical rules while Respondent
21 represented them in a variety of legal matters. Respondent would commence
22 work for his clients; however it would often take him months, even years, to
23 complete the work, if at all, such as in the Jaegers and Brazell matters. In some
24 instances, as in the Graham case, the matter would be dismissed due to
25

1 Respondent's failure to perform some action that he was responsible for, such
2 as bringing the matter to arbitration as ordered by the court. Respondent also
3 failed to timely provide accountings, and to return the case files, as in the cases
4 of Mr. Jaegers and Mr. Graham. Respondent was able to bring some of these
5 cases to successful conclusion, however it would take him an extensive amount
6 of time to do so, such as in Ms. Klunder's case, or his failure to expedite the
7 matter would conclude with results that were not expected by the client, such as
8 in the Boyd case. Respondent failed to keep his clients informed of the status
9 of their cases and often failed to respond altogether to his clients' attempts to
10 contact him. Finally, Respondent agreed to participate in the Bar's Diversion
11 Program, but then failed to fulfill his obligations under the contract and ceased
12 responding to the State Bar's requests for information. Respondent's
13 participation throughout the inquiry and formal discipline process was sporadic
14 at best.

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18
19 The State Bar and Respondent agree, for purposes of this agreement, to
20 dismiss the alleged violations of ERs 1.1, 1.2, 1.5, 1.16(a)(1), 3.2, 4.1, 8.1(a) and
21 8.4(c) & (d), Rule 42, Ariz. R. S. Ct., and Rule 51(i), Ariz. R. S. Ct. Based upon
22 discovery conducted during the formal proceedings, the State Bar conditionally
23 admits it cannot prove these alleged rule violations by clear and convincing
24 evidence.
25

1 Respondent's conduct does not warrant disbarment, but does demand
2 recognition of wrongdoing and a demonstration of rehabilitation. This agreement
3 provides for a sanction that meets the goals of the disciplinary system. The terms
4 of this agreement serve to protect the public, instill confidence in the public, deter
5 other lawyers from similar conduct and maintain the integrity of the bar.
6

7 RECOMMENDATION

8
9 The purpose of lawyer discipline is not to punish the lawyer, but to protect
10 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
11 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
12 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
13 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
14 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
15 (1994).
16

17
18 In imposing discipline, it is appropriate to consider the facts of the case, the
19 American Bar Association's *Standards for Imposing Lawyer Sanctions*
20 ("*Standards*") and the proportionality of discipline imposed in analogous cases.
21 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
22

23 Upon consideration of the facts, application of the *Standards*, including
24 aggravating and mitigating factors, and a proportionality analysis, this Hearing
25 Officer recommends acceptance of the Tender of Admissions and Agreement for

1 Discipline by Consent and the Joint Memorandum in Support of Agreement for

2 Discipline by Consent providing for the following:

3 1. Respondent shall be suspended for a period of six months and one day.

4
5 2. Respondent shall be placed on probation upon reinstatement. The terms
6 and duration of that probation are to be determined at the time of reinstatement.

7 3. Respondent shall pay restitution as follows:

8
9 Mr. Jaegers \$350.00
10 Mr. & Mrs. Boyd \$613.50
11 Mr. & Mrs. Profit \$1,530.00

12 Total: \$2,493.50

13 4. Respondent shall pay the costs and expenses incurred in this
14 disciplinary proceeding.

15 DATED this 10th day of January, 2005.

16
17 Kraig J. Marton
18 Kraig J. Marton
Hearing Officer 8A

19 Original filed with the Disciplinary Clerk
20 this 10th day of January, 2005.

21 Copy of the foregoing was mailed
22 this 10th day of January, 2005, to:

23 Adam P. Weber
24 Respondent
25 P.O. Box 15146
Scottsdale, AZ 85267-5146

1 and

2 Adam P. Weber
3 Respondent
4 13580 North 92nd Place
5 Scottsdale, AZ 85260

6 Denise M. Quinterri
7 Bar Counsel
8 State Bar of Arizona
9 111 West Monroe, Suite 1800
10 Phoenix, AZ 85003-1742

11 by: William

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