

BEFORE A HEARING OFFICER

IN THE MATTER OF A SUSPENDED)
MEMBER OF THE STATE BAR OF)
ARIZONA,) Nos. 03-2003, 04-0157
) 04-0933, 04-0968
GEORGE R. BROWN,)
State Bar No. 009628) HEARING OFFICER'S REPORT
) AND RECOMMENDATION
 Respondent.) HEARING OFFICER 7T
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An Aggravation and Mitigation hearing was held in this matter before the Hearing Officer at 10:00 a.m., November 5, 2004 at 177 N. Church, Suite 200, Tucson, Arizona. Having reviewed the record in this matter, including the exhibits, testimony and argument of counsel, and recognizing that Respondent failed to appear and participate in this disciplinary proceeding, the Hearing Officer finds, concludes and recommends as follows.

I. PROCEDURAL HISTORY

1. Respondent was an attorney licensed to practice law in the State of Arizona,

having been admitted on December 26, 1985.

2. On February 20, 2004, Respondent was suspended for failure to pay dues.

3. On October 29, 2004, Respondent was suspended for six months and one day by Order and Judgment of the Supreme Court of Arizona in Supreme Court case no. SB-04-0121-D, Disciplinary Commission No. 02-0918.

4. Orders of probable cause were issued in this matter for Count One (file no. 03-2003), Count Two (file no. 04-0571), Count Three (file no. 04-0933) and Count Four (file no. 04-0968) on June 29, 2004.

5. The State Bar filed its five count Complaint against Respondent on August 27, 2004.

6. On September 2, 2004, copies of the Complaint were mailed to Respondent by certified mail to Respondent's address of record with the State Bar, first class mail to the Respondent's address of record with the State Bar, transmitted by e-mail to the e-mail address Respondent had used in previous communications with the State Bar, GRBrown001@aol.com, and faxed to (520) 760-7444, a number Respondent had provided to the State Bar and from which the State Bar had received documents from Respondent. Only the certified letter was returned "unclaimed" from the post office.

7. Respondent failed to file an Answer as required by Rule 57(d), Ariz.R.S.Ct., and the disciplinary clerk issued a notice of default on September 28, 2004.

8. Respondent failed to enter his appearance in these proceedings or otherwise respond and an Entry of Default was issued on October 27, 2004.

9. Bar counsel requested an aggravation/mitigation hearing, as provided by Rule

57(d) and an aggravation hearing was held on November 5, 2004. Dana David appeared on behalf of the State Bar. Two complainants, Donald Starkey and William Rodrigues, appeared and testified. Respondent did not appear.

10. The State Bar filed a Proposed Hearing Officer Report on December 1, 2004. Respondent has filed no post-hearing memorandum in mitigation.

11. In sum, Respondent did not participate in any way in these proceedings.

12. This matter was deemed submitted to the Hearing Officer for determination as of November 30, 2004

II. FINDINGS OF FACT.

13. The allegations of the complaint are deemed admitted.

A. COUNT ONE (File No. 03-2003)

14. Melinda Preston retained Respondent on or about September 15, 2002 to represent her son, a medical student, who was hit by a car while crossing a street on his bicycle in Tucson, Arizona. She paid Respondent an \$11,000.00 advanced fee deposit on September 15, 2002 and September 24, 2002, with a personal check and a certified check. Exh. 7, Copies of Certified Check and a Personal Check.

15. Ms. Preston provided Respondent with original documents and photographs to facilitate the representation.

16. Respondent filed a complaint on behalf of Preston on October 1, 2002, captioned *Preston v. Eisner, et.al.*, Pima Co. Sup.Ct.No. C20024802. Respondent did nothing else regarding the case.

17. On June 19, 2003, the attorney for Defendant Eisner filed a Motion to Compel Plaintiff Preston's response to a request for production of documents.

18. On July 23, 2003, Hon. Deborah Bernini, the judge presiding over the Preston case, received a letter from Preston complaining that she had not been able to contact her attorney since March 24, 2003. Judge Bernini or her judicial assistant telephoned Respondent and questioned him about his conduct of the case.

19. On August 15, 2003, in open court in a hearing on the June 19, 2003 motion to compel production of documents, Respondent represented to Judge Bernini that he would actively pursue the case.

20. On October 24, 2003, Judge Bernini signed an order dismissing the Preston case for lack of prosecution

21. In a letter dated October 27, 2003, Judge Bernini referred Respondent to the State Bar.

22. After his August 15, 2003 appearance in the Preston matter, Respondent was served with the State Bar's Complaint in case no. 02-0918, approximately September 9, 2003. Thus, his failure to prosecute the Preston matter occurred after he knew there were disciplinary proceedings pending against him with the State Bar.

23. Respondent's conduct in Count One constitutes a violation of Rule 42, Ariz.R.S.Ct., specifically ERs 1.2 (failure to follow client direction), 1.3 (lack of diligence), 1.4 (failure to communicate with client), 1.5 (excessive fees), 1.15(a)(failure to safeguard client property), 1.16 (improper termination of representation, 3.2 (failure to expedite litigation) and

8.4(d) (prejudice to the administration of justice), effective through November 30, 2003.

B. COUNT TWO (File No. 04-0571)

24. In the fall of 2002, William Rodrigues retained Respondent to pursue a claim against Chaparral College. Rodrigues paid Respondent a retainer of \$2,500.00. (Reporter's Transcript, hereinafter "RT", p.32.) Rodrigues gave Respondent original documents and photographs to facilitate the representation.

25. Respondent filed a lawsuit on behalf of Rodrigues titled *Rodrigues v. Chaparral College*, Pima Co.Sup.Ct., Case No. C20024746. Thereafter, Respondent did nothing further regarding this case.

26. Respondent failed to respond to discovery requests of opposing counsel. Opposing counsel filed unopposed motions for summary judgment. The matter was dismissed with prejudice, and costs and attorney fees in the amount of \$21,944.00 were assessed against Rodrigues. Ex.6, Defendant's Motion for Attorney's Fees in Pima Co.Sup.Ct., Case No. C-20024746, filed November 25, 2003.

27. Despite Rodrigues' requests, Respondent failed to return the case file and original documents or unused attorneys fees to Rodrigues.

28. Rodrigues retained new counsel, who filed a "Rule 60" motion and temporarily reinstated the lawsuit against Chaparral College for the purpose of vacating the order assessing costs and attorney fees against Rodrigues, and then dismissing the case. RT 35-37.

29. Rodrigues paid \$5,000.00 in attorney fees to his new counsel to correct the consequences of Respondent's abandonment of his lawsuit against Chaparral College. RT 35.

30. Respondent's abandonment of Rodrigues' case also occurred during and after the time that he was aware of pending disciplinary proceedings against him in State Bar Case No. 02-0918.

31. Respondent's conduct in Count Two constitutes violation of Rule 42, Ariz.R.S.Ct., specifically ERs 1.2 (failure to follow client direction), 1.3 (lack of diligence), 1.4 (failure to communicate with client), 1.5 (excessive fees), 1.15(a) (failure to safeguard client property), 1.16 (improper termination of representation), 3.2 (failure to expedite litigation) and 8.4(d) (prejudice to the administration of justice), effective through November 30, 2003.

C. COUNT THREE (File No. 04-0933)

32. In November 2002, Lori Matteson Warner gave Respondent a \$10,000.00 fee advance to represent her in a dispute with the University of Arizona. Exh. 8, Copies of Personal Checks. She also provided Respondent with original documents to facilitate the representation.

33. On November 1, 2002, Respondent filed a civil complaint on Warner's behalf in the United States District Court in Tucson, Arizona, titled *Warner v. University of Arizona*, U.S. Dist.Ct.No. Civ. 02-532 TUC-RCC.

34. In August 2003, Warner informed Respondent that she wanted to expedite settlement of the case.

35. On or about October 2, 2003, Respondent was served with a notice of Warner's videotaped deposition scheduled for November 14, 2003. Respondent failed to notify Warner of the deposition.

36. On or about November 14, 2003, Warner sent Respondent an e-mail communication requesting a status report about her case. On November 24, 2003, Respondent responded, advising Ms. Warner that the deadline for discovery had been extended and requested Warner provide dates she would be available for the deposition. Respondent again failed to tell Warner about the deposition that had been scheduled for November 14, 2003.

37. The deposition was rescheduled for February 4, 2004, through an amended notice of deposition that was served on Respondent on January 8, 2004. Respondent never communicated the revised date for the deposition to Warner. Warner did not appear for the deposition scheduled for February 4, 2004.

38. Respondent served no discovery requests on behalf of Warner.

39. Warner tried, numerous times, to contact Respondent by mail, e-mail and telephone after January 8, 2004, without success. Respondent failed to respond to Warner's request for an accounting of the fees charged on her case or her request that Respondent return the case file to her.

40. Sometime in March 2004, Respondent advised Warner that he was going to secure a hearing date, notwithstanding Warner's request that he settle the case in August 2003. However, Respondent took no action to set a trial date.

41. Warner sent Respondent a certified letter requesting refund of money she paid him for legal fees. Respondent did not respond to Warner's request.

42. On May 7, 2004, the court entered its judgment dismissing the Warner case without prejudice for failure to respond to a court order. On the same day, the District Court

entered an order assessing Warner \$3,085.00 in attorney's fees and \$444.94 in costs.

43. The Defendants in that matter have not attempted to collect, nor has Warner paid, the attorney's fees and costs. However, the order has not been vacated.

44. Again, Respondent's conduct, or lack thereof, occurred during the time the disciplinary proceedings in SB 02-0918 were pending. This Hearing Officer's Report and Recommendation, which recommended a six month and one day suspension, was filed April 4, 2004.

45. Respondent's conduct in Count Three constitutes a violation of Rule 42, Ariz.R.S.Ct., specifically ERs 1.2 (failure to follow client direction), 1.3 (lack of diligence), 1.4 (failure to communicate with client), 1.5 (excessive fees), 1.15(a) (failure to safeguard client property), 1.16 (improper termination of representation), 3.2 (failure to expedite litigation and 8.4(d) (prejudice to the administration of justice).

D. COUNT FOUR - File No. 04-0968

46. In May 2003, Donald and Patricia Starkey retained Respondent to file a civil suit in Pima County Superior Court. The Starkeys paid Respondent "a non-refundable earned upon receipt retainer" of \$5,000.00. Exh. 5, Copies of Two Personal Checks Numbered 2393 and 2394. The Starkeys provided Respondent with original documents to facilitate the representation.

47. The fee agreement signed by Respondent provided that "in the event of settlement or jury award, the aforementioned retainer (\$5,000.00) shall be refunded to the clients." Exh.4, Fee Agreement.

48. On or about June 13, 2003, Respondent filed a complaint on behalf of the Starkeys titled *Starkey v. Tucson Realty & Trust Co.*, Pima Co.Sup.Ct. No. C-20033391.

49. Respondent did not meaningfully communicate with the Starkeys about the case after December 8, 2003.

50. On or about March 11, 2004, the Starkeys went to the courthouse to review the case file. They discovered that, although motions had been filed by defense counsel, no motions or responsive motions or pleadings had been filed by Respondent.

51. Between March 11 and April 17, 2004, the Starkeys attempted numerous times to contact Respondent about their case without success.

52. On April 17, 2004, the Starkeys received an order of court assessing them with attorney's fees.

53. On April 22, 2004, the Starkeys' former attorney, Mr. Carter, agreed to represent them for no fee, since he had referred them to Respondent. Unable to speak with Respondent directly, they left Respondent messages requesting that he transfer their case file to Mr. Carter in anticipation of a hearing on the assessment of attorney's fees scheduled for May 26, 2004.
RT, p.26.

54. Respondent did not turn the file over to the Starkeys until May 18, 2004, after they had expended substantial time and effort to recreate the file. RT, pp.26-27.

55. The Starkeys are still in the process of trying to retain new counsel, since their case is not Mr. Carter's area of expertise, and are having difficulty finding the money for another retainer.

56. Respondent's failure to represent the Starkeys in their case occurred during the time the disciplinary proceedings against him in SB 02-0918 were pending.

57. Respondent's conduct in Count Four constitutes violation of Rule 42, Ariz.R.S.Ct., specifically ERs 1.2 (failure to follow client direction), 1.3 (lack of diligence), 1.4 (failure to communicate with client), 1.5 (excessive fees), 1.15(a) (failure to safeguard client property), 1.16 (improper termination of representation), 3.2 (failure to expedite litigation) and 8.4(d) (prejudice to the administration of justice.).

E. COUNT FIVE - Failure to Cooperate

58. In file no. 03-2003 (Count One - Preston), the State Bar sent its charging letter to Respondent on November 19, 2003. Respondent requested an extension until January 9, 2004 to respond. Respondent did not respond. On January 20, 2004, bar counsel sent Respondent another letter requesting his response. On April 2, 2004, bar counsel unsuccessfully attempted to serve Respondent with a subpoena for client documents in his possession for this file. On four occasions the process server attempted to serve the subpoena at Respondent's address of record with the State Bar: 7355 E. Knowlwood Dr., Tucson, AZ, but no one answered the door. Respondent has not responded to any of the State Bar's requests for information for file no. 03-2003.

59. In file no. 04-0571 (Count Two - Rodrigues), the Postal Service returned the State Bar's May 5, 2004 charging letter sent to Respondent's address of record as non-deliverable. Bar counsel left a voice-mail message on Respondent's cell phone, but Respondent has not returned bar counsel's call. Respondent failed to respond to the charging letter. Reasonable

attempts to contact Respondent have been fruitless. Respondent has not responded to any of the State Bar's requests for information for file no. 04-0571.

60. In file no. 04-0933 (Count Three - Warner), the State Bar sent its charging letter to Respondent on June 8, 2004 by first-class mail. The charging letter was also faxed to Respondent on June 14, 2004. Respondent did not respond within the 20-day deadline described in the letter. On July 14, 2004, bar counsel e-mailed copies of the charging letter in this matter and three other matters. On July 15, 2004, Respondent sent an e-mail message to bar counsel stating that he would contact bar counsel on Monday, July 19, 2004. Respondent has not contacted bar counsel as promised. Respondent has not responded to any of the State Bar's requests for information for file no. 04-0933. The State Bar's reasonable attempts to contact Respondent have been fruitless.

61. In file no. 04-0968 (Count Four-Starkey), the State Bar sent its charging letter to Respondent on June 14, 2004, by first-class letter and by facsimile. Respondent did not respond within the 20-day deadline described in the letter. On July 14 2004, bar counsel e-mailed copies of the charging letter in this matter and the other three matters. On July 15, 2004, Respondent sent an e-mail message to bar counsel stating that he would contact bar counsel on Monday, July 19, 2004. Respondent did not contact bar counsel. Respondent has not responded to any of the State Bar's requests for information for file no. 04-0968.

62. Respondent has not appeared or participated in these proceedings.

63. Respondent's conduct in Count Five constitutes a violation of Rule 32(c)(3) (duty to provide the State Bar with a current mailing address) and Rule 53(d)(avoiding service), and

53(f) (failure to cooperate with or furnish information to the State Bar).

III. CONCLUSIONS OF LAW

64. The State Bar has proven by clear and convincing evidence that Respondent's conduct, as set out in Counts One, Two, Three and Four, and deemed admitted, violated Rule 42, Ariz.R.S.Ct., as to each count as follows:

- a. ER 1.2 (failure to follow client direction)
- b. ER 1.3 (lack of diligence)
- c. ER 1.4 (failure to communicate with client)
- d. ER 1.5 (excessive fees)
- f. ER 1.15(a) - (failure to safeguard client property)
- g. ER 1.16 (improper termination of representation)
- h. ER 3.2 (failure to expedite litigation)
- i. ER 8.4(d) (prejudice to the administration of justice), effective through November 30, 2003.

65. The State Bar has proven by clear and convincing evidence that Respondent's conduct, as set forth in Count Five, violated:

- j. Rule 32(c)(3)(duty to provide the State Bar a current mailing address)
- k. Rule 53(d) (avoiding service)
- l. Rule 53(f) (failure to cooperate with or furnish information to the State Bar).

A. ABA STANDARDS

66. The purpose of lawyer discipline is not to punish the lawyer, but to protect the

public, the profession, the administration of justice and deter future misconduct, *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993); *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). In determining the appropriate sanctions for discipline, the Arizona Supreme Court and the Disciplinary Commission consider the American Bar Association *Standards for Imposing Lawyer Sanctions* ("*Standards*") as an appropriate guideline. *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

67. In applying the *Standards*, the Arizona Supreme Court considers 1) the duty violated; 2) respondent's mental state; 3) the injury to the client; and 4) any aggravating or mitigating factors. In cases of multiple charges of misconduct, the *Standards* suggest the attorney be sanctioned for the most serious misconduct, with the additional instances of misconduct treated as aggravating factors. *See Standard 3.0 and Theoretical Framework of the ABA Standards; Matter of Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994).

68. In this case, the Respondent violated the duties owed to his clients, the legal system and the profession. There is no evidence regarding Respondent's mental state and, therefore, it is not a factor in these proceedings. There has been substantial and irreparable injury to four clients. There are aggravating factors and no mitigating factors.

69. The ABA Standards applicable to Respondent's conduct in this matter are:

Standard 4.1. Failure to Preserve the Client's Property. Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

4.11 Disbarment 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.

Standard 4.4 Lack of diligence--Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client, or

(b) a lawyer fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Standard 7.0 Violation of other Duties Owed as a Professional Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct:

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

70. Application of the above Standards to Respondent's conduct in this case establishes that disbarment is the most appropriate sanction. Respondent abandoned his clients in four cases, lied to two clients about the status of their cases and obstructed the ability of all four clients to preserve their legal rights. Under *Standard 4.41(a)* disbarment is the appropriate sanction where Respondent abandoned his practice and caused serious harm to four clients.

71. Respondent received substantial legal fees and retainers from all four clients, but provided minimal or no services to the clients. Although he obtained information and filed

complaints in each of the four cases described in Counts One, Two, Three and Four, Respondent then abandoned the clients. He refused to refund any of the fees paid to him, and failed to communicate with the clients, refused to timely return client documents, thereby impeding their ability to obtain legal services with new counsel and nullifying any benefit to his clients for the services he did perform in drafting and filing the complaints for them. The Respondent knowingly converted client funds to his own use by abandoning the representation in all four cases and then refusing to refund any of the fees he received. *Standard* 4.11 states that disbarment is the appropriate sanction for this conduct.

72. As 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*, Theoretical Framework at p.6; *Matter of Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994). Therefore, the presumed sanction in this matter is disbarment pursuant to *Standards* 4.11 and 4.41(a).

B. Aggravating and Mitigating Factors

73. The ABA *Standards* also require consideration of the relevant aggravating and mitigating factors in arriving at the appropriate sanction. Several aggravating factors in *Standard* 9.22 are present:

- (a) prior disciplinary history. Respondent was suspended for six months and one day per Arizona Supreme Court Order dated October 29, 2004 for conduct in file no. 02-0518.
- (b) dishonest or selfish motive. Respondent lied to his clients about the status of their cases and failed to refund their fees and their files after they asked him to.
- (c) pattern of misconduct. The conduct in each one of the four counts is similar.

Respondent obtained fees from the clients, filed pleadings, then abandoned their cases.

(d) multiple offenses. There are four cases of misconduct.

(e) bad faith obstruction of the disciplinary proceedings. Respondent has intentionally failed to comply with the rules or orders of the disciplinary agency.

(i) substantial experience in the practice of law. Respondent was first admitted to practice in 1983 and was admitted to the Arizona State Bar on February 15, 1994.

74. Respondent has failed to participate in this proceeding. Therefore, there is no evidence of any mitigating factors set forth in *Standard 9.32*.

C. PROPORTIONALITY

75. In order to have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *In re Struthers*, 179 Ariz. 216,226, 877 P.2d 789, 799 (1994); *In re Levine*, 174 Ariz. 146, 174-75, 847 P.2d 1093, 1121-22 (1993). To achieve proportionality, attorney discipline must be tailored to the facts of each case. *In re Wolfram*, 174 Ariz. 49, 59, 847 P.2d 94, 104 (1993).

76. In *In re Camacho*, SB 96-0079-D (1997), the lawyer was disbarred after he converted \$3,045.75 in settlement funds to his own use, intentionally misled a client about the disposition of the client's case, and agreed to a settlement without the client's consent. Although the lawyer repaid the settlement funds to Medicare, all aggravating factors were found to apply, including prior disciplinary record and failure to cooperate with the State Bar. The mitigating factors were remorse and depression.

77. In *In re Brady*, 923 P.2d 836 (1996), a lawyer was disbarred after he abandoned

the cases of several clients. Brady was found to have violated ERs 1.1(competence), 1.3(diligence), 1.4(communication), 1.5(fees), 1.15(safekeeping property), 1.16(terminating representation), 3.3(candor toward the tribunal), 8.1 (bar admission and disciplinary matters) and 8.4(misconduct.). Applicable aggravating factors included a prior disciplinary history and failure to cooperate with the State Bar. No mitigating factors were found. Brady appeared and participated in some, but not all phases of the disciplinary proceeding.

78. In *In re Turnage*, SB-01-0120-D (2001), the lawyer was suspended from the practice of law for four years and ordered to pay restitution in the amount of \$350.00. The discipline was imposed on eight counts, including failure to provide diligent representation in five cases, failure to respond to inquiries of the State Bar in one case, failure to communicate with the client in another case, failure to comply with an order of court resulting in dismissal of another case and three violations of the trust account rules. Aggravating factors included prior discipline, pattern of misconduct, multiple offenses, failure to cooperate and substantial experience in the practice of law. Mitigating factors included personal and emotional problems including alcoholism, timely and good faith effort to make restitution, and full and free disclosure and cooperative attitude after formal proceedings were filed.

79. In *In re Roberts*, SB-04-0123-D (2004), a lawyer consented to a three and one-half year (3-1/2) term of suspension, two years probation and restitution after he abandoned two client matters and converted funds, including settlement proceeds in his client trust account to his own use. There were two aggravating factors of dishonesty and selfish motive and multiple offenses. Three mitigating factors were present: absence of prior disciplinary history, personal

and emotional problems and cooperative attitude.

80. In *In re McGuire*, SB-99-0029-D (1999), the lawyer was the subject of a four count complaint alleging failure to communicate with his clients, failure to prepare necessary documents, abandonment of the clients and, in at least two instances, failure to return unearned retainers and personal property to the clients. McGuire failed to cooperate with the State Bar in its investigation of the matters. In aggravation, the Disciplinary Commission found that the matter involved multiple offenses and the lawyer engaged in bad faith obstruction of the disciplinary process. In mitigation, McGuire's lack of a prior disciplinary history was considered. McGuire received a two year suspension.

81. In *In re McFadden*, SB00-0072-D (2000), the lawyer received a two year suspension for failing to perform services for which he was retained. McFadden failed to communicate with his clients, failed to return unearned retainers and failed to respond to the State Bar's inquiries. Three factors in aggravation were present: multiple offenses, bad faith obstruction of the disciplinary process and substantial experience in the practice of law. In mitigation, McFadden had no prior disciplinary record.

82. In *In re McCarthy*, SB-01-0121-D (2001), the lawyer was the subject of a three count complaint alleging his failure to communicate with his clients, failure to act with reasonable diligence and the failure to respond to the State Bar's investigation. Three factors were present in aggravation: a pattern of misconduct, multiple offenses and bad faith obstruction of the disciplinary process. McCarthy's lack of a disciplinary history was a mitigating factor. McCarthy received a two year suspension for his misconduct.

RECOMMENDATION

In imposing discipline, it is appropriate to consider the facts of the case, the *ABA Standards* and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994). The hearing officer has considered all of these factors. In consideration of all of the relevant factors, the hearing officer recommends disbarment as the appropriate sanction.

In this case, the Respondent received substantial retainers in four cases, then abandoned the clients. He failed to communicate with them, failed to turn over their files, which contained original documents needed to proceed with their cases, and caused significant and irreparable injury to them. Judgments were entered against Ms. Warner, Mr. Rodrigues and the Starkeys for attorney's fees and costs. The Starkeys have not been able to secure new counsel because they do not have the fees. They may have to abandon their case. Rodrigues had to abandon his lawsuit altogether in order to have the judgment of \$21,944.00 vacated. Respondent has shown no remorse or any effort to return the unearned fees or otherwise make restitution to any of these clients.

Respondent has a disciplinary history and has failed to participate in these proceedings in any way. It is clear that he has dodged service of documents and pleadings in this case. He did communicate with bar counsel on July 15, 2004 and was aware of the pending complaints.

There is no evidence of any mitigating factors. Thus, this case is distinguishable from *Roberts, McGuire, McFadden* and *McCarthy*. The Respondent's conduct in this proceeding is most similar to the conduct in *Brady, supra*. Accordingly, the hearing officer recommends

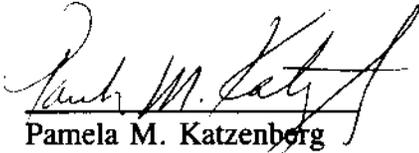
disbarment.

On the basis of the foregoing, the hearing officer recommends that Respondent be disciplined as follows:

1. Respondent shall be disbarred.
2. No later than six months prior to submittal of an application for reinstatement, Respondent shall contact the Director of LOMAP and schedule a MAP assessment. In addition to any other areas of investigation identified by the Director of MAP, Respondent shall provide evidence, satisfactory to the Director of MAP, of successful treatment of any anxiety disorders that Respondent may have suffered and freedom from abuse of controlled substances, including alcohol.
3. As a condition of reinstatement, Respondent shall demonstrate satisfaction of the payment of restitution to the complainants as set forth in paragraph 5 below.
4. Upon reinstatement, Respondent shall serve a two-year term of probation under such terms and conditions as the Arizona Supreme Court deems necessary and proper.
5. Respondent shall pay restitution to the complainants in this matter as follows:
 - a. \$11,000.00 to Melinda Preston (Count One).
 - b. \$7,500.00 to William Rodrigues (Count Two).
 - c. \$13,529.94 to Lori Matteson Warner (Count Three).
 - d. \$5,000.00 to Donald and Patricia Starkey (Count Four).
6. Respondent shall pay costs assessed herein as set forth in the Statement of Costs and Fees to be filed with the Supreme Court of Arizona upon entry of the judgment and order

in this case.

DATED this 14th day of December, 2004.


Pamela M. Katzenberg
Hearing Officer 7T

Original filed with the Disciplinary Clerk
this 17th day of December, 2004.

Copy of the foregoing mailed
this 20th day of December, 2004, to:

George R. Brown
Respondent
7355 East Knollwood Drive
Tucson, AZ 85750-2239

Loren J. Braud
Senior Bar Counsel
State Bar of Arizona
111 West Monroe Street, Suite 1800
Phoenix, AZ 85003-1742

by: Patti Williams