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HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: *[Signature]*

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

IN THE MATTER OF A MEMBER)	Nos. 03-1743, 03-1850, 03-2037
OF THE STATE BAR OF ARIZONA,)	
)	
CHADWICK M. CORD,)	
Bar No. 015680)	
)	HEARING OFFICER'S REPORT
RESPONDENT.)	
)	

PROCEDURAL HISTORY

The parties 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 December 30, 2004. This matter was assigned to this Hearing Officer on January 4, 2005. No hearing has been held.

Respondent was not represented by counsel in this matter, and has chosen to represent himself.¹ Respondent knowingly and voluntarily submitted a Tender of Admissions and Agreement for Discipline by Consent ("Tender"), along with a Joint Memorandum in Support of Agreement for Discipline by Consent ("Joint Memorandum").

¹ As Justice Feldman observed over ten years ago, it is "seldom wise for any person and almost never wise for a lawyer who is charged with disciplinary violations," to represent himself. *Matter of Augenstein*, 178 Ariz. 133, 139871 P.2d 254, 260 (1994) (Feldman, J., concurring). "[B]ehavior problems leading lawyers to err are often made apparent by self-representation in disciplinary proceedings." *Id.*

1 screening letter sent in file no. 03-1850 (child support), addressed to his address
2 of record, was returned for not being deliverable as addressed.

3
4 5. In March 2004, the State Bar's staff investigator obtained another address
5 for Respondent, and the State Bar sent new screening letters to this new address.
6 None of the letters was returned as undeliverable. Respondent did not respond in
7 any of the files by the stated deadline.

8
9 6. Probable-cause orders were issued in all three files in April 2004.
10 However, the State Bar did not immediately send these orders to Respondent
11 while the State Bar attempted yet again to confirm Respondent's address.

12
13 7. In late April 2004, Respondent contacted the State Bar and left a voice-
14 mail for message bar counsel stating that he had moved "some time ago and had
15 problems with my mail." He requested time to get his files and respond to the bar
16 complaints.

17
18 8. On July 16, 2003, bar counsel and Respondent discussed the matter. Bar
19 counsel agreed that Respondent could submit belated responses. Respondent
20 confirmed his address, which was slightly different from the one the State Bar's
21 staff investigator had found. The State Bar again sent the screening letters and
22 probable cause orders to Respondent, at his confirmed address. In August 2004,
23 Respondent submitted responses in each of the three files at issue in this tender.
24
25

1 9. Respondent conditionally admits that prior to his suspension in July 2003,
2 he had failed to provide a current address and telephone number to the State Bar
3 as required by Rule 32(c)(3), Ariz. R. S. Ct.
4

5 10. Respondent conditionally admits that prior to August 2004, he knowingly
6 failed to respond to the State Bar's letters in each of the three files described
7 below.
8

9 **File no. 03-1743 (Shadowens)**

10 11. In February 2003, Shadowens paid Respondent \$5,000 to represent her
11 14-year-old grandson ("the Juvenile") on charges that he violated a restraining
12 order obtained by the family of another teenager. The timing was important
13 because the Juvenile had to ride the bus with members of the family who had
14 obtained the restraining order, and theoretically the Juvenile would violate the
15 order every time he rode the bus.
16

17 12. Respondent eventually filed a document titled "Motion to Set Hearing,
18 For Reconsideration and For New Trial" on or about June 20, 2003. In the
19 motion, Respondent asked the court to vacate the restraining order. The motion
20 was eight pages long, but contained no legal citations other than brief references
21 to Rule 60(c), Ariz. R. Civ. P., and A.R.S. § 12-1809(H). Respondent attached
22 two short affidavits, one from the Juvenile's mother, and one from a neighbor.
23

24 13. The court denied this motion sometime before August 19, 2003.
25

1 14. If this matter proceeded to a hearing, Shadowens would testify that
2 Respondent failed to return her telephone calls, and repeatedly cancelled
3 appointments to interview witnesses.
4

5 15. If this matter proceeded to a hearing, Rhonda Shadowens, Shadowen's
6 daughter, and the mother of the Juvenile, would testify that Respondent
7 repeatedly promised her that he would file some legal document during the
8 Spring of 2003, but always had an excuse why he had not filed it. She would also
9 testify that she never received a copy of the motion that Respondent eventually
10 filed, and only found out that the court had denied the motion by calling the court
11 directly.
12

13
14 16. Rhonda Shadowens would also testify that she contacted the county
15 attorney's office, and discovered that the assigned deputy county attorney had
16 decided in April 2003 -- more than two months before Respondent filed the
17 motion for reconsideration -- not to prosecute the Juvenile for violating the
18 restraining order by riding the bus. As a result, the motion for reconsideration was
19 unnecessary.
20

21 17. Shadowens and Rhonda Shadowens would also testify that Respondent
22 did not advise them that he had been suspended effective July 31, 2003.
23
24
25

1 18. In August 2003, Shadowens demanded that Respondent refund her
2 money because the matter had not been resolved. She would testify that he did
3 not respond to her.
4

5 19. If this matter proceeded to a hearing, Respondent would take the
6 position that he had no reason to communicate with Shadowens after his initial
7 meeting with her, because his client was the Juvenile.
8

9 20. Respondent would further testify that he frequently spoke with the
10 Juvenile and his mother, and that he sent a copy of the motion he filed in June
11 2003 to the mother, along with a letter advising he had filed it. Respondent would
12 also testify that when the court denied the motion, he sent a copy to the Juvenile
13 and his mother.
14

15 21. For purposes of this agreement, Respondent conditionally admits that he
16 failed to respond to Shadowens, or to provide a final accounting of the \$5,000 she
17 paid him for the representation.
18

19 22. Respondent conditionally admits that he failed to advise either
20 Shadowens or Rhonda Shadowens that he had been suspended from the practice
21 of law.
22

23 23. Respondent conditionally admits that he failed to act with reasonable
24 diligence in performing the legal work for which he was hired.
25

1 24. A probable-cause order issued for violations of ERs 1.2, 1.3, 1.4, 1.5,
2 1.16 and 8.1(b), and Rules 43, 44, 53(c) and (d) and (f) and 72. A copy of that
3 order is attached as Exhibit A to the Tender.
4

5 25. The State Bar conditionally admits that it cannot prove by clear and
6 convincing evidence violations of ERs 1.2 or 1.5, Rule 42, Ariz. R. S. Ct., or Rule
7 53(c), Ariz. R. S. Ct.
8

9 26. Respondent has conditionally admitted to violating ERs 1.3 (Diligence),
10 1.4 (Communication), 1.16(d) (Refund of Fees Upon Terminating
11 Representation) and 8.1(b) (Failure to Respond to Demand for Information From
12 Disciplinary Authority), Rule 42, Ariz. R. S. Ct.; Rules 43 (Trust Account
13 Records), 44 (Return of Trust Account Funds), 53(d) (Failure to Cooperate With
14 Inquiry From State Bar) and (f) (Failure to Furnish Information to State Bar) and
15 72 (Notice to Clients of Suspension), Ariz. R. S. Ct.
16

17 **File no. 03-2037 (Woda)**
18

19 27. Kimberly Woda ("Woda") hired Respondent in late 2001 or early 2002
20 to represent her in a child-support matter. She alleged in her complaint that
21 Respondent was obligated to reimburse her for attorney's fees but never did. She
22 also complained that Respondent refused to return her calls when she attempted
23 to ask him for reimbursement.
24
25

1 28. In a May 6, 2003 minute entry, the Honorable Mark W. Armstrong
2 ordered Respondent to review his records "to determine if payment has been
3 made by [Woda] in the amount of \$750 and by [father] in the amount of \$990, to
4 determine if [Woda] is due a refund for her payment of attorney's fees." It
5 appeared from this order that Woda had paid Respondent for child-support work,
6 but then the father was ordered to pay Woda's fees.
7

8
9 29. Woda provided to the State Bar a copy of a check, drawn on an account
10 that appears to have been owned by Woda and the father, for \$990, payable to
11 Respondent, and endorsed with an illegible signature. Woda also provided a
12 printout of an email message, supposedly from Respondent shortly after the May
13 2003 court order, in which he stated that he would reimburse her for some fees.
14

15 30. Respondent charged Woda \$2,332.50. The father paid \$990 of that
16 amount directly to Respondent. Respondent takes the position that he complied
17 with the May 6, 2003 order and lodged an accounting with the court. Respondent
18 does not recall telling Woda that he would reimburse her, thus questioning the
19 validity of the email message. He provides an itemized invoice showing that
20 Woda still owes him \$592.50.
21

22
23 31. Woda contends that Respondent never sent her a bill for \$592.50, and
24 insists that Respondent owes her either the \$990 her ex-husband paid or that he
25 should reimburse her the \$750 she paid him.

1 32. The State Bar's staff investigator obtained a copy of the invoice
2 Respondent lodged with the court in June 2003. It shows that Woda paid him
3 \$750 in January 2001. It appears to be missing the second page, however, because
4 it only covers work performed from December 31, 2001, through April 24, 2002.
5 Because the father did not pay the \$990 until December 2002, the invoice does
6 not account for it.
7

8
9 33. With his belated response to the bar, Respondent provided only the
10 second page of his invoice, presumably because he was accounting for the
11 father's \$990. This second page picks up where the filed invoice left off. When
12 taken together, the two pages show that he charged fees of \$2,332.50 and
13 received \$750 from Woda and \$990 from the father, leaving a balance owed of
14 \$592.50.
15

16 34. The invoice Respondent lodged with the court indicates he mailed a
17 copy to Woda. He also filed an accompanying motion to withdraw, on which he
18 indicates he sent Woda a copy. She has not complained that she did not receive
19 these documents. As Respondent only attached the first page of his invoice to the
20 copy he filed, it is understandable that Woda believes he has not accounted for
21 the \$990. Technically, he had not.
22
23

24 35. It does not appear that Respondent owed Woda any money. Woda
25 appears to have been confused, and believed that the father's \$990 payment was

1 intended to reimburse her for fees she had paid, not to defray her attorney's fees.

2 Respondent's invoice details a substantial amount of work.

3
4 36. A probable-cause order issued for violations of ERs 1.3, 1.4, 1.5, 1.15,
5 3.4, 8.1(b) and 8.4(d), and Rules 43, 44 and 53(c), (d) and (f). A copy is attached
6 as Exhibit B to the Tender.

7
8 37. Respondent conditionally admits that he failed to respond to Woda's
9 attempts to have him explain his billings.

10 38. The State Bar conditionally admits that, in light of Respondent's belated
11 response to Woda's bar complaint and its related investigation after issuance of
12 the probable-cause order, it cannot prove, by clear and convincing evidence,
13 violations of ERs 1.3, 1.5, 3.4 and 8.4(d), Rule 42, Ariz. R. S. Ct., or Rules 43, 44
14 and 53(c), Ariz. R. S. Ct.

15
16 39. Based on his conditional factual admissions detailed above, Respondent
17 has conditionally admitted to violating ERs 1.4 (Communication), 1.15(b)²
18 (Return of Trust Funds) and 8.1(b) (Failure to Respond to Demand for
19 Information From Disciplinary Authority), Rule 42, Ariz. R. S. Ct., and Rule
20 53(d) (Failure to Cooperate With Inquiry From State Bar) and (f) (Failure to
21 Furnish Information to State Bar), Ariz. R. S. Ct.
22
23

24
25 ² This refers to the version of ER 1.15 in effect prior to December 1, 2003, when procedural and substantive changes to the disciplinary rules took effect. ER 1.15(b) now has been re-codified, with minor changes, as ER 1.15(d).

File no. 03-1850 (State Bar judicial referral)

1
2 40. Respondent admits that he was incarcerated in December 2003 for
3 failing to pay child support as ordered in Parnell v. Cord, DR 2000-001378.
4

5 41. Respondent admits that from September 2003 through September 2004,
6 he failed to appear at three of eight substantive hearings. If this matter proceeded
7 to a hearing, he would take the position that he was 15 minutes late for one of
8 those missed hearings; the orders regarding his need to appear at the second
9 hearing were not clear; and he was told by the mother that the third hearing,
10 which was a conference with Expedited Services, had been cancelled.
11

12 42. He conditionally admits that he had been found financially able to make
13 at least partial payments on arrearages.
14

15 43. If this matter proceeded to a hearing, the State Bar would take the
16 position that during at least two of the hearings on child support, he promised the
17 court that he would pay the child support ordered, but failed to. The State Bar
18 also would take the position that he was jailed, at one point, for one week for
19 contempt for failing to pay child support in accordance with court orders, and that
20 on one occasion, as he was being lead out of the courtroom to jail for contempt,
21 he claimed he would not be able to satisfy the purge clause, but did so four hours
22 later.
23
24
25

1 44. A probable-cause order issued for violations of ERs 8.1(b) and 8.4(d),
2 Rule 42, Ariz. R. S. Ct., and Rule 53(c), (d) and (f). A copy is attached as Exhibit
3 C To Tender.
4

5 45. Respondent has conditionally admitted to violating ERs 8.1(b) (Failure
6 to Respond to Demand for Information From Disciplinary Authority) and 8.4(d)
7 (Conduct Prejudicial to the Administration of Justice), Rule 42, Ariz. R. S. Ct.,
8 and Rule 53(c) (Willful Violation of Court Order), 53(d) (Failure to Cooperate
9 With Inquiry From State Bar) and 53(f) (Failure to Furnish Information to State
10 Bar) (d) and (f), Ariz. R. S. Ct.
11

12 **Prior Discipline**

13
14 46. Respondent was suspended for three months, effective June 2, 2001, for
15 misconduct involving his trust account (file nos. 98-1579, 98-1859 and 99-0042).
16 He was reinstated on October 31, 2001.

17
18 47. He was then suspended (file nos. 01-1213 and 01-2148) for six months
19 and one day, effective July 31, 2003, in part for practicing while on his three-
20 month suspension. He has not filed for reinstatement from that suspension.

21 **CONDITIONAL ADMISSIONS**

22
23 48. Respondent has conditionally admitted that his conduct, as set forth
24 above, violated the following Rules of Professional Conduct and the Rules of the
25 Supreme Court:

- 1 a. One violation of ER 1.3, Rule 42, Ariz. R. S. Ct., which requires a
2 lawyer to act with reasonable diligence and promptness in
3 representing a client;
4
- 5 b. Two violations of ER 1.4, Rule 42, Ariz. R. S. Ct., which, at the time
6 of the misconduct conditionally admitted, required that a lawyer
7 “keep a client reasonably informed about the status of a matter and
8 promptly comply with reasonable requests for information”;
9
- 10 c. One violation of former ER 1.15(b), Rule 42, Ariz. R. S. Ct., which
11 required, in part, that a lawyer promptly provide a full accounting of
12 client property at the client’s request;
13
- 14 d. One violation of ER 1.16(d), Rule 42, Ariz. R. S. Ct., which requires,
15 in part, that upon termination of representation, a lawyer refund to
16 the client any advance payment of a fee that has not been earned;
17
- 18 e. Three violations of ER 8.1(b) Rule 42, Ariz. R. S. Ct., which
19 prohibits a lawyer from knowingly failing to respond to a lawful
20 demand for information from a disciplinary authority;
21
- 22 f. One violation of ER 8.4(d), Rule 42, Ariz. R. S. Ct., which prohibits
23 conduct prejudicial to the administration of justice;
24
- 25 g. One violation of Rule 43(d), Ariz. R. S. Ct., and Trust Account
Guideline (2)(a), which at the time of the misconduct required that a

1 lawyer provide timely written reports to clients about fees held in
2 trust, and Rule 44(b), Ariz. R. S. Ct., which imposes a duty on
3 lawyers to safeguard client property;

4
5 h. Two violations of Rule 53(d) and (f), which define as grounds for
6 discipline refusing to cooperate with the State Bar (subsection d) and
7 failing to furnish information to the State Bar (subsection f);

8
9 i. One violation of Rule 53(c), which makes a willful violation of any
10 rule or court order of a state, including child-support orders, grounds
11 for discipline; and

12
13 j. One violation of Rule 72(a), Ariz. R. S. Ct., which requires that a
14 lawyer who has been suspended to notify, within 10 days after the
15 date of the order imposing the suspension, clients being represented
16 in pending matters, among others.

17
18 49. The State Bar conditionally admits that it cannot prove by clear and
19 convincing evidence the alleged violations of ERs 1.2 and 1.5, Rule 42, Ariz. R.
20 S. Ct., or Rule 53(c), Ariz. R. S. Ct., that were included in the probable-cause
21 order in file no. 03-1743, or the alleged violations of ERs 1.3, 1.5, 3.4 and 8.4(d),
22 Rule 42, Ariz.R.S.Ct., or Rules 43, 44 and 53(c), Ariz.R.S.Ct., that were included
23 in the probable-cause order in file no. 03-2037.
24
25

1 **ABA STANDARDS**

2 50. In determining the appropriate sanction, Arizona generally follows the
3 ABA Standards for imposing lawyer sanctions (“the *Standards*”). *In re Zawada*,
4 208 Ariz. 232, 92 P.3d 862 ¶ 12 (2004).
5

6 51. The *Standards* list the following factors to consider in imposing the
7 appropriate sanction: (1) the duty violated, (2) the lawyer’s mental state, (3) the
8 actual or potential injury caused by the lawyer’s misconduct, and (4) the
9 existence of aggravating or mitigating circumstances. ABA Standard 3.0.
10 *Zawada* at ¶ 12. The Hearing Officer has considered all of the required factors.
11

12 52. The theoretical framework analysis contained in the *Standards* states
13 that where there are multiple acts of misconduct, the sanction should be based
14 upon the most serious misconduct, with the other acts being considered as
15 aggravating factors. *See also In re Cassalia*, 172 Ariz. 372, 375, 843 P.2d 654,
16 657 (1992).
17

18 53. The duties violated are discussed above.
19

20 54. The parties have not stipulated in the Tender regarding Respondent’s
21 mental state, except for the admission that he knowingly failed to respond to the
22 State Bar’s numerous attempts to investigate the complaints in these matters. In
23 the Joint Memorandum, however, Respondent has conditionally admitted that his
24 conduct was “knowing.” Joint Memorandum at 4:17.
25

1 55. The fact that Respondent was held in contempt for failure to comply
2 with his child support obligations, however, establishes that he acted willfully in
3 violating the court order. The Arizona Supreme Court has held that “An
4 adjudication of contempt must be based on specific facts found which show
5 knowledge of the order, ability to comply with it, and contumacious conduct on
6 the part of the accused amounting to willful violation.” *Ellison v. Mummert*, 105
7 Ariz. 46, 459 P.2d 306 (1969).
8
9

10 56. Respondent has also conditionally admitted to violating Rule 53(c) of
11 the Rules of the Arizona Supreme Court, which requires a willful violation.
12

13 57. Respondent’s lack of diligence in the Shadowen matter had only the
14 potential of causing serious injury to the Juvenile. No actual injury (apart from
15 potential emotional anxiety) resulted, or was likely to result, given the County
16 Attorney’s decision not to prosecute the Juvenile for violating the restraining
17 order by riding the bus.
18

19 58. Respondent’s failure to account for and return unearned retainer in the
20 Shadowen matter caused at least potential injury in that any funds to be returned
21 by Respondent were delayed.
22

23 59. Respondent’s failure to comply with court orders regarding child
24 support caused serious injury to his children and to the judicial system.
25

1 60. The Hearing Officer finds that Respondent's violation of Rule 53(c), by
2 willfully violating a court's child support orders, is the most serious violation
3 under the theoretical framework analysis contained in the *Standards*.
4

5 61. Section 6.22 of the *Standards* provides that "Suspension is appropriate
6 when a lawyer knowingly violates a court order or rule, and there is injury or
7 potential injury to a client or a party, or interference with a legal proceeding."
8

9 62. The commentary to Section 6.22 of the *Standards* provides that:

10 In many cases, lawyers are suspended when they knowingly violate
11 court orders. Such knowing violations can occur when a lawyer fails
12 to comply with a court order that applies directly to him or her, as in
13 the case of lawyers who do not comply with a divorce decree
14 ordering spousal maintenance or child support.
15

16 63. Section 2.3 of the *Standards*, and its commentary, suggest that
17 suspension should generally be for a period of time equal to or greater than six
18 months.
19

20 **AGGRAVATING AND MITIGATING FACTORS**

21 64. This Hearing Officer has considered aggravating and mitigating factors
22 in this case, pursuant to *Standards* 9.22 and 9.32, respectively.
23

24 65. The Hearing Officer agrees with the parties that three aggravating
25 factors apply and should be considered in this matter:

1 (a) **Prior Disciplinary Offenses**: Respondent was suspended for three
2 months, effective June 2, 2001, for misconduct involving his trust
3 account (file nos. 98-1579, 98-1859 and 99-0042). He was reinstated on
4 October 31, 2001. He then was suspended (file nos. 01-1213 and 01-
5 2148) for six months and one day, effective July 31, 2003, in part for
6 practicing while on his three-month suspension. He has not filed for
7 reinstatement from that suspension. The conduct at issue in the two
8 client-related files (file nos. 03-1743 and 03-2037) in this proceeding
9 occurred before his current suspension began but while the case was
10 before the Disciplinary Commission and the Supreme Court. His own
11 child-support proceeding (file no. 03-1850) is ongoing, but the
12 misconduct began at least in 2003.

16 (c) **Pattern of Misconduct**: The conduct at issue in all of these three
17 cases generally involves Respondent's failure to act, either by
18 complying with court orders or rules (in the form of State Bar directives
19 to respond), by responding to clients or performing the work.

21 (e) **Bad-Faith Obstruction of the Disciplinary Proceeding by**
22 **Intentionally Failing to Comply with Rules or Orders of the**
23 **Disciplinary Agency**: As described above, Respondent knowingly and
24 repeatedly failed to respond to the State Bar.
25

1 66. This Hearing Officer agrees with the parties that there are no mitigating
2 factors.

3 PROPORTIONALITY REVIEW

4
5 Sanctions against lawyers must have internal consistency to maintain an
6 effective and enforceable system; therefore, cases that are factually similar must
7 be examined in arriving at the appropriate sanction. *In re Pappas*, 159 Ariz. 516,
8 526, 768 P.2d 1161, 1171, (1988). Therefore, the last step in determining if a
9 particular sanction is appropriate is to assess whether the discipline is
10 proportional to the discipline imposed in similar cases. *In re Peasley*, 208 Ariz.
11 27, 90 P.3d 764 at ¶ 61 (2004). Although precedent is useful, the discipline in
12 each case must be tailored to the facts of the case. *In re Scholl*, 200 Ariz. 222,
13 227, 25 P.3d 710, 715 (2001).

14
15 Analogous cases show that a suspension of six months and one day is
16 proportional and well within the appropriate range of sanctions in cases involving
17 client-related violations combined with a respondent's prior disciplinary history.
18

19 Cases Involving Failure to Pay Child Support³

20
21 In *In re George Brown*, No. 02-0918, the respondent was suspended for six
22 months and one day for after he was held in contempt on several occasions for
23

24
25 ³ The failure to pay child support is a very serious issue. In a recent case involving convicted murderer James Hamm, the Character & Fitness committee recommended against admission of Mr. Hamm in large part based upon his failure to pay child support.

1 failing to pay child support and spousal maintenance for over seven months. In
2 that case, the respondent's failure to cooperate with the State Bar was held to be
3 an aggravating factor, and there was no evidence supporting any mitigating
4 factors.
5

6 In *In re Cheadle*, Disciplinary Commission Nos. 98-1308, 98-1336, 98-
7 1517, 98-1820, 98-2243, 98-2491, 98-2607, 99-0123, 99-0839, 00-1847 and 00-
8 1948 (2001), the respondent was in arrears by over \$17,000 on court ordered
9 child support payments. He also had numerous other violations relating to
10 diligence, communication, and failure to cooperate with the State Bar. He was
11 suspended for three years. That case was more severe than the present action, in
12 that there were many more instances of misconduct, and greater harm to clients.
13
14

15 The Colorado Supreme Court⁴ has twice suspended attorneys for one year
16 and one day for willfully failing to pay child support. See *In re Green*, 982 P.2d
17 838, 840 (Colo. 1999); *People v. Hanks*, 967 P.2d 144, 145 (Colo. 1998).
18

19 The Minnesota Supreme Court indefinitely suspended an attorney for
20 failing to pay court ordered child support and spousal maintenance. *In re*
21 *Giberson*, 581 N.W.2d 351, 355 (Minn. 1998). Aggravating factors in that case
22
23
24

25 ⁴ Arizona courts look to discipline imposed in other states when there is little
Arizona case law with similar facts. *In re Zawada*, 208 Ariz. 232, 92 P.3d 862 at ¶ 26
(2004).

1 included the attorney's prior disciplinary history, and his failure to cooperate with
2 the disciplinary agency. *Id.* at 353.

3
4 Finally, the Oregon Supreme Court suspended an attorney for two years
5 where he was twice held in contempt for failing to pay child support, and failed to
6 cooperate in the bar's investigation of his conduct. *In re Conduct of Rhodes*, 13
7 P.3d 512 (Ore. 2000).

8
9 **Cases Involving Lack of Diligence and Failure to Communicate**

10 In *In re Counce*, SB-03-0071-D (2003), the lawyer was suspended for six
11 months and one day and given two years of probation upon reinstatement after he
12 was found to have violated ERs 1.1, 1.2, 1.3, 1.4, 1.16(d), 3.1 and 8.1(b) and Rule
13 51(h) and (i) by failing to diligently represent and communicate with his client,
14 failing to return the client's file upon termination of representation, and failing to
15 respond to the State Bar.

16
17 In *In re Oakley*, SB-03-0032-D (2003), the lawyer was suspended for one
18 years, placed on two years of probation and ordered to take the Professionalism
19 Course after he was found to have violated ERs 1.2, 1.3, 1.4, 1.16(b) and (d), 3.2,
20 8.1(b) and 8.4(d) and Rules 51(h) and (i) by failing to communicate with clients,
21 failing to return client files and provide accounting of fees, and failing to
22 cooperate with the State Bar.
23
24
25

1 An attorney with a prior disciplinary history was suspended for the same
2 amount of time, and ordered to pay restitution, for failing to respond to the State
3 Bar, disobeying court orders and failing to keep his address current with the State
4 Bar. He also failed to act diligently and communicate with clients, and then
5 retired and moved out of state without notifying his clients or protecting their
6 interests upon termination of representation. He was found to have violated ERs
7 1.3, 1.4, 1.16(b) and (d), 3.4(c), 8.1(b) and 8.4(d), and Rules 31(c)(3) and 51(e),
8 (h) and (i). *In re Apker*, SB-03-0029-D (2003).

11 **Other Cases Involving Violation of Court Orders**

12 Cases involving a respondent who not only had violated a court order but
13 also failed to respond to the State Bar also support the agreed-upon suspension of
14 six months and one day in this case.

16 In *In re Clark*, SB-03-0107-D (2003), the lawyer was suspended for 60
17 days and ordered to pay restitution for willfully violating a court order and
18 refusing to cooperate with the State Bar. He was found to have violated ERs 1.3,
19 1.4, 1.15(b), 1.16(d), 8.1(b) and 8.4(a) and Rules 51(e), (h), (i) and (k).

21 In *In re Bingham*, Disciplinary Commission No. 00-1769 (2002), the
22 respondent had been suspended attorney for failing to pay his dues and to
23 complete continuing legal education. He was suspended for an additional six
24 months and one day for violating a court order to act as a court appointed
25

1 arbitrator, and failing to respond to orders to show cause why he had not
2 conducted a hearing as ordered.

3
4 In *In re Merchant*, SB-00-0057-D (2000), the respondent was suspended
5 for six months and one day for willfully violating a court order to serve as a court
6 appointed arbitrator. The respondent had no disciplinary history, but failed to
7 participate in the disciplinary proceedings.

8
9 Overall, the Hearing Officer believes that the most analogous case is *In re*
10 *George Brown*, No. 02-0918. This case primarily involved failure to pay child
11 support. Although the attorney in that case had no prior disciplinary history, and
12 no diligence and communication issues, he never participated at all in the
13 disciplinary proceedings. The Hearing Officer also found that the respondent
14 violated ER 8.4(c) and engaged in dishonest behavior by wiretapping his wife's
15 telephone in the divorce proceeding. Here, although Respondent has received
16 prior discipline, and does have other violations, he did, belatedly, participate in
17 this disciplinary proceeding.
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20 **RECOMMENDATION**

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

1 Discipline by Consent and the Joint Memorandum in Support of Agreement for
2 Discipline by Consent providing for the following:

3
4 1. Respondent shall be suspended for a period of six months and one day,
5 effective 30 days after the date of the final judgment and order entered in this
6 matter.

7
8 2. Respondent shall be placed on probation for a period of two years upon
9 reinstatement.

10 3. Respondent shall submit to fee arbitration in File No. 03-1743
11 (Shadowens).

12
13 4. Respondent shall pay the costs and expenses incurred in this
14 disciplinary proceeding totaling \$687.50, as reflected on Exhibit "D" to the
15 Tender.

16 DATED this 4th day of February, 2005.

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19 

20 Daniel P. Beeks
21 Hearing Officer # 7M

22
23 Original filed with the Disciplinary Clerk
24 this 4th day of February, 2005.

25 Copy of the foregoing was mailed
this 4th day of February, 2005, to:

1 Chadwick M. Cord
2 7517 East Sundown Circle
3 Scottsdale, Arizona 85250-0001
4 Respondent

5 Patricia A. Sallen
6 State Bar of Arizona
7 111 West Monroe, Suite 1800
8 Phoenix, Arizona 85003-1742
9 Bar Counsel

10 by: 

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