

1 At all times relevant, Respondent was an attorney licensed to practice law
2 in the State of Arizona, having been admitted to practice in Arizona on October
3 22, 1994.
4

5 **File No. 03-1249**

6 1. Susan and Margery LaFreniere's ("LaFrenieres") rental home
7 burned after an electrical fire started in their car parked next to the home. The
8 LaFrenieres suffered considerable property damage and believed the fire was
9 caused by negligent repair to the alternator in the car. Respondent agreed to
10 represent them in a contingent fee case against their insurer for bad faith and
11 against the car dealer for the alleged negligent repair.
12

13 2. Respondent brought suit on behalf of the LaFrenieres and rendered
14 extensive services during the representation including conducting a multi-day
15 jury trial against the car dealer. Respondent incurred considerable costs in
16 terms of experts, depositions and other related preparation for the matter.
17 Ultimately, Respondent obtained a settlement from the insurer of which the
18 Complainants received \$12,000.00 out of a total of \$29,000.00, the difference
19 being Respondent's fee and the extensive costs that were incurred in the
20 negligence action.
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23 3. Although the final judgment in the case was signed on May 13,
24 2003, Respondent failed to provide an accounting of funds expended and
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1 received on behalf of the LaFrenieres until they filed a charge with the State
2 Bar. Respondent ultimately provided an accounting in September 2003.
3 Respondent subsequently admitted in the course of the investigation by the
4 State Bar that he also failed to enter into a written contingent fee agreement
5 with the LaFrenieres.
6

7 4. Respondent was ordered to diversion pursuant to Ariz.R.Sup.Ct.
8 54(b)5 and 55 for violations of ER 1.5(c) and ER 1.15 for, respectively, failing
9 to have a written fee agreement in a contingent fee case and for failing to
10 provide a client with an accounting concerning disbursement of settlement
11 proceeds.
12

13 5. Respondent initially accepted the order of diversion and on June 5,
14 2004 Respondent signed a Memorandum of Understanding ("MOU") providing
15 for terms of diversion. Bar counsel accepted and signed the MOU on June 10,
16 2004. By entering into the MOU, Respondent agreed to abide by its terms,
17 including a provision titled "Terms of Participation," which provides:
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21 *C. Member shall submit a report to LOMAP regarding Member's*
22 *compliance with the terms of this agreement every ninety days after*
the Member signs the agreement.

23 *D. Member shall timely respond to any State Bar inquiries.*

24
25 *E. Additionally, Member must fulfill the following requirements*
during the term of this agreement:

1
2
3 4. *Member shall advise LOMAP and the director of*
4 *membership records of the Bar, in writing, of any change in his*
5 *address of record or employment status.*

6
7 6. Pursuant to the MOU, Respondent agreed to meet with Law Office
8 Management Assistance Program ("LOMAP") staff at his home office on
9 September 28, 2004. However, when LOMAP staff member Tracy Ward
10 arrived at Respondent's home office, she discovered his home appeared to be
11 vacant and for sale. At that time, Respondent's phone number of record was
12 also not in service and no forwarding number was given. On September 30,
13 2004, Ms. Ward sent a letter to Respondent requesting he contact her by 5:00
14 P.M. October 6, 2004, to discuss the missed meeting, his failure to provide his
15 accurate contact information and his failure to provide a quarterly report
16 required by the terms of the MOU. Bar counsel also contacted the office of
17 Donald Yearin, Esq., with whom Respondent had previously practiced law, but
18 was informed Respondent had not communicated with their office recently nor
19 had Respondent provided them with an updated address and phone number.
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21

22 7. Since Respondent's missed appointment with LOMAP staff, Ms.
23 Ward, no response or any other communication has been received from
24 Respondent concerning this matter, nor have any of the letters sent to
25

1 Respondent by the LOMAP or bar counsel been returned by the United States
2 Postal Service as undeliverable.

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4 8. Accordingly, on October 8, 2004, the Probable Cause Panelist
5 (“Panelist”) vacated the Order of Diversion in the matter and issued an Order of
6 Probable Cause directing bar counsel to proceed with the filing of a formal
7 complaint.

8
9 9. Ms. Susan Lafreniere testified to Respondent’s failure to enter into
10 a written contingent fee agreement and failure to provide an accounting
11 concerning funds received and expended in the course of his representation of
12 Ms. Lafreniere and her sister. [Transcript of Hearing held March 21, 2005
13 (“Hr.Tr.”) 43:6 –57:18¹] Further, although in response to the investigation by
14 the State Bar, Respondent ultimately did provide an accounting to the State Bar,
15 it was not clear as to Ms. Lafreniere. [Hr.Tr 46:21-47:21]

16
17 10. The State Bar offered exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13
18 and 14 in support of the allegations in the Complaint and the same were
19 admitted into evidence. [Hr.Tr. 19:1 –19:9; Hr.Tr. 60:6 – 61:17]

20
21 11. Respondent entered into an agreement for a fee contingent on the
22 outcome of a matter for which services were to be rendered but failed to do so
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24
25 ¹ Hereafter, citations to the Transcript of Hearing will be identified as “Hr.Tr.
(page):(line).”

1 by way of a written fee agreement stating the method by which the fee would
2 be determined, including failing to identify in a written agreement the
3 percentage that would accrue to Respondent in the event of settlement, trial or
4 appeal, failing to state what expenses were to be deducted from the recovery
5 and failing to state whether such expenses were to be deducted before or after
6 the contingent fee was calculated. Further, upon conclusion of the contingent
7 fee matter, Respondent failed to provide the clients with a written statement
8 stating the outcome of the matter and upon securing a recovery for the clients,
9 failed to provide a written statement showing the remittance to the clients and
10 the method of its determination. In so doing, Respondent violated
11 Ariz.R.Sup.Ct. 42, ER 1.5(c). Further, by failing to promptly render a full
12 accounting concerning funds received on behalf of clients upon a request for
13 such an accounting by the clients Respondent violated ER 1.15(b).

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18 12. Thereafter, Respondent failed to comply with the terms of the
19 MOU by failing to submit a timely quarterly report, failing to respond to
20 inquiries from the State Bar and failing to provide membership records and
21 LOMAP with an his change of address. Accordingly, Respondent violated
22 conditions of his diversion and refused to cooperate with staff of the State Bar
23 acting in the course of that person's duties by failing to appear for an agreed
24 upon meeting with LOMAP staff. In so doing Respondent violated
25

1 Ariz.R.Sup.Ct. 53(d) (Grounds for Discipline: Evading Service or refusal to
2 cooperate) and 53(e) (Violation of a condition of probation or diversion).

3
4 **File No. 04-1177**

5 13. On July 9, 2004, Respondent's bank, Bank One, reported that
6 Respondent's trust account check number 462 in the amount of \$10,500 was
7 presented for payment against Respondent's client trust account at a time when
8 there were insufficient funds in the account. Bank One paid the item and
9 overdrew the account.
10

11 14. On July 16, 2004, Staff Examiner for the State Bar sent
12 Respondent a copy of the overdraft notice with request for a response to be filed
13 by August 6, 2004, addressing ER 1.15 (Safekeeping Property) and
14 Ariz.R.Sup.Ct. 43 and 44 (trust account rules).
15

16 15. Again, on July 27, 2004, Bank One reported that Respondent's
17 trust account check number 493 was presented for payment against
18 Respondent's client trust account at a time when there were insufficient funds
19 in the account. Bank One again paid the item, overdrawing the account.
20 However, Bank One did not indicate the amount of check 493.
21

22 16. On July 27, 2004, the Staff Examiner for the State Bar sent the
23 second overdraft notice to Respondent with a request for a response, extending
24 the date for Respondent's response to August 15, 2004.
25

1 17. When no response was received to her letter of July 27, 2004, the
2 Staff Examiner sent Respondent another letter on September 9, 2004, advising
3 Respondent that no response had been received and that a probable cause order
4 could be issued and sanctions imposed by virtue of Respondent's failure to
5 respond.
6

7 18. No response or any other communication has ever been received
8 from respondent concerning this matter, nor have any of the letters sent to
9 Respondent by the Staff Examiner been returned by the United States Postal
10 Service as undeliverable. As of the date of the Complaint herein Respondent
11 had failed to respond in any way to the State Bar's requests for a response to the
12 charges in this count.
13
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15 19. An Order of Probable Cause was issued on September 10, 2004.

16 20. The State Bar offered Exhibits 15, 16, 17, 18, 19, and 20 which were
17 accepted into evidence and support the allegations of the complaint. [Hr.Tr. 19:1
18 -19:9; Hr.Tr. 83:14 - 85:1]
19

20 21. The violations alleged in the complaint and deemed admitted by
21 virtue of Respondent's default include violations of Ariz.R.Sup.Ct. 42, ER 1.15,
22
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1 Rule 43(d) Trust Account Guidelines (in effect at the time)², including guidelines
2 1(b), 1(c), 1(d), 2(c), 2(d) and Rule 44.

3
4 22. Respondent failed to respond to the original charge or respond to
5 discovery in these formal discipline proceedings, even if the Hearing Officer
6 determines the facts alleged to not show all of the violations charged, certain
7 trust account violations are inherent in the facts alleged and deemed admitted
8 by virtue of Respondent's default. Inherent in the facts deemed admitted show
9 violations of Ariz.R.Sup.Ct. 42, ER 1.15 (Safekeeping Property) and Rule 43(d)
10 Trust Account Guidelines (in effect at the time), including Guideline 1(c)
11 (Internal controls within the lawyer's office must be adequate under the
12 circumstances to safeguard funds or other property held in trust).
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15 23. Respondent's conduct as enumerated herein also constituted
16 conduct prejudicial to the administration of justice in violation of ER 8.4(c) and
17 (d).
18

19 24. By knowingly failing to respond to a lawful demand for
20 information from a disciplinary authority, Respondent violated ER 8.1(b).
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24 ² Effective December 1, 2003, the Trust Account Guidelines were incorporated into Rule 43.
25 The Complaint erroneously referred to Guidelines in effect prior to December 1, 2003, when in
fact the Guidelines referred to were expressly set out, without any substantive changes
affecting the allegations in these proceedings, in Rule 43(d) effective December 1, 2003 as
Rule 43(d)(1.)B., C., D.; Rule 43(d)(2.)C., and Rule 43(d)(4.).

1 30. Bar counsel sent Respondent a charging letter on October 12,
2 2004, requesting Respondent address his apparent violations of Ariz.R.Sup.Ct.
3 42, ERs 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communications),
4 1.15 (Safekeeping Property), 1.16 (Declining or Withdrawing from
5 Representation), 3.2 (Expediting Litigation) and 8.4(d) (Conduct Prejudicial to
6 the Administration of Justice).
7

8 31. No response or any other communication has ever been received
9 from Respondent concerning this matter, nor were any of the letters sent to
10 Respondent by the Bar Counsel returned by the United States Postal Service as
11 undeliverable. Respondent failed to respond in any way to the State Bar's
12 requests for a response to the charges in this count.
13
14

15 32. An Order of Probable Cause was issued on November 9, 2004, and
16 nunc pro tunc to correct a clerical error on November 16, 2004. The original
17 Order of Probable Cause issued November 9, 2004, was returned as
18 undeliverable by the United States Postal Service. The Order of Probable
19 Cause Nunc Pro Tunc issued November 16, 2004, was mailed to Respondent's
20 address of record and a possible alternative address identified by a Staff
21 Investigator for the State Bar.
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23

24 33. Mr. Adamkiewicz testified as to his original engagement of
25 Respondent to handle a personal injury claim arising out of a serious

1 automobile accident, the deterioration of communications with Respondent and
2 ultimately Respondent's abandonment of the case. [Hr.Tr. 9:11 – 23:4]

3
4 34. Mr. Adamkiewicz also testified as to efforts he was currently
5 undertaking through other counsel to have his lawsuit re-instated. [Hr. Tr. 23:5-
6 24:20].

7
8 35. The State Bar offered exhibits 21, 22, 23, 24 and 25, which were
9 admitted into evidence and support the charges alleged in the complaint.
10 [Hr.Tr. 19:1 –19:9; Hr.Tr. 26:13 – 29:6]

11 36. Respondent's conduct as deemed admitted, as confirmed by the
12 testimony of the client and as supported by documentary evidence submitted by
13 the State Bar proves Respondent failed to consult with a client concerning a
14 representation in violation of ER 1.2 (Scope of Representation and Allocation of
15 Authority between Client and Lawyer), failed to exercise diligence in
16 representing a client in violation of ER 1.3 (Diligence), failed to communicated
17 with a client concerning the matter in violation of ER 1.4 (Communications),
18 failed to safeguard the client's property in the form of the client's file and related
19 materials in violation of ER 1.15 (Safekeeping Property), failed to withdraw from
20 a representation properly by taking steps to safeguard the client's interests in
21 violation of ER 1.16 (Declining or Terminating Representation), failed to
22 expedite litigation consistent with the interests of his client in violation of ER 3.2
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1 (Expediting Litigation), failed to respond to or cooperate with the State Bar in
2 violation of ER 8.1(b) (Bar Admission and Disciplinary Matters: knowingly
3 failing to respond to a lawful demand for information from a disciplinary
4 authority) and Rules 53(d) (Grounds for Discipline: Evading Service or refusal to
5 cooperate) and 53(f) (Grounds for Discipline: Failure to furnish information) and
6 in so doing violated ER 8.4(d) (Misconduct-prejudicial to the administration of
7 justice).
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10 **File No. 04-1615**

11 37. On September 23, 2004, Respondent's bank, Bank One, reported that
12 a check was presented for payment against Respondent's client trust account No.
13 26906206 at a time when there were insufficient funds in the account. Bank One
14 paid the item and overdrew the account.
15

16 38. On September 27, 2004, Staff Examiner for the State Bar sent
17 Respondent a copy of the overdraft notice with request for a response to be filed
18 within 10 days, addressing ER 1.15 (Safekeeping Property) and Ariz.R.Sup.Ct. 43
19 and 44 (trust account rules), with specific reference to Ariz.R.Sup.Ct. 43(d).
20

21 39. When no response was received to her letter of September 27, 2004,
22 the Staff Examiner sent Respondent another letter on October 21, 2004, advising
23 Respondent that no response had been received and that a probable cause order
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1 could be issued and sanctions imposed by virtue of Respondent's failure to
2 respond.

3
4 40. As of the date of the Complaint Respondent had failed to respond in
5 any way to the State Bar's requests for a response to the charges in this count.

6 41. An Order of Probable Cause was issued on December 23, 2004.

7
8 42. The State Bar offered Exhibits 26, 27, 28 and 29, which were
9 accepted into evidence and support the allegations of the complaint. [Hr.Tr. 19:1
10 -19:9; Hr.Tr. 85:2 - 86:14]

11 43. Respondent's conduct as alleged in this count violated
12 Ariz.R.Sup.Ct. 42, ER 1.15, Rule 43 and Rule 44.

13
14 44. By knowingly failing to respond to a lawful demand for information
15 from a disciplinary authority, Respondent violated Ariz.R.Sup.Ct. 42, ER 8.1(b).

16
17 45. By failing to cooperate with staff of the state bar acting in the course
18 of their duties and by failing to furnish information in response to a request from
19 bar counsel and the probable cause panelist, made pursuant to these rules for
20 information relevant to matters under investigation concerning Respondent's
21 conduct, Respondent violated Ariz.R.Sup.Ct. 53(d) and 53(f) respectively.
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File No. 04-1922

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2 46. In the year 2001, Dana Varney (“Mr. Varney”) paid Respondent
3 \$4,000 as an advance against a fee to commence a lawsuit, the balance to be a
4 contingent fee.
5

6 47. Mr. Varney found that Respondent did not appear for oral argument
7 in the matter in August 2004 and that a motion to dismiss was pending in the case
8 based on Respondent’s failure to comply with discovery rules in the matter.
9

10 48. Mr. Varney also called Respondent repeatedly over a period of
11 months, but received no response.

12 49. On November 24, 2004, bar counsel sent a letter to Respondent
13 demanding a response to the charge within seven (7) days, requesting Respondent
14 address Ariz.R.Sup.Ct. 42, and in particular ER 1.2 (Scope of Representation and
15 Allocation of Authority between Client and Lawyer), ER 1.3 (Diligence), 1.4
16 (Communications), 1.15 (Safekeeping Property), ER 3.2 (Expediting Litigation),
17 8.4(d) (Misconduct-prejudicial to the administration of justice) and Rule 53(c)
18 (Grounds for Discipline: Willful violation of any rule or any order of the court).
19
20

21 50. As of the date of the Complaint Respondent had failed to respond in
22 any way to the State Bar’s requests for a response to the charge in this count.
23

24 51. Mr. Varney testified at hearing consistent with the charges alleged
25 in the Second Complaint, as to the harm already caused by Respondent’s

1 abandonment of his case, as to the potential harm he may suffer in the future.
2 [Hr.Tr. 62:13-83:11] In addition, Mr. Varney testified concerning \$3,000 he
3 paid to Respondent for services that were never completed. [Hr.Tr. 63:22 –
4 65:21]. Mr. Varney also testified in support of Exhibit 35, offered by the State
5 Bar and accepted into evidence. Mr. Varney testified that consistent with
6 Exhibit 35 he paid Respondent \$3,000 as an advanced fee, a net amount of \$550
7 for the services of Scott Miskel as an expert, \$3,000 to successor counsel, Mark
8 Brinton to handle the representation and \$1,500 to Mr. Brinton to hire an
9 expert. All total, at this point Mr. Varney's testimony is that he has incurred a
10 net financial "injury" to the date of the hearing as a result of Respondent's
11 misconduct in the amount of \$8,050.
12
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15 52. The State Bar also offered exhibits 30, 31, 32, 33, 34 and 35,
16 which were admitted into evidence and support the charges alleged in the
17 Complaint. [Hr.Tr. 19:1 –19:9; Hr.Tr. 82:16 – 83:11] The State Bar also
18 offered exhibit 41, which Mr. Varney testified represented the \$3,000 check he
19 gave Respondent to commence his representation although it appears exhibit 41
20 was not expressly admitted into evidence by the Hearing Officer. [Hr.Tr. 64:14
21 – 66:10]. In this regard, the Hearing Officer has reviewed the Transcript and
22 orders Nunc Pro Tunc that Exhibit 41 is admitted in evidence.
23
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1 56. Mr. Shaver also called Respondent later on October 6, 2004, and left
2 a message. Respondent returned Mr. Shaver's call on October 8, 2004,
3 acknowledging Mr. Ellis' directions to turn over his files, indicating he would be
4 out of town until October 12, 2004, at which time Respondent indicated he would
5 call Mr. Shaver.
6

7 57. On October 15, 2004, Mr. Shaver had not heard from Respondent
8 and called again discovering that Respondent's voice mail was full. Mr. Shaver
9 then drafted a letter to Respondent requesting the files and mailing it to
10 Respondent's address of record. A few hours later, Respondent called and agreed
11 to meet at 4:30 p.m. on the afternoon of October 18, 2004. Respondent promised
12 to call and give an address where they could meet. However, Respondent never
13 called.
14

15 58. On October 20, 2004, Mr. Shaver wrote another letter to Respondent
16 that was returned with a notation that the Respondent was no longer at the
17 address. Mr. Shaver immediately called Respondent and left a voice message that
18 was not returned. Mr. Shaver also called and left voice messages for Respondent
19 on October 27, November 1, November 4, and November 5, 2004, but received
20 no responses.
21

22 59. Mr. Shaver reports that Respondent has the originals of Mr. Ellis'
23 files including original documents provided by Mr. Ellis. Mr. Shaver reports that
24
25

1 his ability to handle Mr. Ellis' representation is being hindered by Respondent's
2 inability or unwillingness to turn over the files.

3
4 60. Bar counsel sent Respondent a charging letter on December 2, 2004,
5 requesting Respondent address his apparent violations of Ariz.R.Sup.Ct. 42, ERs
6 1.2 (scope of representation), 1.3 (diligence), 1.4 (communications), 1.15
7 (safekeeping property), 1.16 (declining or withdrawing from representation), 3.2
8 (expediting litigation) and 8.4(d) (misconduct involving prejudice to the
9 administration of justice).

10
11 61. No response or any other communication has ever been received by
12 the State Bar from Respondent concerning this matter. Although the letter and
13 Probable Cause Order sent by the State Bar to Respondent at his address of record
14 have been returned by the United States Postal Service as undeliverable, copies
15 sent to an alternate address identified as possibly that of Respondent, P.O. Box
16 26328, Phoenix, Arizona, 85068, have not been returned as undeliverable. As of
17 the date of the Complaint Respondent had failed to respond in any way to the
18 State Bar's requests for a response to the charges in this count.

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21 62. An Order of Probable Cause was issued on December 15, 2004.

22
23 63. Ernest Shaver testified at the hearing as to his knowledge of the
24 matter and as to facts supporting the charges alleged in the Complaint. [Hr.Tr.
25 32:25 – 40:9] The State Bar also offered exhibits 36, 37, 38, 39, and 40, which

1 were accepted into evidence and also support the facts alleged in the Complaint.

2 [Hr.Tr. 19:1 –19:9; Hr.Tr. 40:10 – 40:25]

3
4 64. Respondent failed to consult with a client concerning a
5 representation in violation of ER 1.2 (Scope of Representation and Allocation of
6 Authority between Client and Lawyer), failed to diligently pursue the matter in
7 violation of ER 1.3 (Diligence), failing to communicated with the client
8 concerning the matter in violation of ER 1.4 (Communications), failing to
9 safeguard the client's property in the form of the client's file and related
10 documents in violation of ER 1.15 (Safekeeping Property), failed to withdraw
11 from a representation properly by taking steps to safeguard the client's interests in
12 violation of ER 1.16 (Declining or Terminating Representation), failed to
13 expedite litigation in the interests of his client in violation of ER 3.2 (Expediting
14 Litigation), failed to respond to or cooperate with the State Bar in violation of ER
15 8.1(b) (Bar Admission and Disciplinary Matters: knowingly failing to respond to
16 a lawful demand for information from a disciplinary authority), Rules 53(d)
17 (Grounds for Discipline: Evading Service or refusal to cooperate) and 53(f)
18 (Grounds for Discipline: Failure to furnish information). Further, Respondent's
19 conduct in all the foregoing respects constituted conduct prejudicial to the
20 administration of justice in violation of Ariz.R.Sup.Ct. 42, ER 8.4(d)
21 (Misconduct-prejudicial to the administration of justice).
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1 **ABA STANDARDS**

2 The *ABA Standards* list the following factors to consider in imposing the
3 appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the
4 actual or potential injury caused by the lawyer's misconduct, and (4) the
5 existence of aggravating or mitigating circumstances. *ABA Standard 3.0*.
6

7 This Hearing Officer considered *Standard 4.0 (Violation of Duties Owed*
8 *to Clients)* in determining the appropriate sanction warranted by Respondent's
9 misconduct. *Standard 4.42 (Lack of Diligence)* specifically provides:
10

11 Suspension is generally appropriate when:

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

17 As to Respondent's mental state, this Hearing Officer determined that he
18 acted "knowingly". The basis of this finding is that the facts alleged in the
19 Complaint deemed admitted by default give rise to a reasonable inference in this
20 regard.

21 Injury to Respondents' clients consist of financial harm as more fully set
22 forth in paragraph 13, 14, 15, 16, 33, 34, 37, 38, 51, 52 and Exhibits 21-40. The
23 Respondent delayed in accounting to and paying clients. The Respondent
24 received funds from the client, but failed to use the funds for the use promised,
25 failed to adequately prosecute the matter and the client received little or no value

1 for his payments to the Respondent. The Respondent failed to diligently
2 prosecute a personal injury claim and this resulted in a dismissal of a client's
3 lawsuit. The Respondent overdrew his attorney's trust account and it appears that
4 the bank without reimbursement paid the overdrafts. The Respondent failed to
5 cooperate with counsel thus delaying subsequent counsel's handling of the
6 matter.
7

8 AGGRAVATING AND MITIGATING FACTORS

9
10 This Hearing Officer then considered aggravating and mitigating factors in
11 this case, pursuant to *Standards* 9.22 and 9.32, respectively. Seven factors are
12 present in aggravation: 9.22(a) prior disciplinary offenses, (b) dishonest or selfish
13 motive, (c) a pattern of misconduct, (d) multiple offenses, (e) bad faith
14 obstruction of the disciplinary proceeding by intentionally failing to comply with
15 rules or orders of the disciplinary agency, and (i) substantial experience in the
16 practice of law. There are no factors in mitigation.
17

18 PROPORTIONALITY REVIEW

19
20 To have an effective system of professional sanctions, there must be
21 internal consistency, and it is appropriate to examine sanctions imposed in cases
22 that are factually similar. In re Shannon, 179 Ariz. 52, 71, 876 P.2d 548, 567
23 (1994), (quoting In re Wines, 135 Ariz. 203, 207 (1983)). However, the
24 discipline in each case must be tailored to the individual case, as neither
25

1 perfection nor absolute uniformity can be achieved. Matter of Riley, 142 Ariz.
2 604, 615 (1984).

3
4 The proportionality analysis provided by the State Bar supports disbarment
5 as the appropriate sanction for Respondent's conduct deemed admitted by default.
6 This Hearing Officer has independently considered previous cases which support
7 that a lengthy suspension is also within the range of an appropriate sanction for
8 similar misconduct. While no cases were directly on point, the following cases
9 were instructive for consideration of an appropriate length of suspension.
10

11 The State Bar has requested disbarment. The Hearing Officer does not
12 agree. The Hearing Officer has reviewed a number of cases that resulted in
13 suspension rather than disbarment. The distinguishing feature in these
14 "suspensions by consent cases" is that the suspensions were by consent. We do
15 not know Mr. Hoover's motivations as to the reasons he allowed the Complaint to
16 go unanswered and a default entered. Perhaps, he did so as a tacit consent to his
17 misconduct. The Hearing Officer assumes that the "suspensions by consent"
18 cases were the result of an answer being filed, the charges contested and the case
19 settled by negotiations. A default by Mr. Hoover saved time and money in
20 prosecuting the Complaint against Mr. Hoover. The conduct of the lawyers in the
21 "suspension by consent" cases, other than the fact that the lawyer consented to a
22 suspension, are not any less egregious than Mr. Hoover's conduct. Based on the
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1 forgoing the Hearing Officer declines to disbar Mr. Hoover in favor of
2 suspension, probation and restitution.

3
4 The following cases convince the Hearing Officer that based on
5 proportionality analysis a three year suspension is appropriate. In *Matter of*
6 *Augustine*, 178 Ariz. 133, 871 P.2d 254 (1994), a two year suspension was
7 imposed for failing to have plaintiff client's complaint served on defendant,
8 allowing client's cases to be dismissed for lack of prosecution, failing to inform
9 clients that their cases were dismissed, failing to communicate with clients,
10 failing to adequately investigate client's case, and failing to cooperate with the
11 State Bar's investigation of these matters. Augustine conduct violated ERs 1.1,
12 1.3, 1.4, 3.2 and SCR's 51(h) and (i).

13
14
15 In *Matter of Whitehead*, SB-04-0151-D (2003), an Agreement for a four
16 year suspension and two years of probation (LOMAP) and restitution was
17 accepted for violating ERs 1.5, 1.15(b), 1.16(d), 8.1(b), 8.4(c) and (d) and SCR's
18 51(h) and (i). In multiple client matters, Whitehead inappropriately dealt with
19 client property, failing to timely provide accountings to clients, failing to timely
20 refund unearned advanced fees, and failing to respond to the State Bar's
21 investigation.

22
23
24 In *Matter of Weisling*, SB-01-0038-D (2001), an Agreement for a 2 year
25 suspension and restitution was accepted for failing to communicate and diligently

1 represent clients, failing to protect the client's interests upon termination of
2 representation and failing to cooperate with the State Bar's investigation in
3 violation of ERs 1.2, 1.3, 1.4, 1.15(b), 1.16(d), 3.2, 8.1(b), 8.4(d) and SCRs 51(h)
4 and (i).
5

6 In *Matter of Silkey*, SB-02-0084-D (2002), an Agreement for a four year
7 suspension and restitution was accepted for taking retainers from clients and then
8 performing little or no work on the client's behalf, essentially abandoning his
9 clients and failing to provide notification to his clients that his office had moved
10 in violation of ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 1.16(d), 3.2, 8.1(b), 8.4,
11 8.4(c) and (d) and SCRs 51(h) and (i).
12

13 In *Matter of Hart*, SB-02-0119-D (2002), an Agreement for a 2 year
14 suspension and two years of probation was accepted for failing to diligently
15 represent his clients, failing to adequately communicate with his clients, failing to
16 provide an accounting when requested by a client, failed to take the steps
17 necessary upon termination of representation to protect his clients' interests,
18 mishandling of trust account funds, commingling personal funds with client funds
19 in his trust account, failing to keep accurate trust account records and failing to
20 respond to bar counsel's inquiries during the State Bar's investigation. Hart's
21 conduct violated ERs 1.1, 1.2, 1.3, 1.4, 1.15(a) & (b), 1.16(d), 8.1(a) & (b),
22 8.4(d), and SCRs 43 (a) & (d), 44(a) and 51(h) & (i).
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4 (1994).

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

10 Upon consideration of the facts, application of the *Standards*, including
11 aggravating and mitigating factors, and a proportionality analysis, this Hearing
12 Officer recommends the following:

- 13 1. Respondent shall be suspended for a period of three years.
- 14 2. Respondent shall be placed on probation for a period of two years upon
15 reinstatement and upon reinstatement he shall be required to be involved with
16 LOMAP/MAP.
17
- 18 3. The Respondent as a condition of reinstatement shall make restitution to
19 Mr. Varney and to Mr. Ellis for the fees they paid to Respondent and Respondent
20 shall make restitution to the Bank for any trust account overdrafts (and related
21 administrative costs) paid by the Bank.
22
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25

1 4. Respondent shall pay the costs and expenses incurred in this
2 disciplinary proceeding.

3 DATED this 16th day of May, 2005.

4
5 
6 Stanley R. Lerner
7 Hearing Officer 7V

8
9 Original filed with the Disciplinary Clerk
10 this 16th day of May, 2005.

11 Copy of the foregoing was mailed
12 this 16th day of May, 2005, to:

13 Stewart P. Hoover
14 Respondent
15 6607 North Scottsdale Road, Suite H-102
16 Scottsdale, AZ 85250-4421

17 and

18 Stewart P. Hoover
19 Respondent
20 P.O. Box 26328
21 Phoenix, AZ 85068

22 and

23 Stewart P. Hoover
24 Respondent
25 15443 North First Street
Phoenix, AZ 85022

Phoenix, AZ 85016-6288

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by: P. Williams

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