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

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

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4 IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)

No.: 04-0600, 04-0822, 04-0818
04-0331

5 **JESSE R. MIRANDA,**)
Bar No. 005265)

HEARING OFFICER'S REPORT

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RESPONDENT.)

I. PROCEDURAL HISTORY

The State Bar filed a Complaint on December 1, 2004 premised on four probable cause orders dated July 26, 2004. Respondent did not file an answer and the Disciplinary Clerk filed a Notice of Default on January 6, 2005. Respondent still did not file an answer to the Complaint and an Entry of Default was filed on January 27, 2005. Neither party asked to be heard in mitigation/aggravation and, therefore, no mitigation/aggravation hearing was held. The Hearing Officer requested briefs regarding sanctions be filed no later than March 18, 2005. The State Bar filed a Brief Re Recommended Sanction on March 18, 2005 but Respondent filed nothing. No hearing has been held.

Pursuant to Rule 57(d), Ariz.R.S.Ct., with Respondent's failure to answer the Complaint against him, all allegations in the Complaint are deemed admitted.

II. FINDINGS OF FACT

1. At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted on April 22, 1978. Respondent has been suspended for various signature and non-payment reasons from April 23, 1999 through May 13, 1999, from May 14, 2004 through July 7, 2004, and from October 22, 2004 through the present.

COUNT ONE (File No. 04-0600)

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2 2. Beginning in 2000, Respondent represented Ernesto M. Yanes on a personal injury
3 claim resulting from an auto accident.

4 3. The matter resulted in an arbitration hearing on June 14, 2001. The arbitrator
5 awarded Mr. Yanes \$3,161.26 in medical damages and property damages of "up to" \$2,433.09. The
6 arbitrator did not award Mr. Yanes any damages for pain and suffering.

7 4. On July 2, 2001, the defendant moved to amend the arbitration award to exclude the
8 award for property damages. Respondent did not file a response on behalf of Mr. Yanes.

9 5. The arbitrator amended the award to exclude any property damages, leaving an
10 award of only the \$3,161.26 in medical damages.

11 6. Respondent later gave Mr. Yanes a check for \$2,000 as his share of the proceeds.

12 7. When Mr. Yanes expressed his unhappiness with the amount, Respondent agreed to
13 appeal the matter. Mr. Yanes returned his portion of the settlement to Respondent.

14 8. Respondent filed an appeal from the arbitration award on July 9, 2001.

15 9. Respondent thereafter took no steps to pursue the appeal.

16 10. On January 16, 2003, Respondent filed a motion to dismiss the appeal, claiming that
17 the parties had resolved the matter.

18 11. Mr. Yanes and/or his brother called Respondent repeatedly to inquire about the status
19 of the case and the money Mr. Yanes had returned to Respondent, but Respondent failed to respond
20 to their inquiries.

21 12. In early 2004, Mr. Yanes confronted Respondent at his office. Respondent advised
22 Mr. Yanes that his money had been "lost."

23 13. At that time, Respondent agreed to send Mr. Yanes his file and other legal papers,
24 but never did so.

COUNT THREE (File No. 04-0818)

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2 26. In late 2003, Respondent agreed to help Vanessa Villa sell her house at 3407 W.
3 Roma, Phoenix, so that Ms. Villa could avoid foreclosure.

4 27. At Respondent's direction, Ms. Villa signed a quit claim deed dated January 13,
5 2004 and gave Respondent the keys to the house.

6 28. Ms. Villa attempted to contact Respondent about the status of her house, but
7 Respondent did not return her calls. He finally returned one call and claimed that a gas problem
8 prevented the sale from closing.

9 29. Ms. Villa thereafter learned that Respondent, without her permission, had let a
10 woman and her small children live in the house for approximately three months.

11 30. Respondent never compensated Ms. Villa for the time the house was occupied by the
12 woman and her small children.

13 31. Ms. Villa visited the property on one occasion to try to ascertain the status of the
14 woman and her children. Upon her arrival, she encountered another woman who identified herself
15 to Ms. Villa as "Birdie." "Birdie" advised that she worked for Respondent and was handling the
16 paperwork for the sale of the home.

17 32. During that visit to the property, Ms. Villa discovered that a \$500 lawn mower and
18 \$300 worth of landscaping tools were missing. She also discovered that some of her furniture had
19 been damaged and was shoved into a backyard storage facility.

20 33. When she confronted Respondent about the missing and damaged property, he failed
21 to address any of her concerns.

22 34. Ms. Villa received notices that the property would be foreclosed on. "Birdie"
23 assured her that the sale would close before the foreclosure occurred.

24 35. At some point, "Birdie" advised Ms. Villa, at Respondent's direction, that the sale

1 would not be consummated and that her only solution was to file for bankruptcy protection.

2 36. Ms. Villa made many subsequent unsuccessful attempts to contact Respondent to
3 discuss the matter.

4 37. Based on Respondent's direction, Ms. Villa, in April 2004, filed a Chapter 13
5 bankruptcy petition.

6 38. The bankruptcy case was dismissed shortly thereafter.

7 39. The State Bar sent Ms. Villa's charge to Respondent by letter dated May 27, 2004,
8 and directed him to respond within 20 days. Respondent did not submit a response to that letter.

9 40. The State Bar sent a second letter dated June 24, 2004, asking again that Respondent
10 respond to Ms. Villa's charge. Respondent did not respond to that letter.

11 41. According to records from the Maricopa County Recorder's Office, Respondent, on
12 June 6, 2004, signed a quit claim deed conveying Ms. Villa's property back to her. This document
13 was recorded on June 16, 2004.

14 42. Respondent is not a real estate agent licensed in Arizona.

15 **COUNT FOUR (File No. 04-0331)**

16 43. Isabel Addicott hired Respondent to serve as attorney for the estate of her
17 companion, Warren Snow, who died in April 2001. Mr. Snow left most of his substantial assets to
18 Ms. Addicott.

19 44. Mr. Snow had earlier hired Respondent to handle a title problem with a
20 condominium or townhouse at 443 E. Hidalgo, Phoenix, owned by Mr. Snow and Ms. Addicott.

21 45. Respondent was to pursue the title problem with the condominium or townhouse;
22 resolve tax problems for both Ms. Addicott and Mr. Snow; handle the tax returns for Mr. Snow's
23 estate; liquidate various assets of Mr. Snow's estate, including both valuable personal property and
24 real estate; and set up and fund a trust account for Ms. Addicott's daughter.

1 46. Respondent sold Mr. Snow's house for approximately \$375,000 in December 2001.

2 47. After the house sold, Respondent asked to borrow \$100,000 from the sale proceeds
3 to invest. Ms. Addicott loaned him the money.

4 48. Ms. Addicott has no documentation of the \$100,000 loan to Respondent.
5 Respondent did not advise her to seek independent legal advice.

6 49. Respondent took possession of many of Mr. Snow's valuable possessions, including
7 10 to 15 guns; 233 first-edition books, dating from 1850; prospecting tools; cast-iron kitchenware; a
8 pickup truck; a Jeep; and his childhood stamp collection.

9 50. Certain of the personal property was supposed to have been donated to a charity.
10 Respondent advised Ms. Addicott that he gave the personal property to a thrift store because he
11 claimed Ms. Addicott did not have the funds to have the property appraised. Ms. Addicott believes
12 that Respondent actually sold the property and retained the proceeds. Despite her requests,
13 Respondent has never given Ms. Addicott an accounting of how he disposed of the property or any
14 resulting funds.

15 51. Respondent took possession of original certificates of stock, worth \$140,000, in Eli
16 Lilly and IBM and liquidated the stocks. After repeated requests by Ms. Addicott, he refused to
17 give her an accounting the resulting funds.

18 52. Respondent took possession of Mr. Snow's tax records, dating from 2000 to the
19 present, and has refused to return them to Ms. Addicott.

20 53. Respondent took possession of title to a mobile home owned by Ms. Addicott and
21 has refused to return it to her.

22 54. Respondent also took possession of two original paintings and an antique mirror that
23 he was to hold in safekeeping for Ms. Addicott. Respondent no longer has possession of those three
24 pieces of personal property.

1 55. On or about May 21, 2002, Respondent assumed the role of personal representative
2 of Mr. Snow's estate, without Ms. Addicott's permission.

3 56. With at least part of the assets of Mr. Snow's estate, Respondent was to set up an
4 account at Compass Bank to which Ms. Addicott would have access, including a debit card.

5 57. Respondent never set up the Compass Bank account for Ms. Addicott. Instead, he
6 periodically disbursed funds to her out of his client trust account at Bank of America. For example,
7 on January 15, 2004, Respondent wrote Ms. Addicott a check for \$1,800 out of his client trust
8 account. With the check for \$1,800, he sent her \$200 in cash. In addition, on March 9, 2004,
9 Respondent wrote a check to Ms. Addicott for \$2,500, again out of his client trust account.

10 58. Respondent invested Ms. Addicott's funds by buying five properties and three flower
11 shops.

12 59. Respondent is not a real estate agent licensed in Arizona.

13 60. Respondent has liquidated the Eli Lilly and IBM stock and retained the proceeds.

14 61. Respondent was to use some part of the funds resulting from Mr. Snow's estate to set
15 up a trust account (the "MLS Trust") for Ms. Addicott's daughter. Respondent failed to set up or
16 fund the MLS Trust.

17 62. Respondent, as personal representative of Mr. Snow's estate, sold the condominium
18 or townhouse at 443 E. Hidalgo, Phoenix, to his son, Anthony Duran. The sales agreement is dated
19 September 3, 2003.

20 63. Since September 2003, Respondent has refused to return Ms. Addicott's telephone
21 calls or to meet with her as she has requested.

22 64. The State Bar sent Ms. Addicott's charge to Respondent by letter dated March 3,
23 2004, and directed him to respond within 20 days. Respondent did not submit a response to that
24 letter.

1 1.3, 1.4, 3.2, 1.15(a) and (b),² 1.16(d), 8.1(b) and 8.4(c), and Rules 43, 44 and 53(d) and (f),
2 Ariz.R.S.Ct.

3 **Count Two** – Respondent’s conduct violated Rule 42, Ariz.R.S.Ct., specifically ERs 1.2(a),
4 1.3, 1.4, 3.2, 1.15(a) and (b), 1.16(d), 8.1(b) and 8.4(c) and (d), and Rules 43, 44 and 53(d) and (f),
5 Ariz.R.S.Ct.

6 **Count Three** – Respondent’s conduct violated Rule 42, Ariz.R.S.Ct., specifically ERs
7 1.8(a), 1.15(a), 1.16(d), 8.1(b) and 8.4(c), and Rules 44 and 53(d) and (f), Ariz.R.S.Ct.

8 **Count Four** – Respondent’s conduct violated Rule 42, Ariz.R.S.Ct., specifically ERs 1.2(a),
9 1.3, 1.4, 1.7(b), 1.8(a), 3.2, 1.15(a), (b) and (e), 1.16(d), 8.1(b), 8.4(c) and (d), and Rules 43, 44 and
10 53(d) and (f), Ariz.R.S.Ct.

11 12 **IV. ABA STANDARDS**

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

17 Several ABA *Standards*, all calling for the presumptive sanction of disbarment, apply to
18 Respondent’s conduct in these four cases. The applicable *Standards* are 4.1 (failure to preserve
19 client property); 4.3 (failure to avoid conflicts of interest); 4.4 (lack of diligence); 4.6 (lack of
20 candor); and 5.1 (failure to maintain personal integrity).

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24 ² Because all or virtually all of the conduct occurred before December 1, 2003, this allegation references ER 1.15 as it
existed prior to that date. As of December 1, 2003, ER 1.15(b) was re-codified, with minor changes, as ER 1.15(d).

1 **1. Failure to preserve client property**

2 *Standard 4.11* calls for disbarment when a lawyer “knowingly converts client property and
3 causes injury or potential injury to a client.”

4 Respondent clearly took property from clients and caused injury. In file no. 04-0600,
5 Respondent took Mr. Yanes’ \$2,000 and promised to appeal his personal injury case and not only
6 never followed through with doing so, but never gave Mr. Yanes any money, even though he filed a
7 notice of settlement. In file no. 04-0822, Respondent took the money from Mr. Jimenez intended
8 for settlement, but never tendered it to the opposing party, resulting in Mr. Jimenez being sued and
9 his bank account garnished. In file no. 04-0818, Respondent took title to Ms. Villa’s property,
10 allowed tenants to live in it without compensation to Ms. Villa and resulting in loss of her personal
11 property. In file no. 04-0331, he took money and valuable personal property, including securities,
12 from Ms. Addicott and Mr. Snow’s estate.

13 **2. Failure to avoid conflict of interest**

14 *Standard 4.31(a)* provides that disbarment is generally appropriate when a lawyer, without
15 the client’s informed consent,

16 engages in representation of a client knowing that the lawyer’s interests are
17 adverse to the client’s with the intent to benefit the lawyer or another, and
 causes serious or potentially serious injury to the client[.]

18 Respondent has engaged in knowing and blatant self-dealing and conflict of interest. In file
19 no. 04-0818, he took possession of Ms. Villa’s house when she engaged him to sell it and, rather
20 than selling it, allowed other people to live in it. In file no. 04-0331, he not only borrowed
21 \$100,000 from Ms. Addicott – without any documentation – but also sold real property owned by
22 the client to Respondent’s own son, and converted Ms. Addicott’s assets to buy Respondent’s own
23 properties and businesses.

1 **3. Lack of diligence**

2 *Standard 4.41(b)* provides that disbarment is generally appropriate when a lawyer
3 “knowingly fails to perform services for a client and causes serious or potentially serious injury to a
4 client[.]”

5 In file no. 04-0600, Respondent failed to follow through with appealing Mr. Yanes’ personal
6 injury case. In file no. 04-0822, Respondent failed to settle Mr. Jimenez’s case as Mr. Jimenez
7 directed him to, resulting in a default judgment against Mr. Jimenez. In file no. 04-0818,
8 Respondent failed to sell Ms. Villa’s house, thus causing her to file bankruptcy. In file no. 04-0331,
9 Respondent failed to pursue and complete the litigation involving the property at 445 E. Hidalgo,
10 Phoenix; failed to donate the personal property to a charity; and failed to establish a trust for
11 Ms. Addicott’s daughter.

12 **4. Lack of candor and failure to maintain personal integrity**

13 *Standard 4.61* provides that disbarment is generally appropriate when a lawyer

14 knowingly deceives a client with the intent to benefit the lawyer or another,
15 and causes serious or potentially serious injury to a client.

16 Furthermore, *Standard 5.11* provides that disbarment is generally appropriate when

17 (a) a lawyer engages in serious criminal conduct, a necessary element of
18 which includes intentional interference with the administration of justice,
19 false swearing, misrepresentation, fraud, extortion, misappropriation, or theft;
 or the sale, distribution or importation of controlled substances; or the
 intentional killing of another; or an attempt or conspiracy or solicitation of
 another to commit any of these offenses; or

20 (b) a lawyer engages in any intentional conduct involving dishonesty, fraud,
21 deceit, or misrepresentation that seriously adversely reflects on the lawyer’s
 fitness to practice.

22 In file no. 04-0600, Respondent knowingly concealed the disposition of Mr. Yanes’ funds.
23 In file no. 04-0822, he knowingly concealed the disposition of Mr. Jimenez’s funds and knowingly
24 failed to use the money for the designated purpose. In file no. 04-0818, he knowingly took the deed

1 to Ms. Villa's home, even though she hired him to sell it for her, and used it for his own benefit.
2 Finally, and most egregiously, in file no. 04-0331, he concealed the disposition of Ms. Addicott's
3 substantial assets, substituted himself as personal representative of Mr. Snow's estate without
4 telling Ms. Addicott and used her funds to purchase real property and businesses for himself.
5

6 **V. AGGRAVATING AND MITIGATING FACTORS**

7 Having determined that disbarment is the presumptive sanction, this Hearing Officer then
8 considered aggravating and mitigating factors in this case, pursuant to *Standards* 9.22 and 9.32,
9 respectively.³

10 The Hearing Officer has determined that nine (9) factors are present in aggravation: 9.22(b)
11 dishonest or selfish motive, (c) a pattern of misconduct, (d) multiple offenses, (e) bad faith
12 obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of
13 the disciplinary agency, (g) refusal to acknowledge wrongful nature of conduct, (i) substantial
14 experience in the practice of law, (j) indifference to making restitution, and (k) illegal conduct.

15 The Hearing Officer finds no evidence of mitigating factors.

16 In addition to the underlying facts in the four cases involved in this proceeding, Respondent
17 has a significant disciplinary history (*Standard* 9.22(a)) as well as his various suspensions detailed
18 on page 1 of this Report:

- 19 • In 1989, Respondent agreed to accept a censure and two years of probation for
20 violating DR 1-102(a)(4) and ERs 1.8(e) and 1.8(j).⁴
21

22
23 ³ Again, neither the State Bar nor Respondent requested an aggravation/mitigation hearing, and none was held.

24 ⁴ The Disciplinary Commission's report in file nos. 86-0733 and 86-1496 (1989) is attached as Exhibit 1. DR 1-102(a)(4) was the counterpart to ER 8.4(c). ER 1.8(j) currently exists, with minor changes, as ER 1.8(i).

- 1 • In 1992, the Supreme Court suspended Respondent for three months and placed him
2 on probation for two years after he stipulated to violating ERs 1.8(a) and 8.1(b) and
3 Rules 51(h), (i) and (j).⁵
- 4 • In 1993, Respondent agreed to an additional seven-month suspension for violating
5 ERs 1.3, 3.2 and 3.4.⁶
- 6 • In 2004, Respondent was informally reprimanded for violating ER 8.4(d).⁷

7 As in the instant cases, common threads run throughout Respondent's prior misconduct.
8 Each of his prior sanctions involved misrepresentations and/or conflicts of interest. Respondent
9 received his censure in 1989 for, in part, lying to a client about having filed her personal injury
10 complaint. He also advanced funds to two clients against prospective proceeds from personal injury
11 cases. The three-month suspension was based his failure to respond to the State Bar and entering
12 into a business relationship with a client in violation of ER 1.8(a). In addition, he had violated the
13 probation imposed with the earlier censure. The seven-month suspension was based not only on his
14 failure to timely file a Ninth Circuit brief, but also on his failure to respond when the Ninth Circuit
15 twice issued orders to show cause. Finally, his recent informal reprimand was based on his failure
16 to disclose to one judge the existence of parallel proceedings before a second judge and the second
17 judge's ruling, which the first judge ultimately relied on in denying Respondent's requested relief.

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22 ⁵ The Supreme Court's opinion, *In re Miranda*, 170 Ariz. 270, 823 P.32d 947 (1992), is attached as Exhibit 2. Rule
23 51(h) and (i) equate to the current Rule 53(d) and (f). Rule 51(j) equates to current Rule 53(e).

24 ⁶ The commission's report in file no. SB-93-0037-D (1993) is attached as Exhibit 3. Respondent was reinstated from
this suspension in 1996. The commission's report recommending reinstatement is attached as Exhibit 4.

⁷ The informal reprimand in file no. 03-1655 is attached as Exhibit 5.

1 **VI. PROPORTIONALITY REVIEW**

2 To have an effective system of professional sanctions, there must be internal consistency,
3 and it is appropriate to examine sanctions imposed in cases that are factually similar. *In re*
4 *Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994), (quoting *In re Wines*, 135 Ariz. 203, 207
5 (1983)). However, the discipline in each case must be tailored to the individual case, as neither
6 perfection nor absolute uniformity can be achieved. *Matter of Riley*, 142 Ariz. 604, 615 (1984).

7 Similar cases involving a myriad of violations, such as self-dealing, converting client
8 property and failing to respond to the State Bar, show that disbarment is proportional.

9 In *In re Clark*, SB-95-0068-D (1996), the lawyer advised a client who was selling a business
10 to reject an offer and, instead, he made an offer. He purchased the business without advising the
11 client to seek independent legal advice and then defaulted on the unsecured promissory note. He
12 also settled a case for that same client and failed to account for \$6,500 of her funds. His other
13 violations included failing to respond to the State Bar. In all, he was found to have violated ERs
14 1.3, 1.4, 1.5, 1.8, 1.15 3.4, 4.2, 5.5 and 8.4 and Rules 43 and 51(h) and 51(i). The Supreme Court
15 noted that the lawyer had three prior informal reprimands for similar ethical violations and that his
16 varied violations showed a disregard for the interests of his clients, the judicial system and the
17 ethical rules. The Disciplinary Commission had based its disbarment recommendation on *ABA*
18 *Standards* 4.11, 4.31 and 4.41, which also apply in this case.

19 In *In re Jones*, 169 Ariz. 19, 816 P.2d 916 (1991), the lawyer received insurance proceeds
20 on a client's behalf but ignored his client's directions to pay the proceeds to a third party. Instead,
21 the lawyer put the money to his own use. He gave the client a check and a promissory note as
22 repayment, but the check bounced and the lawyer never made any payments on the promissory note.
23 The Supreme Court relied on *Standards* 4.11, 4.61 and 5.11(b) – also involved in this case – to
24 disbar the lawyer who, unlike Respondent, did not have a significant disciplinary history.

1 **VII. RECOMMENDATION**

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

7 In imposing discipline, it is appropriate to consider the facts of the case, the American Bar
8 Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") and the proportionality of
9 discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238
10 (1994).

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

- 13 1. Respondent should be disbarred;
- 14 2. Respondent should be ordered to pay restitution as follows:
- 15 a. \$2,000 plus interest from July 9, 2001 until paid to Ernesto M. Yanes.⁸
- 16 b. \$500 plus interest from May 1, 2002 until paid to Gonzalo Jimenez.⁹
- 17 3. Respondent should be ordered to return to Ms. Addicott all of her property or of
18 Mr. Snow that is in his possession and all documents relating to any investment of their money,
19 including stock certificates. Respondent should be ordered to submit an accounting identifying all
20 personal property and money he received from Ms. Addicott or in relation to any of her legal
21

22 _____
23 ⁸ July 9, 2001 is the date Respondent filed an appeal from the arbitration award. He thereafter took no steps to
24 prosecute the appeal, and eventually filed a motion to dismiss, claiming the parties had resolved the matter.

⁹ May 1, 2002 is the date the default judgment was filed.

1 matters during the course of representing her or Mr. Snow's estate, and tracking each item through
2 disposition, including account numbers, financial institutions and locations, sale dates and the like.

3 4. Respondent should be ordered to pay the costs and expenses incurred in this
4 disciplinary proceeding.

5 DATED this 25th day of April, 2005.

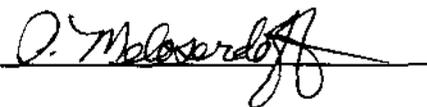
6 
7 Patricia E. Nolan
8 Hearing Officer

9 ORIGINAL filed with the Disciplinary Clerk
10 this 25 day of April, 2005.

11 COPY of the foregoing was mailed
12 this 25 day of April, 2005, to:

13 Jesse R. Miranda
14 2600 N. Central Avenue, Suite 850
15 Phoenix, AZ 85004-3050
16 *Respondent*

17 Patricia A. Sallen
18 State Bar of Arizona
19 4201 N. 24th Street, Suite 200
20 Phoenix, AZ 85016-7244
21 *Bar Counsel*

22 By: 

EXHIBIT

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FILED
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NOEL K. DESSAINT
CLERK SUPREME COURT
BY

BEFORE THE DISCIPLINARY COMMISSION
OF THE
SUPREME COURT OF ARIZONA

In the Matter of)
) Comm. Nos. 6-0733 and 86-1496
JESSE RODRIGUEZ MIRANDA,)
a Member of the State)
Bar of Arizona)
) JUDGMENT OF CENSURE
RESPONDENT.)

This matter having come on for review before the
Disciplinary Commission of the Supreme Court of Arizona,
it having duly rendered its decision, and no timely appeal
therefrom having been filed,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. JESSE RODRIGUEZ MIRANDA, a member of the State
Bar of Arizona is hereby censured and condemned for conduct
unworthy of and in violation of his duties and obligations
as a lawyer, as disclosed in the captioned proceedings.

2. Respondent shall pay to the State Bar of
Arizona costs and expenses incurred in this matter in the
sum of \$554.30 with interest at the legal rate, within
thirty days from the date hereof as provided by law.

. . . . The foregoing instrument is a full, true and correct
copy of the original on file in this office.
. . . . ATTEST May 10, 1989
Noel K. Dessaint, Clerk of the Supreme Court
State of Arizona
By [Signature] Deputy

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DONE AT THE CAPITOL in the city of Phoenix, on

May 12, _____, 1989.

Noel K. Dessaint

Noel K. Dessaint
Clerk of Court

Copies of the foregoing were delivered by U.S. Mail this
12th day of May _____, 1989, to:

Jesse Rodriguez Miranda, Respondent
815 North First Avenue, Suite Two
Phoenix, Arizona 85003

Heidi L. McNeil, Bar Counsel
3100 Valley Bank Center
Phoenix, Arizona 85073-3100

John Pressley Todd, Pro Tem Chairman
Hearing Committee 6J
1275 West Washington
Phoenix, Arizona 85007

Thomas K. Irvine, Member
Hearing Committee 6J
Two North Central, 18th Floor
Phoenix, Arizona 85004

David D. Dodge, Member
Hearing Committee 6J
3636 North Central, Suite 1200
Phoenix, Arizona 85012

✓ ROSEMARY B. MARTIN, Disciplinary Clerk
Disciplinary Commission of the
Supreme Court of Arizona
363 North First Avenue
Phoenix, Arizona 85003

Shirley Murray, Director of Admissions
State Bar of Arizona
363 North First Avenue
Phoenix, Arizona 85003

By: *Rebecca Sawyer*
Deputy Clerk

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1989
Summary Report

BEFORE THE DISCIPLINARY COMMISSION
OF THE
SUPREME COURT OF ARIZONA

In the Matter of)
) Comm. No. 6-0733 and 86-1496
JESSE R. MIRANDA,)
a Member of the State)
Bar of Arizona)
) COMMISSION REPORT
RESPONDENT.)

The captioned matter came for review before the
Disciplinary Commission on February 11, 1989. The record on
appeal having been considered and a decision duly rendered, the
Commission reports as follows:

Decision

The Commission accepts and adopts the recommendation of
Hearing Committee 6J that the Agreement for Discipline by
Consent be approved and that respondent, JESSE R. MIRANDA, be
censured and placed on probation for a period of two years.

Discussion of Decision

By unanimous vote of the nine members present, the
Commission determines as set forth.

Findings and Conclusions

The Commission accepts and adopts the findings of fact
and conclusions of law as set forth in the report filed by

. . . .

1 Hearing Committee 6J on January 18, 1989.

2 Procedural Discussion

3 An order of probable cause was issued in matter No.
4 6-0733 on October 10, 1987.

5 Bar counsel was appointed and a complaint filed on July
6 12, 1988.

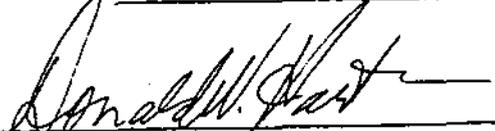
7 Respondent and bar counsel entered into an Agreement for
8 Discipline by Consent. The agreement along with a supporting
9 memorandum was filed on December 6, 1988.

10 Hearing Committee 6J held an informal telephone con-
11 ference on January 4, 1989 for the purpose of reviewing the
12 Agreement for Discipline by Consent and the supporting memoran-
13 dum. The committee filed a report containing findings of fact,
14 conclusions of law and recommendations.

15 By stipulation, the parties waived oral argument.

16 The Commission considered the matter on February 11,
17 1989 and determined as set forth herein.

18 RESPECTFULLY SUBMITTED on March 1, 1989.

19
20 
21 Donald W. Hart
Chair

22 Copies of the foregoing were delivered by U.S. Mail this 2
23 day of March, 1989, to:

24 Jesse R. Miranda, Respondent
25 815 North First Avenue, Suite 2
Phoenix, Arizona 85003

27

28

1 Heidi L. McNeil, Bar Counsel
3100 Valley Bank Center
2 Phoenix, Arizona 85073-3100

3 John Pressley Todd, Pro Tem Chairman
Hearing Committee 6J
4 1275 West Washington
Phoenix, Arizona 85007

5 Thomas K. Irvine, Member
6 Hearing Committee 6J
Two North Central, 18th Floor
7 Phoenix, Arizona 85004

8 David D. Dodge, Member Pro Tem
Hearing Committee 6J
9 3636 North Central, Suite 1200
Phoenix, Arizona 85012

10

11 ROSEMARY B. MARTIN
12 Disciplinary Clerk

13 By: Kelley Kline
Kelley Kline
14 Commission Secretary

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FILED

JAN 18 1989

Disciplinary Commission of the
Supreme Court of Arizona

BY *Francesca H. H. H.*

HEARING COMMITTEE 6J OF
THE STATE BAR OF ARIZONA

1			
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3			
4	IN THE MATTER OF MEMBER)	
5	OF THE STATE BAR OF ARIZONA)	Disciplinary Commission
6	JESSE R. MIRANDA	)	Nos. 6-0733 and 86-1496
7	Respondent	)	ACCEPTANCE OF RESPONDENT'S
8		)	AGREEMENT FOR DISCIPLINE
9		)	BY CONSENT

An informal telephone conference on Respondent's Agreement For Discipline By Consent in the above entitled matter was held on 4 January 1989.

The Committee reviewed Respondent's Agreement For Discipline By Consent and the supporting memorandum, which are attached.

I

FINDINGS OF FACTS

The Committee adopts as findings the admissions by Respondent in Paragraphs II, III, IV, and V of the Agreement For Discipline By Consent and incorporates them into this report.

II

CONCLUSIONS OF LAW

The Committee concludes that Respondent's conduct violated the cited Rules of the Supreme Court.

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III

RECOMMENDATIONS

The Committee incorporates as a recommendation for appropriate discipline Respondent's and Bar Counsel's agreement for discipline as fully set forth in Paragraph VI of the Agreement For Discipline By Consent.

In summary their agreement provides for:

1. Public censure.
2. Two-year supervised probation. The terms and conditions of the probation to include:
 - a. Twenty-four hours of continuing legal education each year.
 - b. Maintenance of time records by the Respondent.
 - c. Submission to the State Bar every three months statistics concerning Respondent's pending cases.

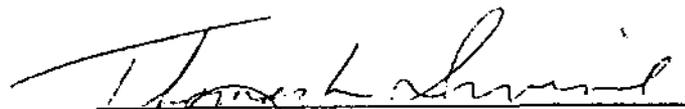
The Committee believes public censure and a term of probation are reasonable given the nature of the offense, the lack of any prior complaints against Respondent, and the lack of any harm resulting from Respondent's conduct. Concerning the terms and conditions of probation, the Committee has been informed that the State Bar is willing and able to enforce each of the terms and conditions of probation. Given the fact that the Respondent has agreed to each of the terms and conditions, the Committee finds them to be reasonable.

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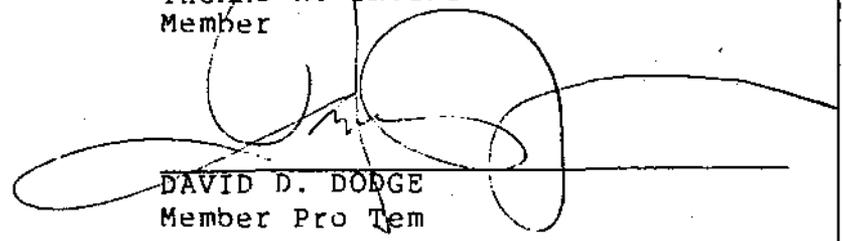
Respectfully submitted this 12th day of January 1989.



JOHN PRESSLEY TODD
Pro Tem Chairman



THOMAS K. IRVINE
Member



DAVID D. DODGE
Member Pro Tem

1525M

DEC 6 1988

Disciplinary Commission of the
Supreme Court of Arizona
BY *Romanus Martin*

BEFORE HEARING COMMITTEE
STATE BAR OF ARIZONA

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IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA) Disciplinary Commission
JESSE R. MIRANDA,) Nos. 6-0733 and 86-1496
Respondent.) AGREEMENT FOR DISCIPLINE
BY CONSENT

This Agreement is entered into between Bar Counsel appointed by the State Bar of Arizona and Respondent, Jesse R. Miranda, pursuant to Rule 56, Rules of the Supreme court, regarding discipline by consent, and the guidelines for discipline by consent issued by the Disciplinary Commission of the Supreme Court, effective July 12, 1986.

I

The parties agree that a Complaint has been filed against Respondent by Bar Counsel in this matter and that no hearing has been held. A copy of the Complaint and Answer are attached hereto and incorporated by this reference.

II

As to Count One of the Complaint, Respondent acknowledges that in the course of his representation of Tammy Gonzales, with regard to her lawsuit to recover for injuries sustained in an automobile accident occurring in July, 1984, he misrepresented to his client the fact of filing of a Complaint, although the Complaint was ultimately filed within the statutory period. Respondent acknowledges that his conduct vio-

.

LAW OFFICES
SNELL & WILMER
3100 VALLEY CENTER
PHOENIX, ARIZONA 85073

1 lated Rule 42, Rules of the Supreme Court, particularly DR
2 1-102(a)(4).¹

3 III

4 As to Count Two of the Complaint, Respondent further
5 acknowledges that he advanced \$2,800.00 to Tammy Gonzales
6 against an anticipated property damage settlement. Respondent
7 acknowledges that his conduct violated Rule 42, Rules of the
8 Supreme Court, particularly ER 1.8(e) and 1.8(j).

9 IV

10 As to Count Three of the Complaint, Respondent further
11 acknowledges that during his representation of Patricia M.
12 Carter, with regard to an automobile accident, he advanced her
13 \$1,900.00 against the prospective proceeds of the lawsuit.
14 Respondent acknowledges that his conduct violated Rule 42,
15 Rules of the Supreme Court, particularly ER 1.8(e) and 1.8(j).

16 V

17 By way of mitigation of the admitted conduct, Tammy
18 Gonzales was not prejudiced or compromised in her lawsuit as a
19 result of Respondent's action or misconduct in handling her
20 case, because the Complaint was eventually filed within the
21 statutory time period. Documentation from the attorney who
22 succeeded Respondent in the representation of Tammy Gonzales
23 attests to a satisfactory result being obtained by Respondent's

24
25 ¹Because the conduct occurred prior to February 1,
26 1985 (effective date of the new rules of conduct), the former
rules are utilized here. DR 1-102(a)(4) is the counterpart to
ER 8.4(c).

1 former client; that no client injury resulted in fact from
2 Respondent's violations of the Rules of Professional Conduct.
3 Attached hereto is a letter, dated June 13, 1986 from Terry F.
4 Hall to Rosemary Martin. Furthermore, Patricia Carter was not
5 prejudiced or compromised in her lawsuit as a result of Respon-
6 dent's actions or misconduct in handling her case.

7 VI

8 Respondent and Bar Counsel agree that appropriate
9 discipline in this matter should consist of the following:

10 That Respondent be publicly censured for his
11 admitted conduct in violation of Rule 42,
12 Rules of the Supreme Court, in effect prior
13 to February 1, 1985, specifically, Disci-
14 plinary Rule 1-102(a)(4), and Rule 42, Rules
of the Supreme Court, in effect on and after
February 1, 1985, specifically, ER 1.8(e)
and 1.8(j) (two separate counts).

15 Respondent also agrees to a two-year probation period
16 in which his work and conduct is supervised and monitored to
17 assure his compliance with the ethical rules. As terms and
18 conditions, Respondent will do the following:

19 1. Attend 24 hours of continuing legal education
20 each year, 8 hours to be in the area of the economics and man-
21 agement of small firm practice, 8 hours to be in the area of
22 general civil litigation, and 8 hours in other pertinent areas
23 of his practice.

24 2. Respondent shall keep time records for each case
25 he handles that records the date, the time incurred, and the
26 nature of the work he performed in sufficient detail as if it

1 were to be utilized in a fee application. The time records
2 shall not be destroyed.

3 3. Respondent shall prepare case statistics every
4 three months to be submitted to a person to be designated by
5 the State Bar. The case statistics shall state the nature of
6 each case he is handling, the date the file was opened, what
7 action has been taken in the case in the prior three months,
8 and if applicable, when the case closed. If requested by the
9 person designated by the State Bar, Respondent will produce his
10 time records on any case.

11 VII

12 Respondent hereby acknowledges that he cannot success-
13 fully defend himself against the charges acknowledged and ad-
14 mitted herein; that he does not desire to contest or defend
15 against those charges; and that he agrees to accept the disci-
16 pline recommended herein in lieu of formal hearings being
17 held. Respondent further agrees that by entering into this
18 Agreement, he waives his right to a formal disciplinary hear-
19 ing, the right to testify and present evidence on his behalf,
20 and further waives all motions, defenses, objections or re-
21 quests which he may have made or could have asserted if the
22 recommended discipline was not accepted.

23 VIII

24 Respondent further acknowledges that this Agreement is
25 submitted freely and voluntarily and not under coercion or
26 intimidation. Respondent acknowledges that he is aware of the

1 Rules of the Supreme Court with respect to discipline and that
2 the Disciplinary Commission may accept or reject this Agreement.

3 IX

4 Respondent further agrees to pay the costs of these
5 bar proceedings.

6 X

7 Respondent acknowledges that he has been advised by
8 Bar Counsel to seek the assistance of counsel before signing
9 this Agreement and that he has chosen not to do so.

10 XI

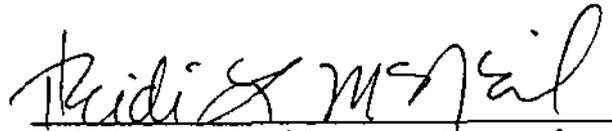
11 Respondent and Bar Counsel agree that this Agreement
12 will be presented to Hearing Committee 6J for review and recom-
13 mendation, that if the Committee recommends approval, the
14 Agreement will be submitted to the Disciplinary Commission of
15 the Supreme Court for final approval, along with the recom-
16 mendation from the Hearing Committee setting forth its findings
17 and support thereof. Respondent and Bar Counsel also acknowl-
18 edge that the Disciplinary Commission may request the presence
19 of Respondent and Bar Counsel at a Commission meeting for pre-
20 sentation of argument in support of this Agreement; and that if
21 approved by the Disciplinary Commission, said approval shall be
22 final.

23
24 
JESSE R. MIRANDA, Respondent

25 DATED this 5th day of Dec., 1988.
26

LAW OFFICES
SNELL & WILMER
3100 VALLEY CENTER
PHOENIX, ARIZONA 85073

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Heidi L. McNeil, Bar Counsel

DATED this 5th day of Dec., 1988.

7061n

EXHIBIT

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Westlaw

823 P.2d 1278
 170 Ariz. 270, 823 P.2d 1278
 (Cite as: 170 Ariz. 270, 823 P.2d 1278)

Page 1

C

Supreme Court of Arizona, In Banc.
 In the Matter of a Member of the State Bar of
 Arizona, Jesse Rodriguez MIRANDA,
 Respondent.

No. SB-91-0045-D.

Disc. Comm. Nos. 88-0557, 89-1272 and 90-0090.

Jan. 21, 1992.

On recommendation of the Disciplinary Commission, the Supreme Court, Corcoran, J., held that entering into business transaction with client without communicating terms of transaction in writing in manner that client could reasonably understand, and without obtaining client's prior written consent, intentionally failing to respond to numerous requests for information from the State Bar, and intentionally failing to comply with terms and conditions of previously imposed probation warrants three-month suspension followed by two-year probation.

Suspension ordered.

West Headnotes

[1] Attorney and Client ⇄57

45k57 Most Cited Cases

In disciplinary proceedings, Supreme Court, acts as independent arbiter of both facts and the law.

[2] Attorney and Client ⇄58

45k58 Most Cited Cases

Entering into business transaction with client without communicating terms of transaction in writing in manner that client could reasonably understand, and without obtaining client's prior written consent, intentionally failing to respond to numerous requests for information from the State Bar, and intentionally failing to comply with terms and conditions of previously imposed probation warrants three-month suspension followed by two-year probation. 17A A.R.S. Sup.Ct.Rules, Rule 42, Rules of Prof.Conduct, ER 1.8(a), 8.1(b); 17A A.R.S. Sup.Ct.Rules, Rules 51(h-j), 54(c).

**1279 *271 State Bar of Arizona, Harriet L. Turney, Chief Bar Counsel by Catherine Leisch, Robert Erven Brown, Phoenix, for State Bar of Arizona.

Harrison, Harper, Christian & Dichter, P.C. by Mark I. Harrison, Phoenix, for respondent.

OPINION

CORCORAN, Justice.

On August 30, 1991, the Disciplinary Commission of the Supreme Court of Arizona (Commission) filed a report recommending that Respondent Jesse Rodriguez Miranda be suspended from the practice of law for 3 months and thereafter be placed on probation for a period of two years. We have jurisdiction to consider this matter pursuant to rule 53(e), Arizona Rules of the Supreme Court.

Factual and Procedural Background

On March 29, 1990, the State Bar of Arizona (State Bar) filed a formal complaint with a Hearing Committee (Committee) against Respondent, charging him with 5 counts of violating numerous ethical rules enumerated in rules 42 and 51, Arizona Rules of the Supreme Court. Count One arose out of Respondent's representation of client A [FN1] in a lawsuit pending against her. Count One alleged that Respondent, while representing client A, entered into a business transaction with her without (1) fully disclosing the terms of the transaction in writing in a manner client A could reasonably understand; (2) giving client A reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) obtaining client A's prior written consent to the transaction, in violation of ER 1.8(a). Count One also alleged that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, and conduct that was prejudicial to the administration of justice, in violation of ER 8.4(c) and (d).

FN1. We recognize that clients who seek counsel from lawyers often do so in

823 P.2d 1278
 170 Ariz. 270, 823 P.2d 1278
 (Cite as: 170 Ariz. 270, 823 P.2d 1278)

Page 2

confidence. We do not believe that such confidences should be breached just because the lawyer involved is being disciplined. We therefore use client A and client B instead of the clients' actual names.

Count Two arose out of Respondent's alleged failure to respond to numerous State Bar requests for information and documents Respondent agreed to provide in connection with a prior, unrelated disciplinary matter, in violation of rules 51(h) and (i). Count 3 arose out of Respondent's alleged failure to abide by the terms of probation imposed upon him by the Commission in a prior, unrelated disciplinary matter, in violation of rule 51(j).

Count 4 arose out of Respondent's representation of client B in a criminal matter. Count 4 alleged that Respondent failed to **1280 *272 act with reasonable diligence and promptness in representing client B, and failed to communicate adequately with client B, in violation of ER 1.3 and 1.4. Count 5 arose out of Respondent's alleged failure to respond to State Bar requests for information in connection with this disciplinary matter, in violation of ER 8.1(b).

After initially denying almost all of the allegations in the complaint, and after retaining counsel, Respondent stipulated to most of the allegations of misconduct and stipulated that such conduct violated certain ethical rules. Specifically, Respondent has stipulated to violating ER 1.8(a) and 8.1(b), and rules 51(h), (i), and (j).

The Committee held a hearing in this matter on October 2, 1990. At the conclusion of the hearing, the Committee made a report setting forth its findings of fact, conclusions of law and recommendations. The Committee recommended that Respondent be suspended from the practice of law for a period of 3 months, followed by a two-year period of probation subject to the following measures:

[1]. Respondent shall attend 24 hours of continuing legal education each year, eight hours in the area of the economics and management of small firm practice, eight hours in the area of ethics, and eight hours in other pertinent areas of his practice.

[2]. Respondent shall prepare case statistics every three months to be submitted to a person to be designated by the State Bar. The case statistics shall state the nature of each case he is handling, the date the file was opened, what action has been taken in the case in the prior three months, and if applicable, when the case is closed. If requested by the person designated by the State Bar, Respondent will produce his time records on any case.

[3]. Chief Bar Counsel or her designee shall act as practice monitor, under the following provisions:

[a]. Respondent shall enter into a written fee agreement with each of his retained clients explaining the nature of his fee, to be signed by his client. The fee agreement shall be in letter form. The fee agreement shall not be destroyed.

[b]. Respondent shall keep time records for each case that he handles that record the date, time incurred and the nature of the work performed in sufficient detail as if it were to be utilized in a fee application. The time records shall not be destroyed.

[4]. Respondent shall comply in all respects with the Rules of Professional Conduct, Rule 42, Arizona Rules of the Supreme Court.

[5]. Respondent shall pay all costs that are or will be due and owing to the State Bar as a result of these proceedings, under a payment plan approved by Bar counsel.

[6]. If Respondent fails to comply with any of the foregoing conditions and information thereof is received by the State Bar, Bar counsel shall file with this Hearing Committee a "Notice of Noncompliance." The Hearing Committee shall conduct a hearing at the earliest practical date, but in no event less than thirty days following receipt of said notice, to determine whether the conditions of probation have been breached and, if so, to recommend appropriate action and response to such breach. If there is an allegation that Respondent has failed to comply with any of the foregoing conditions, the burden of proof thereof shall be on the State Bar to prove noncompliance by a preponderance of the evidence.

On May 11, 1991, the Commission held a hearing in this matter. At the conclusion of the hearing, a 7-member panel of the Commission adopted the

823 P.2d 1278
 170 Ariz. 270, 823 P.2d 1278
 (Cite as: 170 Ariz. 270, 823 P.2d 1278)

Page 3

Committee's findings of fact, conclusions of law, and recommendations. Because Respondent did not file a notice of appeal with the Commission, this matter was submitted to us for decision on the record filed by the Commission.

Discussion

A. Standard of Review

[1] In disciplinary proceedings, this court acts as an independent arbiter of both the facts and the law. **1281*273 *In re Neville*, 147 Ariz. 106, 108, 708 P.2d 1297, 1299 (1985). In acting as arbiter of the facts, we recognize that although we give "serious consideration to the findings ... of the Committee and Commission," *In re Pappas*, 159 Ariz. 516, 518, 768 P.2d 1161, 1163 (1988), "we must be persuaded by clear and convincing evidence that [R]espondent committed the alleged violations." *In re Lincoln*, 165 Ariz. 233, 235, 798 P.2d 371, 373 (1990) (emphasis added), citing rule 54(c); *Pappas*, 159 Ariz. at 518, 768 P.2d at 1163. In acting as arbiter of the law, we give "great weight to the recommendations of the [C]ommittee and the Commission," but recognize that "this court ultimately is responsible for determining the appropriate sanction." *Lincoln*, 165 Ariz. at 235-36, 798 P.2d at 373-74 (emphasis added), citing *Neville*, 147 Ariz. at 115, 708 P.2d at 1306.

B. Respondent's Violations

The record before us establishes by clear and convincing evidence that Respondent violated ER 1.8(a) by entering into a business transaction with client A without communicating the terms of the transaction in writing to client A in a manner that she could reasonably understand, and without obtaining client A's prior written consent to the transaction. Likewise, there is clear and convincing evidence from the record that Respondent violated ER 8.1(b) and rules 51(h) and (i) by intentionally failing to respond to numerous requests for information from the State Bar. Finally, the record establishes by clear and convincing evidence that Respondent violated rule 51(j) by intentionally failing to comply with the terms and conditions of a previously imposed probation.

C. Sanctions

[2] After finding that Respondent had violated numerous ethical rules, and after noting that the discipline of an attorney serves not to punish the attorney, *In re Burns*, 139 Ariz. 487, 493, 679 P.2d 510, 516 (1984), but rather to protect the public and to deter other attorneys from ethical violations, *In re Blankenburg*, 143 Ariz. 365, 367, 694 P.2d 195, 197 (1984), the Committee turned to the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1986) for guidance in determining the proper sanction for Respondent. The Committee concluded that the following sections of the ABA *Standards* applied to Respondent:

Section 8.2 "Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession."

Section 7.2 "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is [a] violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system."

Section 4.32 "Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client."

Before sanctioning Respondent, the Committee also considered the aggravating and mitigating factors present in this case. In aggravation, the Committee found that (1) Respondent's conduct in the client A transaction evidenced a pattern of misconduct in his dealings with clients and continued failure to comply with ER 1.8; (2) Respondent had been previously disciplined for failure to comply with ER 1.8; and (3) Respondent intentionally failed to comply with the terms of his earlier probation. In mitigation, the Committee found that (1) Respondent's violations were not the product of a dishonest or selfish motive, and (2) Respondent has a reputation for being an attorney of high character and competence in the area of criminal law.

After identifying Respondent's violations and the applicable ABA *Standards*, and after considering evidence in aggravation and mitigation, the Committee made the following observation before

823 P.2d 1278
 170 Ariz. 270, 823 P.2d 1278
 (Cite as: 170 Ariz. 270, 823 P.2d 1278)

Page 4

recommending a 3-month suspension followed by a two-year probation:

****1282 *274** The Committee recognizes that Section 2.3 of the ABA Standards suggests suspension should generally be imposed for a period of at least six months. However, for a number of reasons the Committee believes the record supports a shorter suspension period. First, after viewing Respondent at the hearing and knowing he has been heavily counseled by his retained attorney, a past president of the State Bar, the Committee believes Respondent is remorseful, although belatedly. Second, Respondent enjoys a good reputation and is known for his competence in his area of expertise and his commendable commitment to providing legal services to a traditionally under-represented segment of the community. The Committee is hopeful a three-month suspension will be sufficient to deter future misconduct without seriously affecting the important practice of Respondent or the clients he represents. Considering the nature of Respondent's practice and clients, the Committee believes a longer suspension would be merely inappropriate. *See In re Ockrassa*, 165 Ariz. 576, 580, 799 P.2d 1350, 1354 (1990).

We agree with the sanction recommended by the Committee and adopted by the Commission. Just as the Committee recognized that suspensions should generally be for a period of at least 6 months, *see Standards* 2.3, we, too, recognize this general rule. However, the Committee properly concluded that, under all of the facts and circumstances of this matter, Respondent should be suspended for a period of 3 months followed by a two-year probationary period. We concur in the reasons set forth by the Committee and adopted by the Commission.

Disposition

Respondent is suspended from the practice of law for a period of 3 months and, once the suspension is completed, is to be placed on probation for a period of two years under the terms set forth above. Respondent is also ordered to pay the State Bar the amount of \$3,654.64 for costs and expenses incurred in this matter.

FELDMAN, C.J., MOELLER, V.C.J.,

CAMERON, J., and FRANK X. GORDON, Jr., J.
 (Retired), concur.

170 Ariz. 270, 823 P.2d 1278

END OF DOCUMENT

EXHIBIT

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FILED
SEP 23 1993
NOEL K. DESSAINT
CLERK SUPREME COURT
BY

SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF	)	Supreme Court
THE STATE BAR OF ARIZONA,	)	No. SB-93-0037-D
)	
JESSE R. MIRANDA,	)	No. 92-0303
)	
Respondent.	)	JUDGMENT AND ORDER

This matter having come on for hearing before the Disciplinary Commission of the Supreme Court of Arizona, it having duly rendered its decision and no timely appeal therefrom having been filed, and the Court having declined sua sponte review,

IT IS ORDERED, ADJUDGED AND DECREED that JESSE R. MIRANDA, a member of the State Bar of Arizona, is hereby suspended from the practice of law for a period of seven months, effective as of January 1, 1993, for conduct in violation of his duties and obligations as a lawyer, as disclosed in the commission report attached hereto as Exhibit A.

IT IS FURTHER ORDERED that pursuant to Rule 63(a), Rules of the Supreme Court of Arizona, JESSE R. MIRANDA shall notify all of his clients, within ten (10) days from the date hereof, of his inability to continue to represent them and that they should promptly retain new counsel, and shall promptly inform this court of his compliance with this Order as provided by Rule 63(d), Rules of the Supreme Court of Arizona.

IT IS FURTHER ORDERED that JESSE R. MIRANDA shall pay the costs of these proceedings in the amount of \$316.55.

DATED this 23rd day of September, 1993.



NOEL K. DESSAINT
Clerk of the Court

RECEIVED
SEP 24 1993
STATE BAR OF ARIZONA

Supreme Court No. SB-
Page 2 of 2

TO:

Jesse R. Miranda, Respondent (Certified Mail, Return Receipt)
Yigael M. Cohen, State Bar Counsel
Harriet L. Turney, Chief Bar Counsel, State Bar of Arizona
Rosemary B. Martin, Clerk, Disciplinary Commission (Cert. Copy)
Shirley Murray, Membership Records (Cert. Copy)
Bruce Hamilton, Executive Director, State Bar of Arizona
Clerk, United States District Court, District of Arizona (Cert. Copy)
Clerk, United States Court of Appeals, Ninth Circuit (Cert. Copy)
Clerk, United States Supreme Court (Cert. Copy)
West Publishing Company
Mead Data Central

cjq

The foregoing instrument is a full, true and correct
copy of the original on file in this office.

ATTEST

9-23-83
Noel K. Dessaint, Clerk of the Supreme Court
State of Arizona

By *Debra J. Kiser* Deputy

FILED

MAY 12 1993

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

BEFORE THE DISCIPLINARY COMMISSION
OF THE
SUPREME COURT OF ARIZONA

FILED
JUL 12 1993
NOEL K. DESSAINT
CLERK SUPREME COURT
BY

In the Matter of
JESSE R. MIRANDA,
a Member of the State
Bar of Arizona,
RESPONDENT.

Comm. No. 92-0303

DISCIPLINARY COMMISSION REPORT

SB-93-0037-D

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on March 13, 1993, on an agreement for discipline by consent, pursuant to Ariz. R. Sup. Ct., Rule 56(a). The agreement, providing for suspension and probationary terms, was tendered prior to the issuance of a formal complaint, and was reviewed by the Commission without referral to a hearing committee, pursuant to Rule 53(b)(4).¹

Decision

After review of the record on appeal, the Commission, by a vote of nine aye,² recommends acceptance of the agreement for discipline by consent providing that Respondent be suspended for a period of seven months, effective as of January 1, 1993; that he seek assistance from the Law Office Management Assistance Program ("LOMAP"); that he take 24 hours of continuing legal education, in addition to the minimum hours required, to be

¹ Rule 56(a) provides that a respondent may tender a conditional admission of a charge in exchange for a stated form of discipline other than disbarment. Rule 53(b)(4) further provides that when an agreement for discipline is filed prior to the issuance of a formal complaint, it shall be submitted directly to the Commission for review.

² Commissioners Goldsmith and Main did not participate in these proceedings. Christopher Jensen and Robert Miles participated as ad hoc members.

1 divided equally between law office management and criminal law;
2 and that he pay all costs and expenses incurred by the State Bar
3 in the processing of this matter and all costs incurred in
4 connection with his referral to LOMAP. The Commission
5 unanimously adopts the tender of conditional admissions and
6 agreement for discipline by consent and the joint memorandum in
7 support of the agreement for discipline by consent as its
8 findings of fact and conclusions of law.

9 In accepting the conclusions of law of the agreement and
10 memorandum, the Commission notes what is clearly a typographical
11 error. The agreement and memorandum state that Respondent's
12 conduct violated ER 1.3 and ER 3.2, as well as ER 3.3, which
13 concerns candor toward the tribunal. There is no issue in this
14 matter concerning Respondent's lack of candor. Rather, the
15 Commission acknowledges that the reference was intended to be to
16 ER 3.4, which, in part, addresses knowing failure to obey an
17 obligation under the rules of a tribunal.³ Failure to comply
18 with a court order is the very heart of the subject misconduct.
19 The Commission, therefore, acknowledges that Respondent's actions
20 violated ER 1.3, ER 3.2, and ER 3.4.

21 Facts

22 Respondent was retained by a client in or around September
23 1990 for representation on a criminal matter. Respondent was
24 paid a retainer of \$5,000 for this representation. Subsequent to
25 the client's conviction, Respondent agreed to represent him on

26 ³The State Bar confirms that ER 3.3 was listed in error, and that the reference should have been to
27 ER 3.4.

1 appeal, as well. However, the client never paid Respondent the
2 appeal costs.

3 In May 1991, Respondent was granted an extension of time to
4 file the opening brief. In July 1991, Respondent filed a late
5 and deficient opening brief. In September 1991, the United
6 States Court of Appeals ordered Respondent to show cause why
7 sanctions should not be imposed against him for filing the
8 deficient brief, and ordered him to pay the docket fees and
9 remedy the brief deficiencies.

10 Respondent did not respond to that order, and in November
11 1991, the court again ordered Respondent to pay the docket fees
12 and show cause why sanctions should not be imposed. Although
13 Respondent was warned that failure to respond to this order would
14 result in the imposition of sanctions, Respondent again failed to
15 respond. Accordingly, the court imposed a fine of \$500 against
16 Respondent. Respondent then paid the fine and complied with the
17 court orders.

18 Respondent conditionally agrees that this conduct was in
19 violation of ER 1.3, ER 3.2, and ER 3.3.⁴

20 Discussion of Decision

21 The Commission agrees that Respondent failed to act with
22 diligence and promptness in representing his client, and failed
23 to make reasonable efforts to expedite litigation consistent with
24 the interests of his client, in violation of ER 1.3 and ER 3.2,

25

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27 ⁴The Commission notes that this reference should read "ER 1.3, ER 3.2, and ER 3.4."

28

1 respectively. The Commission also finds that Respondent violated
2 ER 3.4 when he knowingly disobeyed several court orders.

3 In determining the appropriateness of a disciplinary
4 sanction, the Commission finds it helpful to review the American
5 Bar Association's Standards for Imposing Lawyer Sanctions. This
6 is the guideline used by the Supreme Court. In re Rivkind, 164
7 Ariz. 154, 791 P.2d 1037, 1040 (1990). The Standards indicate
8 suspension is the proper sanction.

9 Standard 4.42 provides for suspension when a lawyer
10 knowingly fails to perform services for a client and causes
11 injury or potential injury to a client. Standard 6.22 provides
12 for suspension when a lawyer knowingly violates a court order or
13 rule, and there is injury or potential injury to a client or a
14 party, or interference or potential interference with a legal
15 proceeding.

16 Although the final outcome of the client's lawsuit is not
17 known, the potential for injury to the client and interference
18 with a legal proceeding is clear. Respondent explains that he
19 did not pay the docket fees because he had been unable to secure
20 payment of the fees from his client. As Respondent was
21 previously censured for providing financial assistance to a
22 client, Respondent was reluctant to pay the fees himself without
23 some assurance that his client would reimburse him. He has
24 acknowledged, however, that he should have responded in some
25 manner to the court's orders.

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1 The Commission also considered existing aggravating and
2 mitigating factors to assist in determining the appropriate
3 sanction.

4 Standard 9.32 lists factors which can be considered in
5 mitigation, many of which are present here. Respondent was not
6 motivated by dishonesty or selfishness, he has made full and free
7 disclosure and has exhibited a cooperative attitude throughout
8 these proceedings, and he has already received a \$500 fine from
9 the court for this conduct. The memorandum in support of the
10 agreement also includes character or reputation and remorse as
11 mitigating factors.

12 One aggravating factor is present, as listed in
13 Standard 9.22. Respondent has been sanctioned on two prior
14 occasions for violations of his ethical duties. Respondent was
15 censured and placed on probation in May 1989, and was suspended
16 for three months in February 1992.

17 The Commission recognizes that the mitigating factors
18 greatly outnumber the factors in aggravation. However, the fact
19 that Respondent has twice been sanctioned within the last five
20 years outweighs all mitigating factors. Were Respondent's
21 conduct an isolated instance, the Commission would consider a
22 seven-month suspension too harsh. However, in light of his
23 previous sanctions, the Commission believes it imperative that
24 Respondent establish his competency prior to reinstatement. A
25 suspension of seven months will accomplish that goal.⁵ In

26 _____
27 ⁵ A member suspended for more than six months must present proof of rehabilitation prior to
reinstatement. Rule 71(d) and 72.

1 addition, the probationary terms requiring Respondent to obtain
2 additional continuing legal education hours and LOMAP assistance
3 will help Respondent maintain his competency once he returns to
4 practice.

5 RESPECTFULLY SUBMITTED this 10th day of May, 1993.

6
7 Raymond W. Brown
8 Raymond W. Brown, Chair
Disciplinary Commission

9
10 Copies of the foregoing mailed this
12th day of May, 1993, to:

11 Jesse R. Miranda, Respondent
12 6857 West Virginia
Phoenix, Arizona 85035

13 Yigael M. Cohen, Bar Counsel
14 363 North First Avenue
Phoenix, Arizona 85003

15 ROSEMARY B. MARTIN
16 Disciplinary Clerk

17 By: E. A. Deering
18 E. A. Deering
19 Commission Secretary
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EXHIBIT

4



Supreme Court

NOËL K. DESSAINT
CLERK OF COURT

STATE OF ARIZONA
402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON
PHOENIX, ARIZONA 85007-3329
TELEPHONE: (602) 342-9396

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

September 22, 1994

RE: In the Matter of JESSE R. MIRANDA
Supreme Court No. SB-94-0067-R
Disciplinary Commission No. 93-1676

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on September 20, 1994, in regard to the above-referenced cause:

ORDERED: Petition for Reinstatement = GRANTED.

Separate Order to follow.

NOEL K. DESSAINT, Clerk

TO:

Jesse R. Miranda, Respondent
Harriet L. Turney, Chief Counsel, State Bar of Arizona
Bruce Hamilton, Executive Director, State Bar of Arizona
Rosemary B. Martin, Clerk, Disciplinary Commission
Shirley Murray, Director, Membership Records

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RECEIVED
SEP 22 1994
STATE BAR OF ARIZONA

99-1676

FILED
SEP 30 1994
NOEL K. DESSAINT
CLERK SUPREME COURT
BY

SUPREME COURT OF ARIZONA

IN THE MATTER OF THE REINSTATEMENT)
OF A SUSPENDED MEMBER OF THE STATE)
BAR OF ARIZONA,)
)
JESSE R. MIRANDA,)
)
Respondent.)

Supreme Court
No. SB-94-0067-R

Disciplinary Commission
No. 90-1676

ORDER

Respondent JESSE R. MIRANDA, having filed a "Petition for Reinstatement" and the Commission having filed a Disciplinary Commission Report, and the Court having granted Respondent JESSE R. MIRANDA'S Petition for Reinstatement on September 20, 1994,

IT IS ORDERED that JESSE R. MIRANDA be and hereby is reinstated as a member of the State Bar of Arizona, and placed on probation for a period of two years under the terms and conditions as set forth in the Disciplinary Commission Report listed below:

1. Miranda shall refrain from engaging in conduct which violates the Rules of Professional Conduct, Rule 42, Ariz.R.S.Ct.
2. Miranda shall obtain a practice monitor who has been in practice longer than Miranda, who is not sharing offices with Miranda, and who is approved by the State Bar. The practice monitor must agree to meet with Miranda no less than once per week to file quarterly reports reporting the dates upon which the monitor and Miranda met, the number of cases Miranda has pending, the nature of those cases, whether Miranda is handling the cases in a timely manner, any problems identified by the monitor in Miranda's handling of cases, and any recommendations monitor may have for addressing these problems.
3. Miranda will submit to unscheduled inspections and law office audits by the director of the Law Office Management Assistance Program ("LOMAP") or her designee, not to exceed once per month for the first six months of probation and thereafter not to exceed quarterly unless some question is raised regarding Miranda's law office practices. Miranda shall promptly act on reasonable recommendations of the LOMAP director regarding law office practices.

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STATE BAR OF ARIZONA

4. Miranda shall attend 24 hours of continuing legal education each year in addition to the mandatory CLE requirements of Rule 45, Ariz.R.S.Ct. in the following areas: 8 hours in the area of law office management, 8 hours in the area of ethics and professional responsibility, and 8 hours in the substantive areas of his practice.
5. Miranda shall use written fee agreements or retention letters memorializing fee arrangements with all clients.
6. Miranda shall promptly send non-retention letters to advise individuals with whom he has met or has spoken by phone that he is declining representation.
7. Miranda shall do no pro bono services without prior approval of his practice monitor.
8. Respondent shall undergo psychological testing by a psychologist, psychiatrist, or other qualified professional counselor licensed as such by the State of Arizona and approved by the State Bar, and shall follow any recommendations made thereby.
9. Miranda shall pay all reasonable costs associated with the monitoring and enforcement of these terms of probation.
10. In the event it comes to the attention of the State Bar that Miranda may be in breach of any of the above terms of probation, the State Bar shall file a notice of non-compliance with the Disciplinary Clerk who will refer this matter to a hearing committee or hearing officer for an evidentiary hearing to be held as soon as practicable, but in no event later than 45 days after receipt of said notice, to determine whether Miranda is in material breach of the terms of probation. The burden of proof of non-compliance shall be by a preponderance of the evidence. At the conclusion of any evidentiary hearing on non-compliance, the hearing committee or hearing officer will issue a report containing findings of fact, conclusions of law, and a recommendation. The matter will then proceed pursuant to Rule 53(d), Ariz.R.S.Ct.

IT IS FURTHER ORDERED that the reinstatement is effective as of the date of this Order.

DATED this 30th day of September, 1994.



JAMES MOELLER
Vice Chief Justice

Supreme Court No. SB-94-0067-R

Page 3 of 3

TO:

Jesse R. Miranda, Respondent, Pro Se
Harriet L. Turney, Chief Bar Counsel, State Bar of Arizona
Rosemary B. Martin, Clerk, Disciplinary Commission
Shirley Murray, Director, Membership Records, State Bar of Arizona
Bruce Hamilton, Executive Director, State Bar of Arizona

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FILED

JUN 09 1994

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
By *Samuel Martin*

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BEFORE THE DISCIPLINARY COMMISSION
OF THE
SUPREME COURT OF ARIZONA

In the Matter of the)	
Application for	)	Comm. No. 93-1676
Reinstatement of)	
)	
JESSE R. MIRANDA,)	
Attorney No. 005265	)	<u>DISCIPLINARY COMMISSION REPORT</u>
)	
PETITIONER.)	

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on April 9, 1994, for oral argument, pursuant to Rule 72(e), Ariz.R.S.Ct. The Commission considered the Hearing Officer's recommendation of reinstatement with probation. No objections to the Hearing Officer's recommendation were filed.

Decision

With six members concurring and one member dissenting,¹ the Commission adopts the recommendation of the Hearing Officer that the applicant, Jesse R. Miranda ("Miranda"), be reinstated and placed on probation for a period of two years under the terms and conditions set forth below. The probationary terms adopted by the majority are identical to those recommended by the Hearing Officer, with one addition. The Commission recommends that Miranda undergo psychological testing by a psychologist, psychiatrist, or other

¹Commissioners Borwell, Burilison, Doyle, Goldsmith, and Malm did not participate in these proceedings. Donald W. Hart and Douglas W. Seitz participated as ad hoc lawyer members, and Jack L. Potts, M.D., participated as an ad hoc public member.

Commissioner Hart dissented from the majority. See dissenting opinion, page 11.

1 qualified professional counselor licensed as such by the State of
2 Arizona and approved by the State Bar, and that he follow any
3 recommendations made by such doctor or counselor.

4 The majority of the Commission also adopts the findings of
5 fact and conclusions of law of the Hearing Officer.

6 Terms of Probation

7 Upon reinstatement, the Commission recommends that Miranda be
8 placed on probation for a period of two years, under the following
9 terms and conditions:

10 1. Miranda shall refrain from engaging in conduct which
11 violates the Rules of Professional Conduct, Rule 42,
Ariz.R.S.Ct.

12 2. Miranda shall obtain a practice monitor who has been
13 in practice longer than Miranda, who is not sharing
14 offices with Miranda, and who is approved by the State
15 Bar. The practice monitor must agree to meet with
16 Miranda no less than once per week to file quarterly
17 reports reporting the dates upon which the monitor and
18 Miranda met, the number of cases Miranda has pending, the
nature of those cases, whether Miranda is handling the
cases in a timely manner, any problems identified by the
monitor in terms of Miranda's handling of cases, and any
recommendations he or she may have for addressing these
problems.

19 3. Miranda will submit to unscheduled inspections and
20 law office audits by the director of the Law Office
21 Management Assistance Program ("LOMAP") or her designee,
22 not to exceed once per month for the first six months of
23 probation and thereafter not to exceed quarterly unless
24 some question is raised regarding Miranda's law office
25 practices. Miranda shall promptly act on reasonable
26 recommendations of the LOMAP director regarding law
27 office practices.

28 4. Miranda shall attend 24 hours of continuing legal
education each year, in addition to the mandatory CLE
requirements of Rule 45, Ariz.R.S.Ct., in the following
areas: 8 hours in the area of law office management,
8 hours in the area of ethics and professional
responsibility, and 8 hours in the substantive areas of
his practice.

1 5. Miranda shall use written fee agreements or
2 retention letters memorializing fee arrangements with all
clients.

3 6. Miranda shall promptly send non-retention letters to
4 advise individuals with whom he has met or has spoken by
phone that he is declining representation.

5 7. Miranda shall do no pro bono services without prior
6 approval of his practice monitor.

7 8. Respondent shall undergo psychological testing by a
8 psychologist, psychiatrist, or other qualified
professional counselor licensed as such by the State of
9 Arizona and approved by the State Bar, and shall follow
any recommendations made thereby.

10 9. Miranda shall pay all reasonable costs associated
with the monitoring and enforcement of these terms of
11 probation.²

12 10. In the event it comes to the attention of the State
13 Bar that Miranda may be in breach of any of the above
14 terms of probation, the State Bar shall file a notice of
15 non-compliance with the Disciplinary Clerk who will refer
16 this matter to a hearing committee or hearing officer for
17 an evidentiary hearing to be held as soon as practicable,
18 but in no event later than 45 days after receipt of said
19 notice, to determine whether Miranda is in material
breach of the terms of probation. The burden of proof of
20 non-compliance shall be by a preponderance of the
evidence. At the conclusion of any evidentiary hearing
21 on non-compliance, the hearing committee or hearing
22 officer will issue a report containing findings of fact,
23 conclusions of law, and a recommendation. The matter
24 will then proceed pursuant to Rule 53(d), Ariz.R.S.Ct.

25 Underlying Facts

26 Miranda was suspended from the practice of law for seven
27 months effective January 1, 1993, for violations of ER 1.3, ER 3.2,
28 and ER 3.4. That suspension resulted from Miranda's mishandling of
a client's appeal to the United States Court of Appeals, in which
Miranda filed a late and deficient opening brief. Miranda failed

²The State Bar has agreed to establish a payment plan with Miranda for costs associated with his probation. However, Miranda must make his own financial arrangement, if any, with his practice monitor.

1 to respond when the court ordered him to show cause why sanctions
2 should not be imposed against him for filing the deficient brief
3 and ordered him to pay the docket fees and remedy the brief
4 deficiencies. Miranda also failed to respond to the court's second
5 order to pay the docket fees and to show cause why sanctions should
6 not be imposed, and was subsequently fined \$500 by the court. At
7 that point, Miranda paid the fine and complied with the court
8 orders.

9 Miranda received the aggravated sanction of a seven-month
10 suspension for this conduct based on the fact that he had
11 previously been censured and suspended for three months.

12 Discussion of Decision

13 Miranda filed a petition for reinstatement on October 20,
14 1993, and a supplement to that petition on December 16, 1993. The
15 matter came on for hearing before the Hearing Officer on
16 February 10, 1994. Miranda appeared pro per.

17 Rule 72(e), Ariz.R.S.Ct., provides that an applicant for
18 reinstatement must demonstrate rehabilitation, compliance with all
19 applicable discipline orders and rules, fitness to practice, and
20 competence. Upon consideration of the testimony of Miranda and
21 additional witnesses, as well as the application for reinstatement,
22 the Hearing Officer found that Miranda proved his rehabilitation by
23 clear and convincing evidence. The State Bar agrees with the
24 Hearing Officer that Miranda proved the elements required by
25 Rule 72, and has no opposition to his application for
26 reinstatement.

1 Miranda's seven-month suspension has been characterized as the
2 end result of his persistent reluctance to decline cases and his
3 repeated acceptance of clients who did not pay or had difficulty
4 paying their bills. Miranda's opening brief was filed late with
5 the Court of Appeals because after Miranda agreed to continue to
6 represent his client on appeal, the client did not pay the appeal
7 costs. Miranda was reluctant to pay the costs himself without some
8 assurance that the client would reimburse him, as Miranda had
9 previously been censured for providing financial assistance to a
10 client. As such, he did not file the brief. Miranda did
11 acknowledge that, regardless of whether or not his client paid the
12 costs, he should have responded in some manner to the court's
13 orders.

14 Miranda's previous discipline also resulted from his inability
15 to manage his office and his caseload. His 1989 censure resulted
16 when he misrepresented to a client that the complaint had been
17 filed and improperly advanced funds to two clients. In addition to
18 the censure, Miranda was placed on probation for two years, the
19 terms of which included 24 hours of continuing legal education, the
20 maintenance of accurate time records, and the submission of case
21 statistics to the State Bar. Miranda's three-month suspension in
22 1992 also arose out of Miranda's improper advancement of money to
23 a client, as well as his failure to cooperate with the State Bar or
24 comply with the terms of the 1989 probation. In conjunction with
25 that suspension, Miranda was again placed on probation for two
26 years, following the three-month suspension. The terms of that
27 probation also included 24 hours of continuing legal education each
28

1 year, the regular preparation of case statistics, and the retention
2 of a practice monitor.³

3 The agreement for discipline by consent that led to Miranda's
4 seven-month suspension provided probationary terms requiring that
5 Miranda obtain 24 hours of continuing legal education and seek the
6 assistance of LOMAP. Although he had not obtained any of the
7 continuing legal education hours as of the date of hearing before
8 the Commission, Miranda did meet with the director of LOMAP in
9 January 1994 at the law offices where he intends to practice with
10 the two attorneys currently sharing the space. After conducting a
11 preliminary law office audit, the director issued an extensive
12 report which included a list of both mandatory and recommended
13 changes for improving the efficiency and productivity of the
14 practice. Miranda is currently acting as office manager for those
15 two attorneys, and has implemented a number of the changes outlined
16 in the LOMAP director's report. Miranda has expressed his
17 willingness to submit to periodic audits of his law offices by the
18 LOMAP director. Miranda has also declared his willingness to use
19 written fee agreements or retainer letters in all cases, send non-
20 retention letters where appropriate, and decline to accept or
21 continue representation of any client who cannot pay for his legal
22 services.

23 Some members of the Commission expressed concern over the fact
24 that Miranda did not obtain the 24 hours of continuing legal
25

26 ³ Although Miranda had served approximately ten and a half months of that probation at the time the
27 current suspension was imposed, he had not yet fulfilled the continuing legal education requirements of that
28 probation.

1 education provided for in that agreement. However, both the State
2 Bar and Miranda indicated that it was their belief that Miranda was
3 not required to fulfill any probationary terms of the agreement
4 until after he was reinstated. In support of that belief is the
5 court's order of suspension, which orders only suspension; there is
6 no mention of a requirement to obtain continuing legal education
7 hours or to seek the assistance of LOMAP during the period of
8 suspension. In addition, the probation imposed in conjunction with
9 the prior three-month suspension did not go into effect until the
10 period of suspension had ended. Upon considering the statements of
11 the State Bar and Miranda, the majority of the Commission agrees
12 that Miranda did not have to complete the continuing legal
13 education hours prior to his reinstatement.

14 The nature of Miranda's ethical violations make it somewhat
15 difficult to prove rehabilitation while not practicing law, as his
16 misconduct involved his poor practice habits; he cannot absolutely
17 prove rehabilitation until he has the opportunity to practice, but
18 he cannot practice until he is reinstated after proving
19 rehabilitation. The Commission debated the dilemma created by this
20 "Catch 22," particularly in light of Rule 71, Ariz.R.S.Ct., which
21 provides that the Commission shall recommend reinstatement "only
22 when satisfied that the applicant possesses the moral
23 qualifications and the learning in the law required for admission
24 to practice law in this state . . ." The rule makes no provision
25 for imposing probationary terms upon an applicant to monitor his
26 rehabilitation. As the State Bar notes, however, under the
27 doctrine of stare decisis, in situations such as this, terms of

1 probation can be imposed upon a lawyer being reinstated to ensure
2 that rehabilitation has occurred. See In re King, SB-93-0069-R,
3 Ariz. Sup. Ct. (Disc. Comm. No. 91-0044) (1994), In re Fortner, SB-
4 94-0006-R, Ariz. Sup. Ct. (Disc. Comm. No. 93-0916) (1994), and In
5 re Phelps, SB-94-0014-R, Ariz. Sup. Ct. (Disc. Comm. No. 93-0998)
6 (1994).

7 In supporting Miranda's reinstatement, the State Bar
8 acknowledges that Miranda's disciplinary history is less than
9 exemplary. He has been censured and suspended, and has failed to
10 comply with terms of probation. However, as noted above, the State
11 Bar argued that all of the misconduct, including the failure to
12 comply with probationary terms, stemmed, either directly or
13 indirectly, from his poor law office management. The State Bar
14 also pointed out that, in the prior disciplinary matters, it had no
15 system in place to assist lawyers who had not mastered the business
16 aspects of practicing law. However, both the Supreme Court and the
17 State Bar have made a commitment to assist lawyers. As such, great
18 strides have been made in the recent past, with the creation of
19 programs such as LOMAP and Diversion, to help lawyers resolve
20 problems prior to a pattern developing and to prevent their
21 recurrence. Unfortunately, the State Bar noted, these programs
22 were implemented subsequent to Miranda's suspension. Because the
23 help now available to practitioners through LOMAP was not available
24 earlier, the only option available in Miranda's prior disciplinary
25 matters was to repeatedly impose the same probationary terms upon
26 him. Those terms were not effective, however, as they could only
27 dictate that Miranda do what his conduct had already demonstrated

1 he did not know how to do. The State Bar now recognizes that many
2 attorneys, like Miranda, have not learned the organizational skills
3 or acquired the business acumen necessary to private practice, and
4 need a program such as LOMAP. Now that the State Bar has such
5 assistance available, the majority of the Commission believes
6 Miranda deserves a chance to take advantage of it.

7 Miranda, himself, also testified as to why he believes he is
8 again prepared to practice law. Miranda stated that, in the past,
9 he was unaware that the State Bar was available to assist attorneys
10 deal with problems such as his. Now that he has taken advantage of
11 the assistance provided by LOMAP, he believes he is better prepared
12 to handle private practice than he was in the past. As indicated
13 above, Miranda is already managing the law office of the two
14 attorneys with whom he plans to share office space, should he be
15 reinstated. By helping them to avoid the same problems he faced in
16 the past, Miranda has gained a better understanding of how his own
17 problems were created, as well as insight into how to avoid them in
18 the future. He believes the period of suspension and the
19 assistance of LOMAP have enabled him to start practicing again with
20 a "clean slate." He plans to continue to work closely with LOMAP,
21 and to immediately seek its guidance should any problems arise.
22 Miranda believes that the help he has received from LOMAP will
23 enable him to successfully handle the everyday rigors of private
24 practice.

25 . . .

26 . . .

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2 and a willing heart."⁴ The Commission was impressed by Miranda's
3 sincerity and by the State Bar's support for his reinstatement and
4 its belief that Miranda is a man of good character who has only the
5 best intentions in his practice of the law. The State Bar believes
6 Miranda deserves the opportunity to practice law equipped with the
7 knowledge that the State Bar will assist him, should he so request,
8 before a problem turns into an ethical violation. The majority of
9 the Commission agrees, and notes that the two-year probationary
10 period will serve to help Miranda to avoid future ethical
11 violations. If that is not the case the regular monitoring of his
12 practice, as required by the probationary terms, will ensure that
13 any problems are discovered quickly. Should any further misconduct
14 result, the State Bar has made it clear that it will do everything
15 it can to fully and speedily handle the matter, with any future
16 misconduct resulting, in all likelihood, in a request for
17 disbarment. The majority of the Commission agrees with the State
18 Bar that Miranda deserves one last chance to establish that he can
19 successfully make use of his previously-demonstrated legal
20 abilities within the boundaries of the ethical rules, and
21 recommends that Miranda be reinstated, subject to the probationary
22 terms detailed above.

23 RESPECTFULLY SUBMITTED this 9TH day of JUNE, 1994.

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25 _____
26 Steven L. Bosse, Chairman
Disciplinary Commission

27 ⁴2/10/94 Transcript, p. 46.

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BEFORE THE DISCIPLINARY COMMISSION
OF THE
SUPREME COURT OF ARIZONA

In re JESSE R. MIRANDA,) Comm. No. 93-1676
A suspended member)
of the State Bar of)
Arizona)
COMMISSION REPORT

HART, Commissioner *pro tempore*, dissenting:

An absolute majority of the Commission, *see* Ariz. Sup. Ct. Rule ("Rule")
71(a), recommends that Mr. Miranda's application for reinstatement be granted
upon a condition of probation. I dissent.

The reinstatement of a lawyer may not be conditioned.¹ It must be
recommended "only when [the Commission is] satisfied that applicant possesses the
moral qualifications and the learning in the law required for admission to practice
law in this state" in the first instance. *Id.* That this is so is shown not only by the
plain language of Rule 71, but also by the general scheme of handling lawyer
conduct set forth in the 1985 revision of the Court's rules. Despite the power of the

¹It is true that previously the Commission and the Court have both placed
conditions on reinstatement of lawyers. Indeed, the author may have voted for
such a disposition on a prior occasion. That fact neither creates precedent nor *a*
priori amends the clear language of the rules discussed in text.

1
2 court to decide both facts and law in these cases, *In re Neville*, 147 Ariz. 106, 708 P.2d
3 1297 (1985), it and the Commission cannot operate outside the court's own rules.
4 See Rule 54(e); cf. *In re Augenstein* (Ariz. Sup. Ct., March 24, 1994).

5 It is suggested that it is only fair to let the applicant resume practice and earn a
6 living, even though there is such uncertainty about his present behavior that
7 probation is required. How can such a person possibly meet the requirement that
8 "proof of rehabilitation be demonstrated in a reinstatement proceeding"? Rule
9 71(g).

10 Before the 1985 amendments, there was a concern that there was a lack of
11 consistency in imposing discipline by the bar, and a lack of finality in some cases due
12 partly to committees and the Disciplinary Board expanding the limits of vague
13 language in the rules. Therefore, the new rules deliberately limited the action that
14 could be taken with a lawyer and placed time limits within which action must be
15 taken. This provided more certainty for the lawyer, a good due process purpose, and
16 also brought more order to the system.

17 For example, Rule 53(a) requires that a disciplinary charge either be dismissed,
18 or stayed by order for cause, or result in the imposition of discipline. That stopped
19 the practice of some committees of "sitting" on charges while some sort of informal
20 probation was undertaken, or the lawyer was "watched," or some even more bizarre
21 practices. Also, proof must be by clear and convincing evidence, a very certain
22 standard. Rule 54(c); see Rule 73(c). Similarly, in this case Rule 54(k)(2) created an
23 estoppel by judgment to further discipline on the 1993 probation because it
24 culminated in an order of suspension. Another example is the setting of a standard
25 and detailed instructions for disability proceedings. Rule 59; see Rule 59(b)(1)(B) ("A
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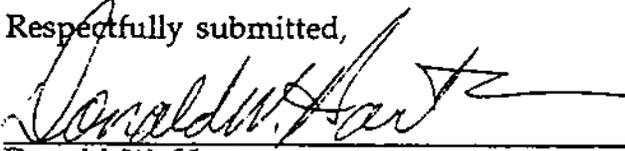
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lawyer shall be transferred to such status upon proof that") (emphasis added), which replaced informal probation and other methods used to handle such cases.

So here, where the rules specify the procedures for reinstatement, Rule 72(e), and limit the action that can be taken on the application for reinstatement to dismissal or granting, with only certain conditions (payment of costs, restitution, others) allowed upon an order of reinstatement. Rule 72(f). Plainly the standard is that the lawyer has been returned to the status of a new admittee, free of all suspicion and extraordinary control until a new disciplinary charge may be brought. It does not call for readmission under probation. The intent of the rules is for qualified, rehabilitated persons to be active attorneys with the respect and honor due a member of the bar. This is further borne out by the requirement for reinstatement from disability inactive status that the lawyer show "by clear and convincing evidence, that the lawyer's disability has been removed," not that with further therapy he can begin to work his way back. Rule 73(c).

Indeed, the rules are so structured that a lawyer can much more easily obtain the help that is needed that under the prior rules. They are in that regard compassionate. At the same time, they protect the public and provide certainty to all by limiting the actions available and requiring that they be definite instead of indefinite or vague. The practice under the rules should not be allowed to change as the predilections of the decision-makers change. *In re Augenstein*, supra, at 13 n.3.

I would grant the application and order reinstatement without condition.

Respectfully submitted,

Donald W. Hart

1 Copies of the foregoing were mailed this 10th day of
June, 1994, to:

2 Jesse R. Miranda, Applicant
3 6857 West Virginia
4 Phoenix, Arizona 85035-1407

5 Robert J. Stephan
6 Hearing Officer 9R
371 East Monte Vista
Phoenix, Arizona 85004-1438

7 Copies of the foregoing were hand-delivered this 10th day of
June, 1994, to:

8 Harriet G. Turney, Bar Counsel
9 111 West Monroe, Suite 1800
10 Phoenix, Arizona 85003

11 ROSEMARY B. MARTIN
12 Disciplinary Clerk

13 By: E. A. Deering
14 E. A. Deering

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EXHIBIT

5

BEFORE THE PROBABLE CAUSE PANELIST
OF THE STATE BAR OF ARIZONA

FILED
FEB 23 2004
STATE BAR OF ARIZONA
BY *Clair Pave*

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)

No. 03-1655

JESSE R. MIRANDA,)
Bar No. 005265)

**ORDER OF INFORMAL
REPRIMAND AND COSTS**

Respondent.)

The undersigned Probable Cause Panelist of the State Bar, having reviewed this matter pursuant to Rule 54(b), Ariz.R.S.Ct., finds that probable cause exists to believe that Respondent has violated Rule 42, Ariz.R.S.Ct., to wit:

Respondent filed a motion for relief from judgment but failed to disclose to the assigned judge the existence of parallel proceedings before a second judge and the second judge's ruling, which the first judge ultimately relied on in denying Respondent's requested relief. Failing to disclose the parallel proceedings, especially when the opposing party failed to respond to the motion, was prejudicial to the administration of justice and violated ER 8.4(d).

IT IS THEREFORE ORDERED that:

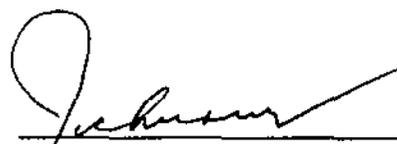
- (1) Pursuant to Rules 54(b) and 60(a)4, Ariz.R.S.Ct., Respondent is reprimanded for such conduct.

(2) Pursuant to Rules 48(k)3 and 60(a)4, this Order will be entered in the Respondent's permanent record at the State Bar and, pursuant to Rule 70(a)2, is not confidential. It may also be considered by a hearing officer, the Disciplinary Commission or the Supreme Court in recommending or imposing discipline in a subsequent disciplinary proceeding against Respondent.

IT IS FURTHER ORDERED, pursuant to Rule 60(b), Ariz.R.S.Ct., that Respondent shall pay the costs and expenses of these proceedings, as set forth in the attached Statement of Costs and Expenses, within thirty (30) days of receipt of this Order.

PURSUANT to Rule 54(b)5, Ariz.R.S.Ct., you have the right to contest this Order of Reprimand and, instead, demand that a formal proceeding be instituted. Your demand should be lodged with the bar counsel assigned to this matter within ten (10) days of service of this Order of Reprimand.

DATED this 20th day of FEBRUARY, 2004.



Probable Cause Panelist
State Bar of Arizona
Richard T. Platt

* * *
* * *

JESSE R. WILLIAMS

Respondent

2600 N. Central Avenue, Suite 850

Phoenix, Arizona 85004-3050

Copy hand delivered

this 24th day of February, 2004, to:

Lawyer Regulation Records Manager

State Bar of Arizona

111 West Monroe, Suite 1800

Phoenix, Arizona 85003-1742

by

Lynn Boardman
PAS.gb