BEFORE A HEARING OFFICER

OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA **DAVID D. RODGERS,** **Bar No. 014623,** Respondent.	File Nos. 05-1357, 06-0326, 06-0434 **HEARING OFFICER REPORT** (Assigned to Hearing Officer 9J Mark S. Sifferman)

PROCEDURAL HISTORY

The Complaint in this matter was filed October 31, 2006. The Complaint was served November 3, 2006, by certified mail - restricted delivery to Respondent at the address of record provided by Respondent to the Membership Records Department of the State Bar of Arizona. This mailing was unclaimed and was returned to the State Bar. The Complaint also was mailed by regular first class mail to Respondent's address of record and to an address provided by Respondent to bar counsel. These mailings also were returned to the State Bar.

Respondent failed to answer the Complaint within the time frame set forth in the Rules. On December 5, 2006, a Notice of Default was filed. A Default was entered January 2, 2007, and an amended Default was entered January 3, 2007.

By a Notice filed and mailed January 8, 2007, an aggravation and mitigation hearing was noticed for January 30, 2007. Due to a scheduling conflict, the aggravation and mitigation hearing was reset to January 29, 2007. Notice of the hearing and rescheduled hearing was provided to Respondent.

At the hearing, the State Bar appeared through its counsel, Roberta L. Tepper. Respondent did not appear at the hearing and no counsel appeared for Respondent.

FINDINGS OF FACT

Based upon the whole record submitted to the Hearing Officer, including records of the Supreme Court and the Superior Court of which judicial notice may be taken, and based upon the effect of the default entered against Respondent, this Hearing Officer finds:

RESPONDENT'S BACKGROUND

1. Respondent was admitted to practice law in this State on October 24, 1992. *Complaint, ¶ 1.*

2. Respondent was summarily suspended from the practice of law in Arizona from September 15, 2000 though July 13, 2001, for failure to complete mandatory continuing legal education ("MCLE") obligations required under Rule 45, Arizona Rules of the Supreme Court. *Complaint, ¶ 2; Hearing Exhibit 4.*

3. On February 21, 2003, Respondent again was summarily suspended for failure to comply with MCLE requirements. Respondent was not reinstated until May 6, 2003.

4. In September 2006, Respondent once again was summarily suspended for failure to comply with MCLE requirements. Respondent has not been reinstated.

5. In December 2006, the State Bar obtained a conservator for Respondent's law practice. *Maricopa County Superior Court Cause No. CV2006-018338.*

COUNT ONE (FILE NO. 05-1357) (COWAN)

6. In April 2004, Respondent was retained by Connie Cowan ("Ms. Cowan") to represent her and her business, Chisholm Company, Inc., in a civil lawsuit filed in

Maricopa County Superior Court, *Chisholm Company, Inc. v. Hickman's Egg Ranch, Inc.*, CV2002-023427 (hereinafter the "Chisholm Matter"). *Complaint, ¶ 3.*

7. When Ms. Cowan retained Respondent, she informed him that he would have to be ready to aggressively manage the litigation in a short period of time. Ms. Cowan explained to Respondent that she wanted him to file a motion for reconsideration of the granting of a motion for partial summary judgment, that discovery in her matter would have to be updated, and that there were other matters that needed prompt attention, including obtaining an expert witness report and handling a discovery dispute with Hickman's. Respondent agreed to represent Chisholm and Ms. Cowan. *Complaint, ¶¶ 4 - 6.*

8. In May 2004, Respondent scheduled three weekend working sessions with Ms. Cowan but did not appear for any of the working sessions. Respondent provided no notice to Ms. Cowan that he would not appear, nor did he contact her to cancel the working sessions. *Complaint, ¶¶ 7, 8.*

9. As of June 21, 2004, although the expert witness report was due by July 1, 2004, Respondent had not obtained the expert witness report. Respondent admitted to Ms. Cowan that he had not contacted the expert witness since April 2004. *Complaint, ¶¶ 9, 10.*

10. In June 2004, Hickman's requested production of Chisholm's tax returns. Ms. Cowan informed Respondent that she did not wish to produce the tax returns as she felt they were not relevant to the litigation. *Complaint, ¶¶ 11, 12.*

11. A settlement conference in the Chisholm matter was scheduled for August 4, 2004. On August 3, 2004, Respondent promised to provide a copy of Hickman's settlement memorandum to Ms. Cowan, as he had not done so prior to that time. Respondent failed to provide the copy of the settlement memorandum to Ms. Cowan as promised. On August 4, 2004, just moments prior to attending the settlement conference

in the Chisholm matter, Respondent provided a copy of Hickman's settlement memorandum to Ms. Cowan. The Hickman's settlement memorandum was lengthy and due to the fact that the settlement conference was about to convene, Ms. Cowan did not have an opportunity to review or discuss it with Respondent. *Complaint, ¶¶ 13 - 17.*

12. From April 2004 through September 2004, Ms. Cowan continued to request that Respondent file a motion for reconsideration of the partial granting of a motion for summary judgment. Respondent failed to file that motion, although he had prepared a draft of the motion. On or about September 28, 2004, Ms. Cowan finalized the Motion for Reconsideration, obtained Respondent's signature on the motion, and filed the motion. *Complaint, ¶¶ 18 - 20; Hearing Testimony of Ms. Cowan.*

13. On or about November 24, 2004, Hickman's filed a motion to compel the production of Chisholm's corporate tax returns, among other items. Respondent failed to provide a copy of the motion to compel to Ms. Cowan. Respondent failed to file a response to the motion to compel. *Complaint, ¶¶ 21 - 23.*

14. On or about December 6, 2004, the court, in a draft ruling, granted Hickman's motion to compel. The court confirmed the order on December 13, 2004. In response, Respondent promised to provide all outstanding discovery, including the requested tax returns, by December 17, 2004. Ms. Cowan was unaware that Respondent's promise included a promise to produce Chisholm's tax returns as she had never been provided a copy of Hickman's motion to compel. *Complaint, ¶¶ 24 - 26.*

15. Respondent promised Ms. Cowan that he would contact the attorneys for Hickman's and negotiate an agreement to not produce Chisholm's tax returns, pursuant to her desire not to disclose the tax returns. Respondent failed to do so. Respondent failed to provide the outstanding discovery to opposing counsel by December 17, 2004, as he had promised to do. On or about December 26, 2004, after learning that Respondent had

promised to provide Hickman's with Chisholm's tax returns, Ms. Cowan requested that Respondent file a motion for protective order. *Complaint, ¶¶ 27 - 30.*

16. On or about December 27, 2004, Respondent informed Ms. Cowan that Hickman's had filed a motion seeking to have Respondent and Ms. Cowan held in contempt for failing to provide discovery as ordered. On or about December 30, 2004, Ms. Cowan e-mailed Respondent and provided documents for him to attach to the motion for protective order she had requested that he file prior to January 4, 2005. Respondent failed to file a motion for protective order as requested by Ms. Cowan, and failed to provide an explanation to Ms. Cowan as to why he did not do so. Respondent failed to satisfy outstanding discovery responses by January 7, 2005. During the last days of December 2004 and until January 5, 2005, Ms. Cowan was unable to contact Respondent and was not informed of his whereabouts. *Complaint, ¶¶ 31 - 35.*

17. Despite repeated reminders by Ms. Cowan to hire a computer expert, Respondent failed to timely do so. When Respondent did disclose a computer expert as a rebuttal witness, he did so in an untimely fashion. *Complaint, ¶¶ 36, 37.*

18. On or about January 6, 2005, Hickman's attorneys provided a settlement offer to Respondent. Under the offer, Hickman's would pay $70,000.00 to Ms. Cowan. Respondent did not timely relay the settlement offer to Ms. Cowan, so by the time she learned of the offer, it had expired. *Complaint, ¶¶ 38, 39; Hearing Testimony of Ms. Cowan.*

19. After a hearing on or about January 18, 2005, the Court, in a ruling on Hickman's motion to compel and motion for sanctions, found that Respondent had not adequately communicated with opposing counsel regarding the reason for Respondent's delay in producing documents in late December 2004 as required and as promised. In the same ruling, the Court awarded Hickman's $2,638.50 to reimburse Hickman's for a

portion of its attorneys fees relating to the filing of the December 27, 2004 motion. *Complaint, ¶¶ 40, 41.*

20. During the period of December 2004 through April 2005, there would be periods of time during which Ms. Cowan would be unable, without any known cause or explanation, to contact Respondent. These periods of time included the week before the February 1, 2005 trial. *Complaint, ¶¶ 42, 43.*

21. During the period of December 2004 through April 2005, Respondent missed deadlines, including deadlines for discovery, a joint pre-trial statement (which was submitted without Respondent's signature), motions in limine, jury instructions, voir dire questions and a case summary. Further, Respondent did not adequately communicate during this time with Ms. Cowan. *Complaint, ¶ 45.*

22. The trial concluded with a verdict in favor of Hickman's and against Chisholm. Judgment subsequently was entered in favor of Hickman's and against Chisholm for $339,403.00 in attorneys fees, $75,214.00 in expert witness fees, and $2,638.50 in sanctions for discovery violation. Hickman's has attempted to collect this Judgment by, among other things, garnishment. *Complaint, ¶ 44; Hearing Testimony of Ms. Cowan.*

23. In late February 2005, or early March 2005, Respondent moved to withdraw as Ms. Cowan's lawyer due to an ongoing fee dispute. Mr. Cowan objected to Respondent's withdrawal. Respondent, prior to the time his motion could be considered and ruled on by the court, refused to perform any post trial work for Ms. Cowan. *Complaint, ¶¶ 46 - 48.*

24. Respondent billed Ms. Cowan for a total of $125,116.72 in attorneys fees for the Chisholm matter. At the time the trial was concluded, approximately $72,000.00 remained unpaid. *Complaint, ¶¶ 49, 50; Hearing Testimony of Ms. Cowan.*

25. On July 11, 2006, a State Bar of Arizona Fee Arbitration hearing was conducted pursuant to a petition by Respondent. On August 23, 2006, the fee arbitration panel issued an award, finding that of the approximate $72,000 in billed but unpaid fees, only $25,000 was reasonable. *Complaint, ¶¶ 49, 50; Hearing Testimony of Ms. Cowan; Hearing Exhibit 1, pages SBA000015 - SBA000025.*

26. The State Bar of Arizona, pursuant to a charge received from Ms. Cowan on or about August 9, 2005, commenced an investigation of possible ethical violations by Respondent. By a letter dated September 13, 2005, from bar counsel to Respondent at his address of record, Respondent was asked to respond and provide information relating to Ms. Cowan's allegations. By a letter dated October 11, 2005, Respondent requested an extension of time to respond to the State Bar's letter, and was granted an extension until October 31, 2005. In spite of the extension of time, Respondent did not respond. *Complaint, ¶¶ 51 - 54.*

27. On or about November 17, 2005, Respondent telephonically informed bar counsel that his response had been overlooked and would be provided to the State Bar by November 21, 2005. Respondent did not provide his response to the State Bar by November 21, 2005. By a letter dated December 12, 2005, bar counsel reminded Respondent of his obligations under the rules of the Supreme Court to respond, and that his failure to respond, in itself, might be grounds for discipline. Respondent did not respond. *Complaint, ¶¶ 55 - 58.*

28. By a letter dated January 23, 2006, bar counsel again reminded Respondent of his obligation to respond to the inquiry, and informed Respondent that his failure to respond by January 30, 2006, would be considered a deliberate non-response. Respondent responded by a letter dated January 30, 2006, which was received by the State Bar that day. *Complaint, ¶¶ 59, 60.*

COUNT TWO (FILE NO. 06-0326)
(KLEIN)

29. In 2002, Respondent was retained by Louis Klein ("Mr. Klein") for representation in the matter of *Louis Klein v. Scottsdale Health Care Corp.* ("Klein I"), Maricopa County Superior Court File No. CV2002-004942. The lawsuit involved the attempted collection of a bill supposedly owed to Scottsdale Healthcare by Mr. Klein, the attempt to collect that bill, and allegedly inaccurate or inappropriate reports to a credit reporting agency. In addition to statutory penalties available under the Federal Fair Credit Reporting Act ("FCRA"), Mr. Klein sought damages as a result of a lost business opportunity caused by erroneous credit report entries. *Complaint, ¶ 65; Hearing Testimony of Mr. Klein.*

30. Respondent failed to serve a timely disclosure statement in Klein I. Respondent also failed to timely prosecute Klein I, resulting in the matter being dismissed. As a result, a Judgment for attorneys fees and court costs was entered against Mr. Klein. *Complaint, ¶¶ 66 - 68; Hearing Testimony of Mr. Klein.*

31. Respondent failed to keep Mr. Klein informed about the status of his matter and failed to inform Mr. Klein that Klein I had been dismissed, or that a Judgment had been entered against Mr. Klein. *Complaint, ¶ 69.*

32. Respondent refiled the lawsuit, which case was assigned Maricopa County Superior Court Cause No. CV2004-018461 ("Klein II"). Respondent did not inform Mr. Klein that he had filed Klein II. *Complaint, ¶¶ 70, 71; Hearing Testimony of Mr. Klein.*

33. Mr. Klein subsequently learned independently that Klein I had been dismissed and that there was an unsatisfied Judgment against him for court costs and attorneys fees in Klein. *Complaint, ¶ 72; Hearing Testimony of Mr. Klein.*

34. Respondent finally admitted to Mr. Klein that Klein I had been dismissed. Respondent promised to resolve the matter by making restitution to Mr. Klein consisting

of the attorneys fees paid by Mr. Klein to Respondent, the costs and fees awarded to Scottsdale Health Care in Klein I, plus the statutory penalities available under the FCRA. *Complaint, ¶¶ 73 - 74; Hearing Testimony of Mr. Klein; Hearing Exhibit 2, pages SBA000042 - SBA000043.*

35. The total amount owed under Respondent's promise to Mr. Klein was $18,268.97, consisting of the $2,500.00 initially paid to Respondent, the $5,319.87 subsequently paid to Respondent, the $336.00 paid to another attorney to have the court file in Klein I reviewed, the $2,000.00 for FCRA statutory damages, and the $8,113.10 fees and costs payable to Scottsdale Healthcare. Respondent has reimbursed Mr. Klein only $4,500.00. *Complaint, ¶ 75; Hearing Testimony of Mr. Klein; Hearing Exhibit 2, pages SBA000042 - SBA000043.*

36. Mr. Klein sued Respondent in Superior Court, and obtained a default judgment on January 11, 2007. The default judgment was for the principal amount of $18,409.03, which includes the amounts set forth in the preceding paragraph. *Hearing Testimony of Mr. Klein; Hearing Exhibit 2, pages SBA000042 - SBA000043.*

37. Based on Mr. Klein's allegations, received by the State Bar on February 24, 2006, bar counsel commenced an investigation into possible ethical violations by Respondent. By a letter dated March 15, 2006, bar counsel made Respondent aware of Mr. Klein's allegations and asked that Respondent respond to them no later than 20 days from the date of the letter. *Complaint, ¶¶ 76, 77.*

38. On April 4, 2006, Respondent's legal Assistant, Nicki Endicott ("Ms. Endicott") telephoned bar counsel on Respondent's behalf and requested an extension of time for Respondent to provide a response in the investigation. By facsimile cover sheet, received by the State Bar on April 4, 2006, Ms. Endicott stated that pursuant to Respondent's request, she was relaying Respondent's request for an extension of time

for his response until April 25, 2006. Respondent was granted an extension until April 25, 2006. *Complaint, ¶¶ 78 - 80.*

39. Respondent's due date for a response was subsequently extended until May 2, 2006, and then until May 19, 2006. Respondent did not respond. *Complaint, ¶¶ 81, 82.*

40. By a letter dated May 31, 2006, bar counsel reminded Respondent of his obligation to comply with the State Bar's request for information and that his failure to cooperate with the disciplinary investigation was, in itself, grounds for discipline. Respondent was asked to respond in the disciplinary investigation no later than June 9, 2006. Respondent did not respond. *Complaint, ¶¶ 83 - 85.*

41. By a letter dated September 14, 2006, bar counsel, having cause to believe that Respondent's address had changed, requested that Respondent update his membership records pursuant to Rule 32(c)(3), Ariz.R.S.Ct. Respondent did not respond. *Complaint, ¶¶ 86, 87.*

COUNT THREE (FILE NO. 06-0434)
(PRACTICING WHILE SUSPENDED)

42. Respondent was suspended from the practice of law from September 15, 2000, though July 13, 2001, for failure to fulfill his MCLE obligation. *Complaint, ¶ 2.*

43. Between February 2001 and July 2001, Respondent was working for the Arizona law firm of Gammage and Burnham, PLC, and acted as an attorney in at least one matter by sending the following letters on Gammage and Burnham letterhead:

- a letter dated June 25, 2001, addressed to a client named Jan Peck ("Ms. Peck") to obtain an assignment of rights from Ms. Peck and her husband, Bruce Peck, to another person.
- a letter dated June 27, 2001, addressed to Charles Horn ("Mr. Horn") the president of ScriptSave, a.k.a. Medical Security Card, Inc., demanding an accounting and a transfer of funds on Ms. Peck's behalf.
- a letter dated June 29, 2001, to Mr. Horn, stating that his firm represented Ms. Peck, advocated Ms. Peck's position to Mr. Horn, and again demanded

an accounting and payment of funds to Ms. Peck. In this letter, Respondent further advised Mr. Horn to contact Ms. Peck only through his firm.

Complaint, ¶¶ 91 - 95; Hearing Exhibit 3, pages SBA0000 - SBA0000.

44. By a letter dated April 17, 2006, bar counsel informed Respondent of this charge and asked that he respond to this bar counsel within 20 days of the date of the letter. Respondent did not respond. *Complaint, ¶¶ 96, 97.*

45. By a letter dated May 31, 2006, bar counsel reminded Respondent of his obligation to respond in the disciplinary investigation and that failure to do so was, in itself, grounds for discipline. Respondent's response was requested not later than June 9, 2006, and Respondent was advised that his continuing failure to respond would be, after that date, considered deliberate. Respondent did not respond. *Complaint, ¶¶ 98 - 100.*

46. By a letter dated September 14, 2006, having cause to believe that Respondent's address had again changed, bar counsel requested that Respondent provide updated address information to the State Bar pursuant to Rule 32(c)(3), Ariz. R.S.Ct. Respondent did not respond. *Complaint, ¶¶ 101, 102.*

CONCLUSION

Based upon the complete record generally and the foregoing facts specifically, this Hearing Officer concludes:

1. Respondent was properly served with the Complaint in this matter. Considering Respondent's multiple requests for extensions of time to respond to State Bar investigatory letters, Respondent was aware his conduct in these matters was the subject to State Bar investigation. Attorneys are obligated to keep a current mailing address on file with the State Bar. The Post Office's return of the mailed Complaint was due to the Respondent's failure to claim the certified letter and failure to maintain a current mailing address as required by Rule 32(c)(3), Ariz. R.S.Ct.

2. As to Count One, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.3, 1.4, 1.5 and 3.2, and Rule 53(f), Ariz.R.S.Ct.

3. As to Count Two, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.3, 1.4, 3.2 and 8.4(d), and Rule 53(d) and (f), Ariz.R.S.Ct.

4. As to Count Three, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 5.5, and Rules 31(b) and 53(d) and (f), Ariz.R.S.Ct.

5. The following aggravating circumstances exist: prior discipline,[1] multiple offenses, pattern of misconduct, dishonest motive, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, and substantial experience in the law.

6. There are no mitigating circumstances.

RECOMMENDATION

CONSIDERATION OF THE ABA STANDARDS

In determining the appropriate sanction, the American Bar Association's *Standards for Imposing Lawyer Sanctions* are to be considered. *In re Clark*, 207 Ariz. 414, 87 P.3d 827 (2004); *In Re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). The Standards are designed to promote consistency by identifying relevant factors which should be considered in determining a sanction, and then applying those factors to situations in which lawyers have engaged in misconduct. *Standard 1.3, commentary*. In applying the *Standards*, four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of

[1] In File No. 03-0770, Respondent was censured and ordered to pay the costs and expenses of the proceedings. This discipline involved Respondent continuing to practice law while summarily suspended for MCLE non-compliance. One aggravating factor was found: substantial experience in the practice of law. Four mitigating factors were found: absence of a dishonest or selfish motive; full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings; character or reputation; and remorse.

aggravating and/or mitigating factors. *In Re Peasley*, supra; *In re Spear*, 160 Ariz. 545, 555, 774 P.2d 1335, 1345 (1989).

Where the matter involves findings of multiple misconduct, the ultimate sanction should be at least consistent with the sanction for the most serious instance of misconduct among the number of violations. The other acts of misconduct should be treated as aggravating factors. Therefore, where multiple acts of misconduct are found, the sanction generally should be greater than the sanction for the most serious individual misconduct. *In Re Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994); *In re Cassali*, 173 Ariz. 372, 843 P.2d 654 (1992).

The most serious misconduct involved the duties owed to clients. ABA Standard 4.0. The most applicable standard in this case is ABA Standard 4.4, Lack of Diligence. As to the lack of diligence violations, Respondent's mental state was knowing.

ABA Standard 4.41 provides that disbarment is generally appropriate when:

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

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

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

ABA Standard 4.42 provides that suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in the pattern of neglect and causes injury or potential injury to a client.

The difference between Standard 4.41 and 4.42 is whether the harm to which the client was exposed constitutes "serious injury." In light of the ethics violations in addition to those involving lack of diligence plus the numerous and substantial aggravating circumstances, this Hearing Officer believes that it is unnecessary to analyze

whether the harm involved in these cases was serious. Most puzzling is Respondent's failure to respond to State Bar inquiries and to participate in these proceedings. If Respondent is incapable or unwilling to comply with the duties he owes in this disciplinary proceeding (including providing some explanation for his conduct), it is logical to conclude, especially in light of the findings made on Counts One and Two, that Respondent is incapable or unwilling to fulfill any of the obligations owed by an attorney.

Respondent poses a present threat to clients. This is especially evidenced by the unopposed Order appointing a conservator for his legal practice. Considering the danger posed to clients, and in light of the complete absence of any mitigating circumstances, this Hearing Officer believes disbarment is warranted. Had Respondent offered any credible explanation for his misconduct, or submitted any evidence in mitigation, a suspension might have been appropriate.

PROPORTIONALITY ANALYSIS

The purpose of professional discipline is twofold: (1) to protect the public, the legal profession, and the justice system, and (2) to deter others from engaging in similar misconduct. *In re Neville*, 147 Ariz. 106, 116, 708 P.2d 1297, 1307 (1985); *In re Swartz*, 141 Ariz. 266, 277, 686 P.2d 1236, 1247 (1984). Disciplinary proceedings are not to punish the attorney. *In re Peasley*, 208 Ariz. 27, 39, 90 P.3d 764, 776 (2004); *In re Beren*, 178 Ariz. 400, 874 P.2d 320 (1994).

The discipline in each situation must be tailored to the individual facts of the case in order to achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983); *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993). To have an effective system of professional sanctions, there must be internal consistency and it is therefore appropriate to examine sanctions imposed in cases that are factually similar: *In re Shannon*, 179 Ariz. 52 (1994); *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988).

The sanction recommended by this Hearing Officer is consistent with the discipline ordered in the following similar cases: *David Apker* (SB-04-0094), *Alexander Sierra* (SB-04-0074), *George Brown* (SB-05-0054), *David Son* (SB-05-0173) and *Cindy L. Wagner* (SB-05-0175). These cases involved attorneys who knowingly failed to diligently represent clients, and where many of the aggravating circumstances found in this case were present. These cases also involved a default being taken against the respondent attorney who did not cooperate in disciplinary proceedings. In these cases, disbarment was ordered by the Disciplinary Commission, with the Supreme Court declining review.

CONCLUSION

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

1. Respondent be disbarred;
2. the cost and expenses of this proceeding be taxed against Respondent;
3. Respondent provide restitution to Mr. Klein by paying the full amount due and owing by Respondent under the judgment obtained by Mr. Klein; and
4. if Respondent is reinstated, that Respondent be subject to two (2) years' probation under terms determined at the time of reinstatement.

DATED this 27th day of February, 2007.

Mark S. Sifferman
Hearing Officer

Original filed with the
Disciplinary Clerk of the
State Bar of Arizona, this
21st day of February 2007,
and copy mailed to:

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