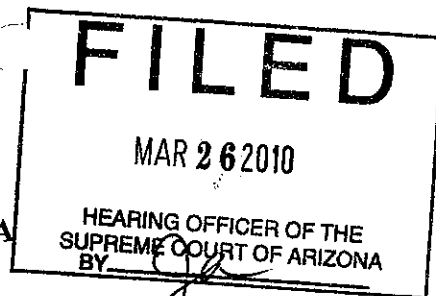


**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**



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

DANIEL INSERRA,
Bar No. 017284

RESPONDENT.

) File Nos. 08-2282, 09-0561, 09-0880
)
)

) **HEARING OFFICER'S REPORT**
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PROCEDURAL HISTORY

1. Probable cause was found in the above three files on October 14, 2009. Thereafter, the State Bar filed a three count Complaint on November 6, 2009, and served it on Respondent on November 12, 2009. The matter was assigned to the undersigned Hearing Officer on November 19, 2009, and a Case Management Conference was held on December 4, 2009. A Notice of Default was filed on December 8, 2009, and Entry of Default was filed on December 29, 2009. During this time, the parties were negotiating on the matter, and ultimately notified the undersigned Hearing Officer that they had resolved the case. The original Final Hearing date of February 19, 2010, was vacated and the matter proceeded to a hearing on the agreement on February 12, 2010.
2. The parties submit that a 15 month suspension retroactive to February 7, 2009, the date Respondent's one year suspension in SB-08-0166-D began, plus a period of probation, and payment of all costs and restitution if any, is an appropriate sanction.

FINDINGS OF FACTS

3. Except as noted herein, at all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on October 19, 1996. Respondent was suspended from the practice of law on February 7, 2009, for one year, and remains suspended at this time.¹
4. The parties submit that all of the conduct in these three Counts occurred prior to Respondent's suspension, except for an instance of failure to advise his client of his suspension, Transcript of hearing ("T/R") 9:9-18.

COUNT ONE (File no. 08-2282 Al-Mossoy)

5. Lindsey Hargis ("Ms. Hargis") is a friend of Ali Mohsson Al-Mossoy ("Mr. Al-Mossoy"). Ms. Hargis met with Respondent in late November 2008 and Respondent said he would take Mr. Al-Mossoy's case for \$6,000.
6. Mr. Al-Mossoy was able to deposit, \$4,500 into Respondent's account on December 1, 2008, and Respondent told Ms. Hargis he would get the rest when Mr. Al-Mossoy was released from jail.
7. Respondent told Ms. Hargis he would file something to get Mr. Al-Mossoy a "sooner date" and he should hear something in 10 days.
8. Respondent told Mr. Al-Mossoy he would be released in the evening of December 12, 2008. Mr. Al-Mossoy was not released and Ms. Hargis tried to get a hold of Respondent, who would not return telephone calls.
9. On December 16, 2008, Respondent called Ms. Hargis after she had left a message telling Respondent that Mr. Al-Mossoy did not want Respondent to represent him anymore.

¹ Unless otherwise noted, the facts cited herein are taken from the Tender of Admissions.

10. Respondent told Ms. Hargis that the judge had “messed up on the papers” and that's why Mr. Al-Mossoy was not released.
11. Mr. Al-Mossoy still wanted his advance fee back, so Respondent told Ms. Hargis to call him “monday (sic) or tuesday (sic) to see how much we would ge (sic) back...” After that Respondent ignored Ms. Hargis’ phone calls.
12. Mr. Al-Mossey provided proof of the payment that he made to Respondent. On April 29, 2009, Mr. Al-Mossey submitted two transaction summaries from Chase Bank, one showing a \$4,500 deposit into an account ending in the number 7679, and one showing a \$1,000 deposit into an account ending in the numbers 3477.
13. Mr. Al-Mossoy never talked to Respondent again after paying him the additional \$1,000.
14. When Mr. Al-Mossoy went to court in February 2009, the judge told him that Respondent had been suspended and Mr. Al-Mossoy needed to get someone new to represent him because Respondent “had dropped the case with no motion.”
15. Regarding restitution,² the evidence was that Respondent did do some work for Mr. Al-Mossoy prior to the time that Mr. Al-Mossoy terminated his services. Respondent concedes that he owes Mr. Al-Mossoy \$1,500 of unused retainer, T/R 49:3-51:17.
16. On February 6, 2009, the State Bar sent Respondent a charging letter asking him to respond in 20 days.
17. On March 12, 2009, Respondent was sent a warning letter regarding his failure to respond.

² The parties stipulated to allow the Hearing Officer to make the decision concerning what, if any, restitution Respondent owes to any of the three clients set forth in the three Counts in this matter.

18. On May 7, 2009, Respondent sent his initial response.
19. On August 4, 2009, Respondent was asked for the following information:
 - a) A copy of your Rule 72(a), Ariz.R.Sup.Ct., letters to Mr. Al-Mossoy and to the Court in CR 2008-167525-001.
 - b) A copy of your Rule 72(e) Affidavit.
 - c) A copy of your fee agreement with Mr. Al-Mossoy, or a writing that complies with ER 1.5(b).
 - d) An explanation of what types of bank accounts Mr. Al-Mossoy deposited the \$4,500 in on December 1, 2008, account ending in number 7679, and the \$1,000 on February 2, 2009, account ending in numbers 3477.
 - e) An accounting of the time you spent on Mr. Al-Mossoy's case. Be specific as to the tasks undertaken and completed, telephone calls made, letters written, and pleadings filed. This request is pursuant to ERs 1.5 and 1.15, Ariz.R.Sup.Ct., to establish the reasonableness of your fees and that an accounting is provided to Mr. Al-Mossoy.
20. Respondent failed to respond.
21. Respondent failed to timely perform the work requested by Mr. Al-Mossoy.
22. Respondent failed to keep Mr. Al-Mossoy informed about the status of his case, and failed to communicate with Mr. Al-Mossoy.
23. Respondent failed to provide an accounting for the fee he charged Mr. Al-Mossoy and the fee was unreasonable.
24. Respondent failed to provide information that the State Bar requested.

25. Respondent failed to inform Mr. Al-Mossoy that he had been suspended as of February 7, 2009.

COUNT TWO (File no. 09-0561 Hines)

26. Rafael and Tequeia Hines ("Mr. and Mrs. Hines") retained Respondent to represent Mr. Hines. Mrs. Hines deposited \$2,500 into Respondent's checking account as a "down payment of the \$4,000 [Respondent] was charging" to represent Mr. Hines.
27. Mr. Hines called Respondent on several occasions and left messages, but Respondent failed to respond.
28. Mr. Hines met with Respondent on February 17, 2009, to discuss the status of the case. Respondent told Mr. Hines he would meet him in court the next day for a scheduled hearing, T/R 37:22-38:15.
29. Respondent did not appear in court the next day. Instead, Mr. Hines met with Eleanor Miller, who informed him that Respondent could not represent him because Respondent was suspended as of February 7, 2009, T/R 40:12-21.
30. Respondent did not inform Mr. Hines about his suspension and did not refund fees that had not been earned.
31. Respondent testified that he did clear up warrants for both Mr. and Mrs. Hines and did do legal work for them. Respondent further testified that Mr. Hines tried to offer him more money, but Respondent refused to accept any more money from Mr. Hines, T/R 41:24-42:17, 53:4-11, 55:8-68:7.
32. Respondent also testified that the reason that he took the Hines' case is because he thought he could get the case resolved prior to the time that his suspension would

go into effect, T/R 54:15-24. As to why he met with Mr. Hines on the day before his hearing on February 17, 2009, and told him that he would meet him the next day in court when he knew he could not, Respondent states that he was simply too embarrassed to admit his suspension to his client, and that he did send another attorney in his stead, T/R 53:5-11. The problem is that the attorney that he sent in his stead wanted more money for attorney's fees that the Hines could not pay, and so they ultimately had a public defender appointed to represent them to resolve their case, T/R 44:7-21.

33. Regarding restitution, there is simply not sufficient evidence to say that the Hines received no value for the services that Respondent performed. Respondent did get the warrants against the Hines quashed, and, according to his testimony, did do work on behalf of the Hines. Mrs. Hines could not refute that fact and so this Hearing Officer is left with trying to establish an amount of restitution without any basis. Under the standard of proof required in these proceedings this Hearing Officer cannot specifically identify an amount of restitution owed by the Respondent to Mr. and Mrs. Hines.

COUNT THREE (File no. 09-0880 Kimbrell)

34. Doreen Kimbrell ("Mrs. Kimbrell") retained Respondent to represent her son, Robert Castiglia ("Mr. Castiglia") in a criminal matter.
35. Respondent represented Mr. Castiglia from January 1, 2006, through March 4, 2008.
36. Mrs. Kimbrell initially paid Respondent \$3,500 for the representation. Later, according to Ms. Kimbrell, Respondent required an additional payment of \$2,500

because of new charges brought against her son, Hearing Exhibit (“H/Ex”) 09-0880, (pages 2 and 4), T/R 29:20-21.

37. When Respondent began to represent Mr. Castiglia, Mr. Castiglia was in jail on a drug charge. Mr. Castiglia had two prior felony offenses. Respondent testified that he did obtain the release of Mr. Castiglia, but then a short time later Mr. Castiglia was rearrested with methamphetamine and a gun, T/R 29:13-19; 55:17-56:18.
38. Based on these factors, Mr. Castiglia was looking at a potential sentencing range for the new charge of between 15.75 and 28 years, with the super aggravated sentence of 35 years. Respondent worked out a plea for Mr. Castiglia of 9.25³ to 18.5 years and hoped to get the 9.25. Mr. Castiglia was sentenced to 14.25 years in the Department of Corrections.
39. Respondent would not communicate with Mrs. Kimbrell and Mr. Castiglia unless Mrs. Kimbrell complained to Respondent.
40. Mrs. Kimbrell e-mailed and called Respondent “many times pleading with him to please answer [her] questions and communicate with [them].”
41. Mrs. Kimbrell checked the Court’s website [Regarding her son's case] on February 21, 2007, and “there was a filing 167 ME-PCR dismissed part 001.” She emailed Respondent the next day to find out what this meant and Respondent told her that “dismissed means we have more time to file a (sic) for more relief.”

³ The presumptive with one prior, but because Mr. Castiglia committed the new offense while on release, this was the minimum.

42. Respondent failed to do the things he told Mrs. Kimbrell and Mr. Castiglia, he would:
- a) He failed to visit Mr. Castiglia in jail;
 - b) He dismissed a Suppression of Evidence motion without Mr. Castiglia's consent;
 - c) He told them if Mr. Castiglia took the plea he would not get more than 9.25 years (Mr. Castiglia was sentenced to 14.25 years);
 - d) He did not explain the differences in the plea agreement to Mr. Castiglia;
 - e) He did not file for Post Conviction Relief and the Rule 32 proceeding was dismissed on July 27, 2007.
43. On September 27, 2007, Respondent told Mrs. Kimbrell, he would scan the file documents he had and e-mail them to her.
44. On November 7, 2007, Mrs. Kimbrell emailed Respondent and asked if he was going to continue with the PCR, and Respondent told her he was on the phone with Mr. Castiglia as they spoke, which was not true.
45. Respondent never returned Mr. Castiglia's original documents and the file to him.
46. Respondent testified that he did not pursue the Rule 32 petition on behalf of Mr. Castiglia because he felt that there were no legitimate issues, T/R 58:14-24.
47. Regarding restitution, Mrs. Kimbrell initially paid the Respondent \$3,500 at the beginning of his representation of her son. Later, after his release from jail, her son yet again was arrested for having methamphetamine and a gun. It was at that time that Respondent requested and was paid an additional \$2,500 by Ms. Kimbrell.

48. Ms. Kimbrell is rightly upset at Respondent for his refusal to communicate with her and what she felt to be lies from the Respondent. Ms. Kimbrell is also upset that her son was sentenced to 14.25 years in the Department of Corrections. Whether Miss Kimbrell's son was run over by the train of mandatory sentencing provisions, or Respondent's incompetence, cannot be determined by this Hearing Officer without a full review of the entire criminal case and being made aware of the plea policies of the County Attorney. Absent that information it is impossible for this Hearing Officer to make a determination of whether Ms. Kimbrell is entitled to a refund of the attorney's fees she paid on behalf of her son. In the jurisdiction that this Hearing Officer is from, the plea agreement negotiated by Respondent on behalf of a multiple time offender committing a new crime while on release, and having access to a gun, would be considered entirely reasonable. This Hearing Officer simply cannot say with any certainty based on the record before him that Respondent did not earn the fees that he was paid.
49. A charging letter was sent on June 10, 2009, but Respondent failed to respond.
50. A warning letter was sent on July 8, 2009, and again Respondent failed to respond.
51. Respondent failed to timely perform the work requested by Mr. Castiglia.
52. Respondent failed to keep Mr. Castiglia informed about the status of his case, and failed to communicate with Mr. Castiglia.
53. Respondent failed to perform the duties he was retained to perform, therefore charging an unreasonable fee.
54. Respondent failed to return Mr. Castiglia's file.

55. Respondent made false statements to Mrs. Kimbrell and Mr. Castiglia about the PCR petition. The State Bar concedes that it cannot prove by clear and convincing evidence that Respondent made knowing misrepresentations to Ms. Kimbrell and Mr. Castiglia.
56. Respondent's inaction in this matter was prejudicial to the administration of justice.
57. Respondent failed to provide information to the State Bar as requested.

CONCLUSIONS OF LAW

58. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz.R.Sup.Ct., as follows:

ER 1.2 Scope of representation; ER 1.3 Diligence; ER 1.4 Communication; ER 1.5 Fees; ER 1.15(d) Safekeeping of property; ER 1.16 Declining or terminating representation; ER 8.1(b) Failing to respond to a demand for information; ER 8.4(d) Engaging in conduct prejudicial to the administration of justice; and Rules 53(f) Failure to furnish information, and 72(a) Notice to clients, and (d) Effective date of order.
59. In the Tender of Admissions, the State Bar conditionally agreed to dismiss ER's 4.1 and 8.4(c).

ABA STANDARDS

60. ABA *Standard* 3.0 provides that 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; (4) the existence of aggravating and mitigating factors.

The Duty Violated

61. Respondent, by his admission that he failed to perform the work for which he had been hired, failed to keep his clients informed of the status of their cases; failed to provide an accounting requested by the client; charged an unreasonable fee; failed to provide information when requested by the disciplinary authority; and failed to inform his clients of his suspension; violated his duties to his clients and the legal system and violated other duties owed as a professional. *ABA Standard 4.0* (duty to clients) and *7.0* (other duties owed as a professional) are the appropriate *Standards* to consider. *Standard 4.1* provides: "Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property, and causes injury or potential injury to a client." *Standard 7.2* provides: "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system." Accordingly, suspension is the presumptive standard.

The Lawyer's Mental State

62. Respondent's conduct was "knowing".

The Injury Caused

63. The Hearing Officer finds that the Respondent caused both potential as well as actual injury to his clients, as more fully discussed herein. In Count One, Respondent's client did not receive the full benefit of the fees that he paid the Respondent. In Count Two, the clients were left in a lurch and had to get a public defender to complete the services for which the Respondent had been retained. In

Count Three, Respondent's conduct created a very difficult situation for both his client Mr. Castiglia as well as his mother, Ms. Kimbrell. Ms. Kimbrell was strung along and not given sufficient information to be able to judge whether her son was being adequately represented, and misinformed in various stages of her contact with Respondent. Respondent's conduct reflects badly not only on the profession, but the entire legal system.

Aggravating and Mitigating Factors

64. Aggravating Factors under ABA *Standard* 9.22:

9.22(a) Prior Disciplinary Offenses.

- On October 24, 2002, Respondent was Censured and given one year of probation in SB-02-0144-D, for violations of ER 1.15, and Rules 43 and 44, Ariz.R.Sup.Ct.
- On August 23, 2005, Respondent was Censured and given one year of probation in SB-050 0124-D, for violation of ERs 1.1, 1.2, 1.3, 1.4(a), 3.2 and 8.4(d), Rule 42, Ariz.R.Sup.Ct.
- Probation in State Bar file number 06-0593, for violation of ERs 1.2, 1.3 and 1.4, Rule 42, Ariz.R.Sup.Ct.
- In 2008, one year Suspension plus one year of probation upon reinstatement in SB-080166-D, for violations of ERs 1.1, 1.2, 1.2(a), 1.3, 1.4, 1.16(d), 3.2, 3.3, 3.4, 3.4(c), 4.4(a), 8.4(c) and (d) and Rule 53(c).

65. 9.22(c) Pattern of misconduct:

Respondent has been sanctioned before for competence, scope of representation, diligence, communication, unreasonable fee, and termination of representation violations.

66. 9.22(d) Multiple offenses

Respondent violated his ethical obligations in three different client matters.

67. 9.22(i) Substantial experience in the practice of law

Respondent has been practicing law in the state of Arizona since 1996.

Mitigating Factors

68. ABA Standard 9.32:

9.32(e) Full and free disclosure to the disciplinary board or cooperative attitude toward proceedings. Although Respondent initially failed to respond to the State Bar during the investigation of these matters, and failed to file an Answer, Respondent has communicated his intent to cooperate and enter into an agreement for discipline by consent.

PROPORTIONALITY REVIEW

69. The Supreme Court has held that attorney discipline should be tailored to the individual facts of the case, but also that the discipline in each case should be similar to cases with similar facts, *In re Peasley*, 208 Ariz. 35, 90 P.3d 778 (2004), *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983), *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993).

70. In *In re Abernathy*, SB-09-0017-D, (2009), Mrs. Abernathy failed to competently and diligently represent clients; failed to safeguard client property; entered into an improper agreement; and failed to protect the clients interests upon termination of representation. Mrs. Abernathy was suspended for 10 months, ordered to pay restitution and placed on probation for two years for violations of ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15 and 1.16(d). Six factors were found in aggravation: 9.22(a) prior disciplinary offenses; 9.22(b) dishonest or selfish motive; 9.22(c) pattern of misconduct; 9.22(d) multiple offenses; 9.22(e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency; and 9.22(g) refusal to acknowledge wrongful nature of conduct. The only mitigating factor considered by the Hearing Officer was 9.32(l) remorse. Ms. Abernathy's conduct was found to be "knowing" and there was actual injury to the clients.
71. In *In re Jenkins*, SB-09-0105-D (2009), Mr. Jenkins failed to adequately communicate with and diligently represent his clients; failed to provide the clients' files to subsequent attorneys; and failed to remit funds once the representation was terminated. In addition, Mr. Jenkins entered into business transactions with clients, hired family members to perform services for a client, and failed to respond to the State Bar's investigation. Mr. Jenkins admitted to violation of ERs 1.2, 1.3, 1.4, 1.5, 1.7, 1.8, 1.8(f), 1.15, 1.16, 1.16(d), 8.1, 8.4(a), 8.4(d), and Rules 53(d) and (f). Mr. Jenkins entered into an agreement for an 18 month suspension, two years probation, and fee arbitration. Seven factors were found in aggravation: 9.22(a) prior disciplinary offenses; 9.22(b) dishonest or

selfish motive; 9.22(c) pattern of misconduct; 9.22(d) multiple offenses; 9.22(e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency; 9.22(h) vulnerability of the victim; and 9.22(i) substantial experience in the practice of law. Five factors were found in mitigation: 9.32(c) personal and emotional problems; 9.32(g) character or reputation; 9.32(j) delay in proceedings; 9.32(k) imposition of other penalties or sanctions; and 9.32(m) remoteness of prior offenses. Mr. Jenkins conduct was found to be “knowing” and there was actual injury.

72. In *In re Robert Horton Green*, SB-08-0027-D (2008), Mr. Green entered into an agreement for a two-year suspension (retroactive), two years probation, and fee arbitration. Mr. Green failed to adequately communicate with and diligently represent his clients. In addition, while summarily suspended, Mr. Green engaged in the unauthorized practice of law. Mr. Green admitted to violating ERs 1.2, 1.3, 1.4, 1.5, 1.8, 1.15, 1.16, 3.2, 5.5, 8.4(c) and (d), and Rules 31(b) and 72(a). Five factors were found in aggravation: 9.22(a) prior disciplinary offenses; 9.22(b) dishonest or selfish motive; 9.22(c) pattern of misconduct; 9.22(d) multiple offenses; and 9.22(i) substantial experience in the practice of law. Five factors were found in mitigation: 9.32(c) personal and emotional problems; 9.32(e) full and free disclosure to disciplinary board or cooperative attitude towards proceedings; 9.32(g) character or reputation; 9.32(l) remorse; and 9.32(k) imposition of other penalties or sanctions.

RECOMMENDATION

73. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, the administration of justice and deter future misconduct, *In re Fioramonti*, 176 Ariz., 182, 859P.2d 1315 (1993), *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). It is also the purpose of attorney discipline to instill public confidence in the Bar's integrity, *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).
74. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Associations *Standards for Imposing Lawyer Sanctions* and the proportionality of discipline imposed in analogous cases, *Matter of Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994).
75. The proposed sanction in this matter is for Respondent to be suspended for 15 months, retroactive to February 7, 2009, the date of Respondent's one year suspension in his previous Bar matter, with one additional year of probation to be added to the one year of probation under terms ordered in that previous matter for a total of two years of probation, restitution, if any, and the imposition of costs and expenses of these proceedings.
76. This Hearing Officer went back and reviewed the Hearing Officer's Report, authored by the undersigned, in the case for which the Respondent was suspended. In that case, respondent represented clients in a domestic relations matter, a personal injury matter, and a criminal case. In those matters, Respondent had issues of competency, honesty, communication with his clients, compliance with court orders, abiding by the client's wishes, misrepresentation,

disobeying an obligation to a tribunal, conduct prejudicial to the administration of justice, and violating a court rule, conducted with a knowing and negligent frame of mind and causing significant loss to his clients.

77. As explanation for his misconduct in the previous matter, Respondent stated: "I only get in trouble when I try to branch out, which is obvious by this garbage -- not garbage, but my lack of understanding of other areas of law, however you want to put it. I like criminal law it's a lot more fun. I feel like when you're concentrating on one thing, it's probably better for me, for the practice, for everything. Doing too many types of law, it's an accident waiting to happen." (Transcript from previous hearing conducted on April 15, 2008 164:17-165:9)

78. In the cases at hand, all **criminal** cases, Respondent exhibited the same lack of concern for his client that he exhibited in the previous case. The following is taken from this Hearing Officers previous Report:

"Throughout the hearing in this matter, this Hearing Officer was struck with Respondent's nonchalant attitude toward his clients, his responsibility to them, and his responsibility as a professional. Respondent seemed to not really care about the negative impact that his actions were having on his clients, Ms. Hoffman or his reputation. Once any particular situation became difficult, Respondent seemed to just quit trying and if his client suffered as a result of that, oh well." H/O Report in File no. 06-1878, dated June 10, 2008, p.17, para.72.

79. Respondent's comments to this Hearing Officer in his previous disciplinary matter indicated that if Respondent simply focused on criminal matters, he would be fine. All three of the Counts in this action are criminal matters, and Respondent

has exhibited the same misconduct. Admittedly, this conduct occurred prior to his suspension in the previous matter, but these violations belie Respondent's claim that if he just sticks to one area of law he'll be fine.

80. Respondent testified that he is now taking medication which helps him stay focused on his work, realizes that he can never practice law by himself again, and does have an appreciation for the harm he causes his clients, T/R 67:9-71:25. While this is not sufficient to act as a mitigating factor, it at least shows some self awareness which is the first step toward addressing his problems.
81. When pressed by the Hearing Officer as to why Respondent should not be disbarred, Bar Counsel stated that had all of Respondent's misconduct been brought up at one time, he would have received this sanction, T/R 63:2-13. Bar Counsel also stated that she has had many contacts with Respondent and believes that Respondent is too optimistic about what he can get done, rather than has an evil intent, T/R 63:22-64:11. Finally, Bar Counsel stated that her investigation of these matters tells her that Respondent did not take his client's money and not intend to do the work, and that this makes this case a suspension case rather than a disbarment, T/R 64:24-66:3.
82. Unfortunately for Respondent, we are looking twice at conduct that occurred at about the same time. This certainly gives the impression of more serious conduct than if it had all been brought up at one time. The Bar simply has no control over when the complaints come in.
83. A 15 month suspension is a very significant period of time for Respondent not to be allowed to practice law. Given that Respondent's conduct in these matters

predated his previous suspension, this Hearing Officer understands why the State Bar is recommending that Respondent's suspension be retroactive to the date that his previous suspension took effect. This Hearing Officer is somewhat concerned that the resources offered by the State Bar in its probationary services are not going to be adequate to address the deficiencies in Respondent's work ethic, honesty and sense of responsibility to his clients and this profession. However, that will have to abide until Respondent reapplies for admission to the Bar.

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

1. Respondent shall be suspended for 15 months, retroactive to February 7, 2009;
2. Upon reinstatement, one year of probation added to the one year of probation previously imposed in File number 06-1878, for a total of two years of probation, with terms to be determined upon reinstatement;
3. Respondent pay restitution to client Al-Mossoy in the amount of \$1,500;
4. Respondent pay all costs and expenses of these disciplinary proceedings, including the costs of the State Bar, the Disciplinary Commission, the Disciplinary Clerk, and the Supreme Court;
5. In the event Respondent fails to comply with any of the terms of probation recommended by the Hearing Officer and approved by the Disciplinary Commission and Supreme Court at the time of reinstatement proceedings, and the State Bar receives information about this failure, Bar Counsel will file a

Notice of Non-Compliance with the imposing entity, pursuant to Rule 60(a)(f), Ariz.R.Sup.Ct.. The imposing entity may refer the matter to a Hearing Officer to conduct a hearing at the earliest practicable date, but in no event later than 30 days following the receipt of notice, and will determine whether the terms have been breached, and, if so, will recommend appropriate action in response to the breach. The State Bar shall have the burden of proving noncompliance by a preponderance of the evidence.

DATED this 26th day of March, 2010.

H. Jeffrey Coker/ga
H. Jeffrey Coker
Hearing Officer 6R

Original filed with the Disciplinary Clerk
this 26th day of March, 2010.

Copy of the foregoing mailed
this 26 day of March, 2010, to:

Daniel Inserra
Respondent
29834 N Cave Creek Road, Ste 118-131
Cave Creek, AZ 85331-2384

Copy of the foregoing hand-delivered
this 26 day of March, 2010, to:

Shauna Miller
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: Deann Bar

//JSA