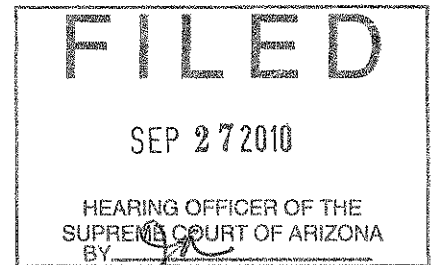


**BEFORE A HEARING OFFICER OF
THE SUPREME COURT OF ARIZONA**



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

No. 09-2370

MICHAEL P. MORRISON
Bar No. 006022

RESPONDENT.)
)
)
)

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

1. On April 21, 2010, the State Bar filed its Complaint. Respondent Michael P. Morrison (hereafter Respondent) filed his Answer on May 14, 2010. The settlement conference was vacated with the Settlement Officer informing this Hearing Officer that a settlement agreement would not likely occur. On July 29, 2010, the parties filed a Joint Prehearing Statement. On August 2, 2010, a telephonic prehearing conference was conducted. On August 11, 2010, the hearing on the merits was held. At the conclusion of the hearing, this Hearing Officer ordered the parties to file proposed findings of fact and conclusions of law.
2. This case involves charges by the State Bar that the Respondent practiced law in violation of his suspension status, violated his duty and obligation of respect to the court, and knowingly made a false statement of fact or law.

FINDINGS OF FACT

3. 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 13, 1979.¹
4. In August 2006, Respondent sought and was granted transfer to inactive status with the State Bar of Arizona for the years 2005 and 2006, through the representation of his Tucson attorney and friend Earl F. “Sam” Daniels III (“Mr. Daniels”). Mr. Daniels requested and obtained inactive status for Respondent. The inactive status was granted after attorney Daniels paid \$265 from his trust account to bring Respondent current with his 2006 membership dues. Exhibit E: letters of August 11 and August 15, 2006; Transcript of Hearing (“T/H”) 51: 6-12. The inactive status was also granted to extend the time for Respondent to acquire hours for mandatory continuing legal education (MCLE) and to pay delinquency fees. Exhibit E: letter of October 3, 2006.
5. After the inactive status for Respondent was obtained, Mr. Daniels informed the State Bar by letter that his representation of Respondent had ended and that future State Bar correspondence could be sent to Respondent directly. Exhibit E: letter of October 6, 2006.
6. At hearing, Mr. Daniels testified that he did not independently recall that he had withdrawn from his representation of Respondent. It was not until Respondent showed him the letter of October 6, 2006, about two months before the hearing in this case that he recalled his withdrawal provision in the letter. T/H 53:13 – 54:2.
7. After being placed on inactive status, Respondent did not become current with his MCLE requirements or his payment of State Bar dues and fees. In a letter dated June 14, 2007, the

¹ The facts are taken from the stipulated facts in the Joint Pre-hearing Statement, the Exhibits or the Transcript of Hearing unless otherwise noted.

State Bar sent its Notice of Summary Suspension for nonpayment of dues. Exhibit 1, T/H 82:4-9. It was sent to Respondent at his address of record at a law firm in Tucson at 3002 North Campbell. T/H 82:8-13; 81:15-16.

8. Since June 14, 2007, when the Notice of Summary Suspension was issued, more than three years have passed without Respondent applying for reinstatement. Respondent did not pay dues in 2007 or thereafter. T/H 124: 15-20.
9. In 2006, when Mr. Daniels obtained inactive status for Respondent, Mr. Daniels felt Respondent really could not practice law because of Respondent's abuse of prescription drugs. T/H 52: 21-25. Mr. Daniels and Respondent had been friends since 1979 as newly admitted Arizona lawyers. Mr. Daniels had seen Respondent abuse prescription medications from the late 1990s to about 2007. Mr. Daniels testified that in his opinion when not impeded by drugs, Respondent ranked as one of the top five personal injury attorneys in Tucson as far as natural inborn skills, with the likes of Barry Davis, John Molloy and David Bury. T/H 48:12-19; 50:7-15.
10. Mr. Daniels testified that Respondent's reputation for honesty as a lawyer was impeccable. T/H 56:9-13.
11. In the fall of 2009, Respondent went to Mr. Daniel's office and asked him if he knew of or had any information whether Respondent was suspended. Mr. Daniels said no. T/H 54:3-18.
12. Respondent was notified of his summary suspension by letter from the State Bar of Arizona dated June 14, 2007, mailed to Respondent at his address of record. [SB Ex. 1]
13. Betty M. Flores, the State Bar Resource director testified that the Notice of Summary Suspension came back from the Tucson address. T/H 92:16-18. She confirmed that it remains the lawyer's duty to notify the State Bar of an updated address within 30 days of a

move. T/H 92:21-24. After the 2006 address of record, Respondent did not provide a subsequent updated address of record. T/H 127:16-21.

14. On October 28, 2009 Respondent appeared before Pima County Justice of the Peace Pro Tem Walter Weber in Tucson intending to represent and defend Tracey Prater against a forcible detainer complaint seeking eviction in case number CV09-028826. Respondent had filed a Notice of Appearance in the case. T/H: 31:12-15. Respondent testified that he had also sent a letter to the trailer park/landlord manager with “Attorney at Law” in the letterhead below his name attempting to assure the landlord that Tracy Prater would pay the rent. T/H114:21-115:3.
15. Before the forcible eviction trial began, the landlord’s attorney challenged Respondent’s bar status. T/H 39:12-19. Judge Weber asked Respondent whether he was an active member of the bar. T/H 40:8-11. Respondent answered no, he was an inactive member, that he was a lawyer and representing Tracy Prater on a pro bono basis. Exhibit 10 (CD audio recording of court proceeding). Judge Weber responded that Respondent’s answer created a problem as to what an inactive member can do in seeking to represent someone on a pro bono basis. Exhibit 10.
16. On the record, Judge Weber contacted the State Bar which informed him that Respondent was suspended. Exhibit 2 and Exhibit 10.
17. Upon learning that Respondent was suspended, Judge Weber continued the trial for two days and ordered Respondent to pay \$125 to the landlord’s attorney. Exhibit 2 and Exhibit 10.

18. Respondent wrote a letter to Judge Weber dated November 2, 2010 telling Judge Weber that he was wrong in preventing Respondent from representing Tracy Prater. Exhibit 4. The letter was offensive and arrogant in its tone to Judge Weber. T/H 33:6-8.
19. At this hearing, Respondent apologized to Judge Weber for his “snotty” letter. T/H 35: 18-21.
20. In his testimony and in his response letter to the State Bar counsel in the investigation of the allegations of misconduct against him, Respondent admitted his actions in seeking to represent Tracy Prater, but denied that he lied to Judge Weber as to his belief for what an inactive member could do. Exhibit 6 (Letter of Respondent dated February 23, 2110); T/H 120: 15-23.
21. Respondent in his testimony and Exhibit 6 letter stated he was vaguely aware that retired lawyers could practice as long as they did not charge a fee and assumed the same to be true for inactive lawyers. Exhibit 6.
22. The majority of Respondent’s testimony was a self descriptive narrative about the consequences of his abuse of prescriptive medicines. He had practiced with different law firms including in the 1980’s with the Al Vermiere law firm in Phoenix doing mostly attorney malpractice. T/H 103: 3-10. In 2000, he started to increase his intake of pills such as Vicodin and Oxycodone. T/ H 106:1-6 He took them at night like a person may take a drink at night because it took away Respondent’s anxiety. T/H 106: 11-14. His use of the drugs became an up and down cycle. T/H 106:21-25. Respondent described himself as having a breakdown in 2006 to 2007. T/H 108:23 – 109:2. He received part of an inheritance and lived with his aunt for a while but was essentially homeless and hit bottom. T/H 111:22 -112:7. He had a vague memory of Sam Daniels sending him copies of letters

in 2006, but Respondent did not read them and instead relapsed. T/H 109:11-15. Respondent begged for money from Sam Daniels and Sam paid Respondent's rent. T/H 112: 8-11.

23. Respondent testified he has gotten over the drugs and that he has not had any since the spring of 2009. T/H 112: 17- 23.
24. In approximately 2009, Respondent be-friended Richard Leddy and his girlfriend Tracy Prater or they be-friended Respondent. T/H 113:4- 114:4.
25. Richard Leddy had health issues. On October 3, 2009, he entered the intensive care unit at Tucson Medical Center and died a couple weeks later. T/H 5-14. Tracy Prater called Respondent after Richard Leddy died and after receiving her eviction notice and asked Respondent what she could do. Respondent told her he would represent her. T/H 116:2- 117:9.
26. Respondent testified that in his mind he knew he was inactive which meant "you don't practice law" but that it was the same as "retired" which meant to him that he just could not be paid for practicing law. T/H 117: 10-19.
27. Respondent then went to Sam Daniels and asked him whether he had received information that Respondent was suspended and Sam told him no. T/H 119:3-8. Respondent thought that Sam Daniels was still his representative to the Bar. T/H 119:3-8.

CONCLUSIONS OF LAW

28. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated: Rule 31(b) (no person shall practice law or represent that he may practice law unless an active member); Rule 31(c) (no member currently suspended shall practice law or represent that he may practice law); Rule 41(c) (duty and obligation to maintain respect due to courts and judicial officers); Rule 41(g) (avoid engaging in unprofessional conduct and to advance no fact prejudicial to the honor or reputation of a party); and Rule 42 Ariz. R. Sup.Ct., specifically ER 5.5(a), (a lawyer shall not practice in violation of the regulation of the legal profession). For the reasons stated later in this Report, this Hearing Officer finds that the State Bar has not proven by clear and convincing evidence that Respondent violated Rule 42 Ariz. R. Sup. Ct., specifically ER 3.3(a)(1), (knowingly making a false statement of fact or law to a tribunal).
29. This Hearing Officer denies Respondent's claim that the Rules of the Arizona Supreme Court regulating the practice of law are unconstitutionally overbroad, vague and ambiguous. The right to practice law is not a constitutional one, but a privilege. *In re Greer*, 52 Ariz. 385, 389, 81 P. 2d 96, 98 (1938). The same Rules regulating the practice of law expand the opportunities for practice by non-Arizona attorneys, special admission procedures and for law students with proper supervision to represent those unable to afford legal services. Respondent's claim that the Rules are in conflict with the purpose to increase access to justice to the poor is denied.

ABA STANDARDS

30. 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; and (4) the existence of aggravating and mitigating factors.

The Duty Violated

31. This Hearing Officer finds that Respondent violated duties owed to the profession and to the legal system.

7.0 Violations of Duties Owed to the Profession

32. Standard 7.3 provides: "Reprimand [Censure in Arizona] is generally appropriate when a lawyer negligently 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."

6.0 Violations of Duties Owed to the Legal System

33. Standard 6.23 provides: "Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
34. The presumptive sanction then for the conduct under the Standards is censure.

The Lawyer's Mental State

35. The parties presented disputed evidence regarding Respondent's mental state for his admitted misconduct of representing that as an inactive member he could practice law and his practice of law. State Bar counsel elicited from Respondent his statement that being an inactive member means that you cannot practice law. T/H 126:15-24. Consistent with his initial response letter of February 23, 2010 (Exhibit 6), Respondent testified he thought that

inactive lawyers were like retired lawyers who normally could not practice, but who could practice if they did not charge a fee. His evidence was that in his descent into drug abuse: (1) he failed to open forwarded mail from Sam Daniels; (2) he mistakenly assumed that Sam Daniels was his ongoing representative and contact person with the State Bar due to his ongoing friendship and financial help; and (3) Sam Daniels answered that he had received no information that Respondent was suspended. Respondent's evidence is no defense to the above violations, but remains relevant to his mental state.

36. Weighing the disputed evidence regarding Respondent's mental state, this Hearing Officer factually finds that the State Bar did not prove by clear and convincing evidence that Respondent acted knowingly, but did prove he acted negligently regarding his representation that he could practice law and his practice of law. The evidence and factual circumstances show that a reasonable person, at a minimum, would have contacted the State Bar to determine status. Respondent's conduct was clearly negligent when he did not contact the State Bar to determine his status. Accordingly, this Hearing Officer finds that the State Bar did not prove a violation of ER 3.3 (a) which has a mental state of knowingly.
37. This Hearing Officer finds that Respondent was negligent in writing his letter to Judge Weber. His words to Judge Weber fueled by anger and or frustration at not being able to represent Tracy Prater were a deviation from the standard of respect to be maintained to courts of justice and judicial officers. What Respondent called snotty, this Hearing Officer finds disrespectful and unprofessional regardless of his good intentions to help a person on a pro bono basis.

Actual or Potential Injury

38. This Hearing officer finds that the two day delay in the trial and the additional fees incurred by the landlord for the delay caused actual injury to the legal system and the parties. The disrespectful and unprofessional letter to Judge Weber caused harm to the legal system.

Aggravating and Mitigating Factors

Aggravating Factors

39. *Standard 9.22(c)*: pattern of misconduct. Respondent performed multiple actions in his unauthorized representation that he could practice law in Arizona.
40. *Standard 9.22(g)*: Refusal to acknowledge wrongful nature of conduct. Respondent admitted that he violated the provisions relating to the authority and restrictions to practice law but that he did so mistakenly. This Hearing Officer has found that Respondent acted negligently and not knowingly. Respondent apologized to Judge Weber for his letter. This Hearing Office gives less weight to this factor.
41. *Standard 9.22(i)*: Substantial Experience in the practice of law. Respondent was admitted to the practice of law in Arizona in 1979.

Mitigating Factors

42. *Standard 9.32 (a)*: Absence of a prior disciplinary record. Since admission to the practice of law in 1979, Respondent has had no prior discipline.
43. *Standard 9.32(b)*: Absence of a dishonest or selfish motive. Respondent's desire to help Tracy Prater was unselfish and in keeping with the goals of the profession. While not a justification for his misconduct, some weight is given to this factor.
44. *Standard 9.32(c)*: Personal or emotional problems. Respondent testified as to the consequences of his drug abuse over several years and its effect on his conduct and mental

state in this case. TH 99:21-135:2. Although no treatment providers testified, evidence of the effect of the drug abuse upon Respondent's mental state of negligence was clear and significant.

45. *Standard 9.32(g)*: Character or reputation. Attorney Sam Daniels testified that Respondent's reputation for honesty was impeccable. Some weight is given to this factor.
46. *Standard 9.32(k)*: Imposition of other penalties or sanctions. Judge Weber imposed a sanction of \$125 which Respondent at the time of the hearing, had not paid. It is noted that Judge Weber's minute entry did not include a due date for payment. No weight is given to this factor.

PROPORTIONALITY REVIEW

47. The Arizona Supreme Court has held that the issue of lawyer sanctions is guided by the principle of internal consistency. *In re Struthers*, 179 Ariz. 216, 887 P.2d 789 (1994) In order to achieve internal consistency, it is appropriate to examine sanctions imposed in cases that are factually similar. *In re Peasley*, 208 Ariz. 90, 90 P.3d 772 (2004). However, the concept of proportionality remains "an imperfect process" because no two cases are identical. *Struthers, supra*. Therefore, the discipline in each situation must be tailored to the individual case as neither perfection nor absolute uniformity can be achieved. *In re Riley*. 142 Ariz. 604, 691 p.2d 695 (1984).
48. In *In re Sweeney*, SB-09-0066-D, Respondent engaged in the unauthorized practice of law while summarily suspended for failure to pay dues and failure to comply with MCLE requirements. Respondent also failed to respond and cooperate with the State Bar's investigation in violation of Rules 31 and Rule 53(f). Respondent also violated ERs 5.5, 8.1, and 8.4. The mental state was negligence. Aggravating factors were 9.22 (a) prior

disciplinary offenses, and 9.22(i) substantial experience. Mitigation factor was 9.32(g) character or reputation. The agreement between the State Bar and Respondent for censure and two years of probation was accepted.

49. In *In re Schlievert*, No. 07-1484, a case cited by the State Bar, Respondent, while suspended, failed to fully comply with Rule 72 by failing to mail notice of his suspension as required. Respondent misrepresented that he had complied with Rule 72. Respondent engaged in the unauthorized practice of law using the designation of “law offices” and by using correspondence that stated his “Law Offices” while suspended.

Respondent violated ERs 5.5, 8.1, 8.4(c), 8.4(d) and Rule 72 (a) and (e), the mental state was knowing. Aggravating factors were 9.22(a) prior disciplinary offenses (two informal reprimands, two censures and one suspension) and 9.22(i), substantial experience. Mitigating factors were no harm, no solicitation of clients or practice of law. Respondent’s mental state was knowing. By agreement, Respondent received a ninety day suspension.

50. In *In Re Brown*, SB-03143-d (2003), Respondent continued to practice while summarily suspended for noncompliance with MCLE requirements. Respondent failed to provide a forwarding address, and failed to promptly respond to the State Bar investigation. Three aggravating factors were 9.22(a) prior discipline, 9.22(e) bad faith obstruction, and 9.22(i) substantial experience. Four mitigating factors were 9.32(a) absence of dishonest or selfish motive, 9.32(c) personal or emotional problems, 9.32(g) character or reputation and 9.32(k) imposition of other penalties. Respondent received a censure with one year of probation.

51. This Hearing Officer has found that Respondent’s mental state was negligent and not knowing as urged by the State Bar. The case of *In re Kahn*, SB-08-0051-D (2008), cited by the State Bar, is dissimilar to Respondent Morrison’s case and not applicable. In *Kahn*, the

Respondent received a three year suspension. The Respondent had knowingly filed a false statement with the court regarding his admission status and made repeated false statements under oath, with a “complete failure to understand the egregiousness of his misconduct”

Respondent also had a prior suspension three years earlier.

52. Similarly, in *In re Brinton*, SB-090012-D (2009), is dissimilar and not applicable. In *Brinton*, Respondent, while suspended, engaged in the unauthorized practice of law and failed to notify his clients and opposing parties of his suspension. There was injury and his mental state was knowing in one count and negligent on another. Aggravating factors were 9.22(a) prior discipline (a prior 30 day suspension and a prior six month and one day suspension), 9.22(d) multiple offenses, and 9.22(i) substantial experience. Mitigating factors were 9.32(b) absence of dishonest or selfish motive, and 9.32(e) cooperative attitude toward proceedings. By agreement, Respondent received a six month suspension.

RECOMMENDATION

53. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, the administration of justice and to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993).
54. In imposing discipline, it is appropriate to weigh and consider the facts of the case, the American Bar Association’s Standards For Imposing Sanctions and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994).
55. This case did not involve formal charges of drug abuse by Respondent, but Respondent volunteered his own detailed narrative about his abuse of medication drugs. It would have

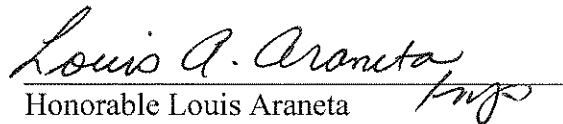
been impossible for Respondent to not provide such information and demonstrate the basis for his negligence.

56. The cases and sanctions involving the practice of law in violation of authority or restriction, cover the spectrum from informal reprimand to lengthy suspension or disbarment. In this case, Respondent has no prior discipline over approximately 30 years. He acted with a negligent and not knowing state of mind. The injury while it occurred was not serious, and involved a single forcible detainer client. This Hearing Officer places great weight on those factors.
57. Mostly all if not all of the cases involving suspension involved Respondents with prior discipline. Many if not all of the suspension cases involved unauthorized representation of multiple clients instead of a single client as in Respondent's case.
58. Censure with payment of all costs imposed on Respondent will satisfy the purposes of lawyer discipline in this case. To impose an additional suspension upon his current suspension serves a punitive purpose.
59. Respondent's perception of his client's right to representation, no matter how well intentioned, did not merit the disrespectful and unprofessional letter to Judge Weber when Judge Weber was required to uphold the rules regarding unauthorized practice.
60. Respondent continues to be on suspension status. Having allowed more than two years to pass since Respondent's summary suspension began, any application for reinstatement by Respondent will require him to show his rehabilitation from drug abuse and fitness to practice law under Rule 65, Ariz. R. Sup. Ct and *In re Arotta*, 208 Ariz. 509, 96 P. 3d 213 (2004). See also Rule 64(f)(1).

61. Upon consideration of the facts, application of the *Standards* with the presumptive standard, aggravating and mitigating factors as well as a proportionality analysis, this Hearing Officer recommends the following:

1. Respondent be censured:
2. Respondent pay all costs incurred by the State Bar in these proceedings and pay all costs incurred by the Disciplinary Clerk's Office and the Supreme Court in this matter.

DATED this 27 day of September, 2010.


Honorable Louis Araneta
Hearing Officer 6U

Original filed with the Disciplinary Clerk

this 27th day of September, 2010.

Copy of the foregoing mailed

this 28 day of September, 2010, to:

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