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

BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER) No. 09-1328
OF THE STATE BAR OF ARIZONA)
)
WILLIAM M. LABUDA, JR.,)
Bar No. 022216) DISCIPLINARY COMMISSION
) REPORT
RESPONDENT.)
_____)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on December 11, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Amended Hearing Officer's Report filed November 9, 2010,¹ recommending a 21 month suspension, two years of probation upon reinstatement (to address Respondent's history of substance abuse and depression), with specific terms and conditions to be determined at the time of reinstatement, the return of Ms. Denny's file and original documents within 30 days of the date of the final judgment and order, and costs.

Decision

Having found no facts clearly erroneous, the eight members² of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law and recommendation for a 21 month suspension, two years of probation upon reinstatement (to address Respondent's history of substance abuse and depression), with specific terms and conditions to be determined at the time of reinstatement, return of Ms. Denny's file and original documents within 30 days of the

¹ The Hearing Officer Report filed September 16, 2010, inadvertently omitted two lines and was sent to Respondent's new physical address in Maryland and not his address of record.

1 date of the final judgment and order, and the payment of costs of these disciplinary
2 proceedings including any costs incurred by the Disciplinary Clerk's office.³

3 RESPECTFULLY SUBMITTED this 5 day of January, 2011.

4
5
6 Pamela M. Katzenberg
7 Pamela M. Katzenberg, Chair
8 Disciplinary Commission

9 Original filed with the Disciplinary Clerk
10 this 6th day of January, 2011.

11 Copy of the foregoing mailed
12 this 7 day of January, 2011, to:

13 William M. Labuda, Jr.
14 Respondent
15 P.O. Box 8714
16 Gaithersburg, MD 20898-8714

17 Jason Easterday
18 Bar Counsel
19 State Bar of Arizona
20 4201 North 24th Street, Suite 200
21 Phoenix, AZ 85016-6288

22 Copy of the foregoing hand delivered
23 this 7 day of January, 2011, to:

24 Hon. Louis A. Araneta
25 Hearing Officer 6U
26 1501 W. Washington, Suite 104
27 Phoenix, AZ 85007

28 by: Deann Barker

/mps

² Commissioner Belleau did not participate in these proceedings.

³ The Hearing Officer's Report is attached as Exhibit A.

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EXHIBIT A

FILED

NOV 09 2010

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: 

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

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

WILLIAM M. LABUDA,)
Bar No. 022216)

RESPONDENT.)
_____)

No. 09-1328, 09-2453

**AMENDED
HEARING OFFICER'S REPORT**

PROCEDURAL HISTORY

A new aggravation and mitigation hearing was held on August 13, 2010, after the office of this Hearing Officer discovered that the prior Entry of Default and Notice of Hearing (aggravation and mitigation) were sent to a prior address of the Respondent and not his address of record at the time.

The State Bar of Arizona ("SBA") filed its initial complaint on January 27, 2010, in SBA File Number 09-1328. The complaint and initial disclosure statement were served on William M. Labuda ("Respondent") by certified restricted mail/delivery and regular first class mail pursuant to Rules 47(c) and 57(e), Ariz. R. Sup. Ct. On February 11, 2010, this Hearing Officer was assigned to this case. A telephonic Initial Case Management Conference was held on February 18, 2010. Respondent appeared and participated at the conference.

Respondent was to file an Answer by February 23, 2010. Respondent did not file an Answer. A Notice of Default was issued on February 25, 2010. On February 26, 2010, the SBA filed its

First Amended Complaint in which it added SBA File Number 09-2453 pursuant to Rule 47(b)(2), Ariz. R. Sup. Ct. The First Amended Complaint and Amended Disclosure Statement were served on Respondent at his address of record by certified restricted mail/delivery and regular first class mail pursuant to Rules 47(c) and 57(e), Ariz. R. Sup. Ct. Respondent did not file an Answer to the SBA's First Amended Complaint; a Notice of Default was issued on March 23, 2010, and was mailed by the Disciplinary Clerk to Respondent at his address of record. Respondent failed to file an Answer or otherwise defend against the allegations contained in the SBA's First Amended Complaint. Although default was entered against Respondent in the matter on April 13, 2010, the Entry of Default and Notice of Hearing were mistakenly mailed to another address of the Respondent and not his address of record at the time. Pursuant to the mis-mailed Notice of Hearing issued on April 27, 2010, a first hearing on mitigation and aggravation was held on May 3, 2010 without appearance by Respondent.

After the first aggravation and mitigation hearing, the office of this Hearing Officer discovered that the Entry of Default and Notice of Hearing on the aggravation and mitigation were erroneously sent to Respondent's prior address in Bullhead City, Arizona and not his address of record at the time in Chandler, Arizona. Therefore, the Entry of Default was resent to Respondent's correct address. On July 7, 2010, at a telephonic conference with the parties, a new aggravation and mitigation hearing was set for August 13, 2010, which the Respondent did attend. There was a three month delay between the two aggravation and mitigation hearings.

FINDINGS OF FACT

The facts listed below are those set forth in the State Bar's complaint, and were deemed admitted by Respondent's default. Additional facts are taken from the transcript of the aggravation and mitigation hearing.

1. 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 July 22, 2003.¹ (Complaint² ¶1.)

COUNT ONE (File no. 09-1328)

2. On or about the morning of June 23, 2009, Respondent left Gabriel Ruiz, the minor son of Respondent's live-in girlfriend, home alone so Respondent could gamble at a nearby casino. (Compl. ¶2.)
3. Upon information and belief, Gabriel Ruiz called the police on or about June 23, 2009, after having been left alone by Respondent. (Compl. ¶3.)
4. On or about June 23, 2009, Officer Robin Holstrom of the Bullhead City Police Department responded to Respondent's residence and found Gabriel Ruiz home alone. (Compl. ¶4.)
5. Later in the day on or about June 23, 2009, Teresa Ramirez ("Ms. Ramirez"), Respondent's live-in girlfriend and mother of Gabriel Ruiz, returned to the residence she and Gabriel shared with Respondent. (Compl. ¶5.)

¹ Respondent is currently suspended from the practice of law in Arizona by Order of the Supreme Court of Arizona in File No. SB-09-0108-D, filed December 2, 2009, effective January 1, 2010.

² References to the Complaint in this matter will be hereinafter noted as "Compl." followed by reference to the appropriate paragraph(s) number(s). References to State Bar exhibits will be noted as "SB Ex." followed by the exhibit number and Bates Stamp numbers, "SB Ex. #:SBA ##."

6. At about 2:00 p.m. on or about June 23, 2009, Officer Robin Holstrom returned to Respondent's address to provide victim right's forms to Ms. Ramirez. (Compl. ¶6.)
7. Officer Holstrom and Ms. Ramirez spoke. Ms. Ramirez informed Officer Holstrom she found a powder-like substance in a bathroom of the residence that Respondent told Ms. Ramirez was cocaine. (Compl. ¶7.)
8. Officer Holstrom asked Ms. Ramirez if she could look in the bathroom, Ms. Ramirez allowed Officer Holstrom to search the bathroom, and Officer Holstrom located a white crystalline substance inside a small plastic packet. (Compl. ¶8.)
9. The white crystalline substance was field-tested by Officer Holstrom. The test indicated the substance Officer Holstrom found in Respondent's bathroom contained methamphetamine. (Compl. ¶9.)
10. The substance was later tested by Jennifer Shirley ("Ms. Shirley"), a criminalist with Arizona's Department of Public Safety, and found to be a useable quantity of methamphetamine. (Compl. ¶10.)
11. On or about the afternoon of June 23, 2009, Respondent returned to the home and spoke with Officers Holstrom and Andersen. (Compl. ¶11.)
12. Respondent informed the officers he left Gabriel Ruiz at home alone so that Respondent could go to a nearby casino. (Compl. ¶12.)
13. Officer Holstrom then asked Respondent about the white crystalline substance found earlier that day. Respondent informed the officers the substance was his methamphetamine, that he purchased the methamphetamine for about \$100, and that he uses methamphetamine every couple of months when he is feeling down. (Compl. ¶13.)

14. The officers then arrested Respondent for Child Neglect, a class one (1) misdemeanor, in violation of A.R.S. § 13-3619. (Compl. ¶14.)
15. On or about August 26, 2009, Respondent was charged with Possession of Dangerous Drugs a class four (4) felony, in violation of A.R.S. § 13-3407, and Possession of Drug Paraphernalia a class six (6) felony, in violation of A.R.S. § 13-3415. The criminal complaint was later amended to include additional charges of Permitting Life, Health or Morals of Minor to be Imperiled, a class one (1) misdemeanor, in violation of A.R.S. § 13-3619, and Child Abuse, a class one (1) misdemeanor, in violation of A.R.S. § 13-3623(B)(3). (Compl. ¶15.)
16. On or about December 1, 2009, Respondent pled guilty to Possession of Drug Paraphernalia as a class one (1) misdemeanor, in violation of A.R.S. § 13-3415. The remaining criminal charges were dismissed pursuant to the plea agreement. (Compl. ¶16.)

COUNT TWO (File no. 09-2453)

17. In or around March 2009, Ms. Laura Denny (“Ms. Denny”) hired Respondent for representation in her existing dissolution of marriage matter. (Compl. ¶19.)
18. On or about March 26, 2009, Respondent filed his Notice of Appearance in the Mohave County Superior Court on behalf of Ms. Denny in the dissolution matter. (Compl. ¶20.)
19. Ms. Denny provided Respondent documents in preparation and use in the representation and Final Dissolution Hearing previously scheduled for May 12, 2009. (Compl. ¶21.)

20. On or about May 12, 2009, a Final Dissolution Hearing was held in the matter. Respondent appeared, on Ms. Denny's behalf, as did Ms. Denny. Ms. Denny's husband, Mr. Michael Denny ("Mr. Denny"), appeared telephonically. (Compl. ¶22.)
21. At the conclusion of the Final Dissolution Hearing, Respondent was directed by the Court to lodge a decree of dissolution. (Compl. ¶23.)
22. Also at the conclusion of the hearing, Ms. Denny requested Respondent to return her documents she previously provided to Respondent. (Compl. ¶24.)
23. Respondent did not return Ms. Denny's documents. (Compl. ¶25)
24. After the Final Dissolution Hearing, Ms. Denny telephoned and wrote to Respondent regarding Mr. Denny's alleged failure to pay the ordered mediation fees, Mr. Denny's alleged failure to pay the child-in-common's schooling, and Mr. Denny's alleged failure to transfer title in a vehicle. (Compl. ¶26.)
25. Respondent failed to respond to Ms. Denny. (Compl. ¶27.)
26. On or about July 10, 2009, Ms. Denny filed a *pro se* Request for Hearing regarding Mr. Denny's alleged failure to pay the ordered mediation fees, Mr. Denny's alleged failure to pay the child-in-common's schooling, and Mr. Denny's alleged failure to transfer title in a vehicle. (Compl. ¶28.)
27. On or about July 14, 2009, the Court issued a minute entry stating it would take no action on Ms. Denny's *pro se* Request for Hearing dated July 10, 2009, because Respondent was still her counsel of record. The Court also noted there was no decree of dissolution. (Compl. ¶29.)

28. Respondent failed to lodge a decree of dissolution as he was directed to do by the Court.
(Compl. ¶30.)
29. In or around November 2009, Mr. Denny lodged a *pro se* Decree of Dissolution. (Compl. ¶31.)
30. On or about November 12, 2009, the Court signed Mr. Denny's *pro se* Decree of Dissolution and the decree was filed with the Clerk's Office on or about November 13, 2009. (Compl. ¶32.)
31. On or about December 10, 2009, Ms. Denny submitted a bar charge to the State Bar of Arizona regarding Respondent's conduct. (Compl. ¶33.)
32. By letter dated December 21, 2009, mailed to Respondent's address of record, bar counsel advised Respondent of the allegations of ethical misconduct relating to Respondent's representation of Ms. Denny and instructed Respondent to respond in writing within twenty (20) days of the date of the letter. (Compl. ¶34.)
33. Respondent knowingly failed to respond to the State Bar's December 21, 2009, letter.
(Compl. ¶35.)
34. By letter dated January 20, 2010, sent to Respondent's address of record, bar counsel reminded Respondent of his duty to respond and cooperate with the State Bar, and advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to reply within ten (10) days of the date of the letter. (Compl. ¶36.)
35. Respondent knowingly failed to respond to the State Bar's January 20, 2010, letter. (Compl. ¶37.)
36. On August 13, 2010, at the new aggravation and mitigation hearing, Respondent stated three mitigating factors: (1) remorse and regret in not closing and resolving the dissolution

case for Ms. Denny. Transcript of Hearing, ("T/H") 15: 2-20; 17: 1-3; (2) personal or emotional problems because Respondent was going through his prior two disciplinary proceedings T/H 17:3-7; Exhibits 1 & 2, dissolving his practice in Mohave County T/H 19:5-16 and having heated arguments with his girlfriend T/H 20:2-9; and (3) criminal penalties and sanctions for his misdemeanor possession of paraphernalia conviction of 15 days jail, 16 hours of drug treatment and 12 months unsupervised probation and a fine of \$1200. T/H 21: 9-23:4.

37. Respondent also testified that during his two prior discipline cases, he did not disclose his use of illegal drugs but instead referred to his alcohol dependence and depression. T/H 56: 13-19; 44:13-23.

38. Respondent testified that he regularly takes his anti-depressant medication. T/H 42: 9-11; 43: 16-22. He presented Exhibit A, a hair follicle test of August 6, 2010, which was negative for drugs. T/H 25: 16-25. Respondent testified that he has not used illegal drugs for a year. T/H 26: 13-16.

39. Respondent stated that since he does well or better in abstaining from illegal drug use when supervised, he would rather have a longer supervisory probationary period than the two-year suspension recommended by Bar counsel. T/H 34: 16-36:10; 56: 3-12.

40. Due to the incorrect mailings of the first Entry of Default and Notice of Hearing, there was a three month delay between the first aggravation and mitigation hearing held on April 27, 2010 and the second hearing on August 13, 2010.

CONCLUSIONS OF LAW

41. Respondent failed to file an answer or otherwise defend against the allegations in the State Bar's First Amended Complaint. Default was properly re-entered with Entry of Default re-

mailed to Respondent's address of record at the time. The allegations are therefore deemed admitted pursuant to Rule 57(d), Ariz. R. Sup. Ct. This Hearing Officer finds by clear and convincing evidence that Respondent violated the Ethical Rules and the Rules of the Supreme Court of Arizona in counts one and two below.

COUNT ONE (File no. 09-1328)

42. Respondent's conduct, as described in this count, violated Rule 41(b), Ariz. R. Sup. Ct. and Rule 42, Ariz. R. Sup. Ct., specifically ER 8.4(b) (commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness).

COUNT TWO (File no. 09-2453)

43. Respondent's conduct, as described in this count, violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2 (scope of representation), 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property), 3.2 (expediting litigation), 3.4(c)(knowingly disobey an order of a court), 8.1(b)(knowingly fail to respond to lawful demand for information from disciplinary authority), 8.4(d)(engage in conduct that is prejudicial to the administration of justice), and Rules 53(c)(knowing violation of any rule or order of a court), 53(d) (refusal to cooperate in disciplinary proceeding), and 53(f) (failure to furnish information in disciplinary proceeding), Ariz. R. Sup. Ct.

ABA STANDARDS

44. The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In determining an appropriate sanction, the Hearing Officer and

the Disciplinary Commission consider: (1) the duty violated; (2) the lawyer's mental state; (3) the presence or absence of actual or potential injury; and (4) the existence of aggravating and mitigating factors. *In re Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); *see also Standard 3.0*.

Duties Violated

45. In Count One, Respondent violated his duty owed to the general public by engaging in criminal behavior.

The most fundamental duty which a lawyer owes the public is the duty to maintain the standards of personal integrity upon which the community relies. The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when lawyers engage in illegal conduct.

Standard 5.0 at 38.

46. In Count Two, Respondent violated his duties to his client, the legal system, and profession. Respondent failed to act diligently in Ms. Denny's matter by failing to lodge the ordered decree thereby delaying Ms. Denny's divorce. Respondent further failed to timely respond to Ms. Denny's letters and phone calls and further failed to return Ms. Denny's documents. Respondent failed to expedite the dissolution matter by failing to lodge the ordered decree thereby violating his duty to the legal system. Lastly, Respondent failed to cooperate and respond to the SBA's investigatory letters and also failed to file an answer in the disciplinary matter thereby violating his duty as a professional.

Mental State and Injury

47. In Count One, Respondent engaged in criminal conduct thereby implicating *Standard* 5.12.

When the police officers confronted Respondent about the methamphetamine, Respondent acknowledged the packet of methamphetamine was his and admitted his past use. Respondent's conduct was knowing.

48. *Standard* 5.12 applies to criminal conduct like that of Respondent which seriously adversely reflects on Respondent's fitness to practice: "Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard* 5.11 and that seriously adversely reflects on the lawyer's fitness to practice." Therefore, *Standard* 5.12 is the appropriate standard.

49. Respondent's conduct in Count Two implicated multiple *Standards*. Respondent engaged in a pattern by not diligently lodging the required proposed decree of dissolution and by failing to return Ms. Denny's phone calls or letters. Respondent's dilatory actions caused actual injury in that Ms. Denny's divorce was not completed as quickly as it should have been. Respondent's conduct implicates *Standard* 4.4. Respondent knew he was ordered by the court to lodge the decree and he failed to do so. Further, Ms. Denny called and wrote Respondent. Respondent's mental state was knowing. *Standard* 4.42 states, 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 a pattern of neglect and causes injury or potential injury to a client.

Standard 4.42 is the appropriate *Standard* that applies to Respondent's violation of ERs 1.2, 1.3, and 1.4.

50. Respondent further failed to return Ms. Denny's documents upon her request in violation of ER 1.15. Ms. Denny called and wrote to Respondent requesting a return of her documents and Respondent failed to do so. Respondent acted with a knowing mental state. Respondent caused actual injury by depriving Ms. Denny of her property. *Standard 4.1* is implicated when an attorney acts improperly in dealing with a client's property. *Standard 4.12*, which is most applicable, states, "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."

51. *Standard 6.2* is implicated when an attorney abuses the legal process. Respondent was ordered by the court to lodge a dissolution of marriage decree. Respondent knowingly did not file the decree. Mr. Denny thereafter lodged the decree, which was eventually signed by the court six months after the trial. Respondent's conduct caused injury to his client because her divorce was not finalized as quickly as it should have been and the Court was injured because the matter languished on its docket for an extra six months. *Standard 6.22* states, "Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding." Therefore, *Standard 6.22* is the appropriate *Standard* to evaluate this issue.

52. Lastly, Respondent violated his duty to the profession by failing to respond to the State Bar's investigation and by his failure to file an Answer in the formal discipline proceedings.

Standard 7.0 is implicated when an attorney violates his duty owed as a professional. As deemed admitted in the First Amended Complaint, Respondent knowingly failed to respond to the SBA's investigatory letters. Respondent was also aware of the formal matter as evidenced by his telephonic appearance and participation in the Initial Case Management Conference. Respondent acted with a knowing mental state.

53. After the Initial Case Management Conference, Respondent ignored the disciplinary process until the new aggravation and mitigation hearing was scheduled and held. When an attorney does not adequately cooperate, it tarnishes the profession's reputation. Therefore, Respondent caused actual injury to the legal system. *Standard 7.2*, the most appropriate *Standard*, states, "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."

54. With multiple charges of misconduct, the ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations. Standards at page 7. *Standards 4.12, 4.42, 6.22, 5.12 and 7.2* each call for suspension. Therefore, the presumptive sanction in this case is suspension.

Aggravating and Mitigating Factors:

Aggravating Factors:

55. *Standard 9.22(a) Prior disciplinary offense*: On September 2, 2009, in SB-09-0085-D (2009), after the State Bar and Respondent had submitted a Tender of Admissions and Agreement for Discipline by Consent, Respondent was censured and placed on probation

for two years for violation of Rule 42, Ariz. R. Sup. Ct., specifically ERs 3.4(c), 8.1, 8.4(d), and Rules 53(d) and 53(f), Ariz. R. Sup. Ct. See Exhibit 1:SBA000001; see also 1:SBA000020.

56. On December 2, 2009, in SB-09-0108-D (2009), after the State Bar and Respondent had reached an Agreement, Respondent was suspended for six (6) months and one (1) day, ordered to pay restitution, and ordered to participate in the SBA's Fee Arbitration Program for violation of Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 1.16, 3.4(c), 8.1(b), 8.4(d), and Rules 53(d) and 53(f), Ariz. R. Sup. Ct. See Exhibit 2:SBA000029; see also 2:SBA000047.

57. Standard 9.22(c) Pattern of misconduct: Respondent displayed a pattern of lack of diligence. He did not diligently contact his client, did not diligently return client property, did not diligently lodge the decree as ordered, and did not respond to the SBA's investigation in Count Two. Respondent's conduct in Count Two is very similar to his conduct in his above two prior discipline matters held in 2009, where Respondent failed to respond to Bar discipline matters and failed to communicate with or return paperwork to clients.

58. Standard 9.22(d) Multiple offenses: Respondent violated multiple ethical rules, duties, and Standards as set forth in this two-count matter.

59. Standard 9.22(e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency: Respondent failed to comply with his ethical obligation to respond to the SBA's investigation in Count Two. "Failure to respond to inquiries from the State Bar shows 'a disregard for the Rules of Professional Conduct and borders on contempt for the legal system.'" *Matter of Davis*, 181 Ariz. 263, 266, 889 P.2d 621, 624 (1995)(quoting *In re Galusha*, 164 Ariz. 503, 505, 794 P.2d 136, 138

(1990). Further, Respondent did not file an answer to the formal complaint and was defaulted. He did participate in the new aggravation and mitigation hearing.

60. Standard 9.22(k) Illegal conduct: Respondent, in violation of Arizona's criminal statutes, possessed methamphetamine and drug paraphernalia. Respondent pled guilty to Possession of Drug Paraphernalia in violation of A.R.S. § 13-3415.

Mitigating Factors:

61. Standard 9.32(b) Absence of a dishonest or selfish motive: From the admitted facts, Respondent's conduct was not motivated by dishonesty or greed.

62. Standard 9.32(c) Personal or emotional problems; Respondent's use of illegal drugs (methamphetamine), alcoholism and depression are directly related to his misconduct in this case like they were in his two prior discipline cases in Exhibit 1 and 2. These substance abuse and mental health factors also created personal problems described by Respondent.

63. Standard 9.32(j) Delay in disciplinary proceedings: While not identified at the hearing, this Hearing Officer recognizes that the erroneous mailing of the Entry of Default and Notice of Hearing went to the wrong address of Respondent resulted in a three month delay between the first and second aggravation and mitigation hearings.

64. Standard 9.32(k) Imposition of other penalties or sanctions; Respondent's misdemeanor conviction creates a criminal conviction record for Respondent. However, less weight is given to this factor because Respondent benefited from the reduction in severity from a felony to a misdemeanor.

65. Standard 9.32(1) Remorse: Respondent testified that he regretted the harm to Ms. Denny in not closing and resolving her dissolution case. Less weight is given to this factor because at

the hearing on August 13, 2010, Respondent had not yet returned the contents of the file to Ms. Denny.

PROPORTIONALITY REVIEW

66. The imposition of lawyer sanctions is guided by the principle of internal consistency. *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988). To achieve internal consistency, it is appropriate to review sanctions imposed in cases that are factually similar. *In re Shannon*, 179 Ariz. 52, 876 P.2d 548 (1994). However, the discipline in each situation must be tailored for the individual case as neither perfection or absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604, 691 P.2d 695 (1984).
67. In *In re Reckling*, SB-08-0052-D (2008), Respondent was suspended for eighteen (18) months, retroactive to the date of his interim suspension, and placed on probation upon reinstatement. Respondent pled guilty to Possession of Drug Paraphernalia as a class 6 designated felony. There were three aggravating factors: 9.22(a) prior disciplinary offenses, 9.22(i) substantial experience in the practice of law, and 9.22(k) illegal conduct. There were four mitigating factors: 9.32(b) absence of a dishonest or selfish motive, 9.32(c) personal or emotional problems, 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings, and 9.32(k) imposition of other penalties or sanctions. Respondent was sanctioned for violation of Rule 42, Ariz. R. Sup. Ct., specifically ER 8.4(b).
68. In *In re Ware*, SB-08-0009-D (2008), Respondent was suspended for two (2) years, ordered to pay restitution, and placed on probation upon reinstatement. Respondent's conduct was deemed admitted by default. Respondent failed to provide competent and diligent representation, charged an unreasonable fee and failed to respond or cooperate with the State

Bar's investigation. There were seven aggravating factors: 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 proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, 9.22(h) vulnerability of victim, 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution. The sole mitigating factor was 9.32(a) absence of prior disciplinary record. Respondent defaulted and was found in violation of ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 8.4(d) and Rules 32(c)(3), 43(d)(2) and 53(f), Ariz. R. Sup. Ct.

69. In *In re Weich*, SB-07-0156-D (2007), Respondent was suspended for two (2) years, ordered to pay restitution, and placed on probation upon reinstatement. Respondent's conduct was deemed admitted by default. Respondent failed to diligently represent clients, failed to adequately communicate with multiple clients, failed to return phone calls from clients, and failed to abide the clients' requests. Respondent further failed to cooperate and respond to the State Bar's investigation. There were five aggravating factors: 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceeding by failing to comply with rules and orders of the disciplinary agency, 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution. The sole mitigating factor was 9.32(a) absence of prior disciplinary record. Respondent violated ERs 1.1, 1.2, 1.3, 1.4, 1.5, and Rules 53(d), 53(e), and 53(f), Ariz. R. Sup. Ct.

RECOMMENDATION

70. The Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'"

In re Alcorn, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the State Bar. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

71. Respondent's misconduct involves abandoning Ms. Denny's dissolution case in May, 2009 and being arrested for methamphetamine possession in June, 2009. Given his ongoing and untreated alcohol abuse, depression and methamphetamine use, it is not surprising that he committed this misconduct while participating in his two other disciplinary cases during early 2009 (Exhibits1/SB-09-0085-D) and mid-2009 (Exhibit 2/SB-09-0108-D). In the first disciplinary case, for misconduct occurring in 2006 and 2007 the Hearing officer described Respondent's failure to respond to the State bar as "avoidant behavior that was symptomatic of his depression and alcohol dependence." Exhibit 1, SBA 000020, at #86. In the second disciplinary case, for misconduct occurring in 2008 (lack of diligence by failure to respond to a client's request for information and failing to expedite his client's matters), the Hearing Officer forewarned:

Both this Hearing Officer and Hal Nevitt have concerns that Respondent does not have a full appreciation of his underlying problems such that he can stay focused on fixing himself. Unless addressed on a permanent basis, Respondent's alcohol dependence and depression will eventually come to haunt him again regardless of where he goes in the legal profession because of the stressful nature of the work.

Exhibit 2/ SBA000055, at #127

72. Respondent's continued substance abuse and depression in 2009 caused his professional and personal life to spiral out of control. This Hearing Officer observed Respondent to be sincere

and serious in his testimony that he wants to return to the practice of law and his belief that he does well on supervision for his substance abuse and depression.

73. This Hearing Officer finds that suspension will not only protect the public and the profession but is also necessary to provide Respondent with the time and opportunity to address his substance abuse and depression treatment needs. Unless Respondent overcomes his substance abuse and depression, he will likely cause future harm to clients, the public, the profession and the legal process. If the Respondent remains dedicated to overcoming his substance abuse and depression, his future application for reinstatement under Rule 65, Ariz. R. Sup. Ct. will require him to prove his rehabilitation and fitness to practice.

74. Respondent was not responsible for the three month delay between hearings that resulted from erroneous mailing of the Entry of Default and Notice of Hearing to Respondent's incorrect address. Therefore, the period of suspension should be reduced by the three month delay to 21 instead of 24 months.

75. Upon consideration of the facts, the ethical rules violated, the applicable *Standards*, the aggravating and mitigating factors, and an analysis of proportional cases, this Hearing Officer finds that the sanction described below is appropriate and proportional. This Hearing Officer recommends the following sanction:

1. Respondent shall be suspended from the practice of law for 21 months.
2. Should Respondent seek, and be granted, reinstatement to the practice of law, Respondent shall be placed on probation for a period of two (2) years beginning on the date he is reinstated. The probation terms are to be determined upon reinstatement and will need to address Respondent's history of substance abuse and depression.

3. Respondent shall pay all costs and expenses incurred by the SBA in bringing this disciplinary proceeding. In addition, Respondent shall pay all costs and expenses incurred in this matter by the Supreme Court and the Disciplinary Clerk's Office.
4. Respondent shall provide Ms. Denny a copy of her client file and return all of Ms. Denny's original documents within thirty (30) days of the date of the judgment and order, if Respondent has not already done so.

DATED this 5th day of November, 2010.


Honorable Louis A. Araneta
Hearing Officer 6U

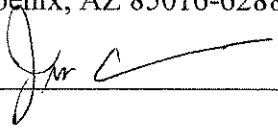
Original filed with the Disciplinary Clerk
this 9 day of November, 2010.

Copy of the foregoing mailed
this 10 day of November, 2010.

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/jsa