

5. During a scheduling conference for the preliminary injunction, Judge Susan Bolton ("Judge Bolton") authorized each side to take two depositions of their choice. Respondent noticed the depositions of two bank executives for September 29 and 30, 2009, and traveled to Atlanta for the depositions, but the deponents did not appear.
6. In an order dated October 1, 2009, Judge Bolton vacated the preliminary injunction hearing on the ground that the trustee's sale had been cancelled, and denied as moot a pending motion for Protective Order that sought canceling the depositions noticed by Respondent.
7. October 1, 2009, in response to Judge Bolton's Order, Respondent filed "Plaintiffs' Counsel's Motion for a[n] Honest and Honorable Court System" ("The Motion"). The Motion is included herein in its entirety:

This motion is filed by Plaintiffs' counsel, Tajudeen O. Oladiran, Esq. ("Mr. Oladiran" or "Taj") pursuant to the law of, what goes around comes around. Judge Bolton, I just read your Order and I am very disappointed in the fact that a brainless coward like you is a federal judge.

I accused Suntrust Bank of racketeering etc., and many good lawyers in town told me the bank's executives would never be deposed, and that the case would go nowhere. I stupidly stuck to the notion that everyone is equal under the law etc. Boy was I wrong. The bank canceled depositions set by the court, canceled a hearing set by the court, and walked away without as much as a scratch.

My thanks go out to Larry Folks and Kathleen Weber who both warned me that I would lose (I should have listened to them).

I apologize to all my clients. I know, I'm sorry does not repair the mess I made but, that's all I've got.

To my family, words can't express my apologies; please remember me kindly.

Finally, to Susan Bolton, we shall meet again, you know where ☺

8. Shortly after the Motion was filed, Judge Bolton recused herself from the action and the matter was assigned to Judge Snow.

COUNT TWO (File no. 10-0425/Judge's Bolton and Snow)

9. On or about December 18, 2009, shortly after the SunTrust case was reassigned from Judge Bolton to Judge Snow, Respondent filed a complaint against Judge Bolton and Judge Snow in *Oladiran v. Judge Susan Bolton, et al.*, Cause No.: 2:09-CV-02633-JWS ("Bolton/Snow case").

10. Respondent alleged in the complaint that both judges conspired to violate his civil rights, Judge Bolton by permitting the Atlanta deposition to be canceled and Judge Snow by failing to rectify Judge Bolton's wrongdoing. Respondent also requested that Judge Snow be removed from the Suntrust case.

11. The Bolton/Snow case assigned to Judge Sedwick, a visiting Judge from Alaska. On about January 12, 2010, Judge Sedwick found the case to be frivolous and dismissed it *Sua sponte* based on the Doctrine of Judicial Immunity. Respondent appealed Judge Sedwick's dismissal, but the Ninth Circuit summarily affirmed and found the issues raised on appeal "so insubstantial as not to require further argument."

12. During the course of presiding over the Suntrust case, the Court became aware of circumstances suggesting that Respondent was engaged in conduct that violated the ethical rules. On February 26, 2010, Judge G. Murray Snow ordered Respondent to "Show Cause why he should not be disbarred from the practice of law in this Court or otherwise disciplined."

13. Effective October 1, 2010, Respondent was suspended from practicing in the United States District Court for a period of six months.

COUNT THREE (File no. 09-2128/Judges Murguia and Anderson)

14. Charles Okonkwo (“Okonkwo”) retained Respondent on February 12, 2009, to represent him in an employment discrimination and civil rights complaint against his former employer, the Glendale Union High School District, in *Okonkwo v. Glendale Union High School District*, Case No. 2:08-CV-0633-MHM (“Glendale case”).

15. While the Glendale case was still pending, Respondent filed a civil rights suit on behalf of Okonkwo against Judges Murguia and Anderson in *Okonkwo v. Murguia*, No. CV- 09-02604-PHX-JWS. (“Murguia/Anderson case”).

16. The complaint alleged that Judge Murguia conspired with Judge Anderson and the defendants in the Glendale case to prejudice Okonkwo’s rights by, among other things, mandating a settlement conference before Judge Anderson and allowing him to impose sanctions against Okonkwo. Judge Sedwick dismissed the suit as frivolous and monetary sanctions were imposed.

17. In April 2009, Respondent filed a motion titled “Plaintiffs Motion Requesting, Under 28 U.S.C. 455, That Judge Mary H. Murguia disqualify herself from continuing to Adjudicate the above-captioned proceeding.” Respondent states in his motion that Judge Murguia’s action in mandating a settlement conference less than two months into the Glendale case “violates this District’s Local Rule of Civil Procedure.” The Court denied the motion without merit.

18. After Judge Murguia ordered Respondent to file a response to the Glendale Defendants' then pending Motion for Summary Judgment, Respondent indicated that he had no intention of complying with the Court's Orders and responded: "Counsel for Plaintiff WILL NOT comply with the Murguia February 2, 2010 Order, and WILL NOT file any response on behalf of Plaintiff to Defendants' Motion for Summary Judgment." Respondent never filed a response to the Summary Judgment motion.

COUNT FOUR (File no. 10-0618/ Okonkwo)

19. Charles Okonkwo ("Mr. Okonkwo") retained Respondent on February 12, 2009, to represent him in the Glendale case over which Judge Murguia presided.

20. Respondent was due to respond to the Defendants' Motion for Summary Judgment by November 25, 2009. Respondent moved to extend the deadline. Judge Murguia extended the deadline to February 12, 2010, and ordered Respondent to respond by the new deadline or the case would be dismissed.

21. Respondent informed Judge Murguia that he had no intention of complying with the Court's Orders and responded: "Counsel for Plaintiff WILL NOT comply with the Murguia February 2, 2010 Order, and WILL NOT file any response on behalf of Plaintiff to Defendants' Motion for Summary Judgment." Respondent never filed a response to the Summary Judgment Motion.

22. Judge Murguia dismissed the Glendale case in its entirety because of Respondent's failure to comply with the Court's Order.

23. Respondent has failed to turn over the client file to Mr. Okonkwo.

CONCLUSIONS OF LAW

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

ER 1.1, ER 1.3, ER 1.16(d), ER 3.1, ER 3.5(d), ER 4.4(a), ER 8.4(d) Rule 53(c).

25. Judge David G. Campbell, who was assigned as the Disciplinary Judge over Respondent's conduct within the Federal Court, in an Order filed September 21, 2010, No. MC-10-0025-PHX-DGC, found that Respondent violated ethical rules as follows (Respondent does not dispute these findings). Judge Campbell ordered that Respondent be suspended from the Federal Bar for six months.

COUNT ONE (File no. 09-2082/Suntrust)

26. Judge Campbell found that Respondent's "Motion for a[n] Honest and Honorable Court System" was frivolous and not filed in good faith in violation of ER 3.1.

27. Judge Campbell found that Respondent's "Motion for a[n] Honest and Honorable Court System" was abusive, obstreperous, and disrupted the proceedings before Judge Bolton in violation of 3.5(d)

28. Judge Campbell found that Respondent's filing of the "Motion for a[n] Honest and Honorable Court System" was prejudicial to the Administration of Justice by interfering with the random assignment of Judges and hindering the timely and efficient resolution of the litigation in violation of ER 8.4(d).

COUNT TWO (File no. 10-0425/Judges Bolton and Snow)

29. Judge Campbell found that Respondent's suit against Judges Bolton and Snow barred by the Doctrine of Judicial Immunity and therefore was clearly frivolous in violation of ER 3.1.

30. Judge Campbell found that Respondent's suit against Judges Bolton and Snow had "no substantial purpose" other than to embarrass and burden Judges Bolton and Snow in violation of ER 4.4(a).

COUNT THREE (File no. 09-2128/Judges Murguia and Anderson)

31. Judge Campbell found that Respondent's suit against Judges Murguia and Anderson barred by the Doctrine of Judicial Immunity and therefore was clearly frivolous in violation of ER 3.1.

32. Judge Campbell found that Respondent's suit against Judges Murguia and Anderson had "no substantial purpose" other than to embarrass and burden Judges Murguia and Anderson in violation of ER 4.4(a).

33. Respondent's refusal to comply with Judge Murguia's Order to file a response to Defendants' Motion for Summary Judgment violated Supreme Court Rule 53(c).

COUNT FOUR (File no. 10-0618/Okonkwo)

34. Judge Campbell found that Respondent failed to provide competent and diligent representation to Mr. Okonkwo when he refused to comply with Judge Murguia's Orders, thus causing Mr. Okonkwo's lawsuit to be dismissed in violation of ER's 1.1 and 1.3.

35. Respondent agrees that he did not return the file to Mr. Okonkwo at the end of the representation in violation of ER 1.16(d).

36. Judge Campbell found that Respondent's conduct in his representation of Mr. Okonkwo was prejudicial to the Administration of Justice in violation of ER 8.4(d).

37. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated the ethical rules as outlined by Judge Campbell.

ABA STANDARDS

38. 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

39. Respondent violated his duties to his client, the legal system and the profession. As noted below, this Hearing Officer finds that Respondent's mental state was "knowing" and there was actual injury to his client. Therefore, *Standard* 6.22 and 6.32 are applicable.

40. *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.

41. *Standard* 6.32 states: Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceedings.

The Lawyer's Mental State

42. The Respondent's mental state was knowing.¹

The Injury Caused

43. The parties submit, and this Hearing Officer concurs, that Respondent caused actual injury to his client. The client, Mr. Okonkwo, appeared at the hearing on the agreement and was clear that he wanted a more severe sanction because he felt that Respondent caused his case to be dismissed. Probably because of the speculative nature of any civil claim, what Mr. Okonkwo's claim entailed was not set forth in sufficient detail to find that there should be a restitution order and, if so, how much it should be? The parties agreed that restitution is not an issue in this case. That appears to be more appropriately the subject of a civil matter between Mr. Okonkwo and Respondent.

Aggravating and Mitigating Factors

44. The following aggravating and mitigating factors are found by clear and convincing evidence:

45. **Aggravating Factors**

Standard 9.22(c) a pattern of misconduct

Standard 9.22(d) multiple offenses

46. **Mitigating Factors**

Standard 9.32(a) absence of prior disciplinary record.

Standard 9.32(b) absence of a dishonest or selfish motive

¹ In his Order, Judge Campbell says that although Respondent's medical conditions appear to have a bearing on his mental state, suggesting that his actions may not have been fully intentional, the Court concluded that his violations were knowing, and this Hearing Officer concurs.

Standard 9.32(c) Personal or emotional problems. Respondent submitted medical records regarding his mental health care or treatment. Respondent's medical records are part of the District Court's file and have been sealed. However, the parties have supplemented the record in this matter with Respondent's medical records and they have also been sealed.

Standard 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Respondent was cooperative during the District Court disciplinary proceeding and has shown further cooperation by entering into the Consent Agreement.

Standard 9.32(k) imposition of other penalties or sanctions. Respondent has been suspended from practicing in the U.S. District Court for six months.

PROPORTIONALITY REVIEW

47. The Supreme Court has held that one of the goals of attorney discipline should be to achieve consistency when imposing discipline. It is also recognized that the concept of proportionality is "an imperfect process" because no two cases are ever alike, *In re Struthers*, 179 Ariz. 216, 887 P.2d 789 (1994), *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983). 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). It is also the goal of attorney discipline that the discipline imposed be tailored to the individual case and that neither perfection nor absolute uniformity can be achieved, *Peasley*, supra.

48. In this case, the parties have stipulated to a sanction of suspension for a period of six months to be followed by a period of two years of probation under conditions to be developed by MAP and Bar Counsel. The parties submit the following cases to be considered in the proportionality analysis:

49. *In re Inserra*, SB-08-0166-D (January 2010). Inserra failed to communicate and diligently represent clients, failed to serve a copy of a Petition for Order to Show Cause, lied to a client about the status of her case, misled the Court, and failed to comply with Court orders. Inserra was suspended for one year and given one year of probation (LOMAP and MAP) for violation of ERs 1.1, 1.2, 1.2(a), 1.3, 1.4, 1.16(d), 3.2, 3.3, 3.4(c), 4.4(a), 8.4(c), 8.4(d), and Rule 53(c). In aggravation, there were eight factors found: 9.22(a) prior discipline; (b) dishonest or selfish motive; (c) pattern of misconduct; (d) multiple offenses; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) experience in the practice of law; and (j) indifference to making restitution. In mitigation, the following factor was found: 9.32(c) personal or emotional problems. Inserra's mental state was knowing and negligent, and there was actual injury.

50. *In re Duffy*, SB-09-0099-D (December 2009). During a murder trial, Respondent violated the Court's order when he failed to redact a reference regarding the defendant's prior convictions. Respondent asserted personal knowledge of facts and implied that other incriminating evidence had been withheld. After being admonished by the Court, Respondent further made a repeated improper argument in his opening statement and improperly argued the burden of proof. Respondent violated ER 3.1, 3.3(a)(1), 3.4(c),

3.4(e), and 8.4(d). Respondent received a 30-day suspension with one year of probation to include 15 hours of CLE training. There were four aggravating factors: 9.22(c) a pattern of misconduct; (d) multiple offenses; (g) refusal to acknowledge wrongful nature of conduct; and (i) substantial experience in the practice of law. There were three mitigating factors: 9.32(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; and (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Respondent's mental state was knowing, and there was actual injury.

51. *In re Risley*, SB-09-0094-D (October 2009). In filing suit against a party, Risley failed to exercise diligence in determining whether a good-faith basis for a claim existed. Risley failed to timely dismiss the party after it was determined that no basis for a claim existed and failed to pay a Court ordered sanction. Risley violated ER's 1.3, 3.1, 3.2, 3.4(c), 8.4(d) and Rule 53(c) and entered into an agreement with the State Bar for a 30 day suspension, two years of probation (LOMAP), and restitution. There were three aggravating factors: 9.22(a) prior disciplinary offenses; (d) multiple offenses; and (i) substantial experience in the practice of law. There were four mitigating factors: 9.32(b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and (j) delay in disciplinary proceedings. Respondent's mental state was knowing and negligent and there was actual injury.

RECOMMENDATION

52. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct, *In re Fioramonti*, 176 Ariz. 182, 859 P.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). In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's *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).

53. The parties submit that they believe that the recommended sanction meets the goals of the disciplinary system because, while Respondent's conduct did not involve dishonesty, his lack of judgment reflects adversely on his fitness to practice law. The parties further submit that the period of suspension with probation will allow Respondent to establish a sustained period of rehabilitation and fitness to practice law prior to being reinstated.

54. This Hearing Officer has reviewed Respondent's medical records in an attempt to understand why an attorney starts making irrational comments that certainly could be taken as threats to members of the judiciary, and filing frivolous lawsuits that are clearly barred by judicial immunity. These records² are sealed, but to the extent that they can be commented on here, this Hearing Officer is persuaded that Respondent's conduct was at least affected by his condition at the time.

² The Doctor's notes are very hard to read, but a general sense of what Respondent was experiencing and his condition can be gleaned from what is legible.

55. This Hearing Officer also reviewed Judge David Campbell's thorough and thoughtful September 21, 2010, order which found ethical violations and entered a sanction in Federal Court. This Hearing Officer concurs with Judge Campbell's finding that Respondent's mental condition, while perhaps having a bearing on Respondent's actions, his subsequent conduct and attempted justification of his actions supports a finding that his actions were done with a knowing state of mind, see Judge Campbell's decision p. 13:15-14:4. This Hearing Officer also concurs with Judge Campbell's analysis of the ABA *Standards* that a suspension is warranted in this case.

56. The State Bar and Respondent submit that a six month suspension is appropriate in this case and that would be commensurate with Judge Campbell's ruling. This Hearing Officer is concerned about the level of Respondent's anger and irresponsible conduct even after he was, according to his doctor, making significant improvement in his medical condition. Also of concern are Respondent's arguments to Judge Campbell in an attempt to justify his conduct, see Judge Campbell's decision, *supra*. As Judge Campbell points out, the purpose of lawyer discipline is deterrence, as well as the protection of the public and the profession. This Respondent seems to have a very skewed understanding of his responsibilities to his clients and his profession, as well as a fundamental misunderstanding of the boundaries of propriety. Whether this can all be laid at the feet of his "mental" condition is not clear, but it should be a significant concern going forward.

57. Respondent does have more mitigating factors than aggravating factors which do cause a tilt toward a mitigated sanction of six months suspension followed by probation,

rather than the more severe six months and a day sanction. This is a reflection of the spirit of our legal system which includes tolerance and understanding perhaps not shared by Respondent. This is a close case on whether the public and the profession would be better served by the more severe sanction of six months and a day. The question is whether Respondent truly understands why his conduct is judged to be offensive and inappropriate and will take the steps to correct his attitude and conduct, or whether he is just saying what he needs to say to avoid losing his license to practice law and intends to pick up where he left off once his period of suspension is over. The answer to this question was not proven to this Hearing Officer and will have to be addressed when Respondent's terms of probation are set up by the MAP coordinator. A review of the stipulated terms of probation set forth below satisfies this Hearing Officer that sufficient safeguards have been built into this proposed agreement to do what can be done to assure that Respondent, if he returns to the practice of law, does not pose a danger to his clients or this profession. Hopefully, by this period of suspension and probation, Respondent gains not only insight, but also the determination to address his condition and attitude such that if he wishes to have a license to practice in these Courts, he will make sure that his conduct conforms with the rules of the Courts.

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

1. Respondent shall be suspended for a period of six months;

2. Respondent shall be placed on probation for a period of two years, under the terms and conditions to be developed by MAP and Bar Counsel. Failure to sign the Terms and Conditions of Probation developed by the State Bar will result in the matter being referred to the imposing entity for referral to a Hearing Officer; The State Bar shall report material violations of the terms of the terms of probation pursuant to Rule 60(a)(5). Ariz. R. Sup. Ct., and a hearing may be held within thirty days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

3. The probation will begin upon the filing of the Judgment and Order and will terminate two years from the signing of the Terms and Conditions of probation;

4. Respondent will meet with the State Bar's Member Assistance Program Director, Hal Nevitt ("MAP Director") within 30 days of the filing of the Judgment and Order to begin the development of the Terms and Conditions of Probation;

5. If the State Bar and the MAP Director determined that a physical or mental exam is necessary, Respondent agrees to be evaluated by a psychiatrist of the State Bar's choosing. Based on an evaluation, additional terms and conditions of the probation may be established.

6. Prior to returning to active status, Respondent will undergo a Fitness to Practice Independent Medical Evaluation. If Respondent is found unfit to practice,

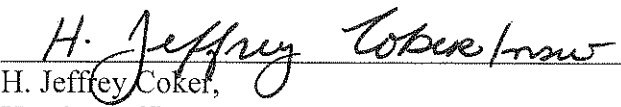
Respondent will agree to remain inactive until he is determined fit to practice.

7. Respondent will be required to participate in drug tests on a regular basis to make sure he is taking any doctor prescribed medications.

8. 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 the reinstatement proceedings, and the State Bar receives information about his failure, the State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct., and a hearing may be held within thirty days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

9. Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court and the Disciplinary Clerk's Office in this matter.

DATED this 24 day of January, 2011.


H. Jeffrey Coker,
Hearing Officer 6R

Original filed with the Disciplinary Clerk
this 26 day of January, 2011.

Copy if the foregoing mailed this
26 of January, 2011 to:

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