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OCT 17 2008

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA

**BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
  
ERIN M. ALAVEZ, )  
Bar No. 021108 )  
  
RESPONDENT. )

Nos. 07-1681, 07-1915, 07-2026,  
07-2081, 07-2118, 07-2152

**DISCIPLINARY COMMISSION  
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 20, 2008, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed June 11, 2008, recommending disbarment and costs.

**Decision**

Having found no facts clearly erroneous, the eight members<sup>1</sup> of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for disbarment and costs<sup>2</sup>.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of October, 2008.

*Jeffrey Messing/CA*  
Jeffrey Messing, Vice-Chair  
Disciplinary Commission

Original filed with the Disciplinary Clerk  
this 17<sup>th</sup> day of October, 2008.

<sup>1</sup> One lawyer member seat remains vacant. Commission Flores did not participate in these proceedings. Daniel P. Beeks, a hearing officer from Phoenix participated as an ad hoc member.

<sup>2</sup> A copy of the Hearing Officer's Report is attached as Exhibit A

Copy of the foregoing mailed  
this 20<sup>th</sup> day of September, 2008, to:

1 Mark S. Sifferman  
2 Hearing Officer 9J  
3 *Norling, Kolsrud, Sifferman & Davis, P.L.C.*  
4 16427 North Scottsdale Road, Suite 210  
5 Scottsdale, AZ 85254

6 Erin M. Alavez  
7 Respondent  
8 41 Brook Mill Lane  
9 Chesterfield, MO 63017

10 David L. Sandweiss  
11 Bar Counsel  
12 State Bar of Arizona  
13 4201 North 24th Street, Suite 200  
14 Phoenix, AZ 85016-6288

15 by: *Stacey Jensen*  
16 /cs

# **EXHIBIT**

**A**



## RESPONDENT'S BACKGROUND

1. Respondent was admitted to practice law in this State on October 29, 2001. *Complaint, ¶ 1.*

### COUNT ONE (FILE NO. 07-1681)

2. In early 2007, client JGT<sup>1</sup> retained Respondent to represent him in connection with a criminal matter. JGT previously had been represented by a Public Defender who told him that he faced imprisonment for a term of 30 to 33 months. *Complaint, ¶¶ 2, 3*

3. Respondent told JGT that she could obtain a shorter term of imprisonment for JGT. JGT and/or members of JGT's family paid Respondent \$2,000.00 as a down payment to begin work on his case. *Complaint, ¶¶ 4 - 6.*

4. On approximately April 15, 2007, Respondent visited JGT along with another attorney, Ramiro Flores, whom Respondent identified as her partner and with whom Respondent told JGT she would collaborate in working on JGT's case. Respondent told JGT that she had several motions that she would file which should assist JGT to receive a shorter term of imprisonment. *Complaint, ¶¶ 7, 8.*

5. Respondent sent JGT a letter stating that she would visit him again with a settlement offer from the government. Respondent never visited JGT again. In addition, Respondent failed to respond to communication efforts from family members. *Complaint, ¶¶ 9 - 11.*

6. On approximately June 7, 2007, Respondent sent JGT a letter stating she was no longer associated with Mr. Flores and had joined the Law Offices of Doug Zanes & Associates, P.L.L.C. In the same letter, Respondent told JGT that he had to pay an additional \$1,500.00 for her to continue representing him. Members of the family paid

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<sup>1</sup> To protect the privacy of clients and third parties, initials are used in this report in place of actual names.

the Respondent \$1,000.00 and Respondent acknowledged that this payment was sufficient for her to continue working on JGT's case. *Complaint*, ¶¶ 12 - 14.

7. On approximately June 22, 2007, Respondent wrote another letter to JGT informing him that he had to appear in court on July 10, 2007 to plead guilty. Members of JGT's family contacted Respondent and asked her for information about a plea agreement to which Respondent replied that she did not have a plea agreement for JGT. Respondent told members of the family that she would visit JGT before Court. Respondent did not visit JGT before the Court date. *Complaint*, ¶¶ 15 - 17.

8. At the July 10, 2007 hearing, JGT saw Respondent in Court at which time Respondent asked him if he was ready to sign the plea offer. Respondent did not explain to JGT the details of the plea offer. JGT asked Respondent how long a term of imprisonment was specified in the plea offer, to which Respondent replied that she did not know. Respondent further replied that the plea offer contained different levels of imprisonment and that it was a "open deal" from 10 to 37 months. Respondent instructed JGT not to worry and that he should answer "yes" to everything that the Judge asked. Respondent did not explain to JGT the consequences of signing the plea offer. JGT signed the plea offer. *Complaint*, ¶¶ 18 - 24.

9. Judge Duncan asked JGT if he read and understood the plea offer to which JGT replied, "no." Judge Duncan then asked Respondent whether it was true that JGT did not understand. Respondent replied that JGT was confused. Respondent persuaded JGT to acknowledge to the Judge that he had read and understood the plea agreement. *Complaint*, ¶¶ 25- 27.

10. Prior to a sentencing interview by a probation officer, Respondent provided certain forms to JGT to complete and return to her. JGT returned to Respondent the completed forms along with letters and documents provided by family members. Respondent told JGT that she would participate in the subsequent interview with the

probation officer by telephone. When the interview occurred, Respondent joined the interview by telephone for only 5 minutes, claiming that she had other things to do.

*Complaint*, ¶¶ 28-31.

11. The interview with the probation officer continued without Respondent being present. The probation officer asked JGT about the forms, to which JGT replied that he had given them to Respondent. The probation officer responded that he had not received the forms. The probation officer informed JGT that Respondent would receive the pre-sentence report and would discuss it with JGT. Respondent failed to visit JGT or discuss the pre-sentence report with him or members of his family. *Complaint*, ¶¶ 32 - 34.

12. Respondent failed to file any of the motions she had promised earlier. *Complaint*, ¶ 35.

13. Approximately 5 days before sentencing, Respondent informed JGT that she no longer worked at the Law Office of Doug Zanes as an associate, and that she was working out of her own house. JGT asked Respondent for the Pre-sentence Report and Respondent replied that she did not have it. At the sentencing hearing on September 7, 2007, JGT saw Respondent before they entered the Courtroom. Respondent told him that the Pre-sentence Report recommended imprisonment from 37 to 43 months. *Complaint*, ¶¶ 36 - 38.

14. JGT asked Respondent for a copy of the pre-sentence report and of the motions that she promised to file, but Respondent did not provide copies of any of those items to JGT. JGT asked Respondent why the probation officer recommended a term of 37 to 43 months, when the Public Defender advised him that he faced a range of 30 to 37 months and Respondent agreed to represent him based upon her statement that she could obtain for him a shorter prison term. *Complaint*, ¶¶ 39, 40.

15. Respondent advised JGT to accept the sentence and to tell the Judge that he would not appeal, and that Respondent would thereafter request a shortening of the prison term based upon "2255." *Complaint*, ¶ 41.

16. Since sentencing, JGT and members of his family have attempted to contact Respondent but that she has failed to respond. Respondent has failed to return to JGT or his family members, documents and property that they gave to Respondent. *Complaint*, ¶¶ 42, 43.

17. The State Bar advised Respondent in writing regarding JGT's charge and requested a response within 20 days. When Respondent failed to respond, the State Bar sent a reminder letter on November 21, 2007 requesting a response within 10 days. Respondent failed to respond within 10 days of November 21, 2007. *Complaint*, ¶¶ 44 - 47.

18. In mid-December, 2007, Respondent informed the State Bar's Lawyer Assistance Program of her new address in Missouri.

19. On December 21, 2007, the State Bar wrote to Respondent at the Missouri address advising Respondent of the pendency of this and other disciplinary matters. Respondent in writing requested an extension until February 5, 2008 to respond, which request was granted. Respondent requested an additional extension until February 11, 2008. No response has ever been provided by Respondent. *Complaint*, ¶¶ 48 - 53.

**COUNT TWO (FILE NO. 07-1915)**

20. Respondent was retained to represent GAF in a criminal matter pending in federal court. *Complaint*, ¶ 64

21. On October 26, 2007, Respondent failed to appear in Court for GAF's sentencing. Court Staff tried but was unable to locate Respondent so the matter was rescheduled. Respondent was ordered to show cause why she should not be sanctioned

for failing to appear. At the rescheduled hearing, November 5, 2007, Respondent again failed to appear. *Complaint*, ¶¶ 65 - 68.

22. Respondent gave no advance notice to the Court for either absence. Respondent was notified of both proceedings by email and the Court mailed a copy of the Minute Entry for the October 26, 2007 to Respondent's physical address. *Complaint*, ¶¶ 69, 70

23. The District Court was forced to appoint substitute counsel for GAF. *Complaint*, ¶ 71.

24. GAF was in custody and was entitled to a time-served sentence with his plea agreement as a consequence of which he spent additional days in custody beyond what would otherwise have ensued but for Respondent's conduct. *Complaint*, ¶ 72.

25. On November 21, 2007, State Bar counsel wrote to Respondent requesting a response to the foregoing charge within 20 days. Respondent failed to respond within the 20 days. *Complaint*, ¶¶ 73 - 75.

26. On December 21, 2007, the State Bar wrote to Respondent at her Missouri address (see *Finding* ¶ 18, *supra*) advising her of the pendency of this and other disciplinary matters which required her attention. *Complaint*, ¶¶ 7, 77.

27. On January 8, 2008, Respondent wrote to the State Bar requesting an extension of time to respond to the foregoing charge until February 5. *Complaint*, ¶ 78.

28. On January 9, 2008, State Bar wrote to Respondent consenting to her request for an extension until February 5, 2008 to respond to the foregoing charge. *Complaint*, ¶ 79.

29. On February 4, 2008, Respondent sent a letter *via* facsimile to the State Bar requesting an additional extension of time by which to respond to the foregoing charge until February 11, 2008. *Complaint*, ¶ 80.

30. Respondent failed to respond to the foregoing charge by either February 5 or 11, or at all. *Complaint*, ¶ 81.

**COUNT THREE (FILE NO. 07-2026)**

31. On February 23, 2004, the daughter of JV was allegedly assaulted by SR, a day care worker at a child care center, owned by Mr. and Mrs. M. The assault was investigated by law enforcement agencies. After SR failed a lie detector test, she admitted to the incident. JV obtained a taped confession from SR. *Complaint*, ¶¶ 93 - 96.

32. JV retained Respondent to represent her and her daughter in the case against SR, the center and its owners. Respondent assured JV that it was a good case and that she saw there was no way they would lose. *Complaint*, ¶¶ 97, 98.

33. Respondent filed suit on behalf of JV and her daughter against SR, the center and other owners. *Complaint*, ¶ 99. SV thereafter heard nothing from Respondent for a very long time. Therefore, she called Respondent who said that she had been in touch with Lourdes Lopez, the attorney for the defendants, and that they had offered \$10,000.00 in settlement. *Complaint*, ¶¶ 100, 101.

34. JV told Respondent to accept the offer. Respondent, however, declined and told JV that they could get more from Ms. Lopez' clients and the insurer for the center and its owners. *Complaint*, ¶¶ 102.

35. After several more months passed with no communication and many unreturned phone calls, JV's father went to Respondent's office and asked for the file and tape. Respondent told JV's father that Respondent would call him later. *Complaint*, ¶¶ 103, 104.

36. Respondent called JV later to say that she was working on getting a bigger settlement. JV told Respondent to accept the \$10,000.00. Respondent said she would let defense counsel know that JV wanted to accept the offer. *Complaint*, ¶¶ 104, 105, 106.

37. JV learned from the Superior Court internet website that her lawsuit had been dismissed. JV asked Respondent about this to which Respondent replied that she had already reinstated the case. *Complaint*, ¶¶ 107, 108.

38. After several more months, Respondent spoke to JV and told her that the insurance claim representative for the center and its owners had left his employment, there was no offer, and there had never been an offer. *Complaint*, ¶ 109.

39. Respondent told JV that the case would go to arbitration. During the ensuing year, Respondent repeatedly told JV that she was preparing to take the case to arbitration. *Complaint*, ¶¶ 110, 111.

40. Respondent made excuses for failing to send JV copies of documents relating to the case. *Complaint*, ¶ 112.

41. Respondent gave JV only a few days notice of her deposition and that there was very little preparation. At her deposition, she was asked questions about documents she had never seen. *Complaint*, ¶ 113.

42. Respondent's deposition of SR was not done in a competent manner. *Complaint*, ¶ 114.

43. After several more months passed, Respondent told JV that they did not have much of a case, they had no expert witness, and the person in charge of day care licensing, who had issued the majority of fines to the center, was not a valid witness. *Complaint*, ¶ 115.

44. Respondent told JV to accept \$1,500.00 from SR because her personal attorney, Ms. Lopez, might not be practicing law much longer. Respondent sent JV a liability release and a check for \$1,000.00. Respondent did not approve the release because it purported to release the center and its owners as well as SR. She asked the Respondent to correct the release. Respondent told JV to hurry up and sign the release before Ms. Lopez stopped practicing law. *Complaint*, ¶¶ 116 - 119.

45. JV asked Respondent why she had already accepted the money from Ms. Lopez, and asked for copies of documents relating to settlement negotiations. Respondent replied that all negotiations were verbal and that there was nothing on paper. *Complaint*, ¶¶ 120, 121.

46. Respondent sent JV a copy of a Motion to Dismiss filed by the defendants asserting that JV had signed the release. JV told Respondent to respond to the Motion since JV had not signed the release. *Complaint*, ¶¶ 122, 123.

47. Respondent moved her law practice to the Law Offices of Doug Zanes & Associates, PLLC. After doing so, Respondent emphasized to JV that she should take the \$1,500.00 offer, which would be \$1,000.00 to JV and \$500.00 to Respondent, and that the release should be sent to Respondent's home rather than her new office, so as not to have to share the fees with Mr. Zanes. *Complaint*, ¶¶ 124, 125.

48. JV signed a settlement release as to SR, but not as to the center or its owners. Respondent sent to JV a \$1,000.00 check written on Respondent's bank account, but not a designated trust account. JV returned the check to Respondent because she did not approve the settlement. *Complaint*, ¶¶ 126, 127.

49. JV has not received a new check or correct form of release as to the center or its owners. *Complaint*, ¶ 128.

50. JV's charge against Respondent was received by the State Bar. On December 6, 2007, the State Bar Counsel wrote to Respondent requesting a response to the charge within 20 days. State Bar Counsel also requested copies of her fee agreement with JV, her entire case file, and her trust account and business account records pertinent to JV's and daughter's matter. This letter request was hand-delivered to Respondent's address of record with the State Bar. *Complaint*, ¶¶ 129 - 132.

51. Respondent failed to respond within 20 days. *Complaint*, ¶ 133.

52. State Bar Counsel wrote to Respondent regarding this matter at her Missouri address. (See *Finding* ¶ 18, *supra*.) On January 8, 2008, Respondent wrote to the State Bar requesting an extension until February 5, 2008 to respond to the foregoing charge. The State Bar consented. The Respondent requested an additional extension until February 11, 2008. Respondent never provided any response to the charge. *Complaint*, ¶¶ 135 - 139.

**COUNT FOUR (FILE NO. 07-2081)**

53. Respondent represented MG, the Plaintiff in a civil case in a matter pending before the Pima County Justice Court. A trial was scheduled for November 29, 2007. Respondent did not communicate her change of address or phone number to the Court or to MG. Respondent did not appear for trial. *Complaint*, ¶¶ 151, 154.

54. Opposing counsel informed the Court at trial that he had received an email from Respondent stating that she had moved out of State. Opposing counsel also stated that his client had previously paid the property damage portion of the claim to Respondent. MG denied receiving any funds from Respondent. The Court concluded that Respondent abandoned her client and the case, and ordered her removal as counsel. *Complaint*, ¶¶ 155, 157.

55. Notice of this charge was sent to Respondent on June 9, 2008 requesting a response within 20 days. Respondent failed to respond. *Complaint*, ¶¶ 158 - 160.

**COUNT FIVE (FILE NO. 07-2118)**

56. CF retained Respondent to represent her in a personal injury matter. After being retained, Respondent failed to respond to CF's communications, and the client was unable to locate Respondent at her listed address or phone number. *Complaint*, ¶¶ 180, 181.

57. Due to Respondent's disappearance, the client's doctor has been billing the client rather than merely forwarding bills to Respondent while the case was pending.

*Complaint ¶ 182.*

58. Respondent has CF's case information and documents which CF provided to Respondent, including the name, license plate digits, and insurance information of the liable driver. *Complaint ¶ 183.*

59. Respondent's phone is no longer in service. CF left a note on Respondent's office door as the office is continuously closed. The last time CF heard from Respondent was in August 2007. *Complaint ¶ 184.*

60. The foregoing information from Ms. Flores was received by the State Bar on December 17, 2007. On January 9, 2008, State Bar Counsel wrote to Respondent requesting a response to the charge within 20 days. Respondent failed to respond within the 20 days, and has not responded at all. *Complaint ¶ 185 - 187.*

**COUNT SIX (FILE NO. 07-2152)  
(JUDICIAL REFERRAL)**

61. Respondent was retained to represent a client in connection with a criminal matter pending in federal court before the Honorable Judge Raner C. Collins. The client was scheduled to be sentenced and Respondent was scheduled to appear in court at the sentencing. Respondent failed to appear for the sentencing. Respondent did not having any communication with the client. *Complaint ¶¶ 196 - 199.*

62. The State Bar, on December 26, 2007, received information regarding this charge from Judge Collins. On January 9, 2008, State Bar Counsel wrote to Respondent requesting a response to the charge within 20 days. Respondent failed to respond within 20 days, and has not responded at all. *Complaint ¶¶ 200-202.*

**CONCLUSIONS OF LAW**

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

1. Respondent was properly served with the Complaint in this matter. Considering Respondent's requests for extensions of time to respond to State Bar investigatory letters, Respondent was aware her conduct in these matters was the subject to State Bar investigation.

2. As to Count One, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.1, 1.2, 1.3, 1.4, 1.5, 3.3 and 8.4(d), and Rules 53(d) and (f), Ariz.R.S.Ct.

3. As to Count Two, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.1, 1.2, 1.3, 1.4, 3.2, 3.4 and 8.4(d), and Rules 53(d), (e) and (f), Ariz.R.S.Ct.

4. As to Count Three, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.1, 1.2, 1.3, 1.4, 1.5, 3.2, 8.4(c) and 8.4(d), and Rules 53(d) and (f), Ariz.R.S.Ct.

5. As to Count Four, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.1, 3.2, 3.3, 3.4, 8.4(c) and 8.4(d) and Rules 41(c), 53(a), (c), (d) and (f). The Complaint does not state well-pled facts establishing a violation of ER 1.9, and the record reveals no evidence supporting that charge.

6. As to Count Five, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.1, 1.2, 1.3, 1.4 and 8.4(d) and Rules 53(d) and 53(f).

7. As to Count Six, Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.1, 1.2, 1.3, 1.4, and 8.4(d) and Rules 53(d) and (f). The Complaint does not state well-pled facts establishing a violation of ER 1.5, and the record reveals no evidence supporting that charge.

8. The following aggravating circumstances exist: prior discipline,<sup>2</sup> multiple offenses, pattern of misconduct, dishonest motive, vulnerability of victims, refusal to cooperate in the disciplinary process, and substantial experience in the law.

9. There are no mitigating circumstances.

### RECOMMENDATION

#### CONSIDERATION OF THE ABA STANDARDS

In determining the appropriate sanction, the American Bar Association's *Standards for Imposing Lawyer Sanctions* are to be considered. *In re Clark*, 207 Ariz. 414, 87 P.3d 827 (2004); *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). The Standards are designed to promote consistency by identifying relevant factors which should be considered in determining a sanction, and then applying those factors to situations in which lawyers have engaged in misconduct. *Standard 1.3, commentary*. In applying the *Standards*, four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating and/or mitigating factors. *In re Peasley*, *supra*; *In re Spear*, 160 Ariz. 545, 555, 774 P.2d 1335, 1345 (1989).

Where the matter involves findings of multiple misconduct, the ultimate sanction should be at least consistent with the sanction for the most serious instance of misconduct among the number of violations. The other acts of misconduct should be treated as aggravating factors. Therefore, where multiple acts of misconduct are found, the sanction generally should be greater than the sanction for the most serious individual misconduct.

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<sup>2</sup> By an Order entered September 1, 2006 in File 06-0499, Respondent was informally reprimanded for violating ERs 1.3 and 8.4(d). Respondent failed to diligently represent her client in a federal civil case, which resulted in the entry of summary judgment against her client and the imposition of attorneys' fees against the client and the Respondent. In addition to the informal reprimand, Respondent was placed on one-year probation. Most of the conduct in the present case occurred during that probation period. By an Order entered May 10, 2007 in File No. 06-2025, Respondent was placed on probation.

*In re Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994); *In re Cassali*, 173 Ariz. 372, 843 P.2d 654 (1992).

The State Bar comments that it is difficult to determine which one of the Respondent's violations was the most serious. *State Bar's Memorandum re: Aggravation - Mitigation Hearing*, 3:13 - 15. The State Bar suggests that the most serious conduct was her lack of candor toward a tribunal and her conduct which involved dishonesty, which implicate Standards 4.62 and 6.11. The State Bar's position is very reasonable. However, judging the "most" serious misconduct by the harm Respondent caused leads this Hearing Officer to conclude that the most applicable standard in this case is ABA Standard 4.4, Lack of Diligence. As to the lack of diligence violations, Respondent's mental state was knowing.

ABA Standard 4.41 provides that disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) A lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) A lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

ABA Standard 4.42 provides that suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in the pattern of neglect and causes injury or potential injury to a client.

The difference between Standard 4.41 and 4.42 is whether the harm to which the client was exposed constitutes "serious injury." Counts One and Two which involved criminal defendants who confinement may have been extended due to Respondent's conduct and Counts Three and Five which involve the loss by Civil Plaintiffs of potentially valuable causes of action show that the harm was "serious." Even if there was no evidence of serious injury, the volume of ethics violations involving lack of diligence

plus the numerous and substantial aggravating circumstances, makes an analysis of the type of harm involved truly academic.

The State Bar suggests that the mitigating factor of "absence of a dishonest or selfish motive" might exist. *State Bar's Memorandum re Aggravation-Mitigation Hearing*, 5:1 - 4. I do not find this mitigating factor. Respondent's conduct in abandoning clients and misleading the court and clients evidences a selfish motive (the intent to protect oneself). The State Bar, to ensure full candor, provided some documents which might establish the mitigating factor of "personal or emotional problems." *Id.*; citing Exhibit 3 to the State Bar's Memorandum. This Hearing Officer firmly believes that a respondent's personal or emotional problems should be given substantial consideration in the *appropriate* case. This is not one of those cases. Respondent has not herself made the effort to establish this mitigating factor. More important, there is no indication that Respondent has taken any action to ensure that those personal or emotional problems are addressed in order that they do not cause harm to others. If Respondent is incapable or unwilling to show some effort to address her personal or emotional problems and if Respondent is incapable or unwilling to comply with the duties she owes in this disciplinary proceeding (including providing some explanation for her conduct), the conclusion is inescapable that Respondent is incapable or unwilling to fulfill any of the obligations owed by an attorney. This Hearing Officer believes disbarment is warranted and necessary.

#### **PROPORTIONALITY ANALYSIS**

The purpose of professional discipline is twofold: (1) to protect the public, the legal profession, and the justice system, and (2) to deter others from engaging in similar misconduct. *In re Neville*, 147 Ariz. 106, 116, 708 P.2d 1297, 1307 (1985); *In re Swartz*, 141 Ariz. 266, 277, 686 P.2d 1236, 1247 (1984). Disciplinary proceedings are not to

punish the attorney. *In re Peasley*, 208 Ariz. 27, 39, 90 P.3d 764, 776 (2004); *In re Beren*, 178 Ariz. 400, 874 P.2d 320 (1994).

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

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

### CONCLUSION

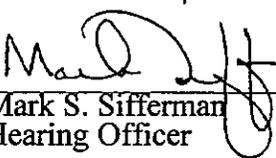
Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer recommends that:

1. Respondent be disbarred;
2. the cost and expenses of this proceeding be taxed against Respondent.<sup>3</sup>

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<sup>3</sup> At the June 4, 2008 Hearing, the State Bar stated that there was no basis to recommend any restitution, primarily due to the absence of information which Respondent otherwise should have supplied.

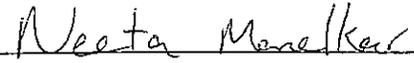
DATED this 10<sup>th</sup> day of June 2008.

  
Mark S. Sifferman  
Hearing Officer

**Original** filed with the  
Disciplinary Clerk of the  
State Bar of Arizona, this  
11<sup>th</sup> day of June, 2008,  
and copy mailed to:

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