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JUL 27 2010

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY Z. P. Dine

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

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

**ALFONSO ROBERTO TRUJILLO,
Bar No. 021619**

Respondent.

File Nos. 09-2102 and 10-0041

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

1. On March 19, 2010, the State Bar filed its Complaint in this matter against Alfonso Roberto Trujillo (hereinafter Respondent). On May 1, 2007, Respondent had been conditionally admitted to the State Bar of Arizona.
2. The nature of this case largely involves Respondent being charged: (1) in Count One with failure to communicate and return the file to his client, misrepresenting his law practice, and failure to respond to State Bar and disciplinary inquiries and proceedings (No. 092102); and (2) in Count Two with Respondent failing to comply with terms of his conditional admission requiring him to submit financial reports, mental health treatment reports, update his contact information, and failure to respond to State Bar and disciplinary inquiries and proceedings regarding his conditional admission (No.10-0041).
3. On March 22, 2010, the Complaint and the State Bar's initial disclosure statement were served by certified restricted mail/delivery and regular first class mail, to Respondent at his address of record with the State Bar, pursuant to Rule 47(c) and 57(e), Ariz. R. Sup. Ct.. On March 23, 2010, the State Bar filed its Notice of Service. On March 31, 2010, this Hearing Officer was assigned to this matter. On April 7, 2010, the Initial Case Management

Conference was held. Senior Bar Counsel Shauna R. Miller appeared telephonically on behalf of the State Bar, but Respondent did not participate.

4. On April 8, 2010, the Case Management Order was issued and Respondent was ordered to file his Answer by April 16, 2010. Respondent failed to file an Answer. On April 23, 2010, a Notice of Default was filed and Respondent was given ten days from the service of the Notice by mail to file his Answer. Respondent did not file an Answer. On May 13, 2010, the Entry of Default was filed. On May 25, 2010, the Notice of Hearing was filed, setting an Aggravation/Mitigation Hearing. On June 8, 2010, the Aggravation/Mitigation Hearing was held at the Supreme Court of Arizona with Bar Counsel present, but Respondent did not appear at the hearing.

FINDINGS OF FACT

5. The facts listed below are those set forth in the State Bar's complaint unless otherwise noted and were deemed admitted by Respondent's default or were presented at the Aggravation/Mitigation hearing. *Matter of Zang*, 158 Ariz. 251, 252-53, 762 P.2d 538, 539, (1988); *Matter of Galusha*, 164 Ariz. 503, 504, 794 P.2d 136, (1990); Rule 57(d), Ariz. R. Sup. Ct.
6. Respondent was conditionally admitted to the State Bar of Arizona on May 1, 2007, subject to specific terms and conditions. State Bar's Complaint (Compl.¶) ¶1; State Bar's Exhibit (Exhibit)¹ 2; Transcript of Hearing ("T/H") 19:23 – 21:6.
7. The Committee on Character and Fitness (the Committee) had referred Respondent to the Law Office Management Assistance Program (LOMAP). As part of his conditions for admission, the terms from an earlier letter of February 15, 2007 from the Committee addressing issues of Respondent's financial stability and mental health status were incorporated into a three (3)

year LOMAP Terms and Conditions Agreement (“LOMAP terms”). The terms included that Respondent’s Practice Monitor (later Thomas Moring) provide quarterly reports and that other periodic reports including mental health reports (later by Dr Hutchins) be submitted regarding Respondent’s compliance. The start date of Respondent’s conditional admission was May 1, 2007. T/H 24:18 – 23; Compl. ¶2; Exhibit 3 (Terms and Conditions of Admission with December, 2008 signature dates); T/H 21:9 – 17. Respondent’s LOMAP contract specifically required that he participate in LOMAP until his conditional admission term of three years expired or he was no longer practicing in a solo or small firm of less than three attorneys. Compl. ¶3; Exhibit 3; T/H 21:9 – 17.

8. Respondent has never notified the State Bar that his employment status has changed, that is, that he was no longer practicing solo or no longer in a small firm of less than three lawyers. Compl. ¶4; T/H 23:22 – 24:16. In a letter dated November 13, 2009, the State Bar notified Respondent that his quarterly financial report and his six month mental health report from Dr. Hutchins were overdue from October, 2009. Exhibit 3; T/H 22:10 -23:11. At the time that Respondent stopped submitting his LOMAP compliance reports in October, 2009, his conditional admission was due to expire May 1, 2010. T/H 24:18 -13.

COUNT ONE (File No. 09-2102/Csontos)

9. On or about July 23, 2009, Paul Thornton, a representative of Respondent’s then client, Harris Climate Control Acquisitions, LLC dba Harris Mechanical Southwest (“Harris”), informed Respondent by email that Harris wished to cancel the agreement they had with Respondent to litigate a claim involving Alta Parke West. Compl. ¶5; Exhibit 1; T/H 25:7 – 16.

¹ The Exhibits were admitted at the Aggravation/Mitigation Hearing.

10. In his response email sent the same day, Respondent informed Mr. Thornton that he would transmit a letter acknowledging the cancellation of the collection contract once he had the opportunity to review their agreement. Compl. ¶6; Exhibit 1; T/H 25:7 – 16.¶
11. Respondent also asked Mr. Thornton where he would like to have the project files sent, but did not send them at that time. Compl. ¶7; Exhibit 1; T/H 25:7 – 16.¶
12. Harris then hired attorney James L. Csontos (“Mr. Csontos) to handle the Alta Parke West matter. Compl. ¶8; Exhibit 1; T/H 25:7 – 16.¶
13. On August 28, 2009, Mr. Csontos informed Respondent that his firm represented Harris and that Mr. Csontos wished to make arrangements to pick up the Alta Parke West project file. Compl. ¶9; Exhibit 1; T/H 25:17 – 24.
14. Respondent failed to respond to Mr. Csontos’ letter. Compl. ¶10; Exhibit 1; T/H 25:17 – 24.
15. On September 29, 2009, Mr. Csontos mailed another request asking Respondent to have the Harris files transferred to his office. Compl. ¶11; Exhibit 1; T/H 25:17 – 24.
16. Respondent failed to respond. Compl. ¶12; Exhibit 1.
17. On October 5, 2009, Mr. Csontos faxed a letter to Respondent informing him that the principals from Harris would be arriving from out of town to meet with Mr. Csontos, and asked that Respondent provide the Harris project files by the following morning. Compl. ¶13; Exhibit 1; T/H 25:25 – 26:3.
18. Respondent again failed to respond to Mr. Csontos’ request. Compl. ¶14; Exhibit 1; T/H 26:3.
19. On October 22, 2009, Mr. Csontos submitted a charge with the State Bar against Respondent. In a letter dated December 24, 2009, the State Bar asked Respondent to respond to the following alleged misconduct (Compl. ¶¶15, 16 and 18; Exhibit 1 and 11; T/H 26:4 – 33:10):

- a. That Respondent failed to promptly deliver a copy of his file to client Harris, or subsequent counsel Mr. Csontos. Exhibit 1 and 11; T/H 26:4 – 9.
- b. That Respondent’s website falsely stated that he and his associates “are on-site to answer all of [y]our client’s legal inquiries”; however, Respondent failed to respond to letters, return phone calls, or otherwise communicate with his clients or their subsequent counsel. Exhibit 1.
- c. That Respondent misrepresented that there are other lawyers associated with the firm when no other attorney members of the State Bar used Respondent’s firm name, address or phone number as their own. Exhibit 1; T/H 26:11 – 28:12.
- d. That Respondent’s website falsely stated Respondent “specialize[d] in construction law and commercial recovery services” when Respondent was neither a specialist recognized by the State Bar of Arizona nor is there such a specialty. T/H 28:14 – 30:10.
- e. That Respondent’s website falsely stated that Respondent is “bonded and insured” when the State Bar’s database indicates that Respondent does not have any errors or omissions insurance. Exhibit 2; T/H 31:3 – 32:5.
- f. That Respondent’s website failed to address the contingency fee requirements of ER 7.2(d)(1) by not stating whether the client is liable for expenses regardless of the outcome of the litigation or whether the percentage fee will be computed before expenses are deducted from the recovery. T/H 32:11 – 33:10.

20. In the December 24, 2009 letter, the State Bar informed Respondent that the firm’s name, address, and telephone number on record with the State Bar appeared to be inaccurate, in that

they were no longer current, in violation of Rule 32(c)(3), Ariz. R. Sup. Ct. Compl. ¶17; Exhibit 1 and 13; T/H 33:12 – 34:21.

21. In addition, the State Bar informed Respondent that his failure to respond to calls from the State Bar's Attorney/Consumer Assistance Program assistant, violated Rules 53(d) and (f), Ariz. R. Sup. Ct. Compl. ¶18; Exhibit 1; T/H 34:24 – 36:15.

22. Respondent was asked to respond in writing within twenty (20) days of the December 24, 2009 date. Compl. ¶19; Exhibit 1.

23. Respondent failed to respond. Compl. ¶20; T/H 36:16 – 37:7.

COUNT TWO (File No. 10-0041/State Bar)

24. Pursuant to his LOMAP terms, Respondent is required to provide to the State Bar quarterly financial reports. Compl. ¶23; Exhibit 3.

25. Pursuant to his LOMAP terms, Respondent is required to provide to the State Bar counseling treatment reports every six months. Compl. ¶24; Exhibit 3 (Letter of May 14, 2007 from State Bar to Respondent).

26. Members of the State Bar are required to provide the State Bar with a current street address and telephone number, and any changes to this information must be made within thirty days of the effective date. Rule 32(c) (3), Ariz. R. Sup. Ct. All attempted contacts by the State Bar were sent or directed to Respondent's address or telephone number of record. Compl. ¶25; Exhibit 2 and 13; T/H 33:12 – 34:19.

27. On November 13, 2009, the State Bar informed Respondent by letter that he had failed to submit his financial quarterly report due on October 1, 2009. Compl. ¶26; Exhibit 3; T/H 37:12 – 40:6.

28. In addition, Respondent was informed that he also had failed to submit his counseling treatment report from Dr. Hutchins due on October 20, 2009. Compl. ¶27; Exhibit 3; T/H 37:12 – 40:6.
29. Respondent was asked to submit both reports within 10 days of the November 13, 2009 letter. He was cautioned that his failure to provide the requested reports would be a violation of his conditional admission and grounds for discipline. Compl. ¶28; T/H 41:17 – 44:10.
30. Respondent failed to respond. Compl. ¶29; T/H 44:11.
31. By letter dated November 19, 2009, LOMAP informed Respondent that he had failed to make his monthly payments of \$80.00 for the months of September, October and November. Respondent owes LOMAP \$732.50. Compl. ¶30; Exhibit 3; T/H 45:1 – 22.
32. Respondent was asked to submit his \$80.00 payment by December 3, 2009, or contact LOMAP's administrative assistant to discuss alternate arrangements if Respondent could not meet the deadline. Compl. ¶31; Exhibit 3.
33. Respondent failed to respond. Compl. ¶32; T/H 44:11 – 25.
34. On December 10 2009, and December 16, 2009, bar counsel's legal assistant left voicemail messages on Respondent's telephone informing him that he needed to contact the Bar right away. Compl. ¶33; Exhibit 2.
35. Respondent failed to respond. Compl. ¶34.
36. By letter dated January 8, 2010, the State Bar informed Respondent that a discipline investigation was being initiated related to violations of ER 8.1(b), Rule 42, Ariz. R. Sup. Ct., and Rules 53(d) and (f), Ariz. R. Sup. Ct. Compl. ¶35; Exhibit 3.
37. Respondent was asked to respond within 20 days of the January 8, 2010 letter. Compl. ¶36; Exhibit 3.
38. Respondent failed to respond. Compl. ¶37; Exhibit 3.

CONCLUSIONS OF LAW

COUNT ONE (File no. 09-2102/Csontos)

39. As to Count One, this Hearing Officer finds that there is clear and convincing evidence that Respondent violated the following ERs: 1.4 (failure to comply with request for return of file documents), 1.15(d) and 1.16(d) (failure to deliver or provide copy of file to client), 7.1 and 8.4(c) (knowingly false or misleading communication or misrepresentation regarding services, i.e. onsite availability, multiple lawyers, nonexistent specialization, insured status), 7.2(d) (omission of contingency fee disclosure regarding expense deduction and fee computation), 7.4(a) (false statement regarding nonexistent specialization), 7.5(a) (misrepresentation regarding multiple lawyers), 8.1(b) (knowingly fail to respond to lawful demand for information from disciplinary authority), 8.4(d) (conduct prejudicial to the administration of justice) and Rules 32(c)(3) (failure to update contact information with State Bar), 53(d) (refusal to cooperate with State Bar) and 53(f) (failure to furnish information for inquiry or disciplinary matter), Ariz. R. Sup. Ct.

COUNT TWO (File no. 10-0041/State Bar)

40. As to Count Two, this Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz. R. Sup. Ct., specifically ER 8.1(b) (knowingly fail to respond to lawful demand for information from disciplinary authority), and Rule 53(d) (refusal to cooperate with State Bar), Rule 53(f) (failure to furnish information for inquiry or disciplinary matter and Rule 53(g) Ariz. R. Sup. Ct., (violation of conditions and terms of admission). This Hearing Officer agrees that the State Bar inadvertently omitted Rule 53(g) from the complaint. However, the facts alleged in the complaint and deemed admitted by default, and at hearing, establish by clear and convincing evidence that Respondent violated

Rule 53(g) by failing to provide his financial and mental health status reports as required by the terms of his conditional admission to practice. *Matter of Swartz*, 129 Ariz. 288, 293, 630 P.2d 1020, (1981).

ABA STANDARDS

41. In determining the proper sanction, 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 aggravation and mitigating factors.

The Duties Violated

42. This Hearing Officer finds that Respondent violated duties he owed to his client by violating ERs 1.4, 1.15 and 1.16.. Respondent violated his duty to the public by violating ER 8.4(c). Respondent violated his duty to the legal system when he violated ER 8.4(d). Lastly, Respondent violated his duty to the profession when he violated ER 7.1, 7.2(d), 7.4(a).7.5(a), 8.1(b), and Rules 32(c)(3), 53(d), 53(f) and 53(g) Ariz. R.. Sup. Ct.

The Lawyer's Mental State

43. Respondent's mental state is knowing. Respondent knowingly failed to return his client's file after acknowledging his client's decision to change representation. Thereafter, he refused to respond to follow-up inquiries for the return of the file. Respondent's mental state was also knowing in that he made false or misleading representations regarding his offered legal services such as having one or more associates, onsite availability, specialization, and insured status. He knowingly failed to respond to the inquiries and requests for information from the State Bar. He knowingly breached his agreement to provide periodic financial reports and mental health status reports as conditions and terms for his admission to practice.

Actual or Potential Injury

44. Respondent's refusal to return his client's file and his refusal to respond to the State Bar inquiry and disciplinary process and his stoppage of submitting periodic financial and mental health reports to monitor his conditional admission status caused injury or potential injury to the client, the public, the legal system and the profession.
45. ABA Standard 4.42 provides: "Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client."
46. ABA Standard 7.2 provides: "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public or the legal system." Therefore, the presumptive sanction is suspension.

Aggravating and Mitigating Factors

Aggravating Factors

47. Standard 9.22(c): pattern of misconduct. Despite repeated requests, Respondent failed to return the file to the client's representative and the client's successor attorney. He also repeatedly failed to respond to the State Bar's inquiries.
48. Standard 9.22 (e): Bad faith obstruction of the disciplinary process. Respondent intentionally failed to comply with the rules of the disciplinary process and failed to submit periodic reports needed to monitor his conditional admission status.

Mitigating Factors

49. Respondent defaulted in presenting any information, but two mitigating factors exist.

50. Standard 9.32(a): Absence of a prior disciplinary record. This is Respondent's first disciplinary matter.

51. Standard 9.32(f): Inexperience in the practice of law. Respondent practiced law for less than three years. This Hearing Officer give less weight to Respondent's inexperience because the conditions for his admission included LOMAP monitoring which was intended to help Respondent deal with the his personal financial and mental health issues and the demands of his legal practice.

PROPORTIONALITY REVIEW

52. 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). 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 discipline in each situation must be tailored for the individual case as neither perfection nor absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604, 691 P.2d 695 (1984).

53. In *In re Casper*, SB-08-0123-D (2008), Casper was suspended for six months and one day and ordered to pay restitution. In a one-count matter, Casper failed to adequately communicate and diligently represent his client, and failed to respond to the State Bar's investigation. Casper's conduct was admitted by default. There were five aggravating factors: 9.22(a) prior disciplinary offenses, 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of disciplinary proceeding by intentionally failing to comply with rules or orders of disciplinary agency, and 9.22(j) indifference to making restitution. There were three mitigating factors: 9.32(c) personal or emotional problems, 9.32(d) timely good faith effort to make restitution or to rectify consequences of misconduct, and 9.32(1) remorse. Casper was

sanctioned for violation of Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 8.4(d), and Rules 53(d) and 53(f), Ariz. R. Sup. Ct.

54. In *In re Augustine*, SB-04-0114-D (2004), a three-count matter, Augustine was suspended for two years and ordered to pay restitution. Augustine failed to act with reasonable diligence and promptness in representing his client. He failed to keep his client adequately informed regarding the status of the matter or promptly comply with reasonable requests for information. Upon request of his client, Augustine failed to promptly render a full accounting regarding the client's property held in trust. Augustine failed to take the steps reasonably practicable to protect his client's interests upon termination of the representation and failed to respond to lawful demand for information from a disciplinary authority. Augustine engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. Lastly, Augustine engaged in conduct that was prejudicial to the administration of justice. Augustine's conduct was admitted by default. 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 intentionally failing to comply with rules or orders of disciplinary agency, 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution. There were four mitigating factors: 9.32(a) absence of a prior record, 9.32(b) absence of a dishonest or selfish motive, 9.32(g) character or reputation, and 9.32(1) remorse. Augustine was sanctioned for violation of Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.4, 1.15(b), 1.16(d), 8.1, 8.4(c), 8.4(d), and Rules 53(f) and 53(d), Ariz. R. Sup. Ct.

55. In *In re Rolph*, SB-06-0011-D (2006), a two-count matter, Rolph was suspended for 90 days, with probation for two years upon reinstatement to consist of participation in MAP and LOMAP and a practice monitor. Rolph was a conditional admittee who failed to comply with

the terms of his admission, leading to him being placed on probation under the same terms. While on probation, he failed to cooperate with the State Bar's investigation in this disciplinary matter and failed to appear at a deposition for which a subpoena had been issued compelling his attendance. Four aggravating factors were found: 9.22(a) prior disciplinary offenses, 9.22(c) a pattern of misconduct, 9.22(d) multiple offenses, and 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency. Three factors were found in mitigation: 9.32(b) absence of a dishonest or selfish motive, 9.32(f) inexperience in the practice of law, and 9.32(j) remorse. Rolph's mental state was knowing and there was actual harm as a result of the misconduct. Rolph violated ERs 1.3, 1.4, 3.4(c), 8.1(b) and 8.4(d), and Rule 53(f), Ariz. R. Sup. Ct.

56. Respondent's case and Casper involve a one-count complaint, with failure to cooperate with the State Bar and failure to adequately communicate with the client. Respondent's case is similar to Rolph because both Rolph and Respondent were conditional admittees. Augustine involved three separate client matters, while in this matter there is only one count involving a client.

57. The State Bar recognized that in most cases involving conditional admittees where the lawyer has violated the terms and conditions of admission, the disciplinary sanction usually received is probation. Footnote 4 at page 17 of the State Bar's Post Hearing Memorandum. If Respondent had provided information like the conditional admittee did in *In re Rolph*, the form of sanction could have taken into account that information. Given the lack of information from Respondent, this Hearing Officer recommends a longer term of probation than in *In re Rolph* for the reasons below.

RECOMMENDATION

58. 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); 147 Ariz. 106 708 P. 2d. 1297 (1994).
59. Respondent was admitted to practice upon the conditions required by the Committee on Character and Fitness. Those conditions were intended to address concerns with his financial stability and mental health. Respondent completed approximately two and one-half years of his three years for conditional admission compliance. Without explanation to his mental health monitor Dr. Hutchins, his LOMAP program monitor, Mr. Thomas Moring, the LOMAP or State Bar representatives, Respondent stopped his compliance.
60. Had Respondent provided information directly or indirectly through LOMAP monitors or others, any issues or problems affecting his misconduct or noncompliance could have been addressed. Such information if provided by Respondent, may have allowed any sanction to be tailored to the identified issues or problems.
61. Since Respondent provided no information, this Hearing Officer considers suspension for six months and one day to be necessary. Such a period of suspension will require Respondent to apply for reinstatement by showing that he has identified and been rehabilitated from the issues or problems that affected or caused his misconduct and noncompliance.
62. Based on consideration of the facts, application of the Standards, including aggravating and mitigating factors, as well as the proportionality analysis, this Hearing Officer recommends that:
1. Respondent be suspended for six months and one day;

2. Should Respondent apply for and be granted reinstatement, that Respondent be placed on two years probation upon conditions and terms to be determined including financial debt and mental health counseling issues; and
3. Respondent pay all costs and expenses incurred by the State Bar 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.

DATED this 27th day of July, 2010.


Louis A. Araneta, Hearing Officer 6U

Original filed with the Disciplinary Clerk
this 27th day of July, 2010

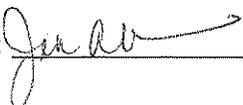
Copies of the foregoing mailed
this 27th day of July, 2010, to:

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Copies of the foregoing emailed
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