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JAN 13 2005

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *Williams*

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

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

JASON J. BRYN
Bar No. 018750

Respondent

File Nos. 03-2228, 04-0313, 04-1141

**HEARING OFFICER REPORT
AND RECOMMENDATION**

I. PROCEDURAL HISTORY

The State Bar filed its Complaint in this matter on September 28, 2004. The Complaint was served on Respondent by certified restricted mail and regular first class mail as provided for in the Rules of the Supreme Court. Respondent failed to file an Answer or otherwise defend. As such, a default was entered in this matter on November 16, 2004. The allegations in the Complaint therefore having been deemed admitted, the case was subsequently set for an Aggravation/Mitigation Hearing on the appropriate sanction for December 10, 2004. Respondent appeared for the hearing and presented a Motion to Overturn Order for Good Cause Shown. The Hearing Officer considered and denied the Motion. Respondent testified. The State Bar presented evidence in the form of three exhibits. Both Bar Counsel and Respondent presented their

1 recommendation for proposed sanction. The Hearing Officer requested that
2 Respondent and the State Bar each file by January 10, 2005 a proposed Hearing
3 Officer recommended decision, and to specifically address their proposed
4 recommendation for sanction in this matter, incorporating the applicable
5 standards and aggravating and mitigating factors under the *ABA Standards for*
6 *Imposing Lawyer Sanctions*, as well as addressing proportionality and restitution.
7
8 The State Bar filed its Proposed Hearing Officer Report and Recommendation.
9 Respondent did not file the requested post-hearing recommended decision or
10 other pleading.
11

12 II. FACTS

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14 The facts listed below are those set forth in the State Bar's complaint, and
15 were deemed admitted by way of Respondent's default.

16 At all times relevant, Respondent was an attorney licensed to practice law
17 in the State of Arizona, having been admitted to practice in Arizona on May 16,
18 1998.
19

20 **COUNT ONE (File No. 03-2228)**

21 On November 28, 2003, the State Bar of Arizona received an overdraft
22 notice from Wells Fargo Bank ("Wells Fargo") regarding Respondent's trust
23 account. The bank's documentation indicated that on November 21, 2003 check
24 number 1346, in the amount of \$2,970.00 attempted to pay against the account
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1 when the balance at the time was \$714.68. Wells Fargo returned the check and
2 charged Respondent a \$29.00 overdraft fee.

3
4 By letter dated December 12, 2003, the State Bar's Trust Account Staff
5 Examiner sent Respondent a copy of the insufficient funds notice with a letter
6 requesting Respondent submit an explanation for the overdraft of the trust
7 account within twenty (20) days. On January 6, 2004, Respondent faxed a letter
8 to the Staff Examiner indicating that he was in the process of obtaining the
9 requested trust account records and would provide a response to the charges by
10 January 9, 2004. Respondent failed to timely respond. At the
11 aggravation/mitigation hearing, Respondent testified that the check that was
12 returned for insufficient funds (number 1346) from the trust account was a check
13 made payable to Respondent himself in the sum of \$2,970.
14

15
16 On January 15, 2004, the Staff Examiner sent a second letter to
17 Respondent requesting a response within ten (10) days. In the January 15, 2004
18 letter, the Staff Examiner informed Respondent that failure to cooperate could
19 lead to the subpoenaing of his trust account records. Respondent failed to timely
20 respond. On January 28, 2004, Respondent contacted the Staff Examiner and
21 informed her that he would be faxing his response by the end of that day.
22 Respondent failed to respond. On February 2, 2004, the Staff Examiner's
23 administrative assistant left a telephone message for Respondent indicating that
24
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1 the State Bar had not received his response. On February 5, 2004, Respondent
2 left a message with the administrative assistant indicating that he would be
3 faxing his response. Respondent failed to respond.
4

5 On February 6, 2004, Respondent faxed copies of his trust account bank
6 statements only for the periods of August 12, 2003 through January 13, 2004.
7 Respondent failed to provide a response to the charge and failed to provide the
8 complete trust account records requested by the Staff Examiner. On March 24,
9 2004, State Bar Counsel ("Bar Counsel") subpoenaed Respondent's trust account
10 records from Wells Fargo. On April 13, 2004, the State Bar received the
11 Respondent's trust account records from Wells Fargo.
12

13
14 On May 5, 2004, Respondent was personally served with a Subpoena
15 Duces Tecum compelling him to produce his client ledgers, deposit slips, trust
16 account ledger and other records related to the maintenance of his trust account.
17 Respondent failed to comply with the subpoena and failed to otherwise respond.
18 Respondent knowingly failed to respond to the State Bar's inquiry related to his
19 trust account. An Order of Probable Cause was entered on July 12, 2004. The
20 overdraft of the account indicates that Respondent has failed to comply with ER
21 1.15, as well as Rules 43 and 44, Ariz. R. S. Ct. Respondent has failed to timely
22 respond to repeated inquiries by the State Bar of Arizona and/or failed to provide
23 the records requested and subpoenaed by the State Bar of Arizona. Respondent's
24
25

1 conduct as alleged in this Count violated Rule 42, Ariz. R. S. Ct., specifically,
2 ERs 1.15, 3.4, 8.1(b), 8.4(d) and Rules 43, 44 and 53(d), Ariz. R. S. Ct.

3
4 **COUNT TWO (File No. 04-0313)**

5 Respondent was retained by Carondelet Health Network ("CHN") to
6 handle three matters: a suit filed by Jan Rust ("Rust") in United States District
7 Court, a suit filed by Deborah Hickman ("Hickman") in Pima County Superior
8 Court and a discrimination claim filed with the Arizona Civil Rights Division by
9 Patricia Childs ("Childs").
10

11 Ms. Rust was representing herself in her lawsuit against CHN. The Court
12 set June 30, 2003 as the deadline for filing a motion to dismiss the lawsuit. On
13 June 9, 2003, Respondent filed a request for an extension to file the motion to
14 dismiss the Rust matter. The Court granted Respondent's motion to extend time
15 to file the motion to dismiss and set a deadline of January 5, 2004 for the filing
16 of all dispositive motions.
17

18 Respondent failed to notify CHN of any motions, including his motion for
19 an extension of time. Respondent researched and drafted a motion to dismiss the
20 Rust case; however, Respondent failed to timely file the motion with the Court.
21 On October 7, 2003, Respondent, without his client's permission or knowledge,
22 signed a stipulation stating that by not timely asserting them, he waived all
23 objections in the Rust case.
24
25

1 The Court set a deadline of October 20, 2003 for the parties to exchange
2 witness lists and Respondent and Ms. Rust stipulated to extend the deadline to
3 October 27, 2003. Ms. Rust filed her witness list in a timely manner; however,
4 Respondent failed to do so on behalf of his client CHN. On November 20, 2003,
5 the Court ordered CHN to file a status report by December 1, 2003 regarding the
6 search for certain documents requested by Ms. Rust. The Order also required
7 CHN to respond to outstanding discovery and provide certain documents within
8 one week. Respondent failed to file the status report with the Court, failed to
9 respond to outstanding discovery requests and provide documents as ordered by
10 the Court, and failed to file any objections to Ms. Rust's discovery requests.
11
12

13
14 Despite the December 1, 2003 discovery deadline, Respondent failed to
15 take Ms. Rust's deposition. Respondent claimed to have attempted to schedule
16 Ms. Rust's deposition approximately one week prior to the discovery deadline.
17 Respondent alleged that he had set her deposition because Ms. Rust was not
18 cooperative about setting a date and refused to agree to an extension of the
19 discovery deadline.
20

21 Respondent failed to send a notice of deposition to Ms. Rust or move to
22 compel her deposition. Respondent failed to inform his client, CHN, that the
23 discovery deadline had passed and that no depositions had been taken.
24
25

1 Respondent never informed CHN the information discovered in the eight
2 depositions taken by Ms. Rust.

3
4 Respondent failed to respond to Ms. Rust's first motion for judgment filed
5 with the Court on December 3, 2003. Respondent failed to respond to a second
6 motion for judgment filed on January 15, 2004 by Ms. Rust as a sanction for
7 CHN failing to respond to discovery requests. Respondent failed to notify CHN
8 about either of the pending motions filed by Ms. Rust and failed to respond to or
9 oppose either motion. As of February 13, 2004, the Court was considering the
10 imposition of sanctions against CHN.
11

12
13 The second matter in which Respondent was retained, the Hickman case,
14 was filed against CHN on June 21, 2003 in Pima County Superior Court. CHN
15 Risk Management requested that Respondent file a response to Ms. Hickman's
16 allegations in a timely manner, having sent the suit to Respondent in a timely
17 manner. Respondent filed a Notice of Appearance on September 24, 2003.
18

19 Ms. Hickman's attorney contacted CHN General Counsel Thomas Murphy
20 to indicate that no answer had yet been filed. Respondent filed an Answer in the
21 Hickman case on December 5, 2003 only after being contacted by CHN's
22 General Counsel Thomas Murphy and instructed to do so. Respondent's Answer
23 contained incorrect facts and information as well as admissions that may not be
24 correct and were not authorized by CHN. Respondent failed to act diligently by
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3
4 the requirement that a joint statement by parties for alternative dispute resolution
5 had to be filed.

6 Finally, the third matter in which Respondent was retained by CHN, an
7 Arizona Civil Rights discrimination matter involving Patricia Childs ("Childs"),
8 was filed on July 12, 2002. In a letter dated August 20, 2002, Respondent
9 notified the Arizona Civil Rights Division that he would be filing a response on
10 behalf of CHN. Respondent drafted a comprehensive responsive position
11 statement but failed to file it with the Civil Rights Division.
12

13
14 By letter dated March 15, 2004, Bar Counsel notified Respondent of the
15 charges submitted against him by CHN and requested a response from
16 Respondent within 20 days. By facsimile and letter dated March 25, 2004,
17 Respondent requested an extension until April 15, 2004 to respond to CHN's
18 charges. Bar Counsel granted a two-week extension to respond. Respondent
19 knowingly failed to respond to the State Bar's inquiry related to his
20 representation of CHN.
21

22
23 An Order of Probable Cause was entered on July 12, 2004. Respondent's
24 conduct as described in this Count violated Rule 42, Ariz. R. S. Ct., specifically
25 ERs 1.1, 1.3, 1.4, 3.1, 3.2, 3.4, 8.1(b), 8.4(d) and Rule 53, Ariz. R. S. Ct.

COUNT THREE (File No. 04-1141)

1
2 On July 31, 2003, the Sun Lakes Homeowners Association II ("HOA")
3 retained Respondent to conduct an Americans with Disabilities Act ("ADA")
4 inspection of the HOA facilities and submit an ADA compliance report and legal
5 opinion letter. The HOA contacted Respondent for several months to inquire
6 about the status of the investigation. Respondent did not initiate the inspection
7 of the HOA facilities until the Fall of 2003.
8
9

10 Per his agreement with the HOA, Respondent received fifty percent (50%)
11 of his fee on October 17, 2003, presumably the date of the alleged on-site
12 inspection. The HOA again contacted Respondent for several months to inquire
13 about the status of the report. Respondent submitted a partial ADA compliance
14 report to the HOA on May 21, 2004. After promising the HOA that the report
15 would be completed, Respondent submitted a second, less comprehensive report
16 on June 10, 2004. Respondent's report had little substantive value to the HOA.
17
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19 Respondent has failed to fulfill his obligations to the HOA and has failed
20 to complete the project that he was paid to perform. By letter dated July 21,
21 2004, Bar Counsel notified Respondent of the charges submitted against him by
22 the HOA and requested a response from Respondent within 20 days.
23 Respondent failed to respond in a timely manner. By letter dated August 26,
24 2004, Bar Counsel again notified Respondent of the allegations made by the
25

1 HOA and requested a response within 5 days. On August 27, 2004, Respondent
2 left a message for Bar Counsel indicating that he would be filing his response by
3 fax by August 30, 2004. Respondent failed to file his response. Respondent
4 knowingly failed to respond to the State Bar's inquiry related to his agreement
5 with the HOA.
6

7 An Order of Probable Cause was entered on September 8, 2004.
8 Respondent's conduct as described in this Count violated Rule 42, Ariz. R. S.
9 Ct., specifically, ERs 1.15, 8.1(b) and Rules 53(d) and (f), Ariz. R. S. Ct.
10

11 III. RECOMMENDED SANCTION

12 In determining the appropriate sanction in a disciplinary matter, the
13 analysis should be guided by the principle that the ultimate purpose of discipline
14 is not to punish the lawyer, but to set a standard by which other lawyers may be
15 deterred from such conduct while protecting the interests of the public and the
16 profession. *In Re Kersting*, 151 Ariz. 171, 726 P.2d 587 (1986).
17
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19 The substantive allegations of the Complaint, as amended by oral motion
20 of the State Bar on December 10, 2004, having been deemed admitted pursuant
21 to the default entered by the Disciplinary Clerk on November 16, 2004, the
22 following sanction should be imposed:
23

24 Suspension from the practice of law for a term of ninety (90) days. At the
25 conclusion thereof, Respondent to be on probation for two years (the

1 period to commence with the signing of the probation contract and/or
2 memorandum of understanding). The conditions of probation will include
3 participation in and cooperation with the Law Office Management
4 Assistance Program (LOMAP), including the use of a Practice Monitor;
5 and an assessment by the Members Assistance Program ("MAP") to
6 include focus on stress management issues. If recommended, a
7 memorandum of understanding shall be entered to assure compliance with
8 the MAP recommendations.
9
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11 This recommendation is based on the applicable *ABA Standards for*
12 *Imposing Lawyer Sanctions* ("Standards"), 1991 edition, including the relevant
13 aggravating and mitigating factors, as well as its review of the applicable case
14 law regarding proportionality of the proposed sanction.
15

16 IV. APPLICABLE STANDARDS

17
18 In determining an appropriate sanction, the Court and the Commission
19 consider the duty violated, the lawyer's mental state, the presence or absence of
20 actual or potential injury, and the existence of aggravating and mitigating factors.
21 *In re Tarletz*, 163 Ariz. 548, 554, 789 P.2d 1049, 1055 (1990); *Standard 3.0*.
22

23 The *Standards* identify four distinct categories where a lawyer has
24 specific duties, to either his client, the general public, the legal system or to the
25 profession. As related to the instant cases, duties to clients are the paramount

1 ethical duties. A majority of the alleged violations concern Respondent's failure
2 to serve his clients. Next, the duties to the profession include maintaining the
3 integrity of the legal profession. In the cases at bar, those duties included
4 cooperation with and response to the State Bar of Arizona and the disciplinary
5 system. Respondent failed in those duties as well.
6

7 Those ethical duties violated having been set forth in the Complaint and
8 deemed admitted, the next inquiry is the lawyer's mental state. There is
9 evidence, in the Complaint and from the testimony of Respondent during the
10 December 10, 2004 hearing that his mental state can only be defined as
11 "knowing." The *Standards* define knowing as "the conscious awareness of the
12 nature or attendant circumstances of the conduct without the conscious objective
13 or purpose to accomplish a particular result. *Standards*, p. 7. Respondent
14 testified and the State Bar contends that he knew he had a duty to respond to the
15 inquiry of the Bar. While Respondent initially claimed not to have been served
16 with the Complaint, Respondent had a copy of the Complaint, mailed by first-
17 class mail and received at his address of record, with him at the December 10,
18 2004, hearing. Further, Respondent testified that he realized that he was missing
19 deadlines, failing to timely file motions or respond to motions, failing to perform
20 the necessary work and failing to keep his clients adequately informed. As
21 admitted by Respondent, the information provided by Respondent regarding
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1 these failures should be considered only, if at all, with regard to possible
2 mitigation.

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4 Third is the determination of harm or possible harm to the client. State
5 Bar exhibits 2 and 3, provided to State Bar by the attorneys who assumed the
6 representation of CHN after Respondent's failure, substantiate that based on their
7 billing of the client, CHN expended an amount in excess of \$33,000 in the three
8 cases abandoned by Respondent, at least in part to take remedial actions. While
9 there is no allegation that the ultimate result of the cases was impacted or that
10 remediation was not possible, the client was forced to expend considerable effort
11 and expense after Respondent's inaction in the Rust, Childs and Hickman
12 matters. Further, a default judgment against Respondent was obtained on behalf
13 of Sun Lakes Homeowner's Association. Respondent acknowledged admitting
14 to owing that amount in conversation with Mr. Bob Mariani (the complainant in
15 Count 3). Subsequent to the hearing, it has been determined that Respondent has
16 paid the Sun Lakes judgment against him in full in the sum of \$2,171 and a
17 Satisfaction of Judgment has been filed with the applicable court. In addition to
18 the allegations in the Complaint having been deemed admitted by default,
19 Respondent acknowledged during the December 10, 2004 hearing that he had no
20 defense to the allegations in the Complaint.
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1 “The *Standards* do not account for multiple charges of misconduct. The
2 ultimate sanction imposed should at least be consistent with the sanction for the
3 most serious instance of misconduct among a number of violations; it might well
4 be and generally should be greater than the sanction for the most serious
5 conduct.” *Standards*, p. 6. *In re Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994).
6

7 Standard 4.4, Lack of Diligence, and Standard 7.0, Violations of other
8 Duties Owed as a Professional, are the *Standards* applicable to the most serious
9 instances of misconduct, namely, abandoning clients and failure to cooperate
10 with and respond to the State Bar. Specifically, *Standard 4.42* provides,
11 “Suspension is generally appropriate when: (a) a lawyer knowingly fails to
12 perform services for a client and causes injury or potential injury to a client, or
13 (b) a lawyer engages in a pattern of neglect and causes injury or potential injury
14 to a client.”
15
16

17 *Standard 7.2* provides that “(s)uspension is generally appropriate when a
18 lawyer knowingly engages in conduct that is a violation of a duty owed as a
19 professional, and causes injury or potential injury to a client, the public, or the
20 legal system.” The duties to respond promptly and furnish information to Bar
21 counsel and to cooperate with the staff of the State Bar are set forth in Rule 53,
22 Ariz.R.S.Ct. The violation of those duties by failing to cooperate with the Bar
23 and provide information in the Bar’s inquiry shows disregard for the disciplinary
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1 systems established by Supreme Court rule. Respondent failed to respond to the
2 Bar's inquiry and subsequently failed to answer the Complaint.

3
4 Having, therefore, established that suspension is the presumptive sanction
5 for Respondent's violations, an examination of the aggravating and mitigating
6 factors, as set forth in the *Standards* is appropriate.

7
8 V. AGGRAVATING AND MITIGATING FACTORS

9 Finally, the analysis set forth in *Standard 3.0* requires a determination of
10 the factors that may be considered in aggravation and/or mitigation. The
11 following aggravating factors listed in *Standard 9.22* are supported by the
12 allegations in the Complaint as well as by the evidence tendered at the
13 Aggravation/Mitigation Hearing held on December 10, 2004:

14
15 (b) selfish motive. Respondent testified during the December 10, 2004
16 hearing that his failure to adequately represent his client, CHN, and neglect of
17 his cases as well as his failure to respond to the inquiry of the State Bar was, at
18 least in part, due to his extended absences during the previous two years to train
19 as a bicyclist for the Athens Paralympics Games, as well as his desire to fulfill
20 personal and family needs. While Respondent's aspirations may be deemed
21 worthy, that Respondent placed his personal goals, athletic or family, over his
22 responsibilities to the Bar and his clients to their detriment. Respondent's failure
23 to provide requested records pertaining to his client trust account frustrated the
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1 Bar's attempt to determine whether client funds had been compromised or
2 endangered. This behavior can only be characterized as "selfish" in light of the
3 requirement to cooperate with the Bar.
4

5 (c) pattern of misconduct. Respondent's actions related to the lack of
6 diligence in the representation and abandonment of two clients, CHN and the
7 Sun Lakes Homeowner's Association, are consistent with his pattern of conduct
8 related to his failure to cooperate and provide information to the State Bar in its
9 inquiry in each of the three cases.
10

11 (d) multiple offenses. The Complaint, the allegations of which are
12 deemed admitted, alleges not only multiple counts but also multiple offenses
13 within each count.
14

15 (e) bad faith obstruction of the disciplinary proceedings by intentionally
16 failing to comply with rules or orders of the disciplinary agency. Respondent,
17 despite receiving multiple extensions of time in which to provide responses to
18 the Bar's inquiry failed to do so. The State Bar contended at the December 10,
19 2004 hearing, and Respondent did not deny, that Respondent had been served
20 with a subpoena *duces tecum* for records relating to his client trust account and
21 failed to provide them.
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1 The following mitigating factors as set forth in *Standard* 9.32 apply:

2 (a) absence of a prior disciplinary record. Prior to the three charges
3 alleged in this Complaint, Respondent had no disciplinary record.
4

5 (c) personal or emotional problems. Respondent testified during the
6 December 10, 2004 hearing that he, during the relevant period of time, had
7 difficulty in balancing his personal and family needs with the demands of his
8 profession. He clearly took on more legal matters than he was able to effectively
9 handle. Additionally, he was torn in a number of different directions including
10 his family, which included his wife and three young children, his athletic career
11 as a participant in the paralympics as a tandem cyclist, and in dealing with the
12 handicap imposed by his severe ophthalmological condition. All of these issues
13 caused Respondent to minimize the importance of the duties owed to his clients
14 and to the State Bar.
15
16

17 (f) inexperience in the practice of law. Respondent was admitted to the
18 practice of law in 1998 and practiced with a firm for 4 years before opening his
19 own practice.
20

21 (h) physical or mental disability or impairment. Respondent has
22 suffered since birth from Retinitis Pigmentosa, a condition that has caused his
23 treating physician to opine that his is legally blind. He has a severely constricted
24 visual field to within 10 degrees of his central fixation, and he also has a
25

1 decreased visual acuity to the 20/200 level. Respondent has dealt with his
2 impairment by utilizing certain technological visual aids, which are available.
3
4 He also does not drive, and depends on others for that service. His ability to
5 work long hours is also affected. While Respondent's disability presents daily
6 and on-going challenges, in response to specific inquiry by the Hearing Officer,
7 Respondent admitted that the conduct alleged in the Complaint, including his
8 failure to respond to and cooperate with the Bar was not caused directly by his
9 disability. Indeed, as alleged in the Complaint and deemed admitted,
10 Respondent's physical disability did not impair his abilities to research and
11 prepare a position statement in the Hickman matter and a dispositive motion in
12 the Rust matter. However, consistent with the pattern of neglect and lack of
13 diligence exhibited in his law practice and in his dealings with the State Bar,
14 Respondent failed to timely file either. Respondent's disability has not prevented
15 him from successfully completing law school or the Arizona Bar Examination or
16 practicing law while employed with his former firm. His success as a sole
17 practitioner, however, has not run as smoothly, due in part to his physical
18 limitations. Respondent's violations appear to stem more from a careless and
19 negligent decision to place his practice and his responsibilities to the Bar at a low
20 priority level. Some of the shortcomings are related to his severe physical
21 impairment.
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1 The Court recently addressed this mitigating factor in *In re Peasley*, 427
2 Ariz.Adv.Rep 23, 90 P.3d 764 (2004) and held that “(p)hysical disability is a
3 mitigating factor only if there is a direct causal connection between the physical
4 disability and the misconduct.” In that case, the lawyer’s disability was
5 somewhat arguably contrived and did not cause the attorney’s misconduct. In
6 the present case, the disability is life-long and of very significant impact, perhaps
7 more than even Respondent himself realizes. While the State Bar contends that
8 the physical disability should be rejected as not being the reason for the
9 Respondent’s improper behavior, the hearing officer does not agree. For
10 example, blindness qualified Respondent to participate in the paralympics in
11 Athens. This was a very important event in Respondent’s life, and his
12 participation clearly distracted him in his duties to his clients and the Bar. The
13 desire to excel while representing his country, and the need to overcome his
14 disability, became the very reasons why Respondent became unable to discharge
15 his duties to his clients and the State Bar.

20 VI. PROPORTIONALITY

21 In *In re Mendoza*, SB-03-0112-D (2003), the attorney consented to a
22 suspension for 18 months, followed by probation for 2 years and a requirement
23 to participate in LOMAP and MAP pursuant to an 11-count complaint. The
24 attorney’s violations included the failure to keep a client advised of the risk in
25

1 proceeding in light of a settlement offer, a repeated pattern of lack of diligence,
2 failure to safeguard client's property, the failure to respond to dispositive
3 motions as well as the failure to respond to the Bar. Violations of ERs 1.2, 1.3,
4 1.4, 1.15, 1.16, 3.2, 8.1 and 8.4 were found as well as violations of Rules 43, 44
5 and 51 (effective prior to December 2003). The presumptive sanction was
6 suspension pursuant to *Standard* 4.42. The Commission found the three
7 aggravating factors: pattern of misconduct, multiple offenses and failure to
8 cooperate and provide information in the investigation of the charges. Mitigation
9 factors were: no prior disciplinary history, no selfish or dishonest motive,
10 personal and emotional problems, withdrawal from private practice and the fact
11 that he had not been the subject of additional charges of misconduct.
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15 In *In re Crown*, SB-03-0129-D (2003), the attorney, a suspended member
16 of the Bar, was suspended for an additional period of six months and one day and
17 placed on probation for a period of 2 years, ordered to participate in LOMAP and
18 complete the Ethics Enhancement Program ("EEP"). The attorney had failed to
19 respond to the formal complaint, therefore the allegations were deemed admitted
20 pursuant to the entry of default against him. Multiple violations of the ethical
21 rules were found, including violations of ERs 1.1, 1.2, 1.3, 1.4, 1.15, 1.16, 3.2,
22 4.1, 8.1(b) and 8.4(d) as well as Rules 43, 44 and 51(h).
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1 The allegations in the complaint included the attorney's failure to timely
2 or sufficiently respond to the Bar's inquiry, the mishandling of client funds,
3 failing to act expeditiously in clients' matters, and failing to keep clients
4 adequately informed about their cases. The Hearing Officer found that the
5 attorney's state of mind was "knowing" and found a pattern of neglect. In one
6 case, against his client's wishes, the attorney signed an agreement knowing that
7 it did not contain desired terms. In addition to the general similarity of the facts,
8 this is factually similar to this Respondent's waiver of objections during the
9 discovery process in the Rust matter without CHN's consent or knowledge.
10
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12 In Crown Standards 4.12 and 4.42 were found to be the applicable
13 standards, and, as in the instant case, suspension the presumptive sanction. In
14 Crown four factors were found in aggravation: multiple offenses, bad faith
15 obstruction of the disciplinary proceedings and failure to cooperate, refusal to
16 acknowledge the wrongful nature of the conduct and failure to accept
17 responsibility, and substantial experience in the practice of law. Two factors
18 were found in mitigation: absence of a prior disciplinary record and absence of
19 dishonest or selfish motive.
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22 In *In re McGuire*, SB-99-0029-D (1999), the attorney was suspended for
23 two years, having been the subject of a 4-count complaint alleging that he failed
24 to adequately communicate with clients, failed to prepare necessary documents,
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1 abandoned his clients and then failed to return unearned fees and client's
2 property. The attorney also failed to cooperate with the State Bar and after the
3 attorney failed to file an Answer to the Complaint default was entered. *Standard*
4 4.42 was found to apply, with suspension the presumptive sanction. The
5 attorney's lack of prior disciplinary history was found in mitigation, multiple
6 offenses and bad faith obstruction of the disciplinary proceeding by intentionally
7 failing to comply with the rules or orders of the disciplinary agency were found
8 in aggravation.
9
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11 In *In re Turley*, SB-04-0089-D (2004) the attorney, who had previously
12 been suspended for 6 months and 1 day, then failed to comply with the
13 conditions of probation and had his suspension lengthened to 1 year, was
14 suspended for an additional 2 years, and ordered on probation for 2 years, to
15 complete the Trust Account Ethics Enhancement Program ("TAEEP") by the
16 terms of a consent agreement disposing of a 4-count complaint. The attorney
17 had continued to practice law while suspended and had failed to keep his clients
18 informed, failed to provide information to a client necessary for the client to
19 make informed decisions, failed to expedite litigation and act diligently, failed to
20 abide by a client's decision and failed to timely release a file. *Standard* 4.42 was
21 one of the pertinent standards considered (all *Standards* considered - 4.1, 4.4, 6.2
22 and 7.2 - called for suspension as the presumptive sanction). Three aggravating
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1 factors were found: prior discipline, multiple offenses and substantial experience
2 in the practice of law. Two mitigating factors were found: absence of selfish or
3 dishonest motive and full/free disclosure to and cooperation with the disciplinary
4 board and proceedings.
5

6 In Turley, The Hearing Officer found insufficient evidence to support two
7 tendered mitigating factors, personal or emotional problems and remorse. The
8 Hearing Officer found that the only evidence offered in support of remorse was
9 Respondent's statements in his answer to the complaint in which he
10 acknowledged that he had made repeated mistakes, had "erred greatly" by some
11 of his actions and that there was no excuse for some of his behavior (Hearing
12 Officer's report at p. 7). With regard to the mitigating factor of "personal or
13 emotional problems", the Hearing Officer found that despite intake and progress
14 notes by one therapist, as well as the findings by another therapist that there was
15 no significant psychopathology and the proposed therapy plan focusing on stress
16 management techniques and relaxation skills, was insufficient to support a
17 finding of personal or emotional problems. The same is not true in the present
18 case.
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23 But for Respondent's blindness, and the enormous pressure and
24 responsibility of his participation in the United States Paralympics, a longer
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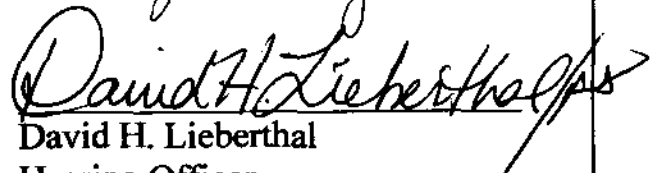
1 suspension would be warranted. Under all of the circumstances, a ninety (90)
2 day suspension meets the proportionality standard.

3 4 **CONCLUSION**

5 The objective of lawyer discipline is not to punish the lawyer, but to
6 protect the public, the profession, and the administration of justice. *In re Neville*,
7 147 Ariz. 106, 708 P.2d 1297 (1985). Thus, the sanction is not imposed to
8 punish the Respondent, but to serve the goal of protecting the public, deterring
9 other lawyers from similar misconduct, and giving the public confidence in the
10 integrity of the bar and the disciplinary process and its ability to self-regulate and
11 impose appropriate sanctions on its members. Based on the facts, the applicable
12 standards including the aggravating and mitigating factors and the cases
13 considered regarding proportionality, Respondent should be suspended from the
14 practice of law for a period of ninety (90) days, placed on two years of probation,
15 upon reinstatement, to include participation in and cooperation with LOMAP,
16 including the use of a Practice Monitor; and an assessment by the MAP to
17 include focus on stress management issues. If recommended, a memorandum of
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1 understanding shall be entered to assure compliance with the MAP
2 recommendations. Respondent shall pay all costs in connection with this matter.

3 DATED this 13th day of January, 2005.

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5 
6 David H. Lieberthal
7 Hearing Officer

8 Original filed with the Disciplinary Clerk
9 this 13th day of January, 2005.

10 Copy of the foregoing mailed
11 this 13th day of January, 2005, to:

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