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SEP 10 2004

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

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

IN THE MATTER OF A MEMBER)	Nos. 003-0310, 03-0703, 03-0871
OF THE STATE BAR OF ARIZONA,)	03-1350, 03-1445, 03-1739
)	03-1767, 03-1769, 04-0135
ANDREW MANKOWSKI,)	04-0328
Bar No. 016637)	
)	HEARING OFFICER'S REPORT
RESPONDENT.)	

PROCEDURAL HISTORY

The State Bar filed a Complaint on April 19, 2004. Respondent filed an Answer on May 17, 2004. The State Bar filed a Motion to Strike Respondent's Answer which was denied by Order dated June 24, 2004. Respondent subsequently filed a Motion to Continue Hearing on the Merits and to Extend the Discovery deadlines which was denied by Order dated July 20, 2004 as being beyond the Hearing Officer's jurisdiction pursuant to Ariz. R. Sup. Ct. 57(i)1. The parties filed a Tender of Admissions and Agreement for Discipline by Consent (Tender) and a Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memo) on July 23, 2004.

After reviewing the Tender and Joint Memo, by Order dated August 2, 2004, the hearing officers ordered the parties to submit evidence and/or an explanation regarding certain issues raised by those pleadings on or before

1 August 13, 2004. In response to that Order, the parties filed separate
2 supplemental memoranda and exhibits which appeared to manifest a lack of
3 agreement on some of the material points of the Tender and Joint Memo. The
4 hearing officer therefore reset this matter for hearing on the merits by Order dated
5 August 18, 2004.
6

7 On August 26, 2004, the parties filed a Joint Motion for Reconsideration
8 which was granted after a telephone oral argument held the same day. The
9 hearing officer's August 27, 2004 Order granting that Joint Motion for
10 Reconsideration vacated the rescheduled hearing and required Respondent to
11 provide the State Bar with a duplicate copy of Kathleen Ashton's file (Count
12 Two) and file a supplemental stipulation which confirmed that delivery and
13 clarifies the status of the client files in Counts One, Three, Five and Six. The
14 parties filed a Supplemental Stipulation on September 1, 2004 which dealt with
15 all the files except Kathleen Ashton. The State Bar filed a Notice of Compliance
16 with regard to that file on September 9, 2004.
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19

20 No hearing has been held.

21 **FINDINGS OF FACT**

22 1. At all times relevant, Respondent was an attorney licensed to
23 practice law in the State of Arizona, having been admitted to practice in Arizona
24 on October 24, 1996.
25

COUNT ONE (File No. 03-0310)

1
2 2. On or about January 30, 2002, Henryka Fila retained Respondent to
3 represent her in a suit against the State of Arizona stemming from a governmental
4 invasion into her home that resulted injury to Ms. Fila.
5

6 3. Respondent and Ms. Fila entered into a contingent fee agreement,
7 and Ms. Fila provided Respondent with several documents pertaining to the case.
8

9 4. Thereafter, Respondent would not return Ms. Fila's phone calls,
10 cancelled scheduled appointments, and ignored requests for information
11 regarding the status of the case.

12 5. Ms. Fila requested the return of her documents and none was
13 returned as of the date the Complaint was filed. Ms. Fila was ultimately able to
14 provide a case file to her new counsel. Thus, for restitution purposes the parties
15 stipulate that the location of this file is now moot.
16

17 6. On February 14, 2003, Ms. Fila filed a complaint against Respondent
18 with the State Bar of Arizona.
19

20 7. On March 10, 2003, the Attorney/Consumer Assistance Program
21 ("A/CAP") Director sent the complaint to Respondent along with a letter
22 directing him to contact Ms. Fila and to copy the State Bar on the
23 correspondence.
24
25

1 8. On March 24, 2003, Respondent sent Ms. Fila a letter, and copied
2 the State Bar.

3
4 9. The A/CAP Director deemed the information submitted was
5 insufficient cause to open a screening file and was therefore going to close the
6 case.

7
8 10. Thereafter, Ms. Fila contacted an attorney to help her articulate her
9 complaint to the State Bar and, on July 21, 2003, Ms. Fila submitted another letter
10 of complaint with documentation to the State Bar.

11 11. On August 6, 2003, the A/CAP Director sent the additional
12 complaint to Respondent along with a letter directing him to contact Ms. Fila, and
13 to copy the State Bar on the correspondence. Respondent did not respond to this
14 letter.
15

16 12. On September 18, 2003 the A/CAP Director sent Respondent
17 another letter informing him of the complaint and requesting his response.
18 Respondent did not respond to this letter.
19

20 13. Due to Respondent's failure to respond to the letters from A/CAP,
21 this matter was referred to the Lawyer Regulation Department of the State Bar for
22 screening and investigation.
23
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1 22. On February 7, 2002, Ms. Ashton sent Respondent a facsimile
2 requesting that he get the hearing scheduled for February 13, 2002 postponed, as
3 Ms. Ashton's mother was in the hospital in critical condition and Ms. Ashton did
4 not want to leave her.
5

6 23. Respondent claims that he contacted the opposing party's attorney,
7 Elizabeth Langford, who agreed to stipulate to a continuance of the hearing.
8

9 24. Respondent did not appear for the hearing scheduled for February
10 13, 2002.

11 25. The opposing party and counsel appeared for the hearing and
12 informed the court that they had not stipulated to the requested continuance.
13

14 26. The February 13, 2002 hearing was rescheduled for April 17, 2002.

15 27. Ms. Ashton never received notice of the April 17, 2002 court date.

16 28. Respondent stated he was never personally notified of the April 17,
17 2002 court date, but admits that he knew the February 13, 2002 hearing had been
18 reset.
19

20 29. When Respondent failed to appear for the April 17, 2002 hearing,
21 the Court contacted Respondent at his office, and Respondent went to the hearing.
22

23 30. Ms. Ashton was at work at the time of the April 17, 2002 hearing
24 and was unable to be contacted, resulting in her non-appearance.
25

1 31. Respondent appeared at the April 17, 2002 hearing without Ms.
2 Ashton present and did not request a continuance.

3 32. On April 23, 2003, Respondent missed another scheduled court
4 hearing.
5

6 33. At the April 23, 2003 hearing, the judge ordered Respondent to
7 submit to the Court a written explanation as to why he failed to appear for the
8 April 23rd hearing.
9

10 34. On May 27, 2003, Respondent missed another scheduled court
11 hearing.
12

13 35. At the May 27, 2003 hearing, the judge issued an Order to Show
14 Cause regarding Respondent's failure to appear at properly noticed hearings and
15 for his failure to submit a written explanation to the Court as ordered on April 23,
16 2003.
17

18 36. On May 30, 2002 Ms. Ashton sent Respondent an email inquiring as
19 to the status of the case. Respondent did not respond.

20 37. On June 17, 2002 Ms. Ashton sent Respondent an email requesting
21 evidence of Respondent's work on the case. Respondent did not respond.
22

23 38. The hearing on Order to Show Cause proceeded on July 18, 2003.
24 The Court found that Respondent did not willfully fail to comply with the Court's
25 orders and quashed the Order to Show Cause; however, the Court warned

1 Respondent that, in the future, the Court would not accept his explanation that he
2 did not receive minute entries as a reason for failure to comply with court orders.

3
4 39. Ms. Ashton left several messages with Respondent's receptionist
5 requesting Respondent contact her. Respondent failed to return her calls.

6
7 40. Ms. Ashton scheduled telephone conference appointments with
8 Respondent. When Ms. Ashton would call Respondent's office on the date and
9 time of these appointments, Respondent would not be there.

10
11 41. On April 14, 2003 Ms. Ashton filed a complaint against Respondent
12 with the State Bar.

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14 42. Respondent's conduct as described in this count violates Rule 42,
15 Ariz. R. S. Ct., specifically, ERs 1.2, 1.3, 1.4, 1.5 and 8.4(d).

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COUNT THREE (File No. 03-0871)

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27 43. In or about September 2002, Bernadette Collar retained Respondent
28 to represent her in a child custody matter.

29 44. Ms. Collar paid Respondent a \$2800.00 retainer fee.

30 45. Ms. Collar drafted all of the necessary court paperwork herself.

31
32 46. Respondent promised Ms. Collar an expedited court hearing, but this
33 did not happen.

34
35 47. In December of 2002, the child custody matter went to court, and the
36 case was dismissed to Ms. Collar's detriment.

1 48. Respondent failed to return any of Ms. Collar's telephone calls either
2 before or after the court hearing.

3 49. Ms. Collar requested an accounting and refund of any unused portion
4 of her retainer from Respondent. Neither has been forthcoming to date.

5 50. On May 7, 2003, Ms. Collar filed a complaint against Respondent
6 with the State Bar.

7 51. On May 19, 2003, Bar Counsel sent Respondent a copy of the
8 complaint with the initial screening letter, requesting Respondent submit a
9 response to the allegations contained therein. Respondent failed to respond to
10 this request.
11

12 52. On June 18, 2003, Bar Counsel sent Respondent a letter reminding
13 him of his ethical duty to respond to requests for information from the State Bar,
14 and again requested a response. Respondent failed to respond to this request.
15

16 53. On July 14, 2003, Respondent called Bar Counsel and requested an
17 extension of time in which to submit his response. Bar Counsel granted a twenty-
18 five (25) day extension until August 8, 2003. Respondent failed to submit his
19 response within this extended timeframe.
20

21 54. On August 20, 2003, Bar Counsel's assistant telephoned
22 Respondent's office to inquire as to the status of the response. Respondent
23
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1 advised that he would submit the response by that Friday, August 22, 2003.

2 Respondent failed to submit his response by that date.

3
4 55. On August 25, 2003, Respondent contacted the State Bar and stated
5 that would submit his response by 5:00pm that day. Respondent failed to do this.

6 56. On August 27, 2003, Bar Counsel contacted Respondent at
7 approximately 10:00am and advised him that, if he did not submit a response by
8 5:00pm that day, then his case would be treated as a non-response. Respondent
9 still failed to submit a response.

10
11 57. Respondent's conduct as described in this count violates Rule 42,
12 Ariz. R. S. Ct., specifically, ERs 1.2, 1.3, 1.4, 1.5, 1.16(d), and Rule 53 (d) and
13 (f).

14
15 **COUNT FOUR (File No. 03-1350)**

16 58. Janice and Russell Trueblood ("the Truebloods") retained
17 Respondent to represent them in a personal injury matter against Home Depot.

18
19 59. Thereafter, Respondent failed to attend depositions, missed
20 scheduled independent medical exams, and ignored written discovery requests.

21 60. Upon information and belief, the defense counsel wrote Respondent
22 approximately twenty-four (24) letters and made several phone calls requesting
23 overdue discovery responses, medical records, MRI films, expert opinions, wage
24 loss documentations, joint submissions, etc.
25

1 61. Respondent did not respond to these efforts, forcing defense counsel
2 to file four (4) motions to compel. Respondent did not comply with the resulting
3 orders.
4

5 62. On July 17, 2003, the State Bar received a judicial referral regarding
6 Respondent's conduct in the matter of *Trueblood v. Home Depot*.

7 63. On August 14, 2003, Bar Counsel sent Respondent a copy of the
8 judicial referral and an initial screening letter requesting Respondent submit a
9 response to the allegations contained therein. Respondent failed to respond.
10

11 64. On June 18, 2003, Bar Counsel sent Respondent a letter reminding
12 him of his ethical duty to respond to requests for information from the State Bar
13 of Arizona, and again requested a response. Respondent failed to respond to this
14 request.
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16 65. Respondent's conduct as described in the count violated Rule 42,
17 Ariz. R. S. Ct., specifically, ERs 1.3, 3.2, 3.4(c), 8.4(d) and Rule 53(d) and (f).
18

19 **COUNT FIVE (File No. 03-1445)**

20 66. Amaechi Akpa retained Respondent to represent him in a criminal
21 matter in federal court.
22

23 67. Following the termination of representation, Respondent failed to
24 provide an accounting or turn over Mr. Akpa's file upon Mr. Akpa's request. Mr.
25

1 Akpa's new counsel was ultimately able to reconstitute the file from documents
2 provided by Mr. Akpa, court records and the U.S. Attorney's Office.

3
4 68. On August 4, 2003 Mr. Akpa filed a complaint against Respondent
5 with the State Bar of Arizona.

6 69. On September 4, 2003, Bar Counsel sent Respondent a copy of the
7 complaint and an initial screening letter requesting Respondent submit a response
8 to the allegations contained therein. Respondent failed to respond.

9
10 70. On September 8, 2003, Bar Counsel sent Respondent a copy of
11 additional correspondence received from Mr. Akpa and requested a response to
12 the allegations contained therein. Respondent failed to respond.

13
14 71. Respondent's conduct as described in the count violated Rule 42,
15 Ariz. R. S. Ct., specifically, ERs 1.16(d), and Rule 53(d) and (f).

16 **COUNT SIX (File No. 03-1739)**

17
18 72. On or about May 1, 2003 Robert and Beverly Leon ("the Leons")
19 retained Respondent to represent them in a domestic relations matter.

20 73. On or about May 1, 2003, the Leons paid Respondent a \$2000.00
21 retainer fee.

22
23 74. Thereafter, Respondent failed to return phone calls, cancelled or did
24 not show up for scheduled appointments, and told the Leons that their case had
25 been filed and papers had been served when they had not.

1 75. Respondent did not perform any work on the Leons' case.

2 76. The Leons made multiple requests for the return of their file with the
3 documents and pictures contained therein. Respondent has not provided the file
4 to the Leons as of this date.

5 77. The Leons subsequently retained new counsel who satisfactorily
6 concluded their case. Thus, the current status of Respondent's client file is moot
7 for purposes of these proceedings.

8 78. On September 13, 2003, Respondent sent the Leons a letter and a
9 refund check for \$2000.00.

10 79. On September 19, 2003, the Leons filed a complaint against
11 Respondent with the State Bar.

12 80. On September 25, 2003, the Leons returned the \$2000.00 check to
13 Respondent along with a letter stating Respondent had told them the refund was
14 a, "donation for their problems."

15 81. Respondent has since returned the \$2000.00 check to the Leons.

16 82. On October 9, 2003, Bar Counsel sent Respondent a copy of the
17 complaint and an initial screening letter requesting Respondent submit a response
18 to the allegations contained therein. Respondent failed to respond.

19 83. Respondent's conduct as described in the count violated Rule 42,
20 Ariz. R. S. Ct., specifically, ERs 1.2, 1.3, 1.4, 1.5 and Rule 53(d) and (f).
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1 (sic) and Withdraw from Divorce/Custody Case Number FC2001-010394 and
2 Order to Show Cause Contemempt (sic) and Sancitions (sic).”

3
4 91. On September 22, 2003, the State Bar received a minute entry dated
5 September 16, 2003 regarding Ms. Anderson’s July 22, 2003 petition.

6 92. In the September 16, 2003 minute entry, the court ordered Ms.
7 Anderson’s petition to be forwarded to the State Bar, and further ordered
8 Respondent to provide a written response to the petition to the court and to the
9 State Bar no later than 45 days from the filing date of the minute entry.
10

11 93. On October 8, 2003, Bar Counsel sent Respondent a copy of the
12 complaint and an initial screening letter requesting Respondent submit a response
13 to the allegations contained therein. Respondent failed to respond, in violation of
14 the court’s order of September 16, 2003.
15

16 94. On March 3, 2004, Bar Counsel advised Respondent that he was to
17 return Ms. Anderson’s file to her by March 12, 2004. Respondent provided
18 documentation that the file had been returned to Ms. Anderson on February 27,
19 2004.
20

21 95. Respondent’s conduct as described in the count violated Rule 42,
22 Ariz. R. S. Ct., specifically, ERs 1.2, 1.3, 1.4, 1.16 and Rule 53 (c), (d) and (f).
23

24 **COUNT EIGHT (File No. 03-1769)**
25

1 96. On or about May 2003, Jodie Henderson (“Ms. Henderson”) retained
2 Respondent to represent her in a child custody matter.

3
4 97. Ms. Henderson paid Respondent a \$1500.00 retainer fee.

5 98. Thereafter, Ms. Henderson tried to contact Respondent via
6 telephone, email, and visits to his office.

7 99. Respondent failed to provide a substantive response to any of Ms.
8 Henderson’s efforts to contact him.

9
10 100. On or about July 8, 2003, Ms. Henderson fired Respondent and
11 retained another attorney for \$1500.00.

12 101. Upon learning of his termination, Respondent contacted Ms.
13 Henderson and asked to be permitted to continue with the case, stating that he
14 was prepared for trial. Ms. Henderson did not trust Respondent, did not believe
15 that he was ready for trial, and told Respondent she did not want him to continue
16 with the representation.
17

18 102. Respondent refunded \$1000.00 of Ms. Henderson’s retainer.

19 103. Ms. Henderson’s new attorney filed a motion to continue so she
20 could have a reasonable amount of time to prepare for trial.
21

22 104. On July 11, 2003, Judge Roland Steinle granted the motion and set a
23 hearing on September 5, 2003 to determine if Respondent or Ms. Henderson
24
25

1 should be ordered to pay the opposing party's attorney fees and costs related the
2 to continuance.

3
4 105. During the September 5, 2003 hearing on sanctions, Judge Steinle
5 ordered Respondent to return to Ms. Henderson the remaining \$500.00 of her
6 retainer, ordered Respondent to pay the opposing party's legal fees, and ordered
7 the matter to be referred to the State Bar.

8
9 106. On September 24, 2003, the State Bar received a copy of the minute
10 entry with exhibits from the September 5, 2003 hearing.

11 107. On October 8, 2003, Bar Counsel sent Respondent a copy of the
12 complaint and an initial screening letter requesting Respondent submit a response
13 to the allegations contained therein.

14
15 108. On October 23, 2003, the State Bar received a copy of the minute
16 entry on Respondent's case dated July 11, 2003, and another copy of the
17 September 5, 2003 minute entry from Judge Steinle.

18
19 109. On October 28, 2003, Bar Counsel sent Respondent a copy of the
20 July 11, 2003 and September 5, 2003 minute entries along with a letter reminding
21 him that his response is due November 3, 2003.

22
23 110. On December 2, 2003, Respondent sent Bar Counsel a letter
24 advising Bar Counsel that an appeal of the monetary sanctions against him was
25 pending and requested additional time to respond. It was later discovered that

1 although Respondent had filed a Notice of Appeal on November 19, 2003, he did
2 nothing further in that matter.

3
4 111. On December 8, 2003, Bar Counsel sent Respondent a letter denying
5 his request for an extension of time and advising him that, since he had
6 previously failed to respond to this complaint within the allotted time frame, a
7 request for an Order of Probable Cause had already been forwarded to the
8 Probable Cause Panelist.
9

10 112. On March 1, an Order to Show Cause hearing was held concerning
11 Respondent's failure to pay either his former client or opposing counsel. Based
12 on Mr. Mankowski's representation that he had refunded Ms. Henderson's
13 \$500.00 and would pay the fees of opposing counsel, Mr. Mankowski was not
14 held in contempt.
15

16 113. Respondent's conduct as described in the count violated Rule 42,
17 Ariz. R. S. Ct., specifically, ERs 1.2, 1.3, 1.4, 1.16 and Rule 53 (c), (d) and (f).
18

19 **COUNT NINE (File No. 04-0135)**

20 114. In September of 2002, Shelly Sharp ("Ms. Sharp") retained
21 Respondent to represent her in a domestic relations matter.
22

23 115. Ms. Sharp paid Respondent a fee of \$1500.00.

24 116. Over the next few months, Respondent repeatedly failed to
25 communicate with Ms. Sharp or keep appointments she made to meet with him.

1 117. Respondent failed to appear at hearing for a protective order and
2 later told Ms. Sharp he had been with another client.

3
4 118. Respondent failed to have Ms. Sharp's ex-husband served with the
5 order of protection when he stated he would.

6 119. Ms. Sharp terminated Respondent's services in November of 2002
7 due to the breakdown of communication with Respondent.

8
9 120. After requesting an accounting of the services performed in the
10 matter, Respondent refunded \$500.00 to Ms. Sharp and stated, in a letter dated
11 January 15, 2003, that a final bill would be forthcoming. A final accounting has
12 not been forthcoming to date.

13
14 121. Ms. Sharp requested fee arbitration through the State Bar in August
15 of 2003 but Respondent failed to respond to the State Bar's attempt to resolve the
16 matter through arbitration.

17
18 122. On January 3, 2004, Ms. Sharp requested that her complaint against
19 Respondent be re-opened due to his failure to participate in fee arbitration.

20 123. On January 29, 2004, Bar Counsel sent Respondent a copy of Ms.
21 Sharp's complaint with the initial screening letter, requesting that Respondent
22 submit a response to the allegations. Respondent failed to respond to this request.
23
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1 129. At the hearing, Respondent questioned Mr. Soper, under oath,
2 regarding the terms of the settlement agreement. Mr. Soper testified that Mrs.
3 Soper would receive \$2,500.00 as repayment of a debt and the 20% of his
4 retirement benefits.
5

6 130. On or about August 26, 2003, the court issued a minute entry
7 ordering Respondent to file the proposed divorce decree by September 26, 2003.
8

9 131. According to Mrs. Soper, she attempted to contact Respondent
10 numerous times throughout October and November concerning the status of the
11 decree but Respondent failed to respond. Mrs. Soper sent a letter to Respondent
12 regarding the fact that Respondent had not filed the divorce decree as ordered by
13 the court.
14

15 132. Respondent filed the decree of dissolution with the court on
16 December 29, 2003, more than three months past the date ordered by the court.
17

18 133. The decree submitted by Respondent stated that Mr. Soper would
19 pay Mrs. Soper alimony in the sum of seventy-five dollars (\$75.00) per month for
20 33 and 1/3 months. This was contrary to the agreement of the parties.
21

22 134. The decree further stated that Mrs. Soper waived her rights to Mr.
23 Soper's retirement benefits. Again, this was contrary to the agreement reached by
24 the parties and testified to by Mr. Soper at the August 26th hearing.
25

1 Conduct; Rule 42, Ariz. R. S. Ct., specifically, ERs 1.2, 1.3, 1.4, and Rule 53 (d)
2 and (f).

3
4 **COUNT TWO (File No. 03-0703)**

5 Respondent, in exchange for the agreed upon form of discipline,
6 conditionally admits his conduct violated the following Rules of Professional
7 Conduct; Rule 42, Ariz. R. S. Ct., specifically, ERs 1.2, 1.3, 1.4, and 8.4(b).

8
9 **COUNT THREE (File No. 03-0871)**

10 Respondent, in exchange for the agreed upon form of discipline,
11 conditionally admits his conduct violated the following Rules of Professional
12 Conduct; Rule 42, Ariz. R. S. Ct., specifically, ERs 1.2, 1.3, 1.4, 1.5, 1.16(d), and
13 Rule 53 (d) and (f).

14
15 **COUNT FOUR (File No. 03-1350)**

16 Respondent, in exchange for the agreed upon form of discipline,
17 conditionally admits his conduct violated the following Rules of Professional
18 Conduct; Rule 42, Ariz. R. S. Ct., specifically, ERs 1.3, 3.2, 3.4(c), 8.4(d) and
19 Rule 53(d) and (f).

20
21 **COUNT FIVE (File No. 03-1445)**

22 Respondent, in exchange for the agreed upon form of discipline,
23 conditionally admits his conduct violated the following Rules of Professional
24
25

1 Conduct; Rule 42, Ariz. R. S. Ct., specifically, ERs 1.16(d), and Rule 53(d) and
2 (f).

3
4 **COUNT SIX (File No. 03-1739)**

5 Respondent, in exchange for the agreed upon form of discipline,
6 conditionally admits his conduct violated the following Rules of Professional
7 Conduct; Rule 42, Ariz. R. S. Ct., ERs 1.2, 1.3, 1.4, and Rule 53(d) and (f).

8
9
10 **COUNT SEVEN (File No. 03-1767)**

11 Respondent, in exchange for the agreed upon form of discipline,
12 conditionally admits his conduct violated the following Rules of Professional
13 Conduct; Rule 42, Ariz. R. S. Ct., ERs 1.2, 1.3, 1.4, 1.16 and Rule 53 (c), (d) and
14 (f).

15
16 **COUNT EIGHT (File No. 03-1769)**

17 Respondent, in exchange for the agreed upon form of discipline,
18 conditionally admits his conduct violated the following Rules of Professional
19 Conduct; Rule 42, Ariz. R. S. Ct., ERs 1.2, 1.3, 1.4, 1.16 and Rule 53(d) and (f).

20
21 **COUNT NINE (File No. 04-0135)**

22 Respondent, in exchange for the agreed upon form of discipline,
23 conditionally admits his conduct violated the following Rules of Professional
24

1 Conduct; Rule 42, Ariz. R. S. Ct., ERs 1.2, 1.3, 1.4, 1.5, 1.16 and Rule 53(d) and
2 (f).

3
4 **COUNT TEN (File No. 04-0328)**

5 Respondent, in exchange for the agreed upon form of discipline,
6 conditionally admits his conduct violated the following Rules of Professional
7 Conduct; Rule 42, Ariz. R. S. Ct., ERs 3.3(a)(1), 4.1, 4.4, 8.4(c) and (d) and Rule
8 53(c), (d) and (f).
9

10
11 **DISMISSED ALLEGATIONS**

12 The State Bar, in exchange for the agreed upon form of discipline, agrees
13 to dismiss the following violations:

14 COUNT ONE: ER 1.1

15 COUNT SIX: ER 1.5

16 COUNT NINE: ER 1.15 and 8.1(b)

17
18 **ABA STANDARDS**

19 The *ABA Standards* list the following factors to consider in imposing the
20 appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the
21 actual or potential injury caused by the lawyer's misconduct, and (4) the
22 existence of aggravating or mitigating circumstances. *ABA Standard 3.0*.
23

24 In determining the appropriate sanction, the parties considered both the
25 American Bar Association's *Standards for Imposing Lawyer Sanctions*

1 (“Standards”) and Arizona case law. The *Standards* provide guidance with
2 respect to an appropriate sanction in this matter. The Court and Commission
3 consider the *Standards* a suitable guideline. *In re Rivkind*, 164 Ariz. 154, 157,
4 791 P.2d 1037, 1040 (1990); *In re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274,
5 276 (1994).
6

7 Concerning the many violations involving scope of representation,
8 diligence and communication, Standard 4.4 is applicable. Respondent
9 repeatedly failed to communicate with his clients, failed to schedule and/or
10 attend court hearings, and failed to diligently represent his clients. Standard
11 4.42 states that suspension is generally appropriate when a lawyer knowingly
12 fails to perform services for a client and causes injury or potential injury to a
13 client, or a lawyer engages in a pattern of neglect and causes injury or potential
14 injury to a client.
15
16

17 As to the various violations involving failure to expedite litigation,
18 fairness to opposing party and respect for rights of a third person, Standard 6.2 is
19 applicable. Standard 6.22 states that suspension is appropriate when a lawyer
20 knowingly violates a court order or rule, and there is injury or potential injury to
21 a client or a party, or interference or potential interference with a legal
22 proceeding. In Count Four, Respondent failed to attend depositions, failed to
23 inform his clients about scheduled independent medical exam appointments, and
24
25

1 ignored written discovery requests. Respondent's failure to expedite the
2 litigation of his clients' cases, including his failure to comply with requests for
3 discovery or communicate in any manner, forced opposing counsel to file four
4 (4) Motions to Compel that were then granted by the court but ignored by
5 Respondent.
6

7 Standard 4.6 is applicable to violations related to fees and misconduct
8 involving dishonesty. Standard 4.62 states that suspension is generally
9 appropriate when a lawyer knowingly deceives a client, and causes injury or
10 potential injury to the client. In Count Three, Respondent collected fees from
11 the client but failed to perform any work on the case or return any of the fees. In
12 Count Ten, Respondent filed a dissolution decree that misrepresented the
13 agreement of the parties as testified to on the record. Further, when the matter
14 was brought to his attention, Respondent did nothing to correct the
15 misrepresentation and was subsequently sanctioned by the court for his conduct.
16
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19 Throughout the course of the State Bar's investigation in this matter,
20 Respondent consistently failed to respond to repeated requests for information
21 concerning the allegations made by the Complainants. Standard 7.0 is
22 applicable to these violations. Standard 7.2 states that suspension is generally
23 appropriate when a lawyer knowingly engages in conduct that is a violation of a
24
25

1 duty owed to the profession, and causes injury or potential injury to a client, the
2 public or legal system.

3
4 Standard 6.0 is applicable to violations of duty to the legal system and
5 Standard 6.1 relates specifically to false statements, fraud and
6 misrepresentation. In this matter, Respondent failed to correct filed documents
7 and failed to correct misstatements made to the Court and to opposing party, as
8 set forth in Count Ten. Standard 6.12 states that suspension is generally
9 appropriate when a lawyer knows that false statements or documents are being
10 submitted to the court or that material information is improperly being
11 withheld, and takes no remedial action, and causes injury or potential injury to a
12 party to the legal proceeding, or causes an adverse or potentially adverse effect
13 on the legal proceeding.
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15

16 Based on the foregoing, the presumptive sanction for the admitted
17 conduct is a term of suspension. After determining the presumptive sanction, it
18 is appropriate to evaluate factors enumerated in the Standards that would justify
19 an increase or decrease in the presumptive sanction.
20

21 AGGRAVATING AND MITIGATING FACTORS

22 This Hearing Officer then considered aggravating and mitigating factors in
23 this case, pursuant to *Standards* 9.22 and 9.32, respectively. This Hearing Officer
24 agrees with the parties that four aggravating factors apply and should be
25

1 considered in this matter: (c) a pattern of misconduct; (d) multiple offenses; (e)
2 bad faith obstruction of the disciplinary proceeding by intentionally failing to
3 comply with rules or orders of the disciplinary agency and (i) substantial
4 experience in the practice of law. As is often the case, the final factor is offset by
5 the corresponding factor of an unblemished disciplinary record during the same
6 time period. *Matter of Shannon*, 179 Ariz. 52, 68, 876 P.2d 548, 564 (1994).

8
9 This Hearing Officer agrees with the parties that three factors are present in
10 mitigation: (a) absence of a prior disciplinary record; (b) absence of a dishonest
11 or selfish motive; and (c) personal or emotional problems. Although as noted, the
12 absence of a prior disciplinary record is offset by the aggravating factor of
13 substantial experience in the practice of law.

14
15 The evidence of personal or emotional problems was not extensive. See
16 *Matter of Augenstein*, 178 Ariz. 133, 137-38, 871 P.2d 254, 258-59 (1994).
17 However, the parties did present evidence that Respondent is a solo practitioner
18 with a diverse practice. Respondent had too many clients and could not maintain
19 support staff to assist him. Respondent's wife had been helping with the practice
20 until she was diagnosed with cancer and could no longer assist Respondent. The
21 departure of his wife from his practice appears to coincide with the rash of
22 complaints the State Bar received.
23
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1 1.3, 1.4, 8.1(a), 8.4(d) and Rule 51 (h) and (i).¹ As in this case, *Blaine* failed to
2 consult with his client concerning the objectives of the representation, failed to
3 abide by the client's decisions concerning the means by which the objectives
4 should be accomplished, failed to act with reasonable diligence and promptness
5 in representing a client, failed to keep a client reasonable informed about the
6 status of a matter, failed to promptly comply with reasonable request for
7 information, and failed to explain the matter to the extent reasonably necessary to
8 permit the client to make informed decisions regarding the representation. In
9 addition, *Blaine* failed to respond to a demand for information from a
10 disciplinary authority, failed to promptly furnish information or respond to an
11 inquiry from bar counsel and refused to cooperate with officials and staff of the
12 State Bar. *Blaine's* conduct was found to have been prejudicial to the
13 administration of justice.

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18 The Commission applied ABA *Standards* 4.0 and 7.0 and determined that
19 suspension was the presumptive sanction for *Blaine's* conduct. In review of
20 *Standards* 9.22 and 9.32, the Commission determined that there were three
21 aggravating factors and two mitigating factors that should affect the sanction to
22 be imposed. In aggravation, the Commission found prior disciplinary offenses, a
23

24 ¹ Amended as Supreme Court Rule 53 (f) and (d), respectively.
25

1 pattern of misconduct and multiple offenses. In mitigation, the Commission
2 found absence of a dishonest or selfish motive and personal or emotional
3 problems.
4

5 In the Matter of Naida Axford, 2000 Ariz. Lexis 104, Axford was
6 suspended from the practice of law in the State of Arizona for six months and one
7 day for conduct in violation of Rule 42 Arizona Rules of the Supreme Court,
8 ERs 1.2, 1.3, 1.4, 1.5, 3.1, 3.2, and 8.4(d).
9

10 The allegations against Axford arose out of four different matters. The
11 Commission found that on multiple occasions, Axford failed to act with
12 reasonable diligence and promptness in representing her clients, failed to keep the
13 clients reasonably informed as to the status of their cases and charged an
14 unreasonable fee. The Commission also found that Axford failed to explain the
15 matter sufficiently to allow the client to make informed decisions regarding the
16 representation, took no action to protect the client or pursue the client's claim and
17 failed to consult and abide by the client's decisions about the objectives of the
18 representation. The Commission found three aggravating factors: pattern of
19 misconduct, multiple offenses and substantial experience in the practice of law.
20 Three factors were found in mitigation: absence of a prior disciplinary record,
21 absence of a dishonest or selfish motive and personal or emotional problems.
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1 Similarly, In the Matter of Patricia A. Pelfrey, 1999 Ariz. Lexis 31,
2 Supreme Court No. SB-98-0066-D, Pelfrey was suspended from the practice of
3 law for a period of six (6) months and one (1) day for violations of ERs 1.1, 1.3,
4 1.4, 1.16(d), 3.3, 3.4, 8.1, 8.4 and Rule 51 (e) (h) (i) and (k).² In aggravation the
5 Commission found a pattern of misconduct, multiple offenses and substantial
6 experience in the practice of law, however the Commission felt that a discipline
7 free history during the entire period negated the last aggravating factor. In
8 mitigation the Commission found the absence of any dishonest or selfish motive
9 and possible psychological or medical problems.

12 Finally, in In the Matter of Shaver, 2001 Ariz. Lexis 100, Supreme Court
13 No. SB-01-0114-D, the Disciplinary Commission of the Supreme Court of
14 Arizona censured Shaver for conduct in violation of ERs 1.2, 1.3, 1.4, 1.5, 1.15
15 and 1.16. The Commission found that, during his representation of clients in 6
16 different matters, Shaver violated the Rules of Professional Conduct by failing to
17 provide adequate attention to the files, failing to diligently pursue the matters,
18 failing to communicate with the clients and failing to resolve fee disputes. The
19 Commission found that Shaver's conduct was similar in each of the matters. The
20 Commission found three aggravating factors: a pattern of misconduct, multiple
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25 ² Amended as Supreme Court Rule 53.

1 offenses and substantial experience in the practice of law. In mitigation, the
2 Commission found six factors: absence of a prior disciplinary record, absence of
3 a dishonest or selfish motive, personal problems, timely good faith effort to
4 rectify consequences of misconduct, full and free disclosure to disciplinary board
5 or cooperative attitude toward proceedings and remorse. However, the State Bar
6 would argue that, while similar, Shaver is distinguishable from this case in that
7 there are more aggravating factors than in Shaver.
8
9

10 Respondent's conduct in the instant case and the ethical violations alleged
11 are similar in nature to *Blaine*, *Pelfrey* and *Axford*, all of which resulted in
12 suspensions of six (6) months and one (1) day. The sanction agreed upon by
13 Respondent and the State Bar is within the range of appropriate sanctions for the
14 admitted conduct. A lesser sanction is not appropriate given the nature of the
15 misconduct. Respondent should be required to demonstrate rehabilitation in
16 order to return to the practice of law. Otherwise, there is no way to ensure the
17 protection of the public. Likewise, a more severe sanction than agreed upon
18 would serve no purpose other than to punish.
19
20

21 RECOMMENDATION

22
23 The purpose of lawyer discipline is not to punish the lawyer, but to protect
24 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
25 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the

1 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
2 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
3 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
4 (1994).

5
6 In imposing discipline, it is appropriate to consider the facts of the case, the
7 American Bar Association's *Standards for Imposing Lawyer Sanctions*
8 (*"Standards"*) and the proportionality of discipline imposed in analogous cases.
9 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

10
11 Upon consideration of the facts, application of the *Standards*, including
12 aggravating and mitigating factors, and a proportionally analysis, this Hearing
13 Officer recommends acceptance of the Tender of Admissions and Agreement for
14 Discipline by Consent and the Joint Memorandum in Support of Agreement for
15 Discipline by Consent providing for the following:
16

17 1. Respondent shall be suspended for six months and one day.

18
19 2. Upon reinstatement, Respondent shall be placed on probation for a
20 period of two years, commencing upon the signing by Respondent of a Probation
21 Contract. The terms of probation shall be as follows:

22 a. Respondent will, within thirty days of the Supreme Court's Order of
23 Reinstatement, contact the director of the State Bar's Law Office Management
24 Assistance Program (LOMAP) to schedule an audit of his law office. The
25

1 LOMAP director or his/her designee will conduct an audit of Respondent's law
2 office no later than thirty days thereafter. Following the audit, Respondent will
3 enter into a Memorandum of Understanding that will be effective for a period of
4 two years from the date upon which all parties sign the Memorandum.
5 Respondent will comply with all recommendations of the LOMAP director or
6 his/her designee.
7

8
9 b. Respondent will, within thirty days of the Supreme Court's final
10 judgment and order, contact the director of the State Bar's Membership
11 Assistance Program (MAP) to schedule an assessment of his condition to practice
12 law. The MAP director or his/her designee will schedule the assessment of
13 Respondent to take place no later than sixty days thereafter.
14

15 c. Respondent will be responsible for the costs and expenses associated
16 with his participation in the MAP and LOMAP programs.
17

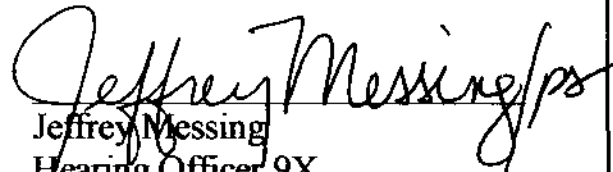
18 d. Respondent shall be assigned a practice monitor for the period of
19 probation. The reporting terms shall be developed by LOMAP and shall require
20 that the practice monitor actively monitor Respondent's case load.
21

22 e. Respondent shall participate in fee arbitration with the named
23 Complainants in Counts Two, Three, Five, Seven, and Nine. Respondent will
24 pay restitution to those Complainants as determined by the arbitrator. The
25 Complainants have agreed to participate in fee arbitration. Respondent shall pay

3
4 f. In the event that Respondent fails to comply with any of the
5 foregoing conditions, and the State Bar receives information, bar counsel shall
6 file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule
7 60(a)5, Ariz. R. S. Ct. The Hearing Officer shall conduct a hearing within thirty
8 days after receipt of said notice, to determine whether the terms of probation have
9 been violated and if an additional sanction should be imposed. In the event there is
10 an allegation that any of these terms have been violated, the burden of proof shall be
11 on the State Bar of Arizona to prove non-compliance by clear and convincing
12 evidence.
13
14

15 3. Respondent shall pay the costs and expenses incurred in this
16 disciplinary proceeding.
17

18 DATED this 10th day of September, 2004.

19 
20 Jeffrey Messing
21 Hearing Officer 9X
22

23 Original filed with the Disciplinary Clerk
24 this 10th day of September, 2004.
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Copy of the foregoing was mailed
this 10th day of September, 2004, to:

Andrew Mankowski
Respondent
3225 North Central Avenue, Suite 315
Phoenix, AZ 85012-2407

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by: Patti Williams

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