

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

JAN 24 2013

FILED

BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA

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

**WILLIAM M. KING,
Bar No. 005255**

Respondent.

PDJ-2012-9106

**RULE 58(k) REPORT AND
ORDER IMPOSING SANCTIONS**

State Bar Nos. 12-1134, 12-1280,
12-1388, 12-1396, 12-1639,
12-1641, 12-1704, 12-1705,
12-1806, 12-1808, 12-1853,
12-1962, 12-2162, 12-2178,
12-2281

On January 15, 2013, the Hearing Panel ("Panel") composed of Mark E. Salem, a public member from Maricopa County, James M. Marovich, an attorney member from Maricopa County, and the Presiding Disciplinary Judge ("PDJ") held an aggravation/mitigation hearing pursuant to Supreme Court Rule 58(d), Ariz.R.Sup.Ct. Hunter F. Perlmeter appeared on behalf of the State Bar of Arizona ("State Bar") and Respondent failed to appear.

The following facts having been alleged in the Complaint are deemed admitted as a result of Respondent's Default:

FINDINGS OF FACT

1. Respondent was first admitted to practice in Arizona on April 22, 1978.
2. Respondent was suspended from the practice of law for four months, beginning March 1, 2012 and has not been reinstated.

3. In each of the matters listed below, Respondent was required to submit a response to the Bar. Respondent failed to respond to the Bar's investigation in all but one of the above referenced matters, 12-1134.

COUNT ONE (File No. 12-1134/Arizona)

4. Following his suspension, which began on March 1, 2012, Respondent failed to withdraw as counsel of record in Maricopa County Superior Court case number JG4011.

5. Respondent failed to appear for a hearing on March 27, 2012.

6. On the morning of the hearing, the court received a phone call from someone associated with Respondent's office. The person left a voice message requesting that the matter be continued because relevant forms had not yet been obtained by Respondent's clients.

7. Respondent has admitted to the bar that the caller was his wife, a non-lawyer employee of his firm. No other attorneys were working for his firm at that time.

COUNT TWO (File No. 12-1280/Ellis)

8. James Ellis hired Respondent in 2011 to complete a Chapter 7 Bankruptcy in exchange for \$1,399.

9. Respondent failed to file a bankruptcy petition for Ellis.

10. On February 17, 2012, Ellis learned from a third party that Respondent was being suspended from the practice of law for four months.

11. Ellis contacted Respondent for the return of the \$456 in filing fees that were part of his \$1,399 payment. Respondent verbally agreed to return the money, however, a check was never received. Ellis then contacted Respondent

again and was again promised that a check would be mailed. However, Ellis has yet to receive a refund.

COUNT THREE (File No. 12-1388/Otten)

12. Kim Otten hired Respondent in July of 2011 to handle a bankruptcy matter.

13. Otten paid Respondent approximately \$1,200 for his services.

14. In April of 2012, attorney Adam Rieth took over Otten's case when Respondent was suspended. Rieth instructed Otten to contact Respondent for the return of her filing fees, as Respondent had not filed her bankruptcy petition.

15. Otten called Respondent in April, at which time Respondent said he would send Otten a refund. After approximately one week, Otten called again and left a message but has not heard from Respondent and has not received a refund of her filing fees or the return of her file. Respondent completed no work on Otten's behalf in exchange for her \$1,200 payment.

COUNT FOUR (File No. 12-1396/Jamison)

16. Christian Jamison hired Respondent in approximately December of 2010 to handle his bankruptcy for \$1,399.

17. Jamison paid Respondent for his services, but Respondent failed to complete any work on Jamison's behalf.

18. Jamison attempted to contact Respondent several times but received no response and has not received a refund or the return of his file.

COUNT FIVE (File No. 12-1639/Richter)

19. Cynthia Richter hired Respondent on October 31, 2011 to handle her bankruptcy. Richter paid Respondent \$100 each month towards Respondent's fee of \$1,400.

20. In June of 2012, after she had paid Respondent \$700, Richter, through online research, discovered Respondent had been suspended in March of 2012.

21. Respondent continued to cash the checks sent to him, even after he had been suspended.

22. Respondent failed to complete any work on Richter's behalf and has not refunded any of the \$700 paid by her.

COUNT SIX (File No. 12-1641/Szlezinski)

23. Respondent served as the attorney for Patricia Szlezinski's mother-in-law's estate (PB2011-091361). Szlezinski was a beneficiary under the estate.

24. Respondent communicated with Szlezinski on two occasions following her mother in law's death. On the first occasion, he sent her a copy of a will. On the second occasion, four months later, Respondent sent Szlezinski a distribution check for \$10,280.

25. Szlezinski did not receive further information from Respondent regarding the finances or assets of the decedent and was never told how the amount of the distribution was calculated.

26. Szlezinski wrote a letter to Respondent requesting additional information, but received no response. When Szlezinski sent a second letter, it came back to her marked: "return to sender."

27. Szleszinski received no further communication from Respondent and has no knowledge of whether the assets of the estate were correctly distributed.

COUNT SEVEN (File No. 12-1704/State Bar)

28. After receiving multiple complaints concerning Respondent relating to conduct that occurred during Respondent's four month period of suspension, a State Bar investigation was conducted on June 6, 2012, to determine whether Respondent had engaged in the unauthorized practice of law. Activity in the following cases was discovered.

29. On March 13, 2012, in case number JC2012-103425, Respondent signed a Plea Agreement on behalf of his client Tyler Tse.

30. On March 19, 2012, Respondent filed an Emergency Motion to Withdraw as Attorney of Record regarding his representation of Eileen Madden in FC2009-007282.

31. On March 22, 2012, in PB2008-001660, Respondent filed an Accelerated Motion to Withdraw as Attorney of Record in the matter of Heather Brown.

32. On April 19, 2012, in FN2011-093171, Respondent submitted a Stipulation to Continue Trial for client Lawrence George Gretz.

33. On April 24, 2012, Respondent appeared telephonically on behalf of client Sandra Ann Palembas in CV2011-090752.

34. On June 8, 2012, Attorney Adam C. Rieth filed a Motion to Substitute Counsel for Respondent in FN2011-093171. Respondent had not withdrawn from the matter.

COUNT EIGHT (File No. 12-1705/Auer)

35. Elizabeth Auer retained Respondent to file bankruptcy in January of 2012 and paid him \$1,399.

36. Respondent has not communicated with Auer since collecting her money, has not refunded her fees, and has not completed any work on her behalf.

COUNT NINE (File No. 12-1806/Karsten)

37. On October 25, 2011, Jason and Allison Karsten retained Respondent to file Chapter 13 bankruptcy. They paid Respondent \$1,397.

38. After learning from another attorney that Respondent had been suspended, the Karstens attempted to contact Respondent on multiple occasions to request a refund of the fees paid to him, but received no response.

39. Respondent performed no work on the Karsten's behalf.

COUNT TEN (File No. 12-1808/Hansen)

40. Marie Hansen hired Respondent to file personal bankruptcy on her behalf in December of 2011. Hansen paid Respondent a total of \$1,200 of the \$1,399 fee that had been agreed upon.

41. Before making her final payment, Hansen learned from another attorney that Respondent had been suspended.

42. Hansen contacted respondent for the return of her money, however Respondent failed to respond. Additionally, Respondent failed to complete any work on Hansen's behalf.

COUNT ELEVEN (File No. 12-1853/Shoemaker)

43. George Shoemaker hired Respondent to file bankruptcy in exchange for \$1,399.

44. After paying in full, Shoemaker received no communication from Respondent.

45. On July 6, 2012, Shoemaker called the State Bar and discovered that Respondent had been suspended.

46. Respondent has not completed any work on Shoemaker's behalf and has not refunded his payment of \$1,400.

COUNT TWELVE (File No. 12-1962/McDonald)

47. Lindyl McDonald hired Respondent in August of 2011 to handle her Chapter 13 bankruptcy case. McDonald paid Respondent a total of \$1,199.

48. McDonald was later informed by a third party that Respondent had been suspended from the practice of law.

49. Respondent failed to perform any work on McDonald's behalf, has failed to return McDonald's phone calls and has not refunded any of her fees.

COUNT THIRTEEN (File No. 12-2162/Marcott)

50. In December of 2010, Joann Marcott hired Respondent to handle her personal bankruptcy for \$1,399.

51. Following Respondent's suspension in March of 2012, Marcott contacted Respondent for the return of her fees.

52. Respondent did not inform Marcott that he had been suspended, failed to complete any work on her bankruptcy and failed to return her fees.

COUNT FOURTEEN (File No. 12-2178/Cirino)

53. In September of 2011, Traci Cirino hired Respondent to complete her personal bankruptcy and paid him \$1,399. She was subsequently refunded \$699 by Respondent because she was facing difficult financial circumstances.

54. In April of 2012, after receiving a notice directing her to appear in court, she visited Respondent's office and dropped off a letter asking Respondent whether he would be appearing with her. With the letter she included a \$50 payment. She received no response to her letter.

55. On June 8, 2012, Cirino, for the first time, was informed by Respondent's office of Respondent's suspension. Respondent completed no work for Cirino and failed to refund any of the \$749 paid by her.

COUNT FIFTEEN (File No. 12-2281/Yragui)

56. Respondent represented attorney Yvonne Yragui's client, Mark Seely, from September 21, 2011, until July 17, 2012, in a divorce matter. Seely provided Respondent with a \$6,500 fee deposit at the start of the representation.

57. Respondent failed to notify Seely that he had been suspended from the practice of law on March 1, 2012, and continued to represent him until July 9, 2012, at which time he informed Seely that he could no longer provide representation and referred Seely to another attorney.

58. Seely was not aware that Respondent had failed to attend status conferences in his case on June 21, 2012 and July 2, 2012.

59. After being retained by Seely, attorney Yragui requested a copy of Seely's file from Respondent on multiple occasions. However, Respondent repeatedly ignored requests to turn over the file.

60. Respondent, additionally, has failed to provide Seely with an itemized bill.

CONCLUSIONS OF LAW

61. ER 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. Respondent violated ER 1.3 when he failed to promptly perform work for multiple clients.

62. ER 1.4 requires a lawyer to promptly communicate with his client. Respondent violated ER 1.4 when he failed to communicate with his clients concerning the status of their cases, the status of their refunds and the fact that he had been suspended.

63. ER 1.5 requires a lawyer's fee to be reasonable. Respondent violated ER 1.5 by collecting up-front fees from his clients, but then failed to complete work on their behalf and failed to issue refunds.

64. ER 1.15(d) requires a lawyer to promptly deliver to the client any funds or other property the client is entitled to receive. Respondent violated ER 1.15(d) when he failed to remit funds to multiple clients.

65. ER 1.16(d) requires a lawyer upon termination of representation to surrender documents and property to which his client is entitled. Respondent violated ER 1.16(d) when he failed to return fees and client files.

66. ER 5.5 prohibits a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. Respondent violated ER 5.5 when he practiced law while suspended.

67. ER 8.1 prohibits a lawyer from knowingly failing to respond to a lawful demand for information from a disciplinary authority. Respondent violated ER 8.1 by failing to respond to the State Bar's investigation of these matters.

68. Rule 54(d) requires a lawyer to furnish information or respond promptly to any inquiry or request from bar counsel. Respondent violated Rule 54(d) by failing to respond to the State Bar's inquiries in these matters.

69. Rule 72(b)(2) requires an attorney serving a suspension of greater than sixty days to move for leave to withdraw. Respondent violated Rule 72(b)(4) when failed to move for leave to withdraw.

70. Rule 72(c) requires a lawyer to deliver to all clients being representing in pending matters any papers or other property to which they are entitled. Respondent violated Rule 72(c) by repeatedly ignoring requests to turn over the client's file.

71. Rule 72(e) requires a lawyer within ten days after the effective date of the judgment of suspension to file with the hearing panel and with the court an affidavit showing compliance with Rule 72. Respondent violated Rule 72(e) by failing to file the required affidavit.

ABA STANDARDS

In determining an appropriate sanction, the hearing panel is required to utilize the American Bar Association's *Standards for Imposing Lawyer Sanctions* (hereinafter *Standards*). Rule 58(k), Ariz. R. Sup. Ct. In determining an appropriate sanction, consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *Standard 3.0*.

Respondent violated his duties owed to clients. *Standard 4.41* Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

The record supports that in multiple counts, Respondent accepted retainers from clients and then performed little or no work on their behalf, thereby abandoning his clients and causing actual harm.

AGGRAVATING AND MITIGATING FACTORS

The Panel finds pursuant to 9.22, the following *aggravating factors* exist:

- a. Prior disciplinary offenses
- c. A pattern of misconduct
- d. Multiple offenses
- e. Bad faith obstruction of the disciplinary proceeding
- i. Substantial experience in the practice of law
- j. Indifference to making restitution

CONCLUSION

As the Court is aware, the object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Given the numerous ethical rule violations, the appropriate *Standards* and the aggravating factors, the objectives of discipline will be met by the imposition of disbarment with the assessment of all costs and expenses incurred in this matter. Therefore,

IT IS ORDERED that William M. King is disbarred effective immediately.

IT IS FURTHER ORDERED that as a condition of reinstatement, Respondent shall pay restitution in the following amounts to the following individuals:

1. Kim Otten (File No. 12-1388): \$1,299.00
2. Christian Jamison (File No. 12-1396): \$900.00
3. Cynthia Richter (File No. 12-1639): \$600.00
4. Stephanie Auer (File No. 12-1705): \$200.00
5. Allison Karsten (File No. 12-1806): \$1,399.00
6. Marie Hansen (File No. 12-1808): \$900.00
7. Joann Marcott (File No. 12-2162): \$1,399.00

IT IS FURTHER ORDERED granting the State Bar leave to seek to amend the judgment upon the lifting of the automatic or other stay imposed by the Bankruptcy Court in order to collect restitution.

IT IS FURTHER ORDERED that Respondent shall participate in fee arbitration in the following matters:

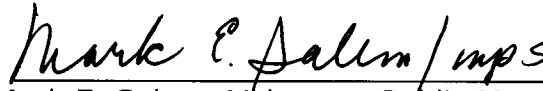
1. James Ellis (File No. 12-1280)
2. George Shoemaker (File No. 12-1853)
3. Lyndl McDonald (File No. 12-1962)
4. Traci Cirino (File No. 12-2178)

IT IS FURTHER ORDERED that Respondent shall pay costs and expenses of the disciplinary proceedings.

DATED this 24 day of January, 2013.



Hon. William G. O'Neil
Presiding Disciplinary Judge



Mark E. Salem, Volunteer Public Member



James M. Marovich, Volunteer Attorney Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 24 day of January, 2013.

Copies of the foregoing mailed/emailed
this 24 day of January, 2013, to:

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