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FEB 19 2009

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

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
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**IN THE MATTER OF A SUSPENDED
MEMBER OF THE STATE BAR OF
ARIZONA,**

No. 08-0073, 08-1264

HEARING OFFICER'S REPORT

**PAUL M. WEICH,
Bar No. 014089**

(Assigned to Hearing Officer 8W,
Thomas M. Quigley)

Respondent.

The undersigned hearing officer recommends that Respondent Paul M. Weich ("Respondent") be disbarred in accordance with the following findings of fact and conclusions of law as set forth below.

I. PROCEDURAL HISTORY

The State Bar filed its complaint in this matter on September 18, 2008. The complaint was served on Respondent by certified mail/restricted delivery and regular first class mail at his address of record. Because Respondent failed to timely file an answer or otherwise respond to the complaint, the Disciplinary Clerk entered Notice of Default on October 20, 2008. Because Respondent still failed to file an answer or otherwise respond, the Disciplinary Clerk entered default on November 19, 2008. At the request of the State Bar, an aggravation/mitigation hearing was held on December 19, 2008. Respondent was notified of the hearing by mail to his address of record, but did not appear. After the hearing, the State Bar served its Notice of Intent to Use Prior Discipline on December 23, 2008. Pursuant to the Hearing Officer's order, the State Bar submitted proposed findings of fact and conclusions of law on December 30, 2008.

Thereafter, on January 13, 2009, Respondent made his first appearance and requested that he be allowed to submit evidence in mitigation. The proffered evidence was that Respondent was in the process of paying certain funds relevant to Count Two below from his trust account to the owner of the funds.

The State Bar objected to Respondent's late appearance and proffer of evidence on January 21, 2009. In reply, Respondent moved to reopen on January 27, 2009. The

1 undersigned hearing officer denied Respondent's late motions by order dated February 9,
2 2009.

3 **II. FINDINGS OF FACT¹**

4 1. At all times material hereto, Respondent was a lawyer licensed to practice
5 law in the state of Arizona having been first admitted to practice in Arizona on
6 October 26, 1991. Complaint ¶ 1.

7 2. Respondent was suspended for two years by Order of the Supreme Court
8 of Arizona in SB-07-0156-D (2007) filed on October 30, 2007, effective November 29,
9 2007. Complaint ¶ 2.

10 **COUNT ONE (File No. 08-0073)**

11 3. Respondent served as an attorney for Transport Funding, a Missouri
12 business. Complaint ¶ 3.

13 4. One of the matters Respondent handled for Transport Funding was a
14 bankruptcy matter, 07-00660, Sada Simmons (the "Simmons bankruptcy"). Complaint
15 ¶ 4.

16 5. The Simmons bankruptcy Trustee issued to Transport Funding c/o
17 Respondent, checks in the amount of \$150.00, each month from July through November
18 2007. Complaint ¶ 5.

19 6. In September 2007, Transport Funding noticed that the July 2007,
20 payment had been sent to Respondent, and the check had been cashed, but that they had
21 not received the funds. Complaint ¶ 6.

22 7. On September 19, 2007, Transport Funding e-mailed Respondent, asking
23 that he send its funds to it. Complaint ¶ 7.

24 8. Respondent failed to do so. Complaint ¶ 8.

25
26 ¹ Because Respondent failed to file an answer to the State Bar's complaint, or otherwise
27 defend, all well pled allegations contained therein are deemed admitted by default. The
28 complaint is contradictory concerning the precise time certain payments were negotiated. See
Complaint ¶¶ 10, 12. As is made clear by the findings of fact below, this discrepancy is not
material to the ethical violations shown by the allegations deemed admitted.

1 9. On December 12, 2007, Transport Funding noticed that the Trustee had
2 issued additional \$150 payments to Transport Funding c/o Respondent, in August,
3 September, October and November 2007. Complaint ¶ 9.

4 10. On December 12, 2007, Transport Funding called Respondent and left a
5 message demanding that Respondent provide to them the \$150.00 from the negotiated
6 July 2007, check, in addition to providing the checks or funds from the August through
7 November payments. Complaint ¶ 13.

8 11. Respondent failed to provide the funds and/or checks to Transport
9 Funding. Complaint ¶ 14.

10 12. On December 19, 2007, Transport Funding called Respondent and left a
11 message, again demanding that Respondent provide the \$150.00 from the negotiated
12 July 2007, check, in addition to providing the checks that had not been negotiated.
13 Complaint ¶ 15.

14 13. Respondent did not provide the funds and/or the checks to Transport
15 Funding. Complaint ¶ 16.

16 14. On December 26, 2007, Transport Funding e-mailed Respondent, again
17 demanding the \$150.00 from the negotiated July 2007, check, in addition to providing
18 the checks that had been received but not negotiated. Complaint ¶ 17.

19 15. Transport Funding subsequently learned that the August and September
20 2007, checks were negotiated by Respondent on or about January 7, 2008,
21 approximately three weeks after Transport Funding had demanded that Respondent
22 forward to them any un-cashed checks. Complaint ¶ 18.

23 16. As of January 8, 2008, Respondent failed to contact Transport Funding
24 about this matter. Complaint ¶ 19.

25 17. By letter dated January 8, 2008, Transport Funding, through their
26 Litigation Manager, Alisa Sobczyk, Esq. notified the State Bar of Arizona of
27 Respondent's misconduct. Complaint ¶ 20.

28 18. By letter dated January 30, 2008, sent to Respondent at his address of

1 record, the State Bar notified Respondent of Transport Funding's allegations and
2 requested that he respond no later than twenty (20) days of the date of the letter.

3 Complaint ¶ 21.

4 19. The State Bar's letter was not returned to the State Bar as undeliverable.
5 Complaint ¶ 22.

6 20. Respondent failed to respond. Complaint ¶ 23.

7 21. By letter dated March 31, 2008, sent to Respondent at his address of
8 record, the State Bar reminded Respondent of his obligation to respond to inquiries of
9 Bar counsel, and that his failure to do so was, in itself, grounds for discipline.

10 Complaint ¶ 24.

11 22. The State Bar's letter was not returned to the State Bar as undeliverable.
12 Complaint ¶ 25.

13 23. Respondent was asked to respond within ten (10) days of the date of the
14 letter. Complaint ¶ 26.

15 24. Respondent failed to timely respond. Complaint ¶ 27.

16 25. An Order of Probable Cause was filed in this matter on May 5, 2008; a
17 copy of the order was mailed to Respondent at his address of record on the same day.
18 Complaint ¶ 28.

19 26. Respondent did contact the State Bar after the entry of the probable cause
20 order but before the service of the complaint and offered an explanation for his
21 misconduct in Count One. Respondent also informed Bar counsel that he had paid
22 Transport Funding the monies owed to it. Transport Funding confirmed receipt of the
23 funds prior the aggravation/mitigation hearing. Transcript of hearing dated
24 December 19, 2008 at p. 3, l. 15- p. 4, l. 17; Proposed findings of fact and conclusions
25 of law at p. 11, n. 1.

26 **COUNT TWO (File No. 08-1264)**

27 27. Respondent represented Presto Auto Loans, Inc., aka MV Acceptance;
28 ("Presto") an automotive finance company located in Phoenix, Arizona, in Chapter 13

1 bankruptcy proceedings. Complaint ¶ 34.

2 28. Presto retained Respondent for representation as a creditor in a Chapter 13
3 bankruptcy case filed by Glen and Laurie Converse (“the Converses”). Complaint ¶ 32.

4 29. After the bankruptcy plan was confirmed, Presto began receiving
5 payments from the Converses through the bankruptcy trustee (“Trustee”). Complaint
6 ¶ 33.

7 30. Initially, when the Trustee sent payments to, and in care of, Respondent,
8 payable to MV Acceptance, Respondent would forward either the check or the payment
9 to Presto. Complaint ¶ 34.

10 31. Respondent received check 122451, from the trustee, payable to MV
11 Acceptance, in the amount of \$2,095.70. This amount reflected the payment amount
12 due, plus interest. Complaint ¶ 35.

13 32. Presto learned that Respondent had negotiated the check, Respondent,
14 however, did not forward the payment of \$2,095.70; to Presto. Complaint ¶ 36.

15 33. On March 31, 2008, after the effective date of Respondent’s disciplinary
16 suspension, Respondent received another check, number 129659, in the amount of
17 \$70.12, from the Trustee in the Converse bankruptcy, payable to MV Acceptance.
18 Complaint ¶ 38.

19 34. Respondent negotiated that check, but did not forward payment of \$70.12,
20 to Presto. Complaint ¶ 39.

21 35. Respondent did not make Presto aware of the receipt of the payment nor
22 communicate with them in any way about the payment. Complaint ¶ 40.

23 36. Presto learned of the two checks referenced in Paragraphs 30 and 33
24 through means other than information received from Respondent. Complaint ¶ 41.

25 37. Presto, through its Vice President John Goodman, telephoned Respondent
26 on more than one occasion, demanding the funds resulting from the two checks
27 negotiated by Respondent. Complaint ¶ 42.

28 38. Respondent did not respond to Mr. Goodman, Presto, nor provide

1 payment of the funds. Complaint ¶ 43.

2 39. Mr. Goodman referred this matter to the State Bar of Arizona by letter
3 dated July 18, 2008. Complaint ¶ 44.

4 40. Respondent received, and negotiated, two additional checks from the
5 Converse bankruptcy; check number 631287 in the amount of \$699.40, issued July 30,
6 2007; and check number 630485 in the amount of \$644.12, issued June 28, 2007.
7 Complaint ¶ 45.

8 41. Respondent provided neither check to Presto, did not advise Presto of the
9 receipt of those funds, nor did he forward payment of either amount to Presto.
10 Complaint ¶ 46.

11 42. Respondent failed to respond to phone calls and/or messages from Presto
12 relating to these amounts. Complaint ¶ 47.

13 43. By letter dated July 31, 2008, sent to Respondent at his address of record,
14 the State Bar advised Respondent of Presto's allegations and requested that he respond
15 within 20 days of the date of the letter. Complaint ¶ 48.

16 44. The State Bar's letter was not returned to the State Bar as undeliverable.
17 Complaint ¶ 49.

18 45. Respondent failed to respond. Complaint ¶ 50.

19 46. By letter dated August 29, 2008, sent to Respondent at his address of
20 record, the State Bar reminded Respondent of his obligation to respond to the State Bar
21 and that failure to do so was, in itself, grounds for discipline. Complaint ¶ 51.

22 47. Respondent was requested to respond within ten (10) days of the date of
23 the letter. Complaint ¶ 52.

24 48. The State Bar's letter was not returned to the State Bar as undeliverable.
25 Complaint ¶ 53.

26 49. Respondent failed to respond. Complaint ¶ 54.

27 50. Respondent's counsel now asserts that Transport Funding has been paid.
28 Ex. 1 to Respondent's Response dated January 27, 2009.

1 **III. CONCLUSIONS OF LAW**

2 Based on the findings of fact, above, the Hearing Officer finds as follows:

3 **COUNT ONE:** Respondent's conduct as described in this count violated ERs
4 1.3, 1.4, 1.15, 8.1, 8.4(c) and 8.4(d) Ariz. R. Sup. Ct. 53(d) and (f).

5 **COUNT TWO:** Respondent's conduct as described in this count violated ERs
6 1.3, 1.4, 1.15, 8.1, 8.4(c) and 8.4(d), and Ariz. R. Sup. Ct. 53(d) and (f).²

7 **IV. RECOMMENDED SANCTION**

8 The purpose of lawyer discipline is not to punish the lawyer, but to protect the
9 public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d
10 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the
11 profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297
12 (1985). Yet another purpose is to instill public confidence in the bar's integrity. *Matter*
13 *of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

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

18 **A. The ABA Standards for Imposing Lawyer Sanctions**

19 ABA *Standard* 3.0 provides that four criteria should be considered when
20 imposing discipline: (1) the duty violated; (2) the lawyer's mental state and (3) the
21 actual or potential injury caused by the lawyer's misconduct; and (4) the existence of
22 aggravating or mitigating factors. The ABA *Standards* indicate that the "ultimate
23 sanction imposed should at least be consistent with the sanction for the most serious
24

25 ² The State Bar also argued that the admitted facts demonstrated violation of ERs 1.2 (both
26 Counts) and ER 8.4(b) (Count Two). This hearing officer declines to find such additional
27 violations by clear and convincing evidence. However, given the seriousness of the violations
28 demonstrated by clear and convincing evidence, such additional ethical violations, if supported
by clear and convincing evidence, would not change the recommendations of this hearing
officer.

1 instance of misconduct among a number of violations; it might well be and generally
2 should be greater than the sanction for the most serious.” *Matter of Taylor*, 180 Ariz.
3 290, 292; 883 P.2d 1046 (1994).

4 1. The Duty Violated.

5 The *Standards* identify four distinct categories in which a lawyer has specific
6 duties: to his client; to the general public; to the legal system; and, to the profession.
7 Respondent’s duties to his clients, to the general public, to the legal system and to the
8 profession are all implicated by his misconduct in this matter.

9 Respondent’s misconduct falls within two *Standards* which recommend
10 disbarment as the presumptive sanction. *Standard 4.11* states, “Disbarment is generally
11 appropriate when a lawyer knowingly converts client property and causes injury or
12 potential injury to a client.” *Standard 7.1* indicates that disbarment is generally
13 appropriate for a knowing violation of a duty owed to the profession with the intent to
14 benefit the lawyer.

15 2. The Lawyer’s Mental State.

16 The facts deemed admitted demonstrate that Respondent acted with intent.
17 Negotiating checks and not transmitting client funds can only be an intentional act.
18 Failing to respond to the complaint in this matter likewise can only be intentional.

19 3. Actual or Potential Injury.

20 It is beyond dispute that Respondent’s conduct caused actual injury to his clients,
21 to the legal system and to the profession. While Respondent’s clients may have
22 received their funds now, they were deprived of the use of such funds for at least several
23 months.

24 4. Aggravating and Mitigating Factors.

25 Based on the facts of this matter, the following aggravating factors exist:

26 *Standard 9.22(a)* Prior discipline. Respondent was suspended from the practice
27 of law by order of the Supreme Court of Arizona effective November 29, 2007. The
28 fact that Respondent received and negotiated checks on behalf of clients after that date

1 is a likely violation of his duties upon suspension.

2 *Standard 9.2(c)* Pattern of misconduct. The facts demonstrate two separate
3 instances of failure to properly account for client funds and two instances of failure to
4 cooperate with the State Bar.

5 *Standard 9.22(d)* Multiple offenses.

6 *Standard 9.22(e)* Bad faith obstruction of the disciplinary proceeding. Having
7 been through the discipline process once, Respondent failed to cooperate with the State
8 Bar or participate in the formal discipline process until after the aggravation/mitigation
9 hearing.

10 *Standard 9.22(i)* Substantial experience in the practice of law. Respondent was
11 admitted to practice in 1991.³

12 This hearing officer finds no mitigating factors. Although there is every
13 indication that Respondent has now paid the funds at issue in both Counts One and
14 Two, Respondent clearly did so under compulsion. As such, repayment is neither
15 mitigating nor aggravating. *Standard 9.4(a)*. The fact that Respondent had some brief
16 contact with Bar counsel after the entry of the probable cause order and then made an
17 appearance in this matter after the aggravation/mitigation hearing does not ameliorate
18 his failure to participate in this matter.

19 The presumptive sanction in this matter is disbarment, even without
20 consideration of the aggravating factors found above. With consideration of the
21 aggravating factors, particularly the failure to participate in these proceedings while
22 already suspended, disbarment is the *only* sanction available that will achieve the

23 _____
24 ³ The State Bar also argued that *Standard 9.22(b)* (dishonest or selfish motive) should be found
25 to exist. This hearing officer declines to find this aggravating factor because it is not clear *what*
26 Respondent's motive, if any was. The amounts involved are relatively small, and there is no
27 evidence that Respondent used the funds for his benefit. The State Bar also argued that
28 *Standard 9.22(j)* (indifference to making restitution) should be found to exist. Given that
Respondent did finally provide funds to Transport Funding, and belatedly claims to have paid
the funds at issue in Count Two, this hearing officer declines to find this aggravating factor.
However, as discussed below, no mitigating weight is given these belated payments.

1 purposes of lawyer discipline.

2 **B. PROPORTIONALITY**

3 To have an effective system of professional sanctions, there must be internal
4 consistency, and it is appropriate to examine sanctions imposed in cases that are
5 factually similar. *In re Peasley*, 208 Ariz. 27, 35, ¶ 33, 90 P.3d 764, 772 (2004).
6 However, the discipline in each case must be tailored to the individual case, as neither
7 perfection nor absolute uniformity can be achieved. *Id.* at 41, ¶ 61, 90 P.3d at 778
8 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz.
9 203, 207, 660 P.2d 454, 458 (1983)).

10 Respondent negotiated checks for his clients' benefit; retained these funds and
11 refused to account for them while suspended and then refused to participate in this
12 matter.

13 Failure to respond to inquiries from the State Bar shows a
14 disregard for the Rules of Professional Conduct and borders
on contempt for the legal system.

15 *In re Davis*, 181 Ariz. 263, 266, 889 P.2d 621, 624 (1995).

16 The State Bar proffered several cases for proportionality review. This hearing
17 officer finds *In re Son*, SB-05-0173-D (2006), is sufficiently similar to demonstrate
18 proportionality in this matter. The Respondent there abandoned his practice and failed
19 to perform contracted services, then failed to cooperate with the State Bar's
20 investigation and was disbarred.

21 The sanction of disbarment is supported by proportional case law, as well as the
22 *Standards*.

23 **V. CONCLUSION**

24 This Hearing Officer hereby recommends the following:

- 25 ▪ Respondent be disbarred;
- 26 ▪ Respondent shall pay restitution, if such has not already been
27 accomplished, to Presto Auto Loans, Inc. aka M-V Acceptance, in the
28 amount of \$3,509.34;

