

**BEFORE A HEARING OFFICER**

IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
)  
**CHADWICK M. CORD,** )  
**Bar No. 015680** )  
)  
**RESPONDENT.** )

NOS. 01-1213, 01-2148 HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *[Signature]*

**HEARING OFFICER'S REPORT  
AND RECOMMENDATION**

**PROCEDURAL HISTORY**

A Probable Cause Order was filed on February 27, 2002. A four count Complaint was filed on May 6, 2002 and served by mail on May 7, 2002. Respondent filed an answer on May 29, 2002.

A settlement conference was held on August 30, 2002, at which the parties were unable to reach an agreement. A hearing was held on November 13, 2002, at which Bar Counsel and Respondent were present.

**FINDINGS OF FACT**

At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted on February 21, 1995. Respondent was suspended for three months on May 2, 2001.

**Counts I and II:** Respondent had represented a client, Tao Ngyen's ex-wife, in a child custody matter. On June 6, 2001, Respondent sent a letter to the opposing attorney, Merrill Robbins and to Ronn J. Lavit, Ph.D.<sup>1</sup> This letter constituted the practice of law.

<sup>1</sup> Exhibit 2

By Judgment and Order of the Supreme Court of Arizona filed May 2, 2001, Respondent was suspended from the practice of law effective thirty days from the date of the order.<sup>2</sup>

Respondent testified that he believed that, pursuant to Arizona Rules of Civil Procedure 6(e), his effective suspension date was June 7, 2001. However, in an unrelated matter, Respondent told a client, Elise Rierson, in a letter dated May 16, 2001, that "as of June 2, 2001, I will no longer be able to represent you as your attorney."<sup>3</sup> This demonstrates that Respondent knew the effective date of his suspension was June 2, 2001. I find Respondent's testimony regarding the discrepancy between the May 16, 2001 letter to Ms. Rierson and the June 6, 2001 letter to Mr. Robbins and Dr. Lavitt unpersuasive and unconvincing.

**Count III:** As previously stated, on May 2, 2001, the Supreme Court of Arizona issued a Judgment and Order suspending the Respondent for three months effective June 2, 2001.

Respondent subsequently filed an Affidavit for Reinstatement containing the following statement:

"A check has been sent to the State Bar of Arizona for the full amount of costs and expenses as ordered by the Supreme Court."

This Affidavit was signed by Respondent on September 17, 2001, then signed a second time on September 25, 2001.<sup>4</sup> In fact, however, the Respondent submitted a post-dated check dated October 5, 2001.<sup>5 6</sup>

I am unconvinced by the Respondent's explanation that there is a significant distinction between a check having been sent and payment having been made. I believe any reasonable

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<sup>2</sup> Exhibit 1

<sup>3</sup> Exhibit 4

<sup>4</sup> Exhibit 6

<sup>5</sup> Exhibit 7

<sup>6</sup> I am amazed that it took Respondent three tries to "get it right" relative to the Affidavit for Reinstatement, and that he submitted a post-dated check from his then "girlfriend".

I am also amazed that, in a situation where his practice was "on the line", he chose to rely on his secretary to ascertain the correct procedure. TR p.44, ll. 1-10.

person reading the statement that, "a check has been sent to the State Bar of Arizona for the full amount (sic) costs and expenses as ordered by the Supreme Court" would conclude that the State Bar had been paid in full as of the date of the Affidavit, not that payment would in fact be "perfected" in another few weeks. His explanation is reminiscent of former President Clinton's statement at a deposition that a responsive answer to a question would depend on the definition of the word "is".<sup>7</sup>

**Count IV:** Respondent was previously sanctioned for violating the Rules of Professional Conduct. In file numbers 98-1579, 98-1859 and 99-0042, Respondent was suspended from the practice of law for ninety days. Pursuant to Rules 53 (c) and 54 (k) (4), Ariz.R. S. Ct., I have reviewed pertinent portions of the record of that case.

#### CONCLUSIONS OF LAW

I find that there is clear and convincing evidence that the Respondent violated the Arizona Rules of Professional Conduct, Rule 42, Ariz. R. S. Ct. as follows:

With respect to Counts I and II, I find that the Respondent violated ER 3.4 (c), ER 5.5 and ER 8.1(a) and (c).

With respect to Count III, I find that Respondent violated Rules 51(e), (f) and (k), Ariz. R. S. Ct. and ER 3.3 (a)(1), 8.4(c) and (d).

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<sup>7</sup> I believe Respondent has not been completely candid. For example, Respondent stated in his Disclosure Statement that the aforementioned check was held by the State Bar for several weeks. I presume the reason for this was that it was post-dated.

Also, Respondent stated in his Answer that his prior suspension resulted from an agreement reached by the parties. In fact, his suspension followed a hearing (06/11/00) and Hearing Officer's Report and Recommendation (07/10/00).

## ABA STANDARDS

ABA *Standard 3.0* provides that four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors.

I considered *Standard 7.2* (Violations of Other Duties Owed as a Professional) in determining the appropriate sanction warranted by the Respondent's conduct. Specifically, *Standard 7.2* provides that: "suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential to a client, the public or the legal system." Respondent's conduct, while not causing injury or potential injury to a particular client, or even to the public at large, was clearly injurious to the legal system.

I then considered aggravating and mitigating factors, pursuant to *Standards 9.22 and 9.32*, respectively. Four aggravating factors are present: 9.22(a) prior disciplinary offenses, (d) multiple offenses, (f) submission of false evidence, false statements or other deceptive practices during the disciplinary process and (g) refusal to acknowledge wrongful nature of conduct.<sup>8</sup> One mitigating factor is present, 9.3(e), full and free disclosure to a disciplinary board or cooperative attitude toward proceedings. No other aggravating or mitigating factors are found.

## PROPORTIONALITY REVIEW

The Supreme Court has held that in order to achieve proportionality when imposing discipline, the discipline in each situation must be tailored to the individual facts of the case in order

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<sup>8</sup> Respondent was asked whether he felt the Bar had met its burden of proof. His answer was, "No . . . based on the *mens rea* required (!). TR p.46, ll. 7-12.

to achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983) and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993).

I have reviewed the Disciplinary Cases Matrix and believe the following cases are most analogous to this case:

1. Cynthia R. Allred, SB-98-0049-D
2. Lionel F. Larriva, SB-96-0020-D
3. Michael L. Rhees, SB-01-0161-D
4. Cheryl L. Sivic, SB-01-0077-D

The Respondent's conduct in the foregoing cases was similar to the Respondent's conduct in this case; in all of the foregoing cases, the Respondent was suspended for six months and one day.

#### RECOMMENDATION

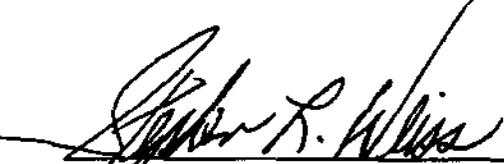
The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the administration of justice.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

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

Upon consideration of the facts, application of the *Standards*, including aggravating and mitigation factors, and application of a proportionality analysis, I recommend the following:

1. Respondent shall be suspended for six months and one day;
2. No restitution is owing in this case.
3. Respondent shall pay the costs and expenses incurred in these disciplinary proceedings.

DATED December 18, 2002.

  
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Stephen L. Weiss  
Hearing Officer 9Z

Original mailed to the Disciplinary Clerk  
on December 18, 2002.

Copy of the foregoing mailed on  
December 18, 2002 to:

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