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HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
R. Wilson

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

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

No. 03-0272

**MICHAEL E. ISLER
Bar No. 020847**

**HEARING OFFICER'S
REPORT AND
RECOMMENDATION**

Respondent.

PROCEDURAL HISTORY

The State Bar of Arizona filed a Complaint against Respondent on September 26, 2003. On September 29, 2003, the State Bar served the Complaint by mail, pursuant to Rule 55(b), Ariz. R. S. Ct. (now Rule 47(c), effective December 1, 2003). Respondent failed to file an answer pursuant to Rule 53(c)(2), Ariz. R. S. Ct. (now Rule 57(b), effective December 1, 2003). The Disciplinary Clerk filed a notice of default and ultimately entered default on November 28, 2003. On December 8, 2003, the State Bar requested an aggravation/mitigation hearing pursuant to Rule 57(d), Ariz. R. S. Ct. That hearing was held on December 18, 2003, and Respondent failed to appear.

FINDINGS OF FACT¹

1. At all times relevant, Respondent was an attorney licensed to practice law in Arizona, having been admitted to practice in Arizona on July 10, 2001.
2. Respondent was a deputy county attorney for Gila County from August 2001 through March 2002.
3. During his employment with the Gila County Attorney's Office,

¹ Because Respondent failed to answer the Complaint and failed to appear for the aggravation and mitigation hearing, all allegations in the Complaint are deemed admitted. With the exception of number 9, the facts set forth are a recitation of the facts as asserted in the Complaint.

1 Respondent informed the County Attorney, his supervisors and the entire office
2 staff that his wife was pregnant with twins and was suffering from a pinched
3 nerve that rendered her unable to drive. Respondent requested that he be allowed
4 to leave work each day at 4:00 p.m. so that he could drive his wife home from
5 her place of employment. Respondent's supervisor authorized Respondent's
6 requested schedule.

7 4. In or about December 2001, Respondent informed his supervisor
8 that his father-in-law had passed away and that Respondent needed to
9 accompany his wife to Canada for the funeral.

10 5. On or about February 8, 2002, Respondent called the Gila County
11 Attorney's Office to report that his wife had given birth to twins prematurely and
12 that he would be out for several days. Upon his return to the office, Respondent
13 informed the entire office of the names of the twins and regularly provided
14 descriptions of his new children.

15 6. In March 2002, Respondent resigned his position, giving two weeks
16 notice. He then failed to appear for his last week of work. At some point
17 thereafter, Respondent's supervisor contacted Respondent's wife and learned that
18 she and Respondent had divorced. Respondent's supervisor also learned that
19 Respondent's ex-wife did not have any children and that her pregnancy and the
20 existence of twins were a fiction created by Respondent. Respondent's
21 supervisor also learned from Respondent's ex-wife that her father had not passed
22 away, but was alive and well in Canada.

23 7. On February 4, 2003, Respondent's former supervisor filed a
24 complaint with the State Bar.

25 8. In his response to the State Bar dated April 1, 2003, Respondent
26 admitted that his statements referred to above were false.

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

5 **The Ethical Duty Violated**

6 The *Standards* identify four categories of ethical duties that a lawyer might
7 violate: duty to the clients; duty to the general public; duty to the legal system;
8 and duty to the profession.

9 Respondent's conduct in this case violated his duties to the general public
10 and the profession. The community expects, and has a right to expect, lawyers to
11 exhibit the highest standards of honesty and integrity, and lawyers have a duty not
12 to engage in conduct involving dishonesty, fraud, or interference with the
13 administration of justice. *Standards* at 5. Respondent violated the duty by lying
14 to his employer and co-workers at, the Gila County Attorney's Office. Although
15 there is no evidence his lies interfered with the administration of justice,
16 Respondent engaged in conduct involving dishonesty over a period of
17 approximately seven months.

18 Respondent's failure to participate in these proceedings in violation of Rule
19 53 (d) and (f), Ariz. R. S. Ct., also violated the duty he owed to the legal
20 profession.

21 **Respondent's Mental State**

22 Intent is defined as "the conscious objective or purpose to accomplish a
23 particular result." *Standards* at 7. Knowledge is defined as "the conscious
24 awareness of the nature or attendant circumstances of the conduct without the
25 conscious objective or purpose to accomplish a particular result." *Standards*. at 7.
26 Respondent's conduct in this case involved the fabrication and elaboration of a

1 story about his wife's fictitious pregnancy followed by a lie concerning his father-
2 in-law's death and funeral. He maintained that fiction and actively lied to his
3 supervisor and co-workers over an extended period of time in order to obtain a
4 favorable work schedule and time off work. His conduct can only be termed
5 intentional.

6 **Extent of the Actual or Potential Injury Caused By the Misconduct**

7 Injury in this context is defined as "harm to a client, the public, the legal
8 system, or the profession which results from a lawyer's misconduct. The level of
9 injury can range from 'serious' injury to 'little or no injury.'" *ABA Standards,*
10 *Definitions*, pg. 7. Respondent's conduct did not cause any quantifiable harm.
11 No clients were affected. Respondent simply obtained a different work schedule
12 than he would normally have had. However, Respondent's willingness to create
13 and maintain an elaborate fiction had the potential to cause great harm to the
14 public and the profession. Respondent's conduct calls into question his integrity
15 and therefore his fitness to practice law. Further, Respondent's failure to respond
16 to the State Bar and/or participate in these proceedings constitutes a failure to
17 maintain the profession's integrity.

18 **Aggravating or Mitigating Factors**

19 *Standard §9.22* sets forth the following factors that may be considered in
20 aggravation:

- 21 a. prior disciplinary offenses;
- 22 b. dishonest or selfish motives;
- 23 c. pattern of misconduct;
- 24 d. multiple offenses;
- 25 e. bad faith obstruction of the disciplinary proceedings by intentionally
26 failing to comply with rules or orders of the disciplinary agency;
- f. submission of false evidence, false statements, or other deceptive
practices during the disciplinary process;
- g. refusal to acknowledge wrongful nature of conduct;
- h. vulnerability of victim;
- i. substantial experience in the practice of law;

1 j. indifference to making restitution.

2 Several of those factors are present in this case. Respondent's motives
3 were dishonest and/or selfish. He lied to obtain a different and more favorable
4 work schedule. *Standard 9.22(b)*. In order to maintain the fiction he had created,
5 Respondent told a series of interrelated lies which established a continuing pattern
6 of misconduct. *Standard 9.22(c)*. Although Respondent initially responded to
7 the State Bar's letter of investigation, he subsequently failed to respond to
8 telephone calls and failed to answer the complaint filed against him, thus,
9 obstructing these proceedings. *Standard 9.22(e)*. Respondent's initial response
10 to the charges indicates that he has not fully taken responsibility for the wrongful
11 nature of his conduct. Respondent maintains that his ex-wife created the
12 situation, but grudgingly admits that he "could have done more to stop it before it
13 got this far." *Standard 9.22(g)*.

14 *Standard 9.32* sets forth factors which may be considered in mitigation:

- 15 a. absence of a prior disciplinary record;
16 b. absence of a dishonest or selfish motive;
17 c. personal or emotional problems;
18 d. timely good faith effort to make restitution or to rectify
19 consequences of misconduct;
20 e. full and free disclosure to disciplinary board or cooperative attitude
21 toward proceedings;
22 f. inexperience in the practice of law
23 g. character or reputation;
24 h. physical disability;
25 i. mental disability and chemical dependency including alcoholism or
26 drug abuse;
j. delay in disciplinary proceedings;
k. imposition of other penalties or sanctions;
l. remorse;
m. remoteness of prior offenses.

24 Respondent does not have a disciplinary record and he is inexperienced in
25 the practice of law. *Standard 9.32(a)* and (f). In his initial, informal response,
26 Respondent alleged that his wife was having an affair and he and his wife

1 separated during the period in which his conduct is at issue. However, he
2 presented no evidence to prove those allegations or of any allegedly resulting
3 personal and/or emotional problems. I, therefore, conclude that *Standard 9.32(c)*
4 is not applicable.

5 As stated in the theoretical framework and as recommended in *In re*
6 *Cassalia*, 173 Ariz. 373, 843 P.2d 654 (1992), cases involving multiple charges of
7 misconduct should receive one sanction appropriate for the most serious instance
8 of misconduct. Rather than imposing individual sanctions, multiple instances of
9 misconduct are considered as aggravating factors.

10 *Standard 5.0* applies when a lawyer violates a duty to the public. "The
11 most fundamental duty which a lawyer owes the public is the duty to maintain the
12 standards of personal integrity upon which the community relies." *Standard 5.0*.
13 *Standard 5.1*, "Failure to Maintain Personal Integrity," provides that:

14 "Absent aggravating or mitigating circumstances . . . , the
15 following sanctions are generally appropriate . . . in cases
16 with conduct involving dishonesty, fraud, deceit, or
misrepresentation:

17 5.11 Disbarment is generally appropriate when:

18 (a) a lawyer engages in serious criminal conduct
19 a necessary element of which includes intentional
interference with the administration of justice,
false swearing, [. . .]

20 (b) a lawyer engages in any other intentional
21 conduct involving dishonesty, fraud, deceit, or
misrepresentation that seriously adversely reflects
on the lawyer's fitness to practice.

22 5.12 Suspension is generally appropriate when a lawyer
23 knowingly engages in criminal conduct which does not
24 contain the elements listed in *Standard 5.11* and that
seriously adversely reflects on the lawyer's fitness to
practice.

25 5.13 Reprimand [censure in Arizona] is generally
26 appropriate when a lawyer knowingly engages in conduct

1 that involves dishonesty, fraud, deceit, or
2 misrepresentation and that adversely reflects on the
3 lawyer's fitness to practice law.

4 Censure is the presumptive sanction in this case. Respondent intentionally
5 engaged in a disturbing pattern of dishonest conduct, but that conduct was not
6 criminal. Although *Standard 5.11(b)* would seem to apply, taken as a whole
7 with the commentary to the Section, *Standard 5.0* makes it clear that disbarment
8 and suspension are generally reserved for cases involving criminal misconduct.
9 Conversely, admonition (informal reprimand) is generally reserved for cases not
10 involving dishonesty, fraud, deceit or misrepresentation.

11 An effective system of professional sanctions must have internal
12 consistency. *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988). *Matter of*
13 *Rempe*, SB-95-0043-D (1995), is the closest case on point. The respondent in
14 that case was censured, and costs were imposed, for a violation of ER 8.4(c). The
15 respondent lied in a deposition, but later corrected his statements before the
16 document was presented to the court. The respondent's misrepresentation was
17 made under oath, which is somewhat more egregious than the facts in the matter
18 at hand. The Disciplinary Commission applied *ABA Standard 5.13* but found that
19 the mitigating factors outweighed the aggravating factors in that case. Here,
20 Respondent did not lie under oath but he did not voluntarily correct his
21 misrepresentations, and the aggravating factors outweigh the mitigating factors.

22 An informal reprimand and costs were entered against the respondent in
23 *Matter of Laber*, SB-98-1985 (2001), for one violation of ER 8.4(c). The
24 respondent made a misrepresentation by notarizing a quitclaim deed knowing that
25 no signature had been affixed to it at the time he notarized the deed. The person
26 did actually sign the document, but not before the respondent and not on the date
indicated. The hearing officer found that the respondent had made a knowing

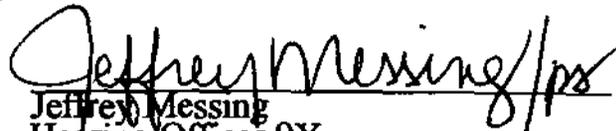
1 misrepresentation, but that the mitigating factors outweighed the aggravating
2 factors.

3 In this case, Respondent made repeated knowing misrepresentations and
4 the aggravating factors outweigh the mitigating factors. Respondent has also
5 failed to cooperate, thus violating Rule 53 (d) and (f), Ariz. R. S. Ct. The State
6 Bar argues that censure and an imposition of costs with a period of probation is
7 the appropriate sanction in this case. I agree.

8 **RECOMMENDATION**

9 I recommend that that Respondent be censured and ordered to pay costs of
10 this disciplinary proceeding. In addition, Respondent should be placed on a two-
11 year term of probation and required to participate in a MAP assessment and
12 attend the Ethics Enhancement Program ("EEP").

13 DATED this 4th day of January 2004.

14 
15 Jeffrey Messing
16 Hearing Officer 9X

17 Original filed with the Disciplinary Clerk
18 this 4th day of January 2004.

19 Copy of the foregoing mailed
20 this 4th day of January 2004, to:

21 Michael E. Isler
22 Respondent
23 2700 North Central Avenue, Suite 1130
24 Phoenix, AZ 85004

25 Denise M. Quinterri
26 Bar Counsel
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by: Kelzigand