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HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *William*

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

IN THE MATTER OF A MEMBER)	No. 04-2072
OF THE STATE BAR OF ARIZONA,)	
)	
DALE R. GWILLIAM,)	
Bar No. 004979)	
)	HEARING OFFICER'S REPORT
RESPONDENT.)	
)	

PROCEDURAL HISTORY

A Probable Cause Order was filed on January 21, 2005. A Complaint was filed on May 31, 2005. Respondent filed an Answer on July 25, 2005. A settlement conference was held on September 15, 2005; however, the parties were unable to reach an agreement at that time. A Tender of Admissions and Agreement for Discipline by Consent (Tender) and Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent (Joint Memo) were filed on October 6, 2005. A hearing on the Tender and Joint Memo was held on October 7, 2005.

FINDINGS OF FACT

1. Respondent is an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on October 8, 1977.

1 2. At all times relevant to this matter, Respondent was a co-founder,
2 officer, and director of Adoption Media, LLC.

3
4 3. By order dated January 22, 2003 in Arizona Supreme Court case SB-
5 03-0004-D, Respondent was censured and ordered to pay discipline costs in the
6 amount of \$2,386.38.

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8 4. On or about July 8, 2004, the State Bar's records manager, Sandra E.
9 Montoya, sent Respondent a letter requesting that he pay the above costs by August
10 10, 2004, and providing him information on how to do so.

11 5. When Ms. Montoya did not receive the cost payment from Respondent
12 as requested in the July 8, 2004 letter, she sent a follow-up letter dated October 4,
13 2004 to Respondent. In that letter, Ms. Montoya again requested payment of costs
14 and informed Respondent that the State Bar would seek his summary suspension if
15 he failed to pay the costs.
16

17
18 6. On or about November 30, 2004, Respondent hand-delivered payment
19 of the costs to Ms. Montoya at the State Bar. Respondent paid the costs by way of a
20 cashier's check in the amount of \$2,386.38, and was provided a receipt by Ms.
21 Montoya.
22

23 7. Thereafter, in an envelope post-marked November 30, 2004, the State
24 Bar received a check from Adoption Media, LLC, in the amount of \$2,386.38. The
25 check receipt attached to the check indicated that it was for "Misc. Admin.

1 Expenses.” The check was signed by Nathan Gwilliam, Respondent’s son, who is a
2 co-founder of Adoption Media, L.L.C. Along with the check was a copy of a letter,
3 purportedly from the State Bar to Respondent. The letter is dated November 1,
4 2004, and is typed on State Bar letterhead. The letter is purportedly signed by Ms.
5 Montoya. The subject matter of the letter is listed as “State Bar of Arizona 2004
6 Membership Capital Improvement Assessment.” The language in the body of the
7 letter indicates that the State Bar’s Board of Governors decided that the purchase of
8 the new State Bar building should be covered by a “per capita assessment of each
9 active member of the State Bar of Arizona” and that Respondent’s individual
10 assessment was determined to be \$2,386.38. The language makes further
11 statements about the new building, and directs Respondent to pay the assessment by
12 December 2, 2004.
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15

16 8. The above-referenced letter was not authentic. The letter was created
17 by Respondent, presumably copied on State Bar letterhead from letters he had
18 previously received from the State Bar. Respondent drafted the letter, and signed
19 Ms. Montoya’s signature on the letter without her permission.
20

21 9. The information contained in the letter regarding the per capita
22 assessment was false and Respondent knew it was false. The State Bar’s Board of
23 Governors never made any kind of per capita assessment regarding the new
24 building purchase.
25

1 10. At all times relevant hereto, Leon Stewart was the finance director of
2 Adoption Media, LLC.

3 11. Nathan Gwilliam and Leon Stewart were unaware that the letter
4 Respondent provided in support of his request for a check was false.
5

6 12. Mr. McBay thereafter left a message for Respondent to contact him.
7 On or about December 9, 2004, Mr. McBay received a phone call from Respondent
8 regarding the check and the false letter. Respondent informed Mr. McBay that he
9 had information about the situation, but would prefer to respond in writing.
10

11 13. Respondent prepared and sent a letter to the State Bar, dated January 3,
12 2005, regarding the situation.
13

14 14. In his response, Respondent admitted the misconduct, and explained
15 that he prepared the letter in order to obtain a check from Leon Stewart without
16 having to explain his prior discipline to Mr. Stewart. Respondent stated that he
17 could have written the check himself, but wanted to follow his company's
18 accounting procedures. Mr. Stewart was a new employee and a long-time friend of
19 Respondent's. Respondent wanted to avoid the embarrassment of having to explain
20 the prior sanction to Mr. Stewart. Respondent asserts that, since Mr. Stewart was
21 his employee, Respondent had no duty to disclose his prior discipline history to Mr.
22 Stewart, and Mr. Stewart had no right to receive that information, which was not
23 necessary in order for Mr. Stewart to perform his duties as Respondent's employee.
24
25

1 Respondent believed that Mr. Stewart would be the only person to see the false
2 letter.

3
4 15. When Respondent provided the letter to Mr. Stewart, Respondent
5 specifically instructed Mr. Stewart to cut a check and return the check and the letter
6 to Respondent the following day.

7
8 16. After providing the false letter to Mr. Stewart, Respondent later had a
9 change of heart, and asked Mr. Stewart to give him back the letter. He then learned
10 from Mr. Stewart that a staff person working under Mr. Stewart had mailed the
11 check earlier that day, along with a copy of the letter, to the State Bar, contrary to
12 Respondent's prior instructions.

13
14 17. Respondent admitted the wrong-doing, and has expressed remorse for
15 his actions.

16 CONDITIONAL ADMISSIONS

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18 Respondent conditionally admits that his conduct violated Rule 42, Ariz.
19 R. S. Ct., specifically: ER 8.4(c) and (d).

20 ABA STANDARDS

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

1 The parties indicated that *Standard 5.1* is the most applicable in this matter.
2 A review of ABA *Standard 5.0* (Violations of Duties Owed to the Public)
3 indicates that censure is the presumptive sanction for Respondent's misconduct.
4
5 *Standard 5.13* (Failure to Maintain Personal Integrity) specifically provides:

6 Reprimand (censure in Arizona) is generally appropriate
7 when a lawyer knowingly engages in any other conduct that
8 involves dishonesty, fraud, deceit, or misrepresentation and
9 that adversely reflects on the lawyer's fitness to practice
law.

10 In this matter, Respondent has admitted that his conduct was knowing.
11 Respondent acknowledges that his actions may have harmed the system as a
12 whole, because of the high standards that are set for the integrity of attorneys.
13

14 AGGRAVATING AND MITIGATING FACTORS

15 This Hearing Officer then considered aggravating and mitigating factors in
16 this case, pursuant to *Standards 9.22* and *9.32*, respectively.

17 This Hearing Officer agrees with the parties that there are two applicable
18 aggravating factors in this matter:
19

- 20 (a) prior disciplinary offenses;¹ and,
21 (b) dishonest or selfish motive.²
22
23
24

25 ¹ See Joint Memo.

² Respondent has stated, and the State Bar does not dispute, the reason behind his action in this matter was his own interest in avoiding embarrassment over his prior discipline case.

1 This Hearing Officer agrees with the parties that three factors are present in
2 mitigation:

3
4 (d) timely good faith effort to make restitution or to rectify consequences
5 of misconduct;³

6 (e) full and free disclosure to disciplinary board or cooperative attitude
7 toward proceedings; and,

8
9 (l) remorse.

10 **PROPORTIONALITY REVIEW**

11 While it is appropriate review other disciplinary decisions, the discipline
12 in each case must be tailored to the individual case, as neither perfection nor
13 absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604, 615, 691 P.2d
14 695 (1984).

15
16 In terms of proportionality, the State Bar asserts that there are several
17 similar cases. The State Bar notes at the outset that proportionality cases for
18 dishonest conduct vary widely depending on the very specific facts of the case,
19 including such facts as whether the dishonesty involved money and whether the
20 dishonesty was to a client or a court.
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24
25 ³ Respondent asserts, and the State Bar does not dispute, that Respondent changed his mind about his actions, and attempted to retrieve the false letter; however, the letter had already been mailed by the time he tried to retrieve it in a manner that was contrary to the specific instructions he had given his employee.

1 In *In re Isler*, SB-04-0073-D (2004), the lawyer received a censure for
2 violation of ER 8.4(c). Mr. Isler made several misstatements to his supervisor
3 concerning his personal family situation, including fabricating stories about
4 children who did not exist. In addition, Mr. Isler failed to cooperate with the
5 State Bar during the discipline proceedings.
6

7 Similarly, in *In re Lamm*, SB-03-0026 (2003), the lawyer received a
8 censure for violation of the ethical rules, including a violation of ER 8.4(c). Mr.
9 Lamm's misconduct included misleading a detention officer as to the reason he
10 wanted to speak to an inmate. Mr. Lamm also violated ERs 4.3 and 7.3 in that
11 case.
12

13 In some cases involving violations of ER 8.4(c) the lawyer received a
14 harsher sanction than a censure. For instance, in *In re Coffee*, SB-01-0095 (2001),
15 Mr. Coffee received a 30-day suspension for violations including violation of ER
16 8.4(c). He had knowingly made misstatements to the court during his own
17 divorce proceedings.
18

19 The Respondent accepts the assertion of the State Bar in this case, with one
20 violation of ER 8.4(c), a censure is proportionate. Respondent's prior discipline
21 history might ordinarily cause the sanction in this case to be aggravated from a
22 censure to a suspension. However, the State Bar gave significant weight to the
23 fact that Respondent, on his own, had a change of heart and attempted to stop the
24
25

1 misconduct. In addition, the dishonesty occurred in a matter not related to client
2 representation. Considering the totality of the factual circumstances of this case,
3 a censure is within the range of an appropriate sanction.
4

5 RECOMMENDATION

6 The purpose of lawyer discipline is not to punish the lawyer, but to protect
7 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
8 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
9 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
10 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
11 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
12 (1994).
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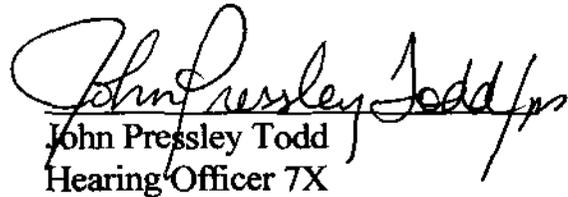
15 In imposing discipline, it is appropriate to consider the facts of each case,
16 the American Bar Association's *Standards for Imposing Lawyer Sanctions*
17 ("*Standards*") and the proportionality of discipline imposed in analogous cases.
18 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
19

20 Upon consideration of the facts, application of the *Standards*, including
21 aggravating and mitigating factors, and a proportionality analysis, this Hearing
22 Officer recommends acceptance of the Tender of Admissions and Agreement for
23 Discipline by Consent and the Joint Memorandum in Support of Agreement for
24 Discipline by Consent which provides for the following:
25

1 1. Respondent shall receive a censure.

2 2. Respondent shall pay the costs and expenses incurred in this
3 disciplinary proceeding.
4

5 DATED this 7th day of November, 2005.

6 
7 John Pressley Todd
8 Hearing Officer 7X

9 Original filed with the Disciplinary Clerk
10 this 7th day of November 2005.

11 Copy of the foregoing was mailed
12 this 7th day of November, 2005, to:

13 Dale R. Gwilliam
14 Respondent
15 *Law Office of Dale R. Gwilliam*
16 459 North Gilbert Road, Suite C-100
Gilbert, AZ 85234-0001

17 Amy K. Rehm
18 Senior Bar Counsel
19 State Bar of Arizona
4201 North 24th Street, Suite 200
20 Phoenix, AZ 85016-6288

21 by: *P. Williams*