

FILED

DEC 06 2005

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

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

IN THE MATTER OF A MEMBER)	Nos. 04-1790, 04-1801
OF THE STATE BAR OF ARIZONA,)	
)	
MICHAEL L. LYNCH,)	
Bar No. 013046)	
)	HEARING OFFICER'S REPORT
)	
RESPONDENT.)	

PROCEDURAL HISTORY

A Probable Cause Order was filed on June 7, 2005. A Complaint was filed on July 28, 2005. Respondent filed an Answer on August 25, 2005. A settlement conference was held on October 19, 2005, at which the parties were able to reach an agreement. 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 November 4, 2005. A hearing has not been held in this matter.

FINDINGS OF FACT

1. Respondent is licensed to practice law in Arizona, having been first admitted to practice in this state on February 5, 1991.

1 2. On March 18, 2004, the Board of Governors of the State Bar of
2 Arizona approved Respondent's name for summary suspension for failure to
3 comply with mandatory continuing legal education ("MCLE") requirements.
4

5 3. The State Bar notified Respondent of the suspension by letter dated
6 March 29, 2004.

7 4. Despite knowledge of his suspension, Respondent continued to
8 practice law and failed to comply with Rules 61(d) and 72, Ariz. R. S. Ct.,
9 regarding notification to interested parties and preclusion of accepting new cases.
10

11 5. On October 25, 2004, the Supreme Court of Arizona reinstated
12 Respondent's license to practice law in Arizona after he complied with the MCLE
13 requirements and filed a motion for reinstatement.
14

15 6. Respondent continued to represent clients in numerous matters
16 during his period of suspension. For example, a search of the Maricopa County
17 Superior Court Attorney Calendar database shows that between March 29, 2004
18 and October 25, 2004, Respondent was the attorney of record in at least six cases,
19 including FC2003-091558, FC2003-093295, FC2003-094081, CV2003-093070,
20 CR2004-021321, FC2004-015736. Respondent also identified thirty-five
21 additional cases in which he continued to practice law during his suspension.
22
23

24 7. In FC2003-093295, Respondent filed:
25

1 a. **Motion For Leave Of Court To Convert Petition For Legal**
2 **Separation To Petition For Dissolution Of Marriage, on May 28, 2004;**

3 b. **Amended Petition Requesting Dissolution Of Marriage (With**
4 **Children), on August 5, 2004; and**

5 c. **Stipulation Re: Temporary Orders For Child Custody,**
6 **Parenting Time And Child Support, on October 8, 2004.**

7
8 8. **In CV2003-093070, Respondent filed:**

9 a. **Motion For Leave To Amend Complaint, on May 28, 2004;**
10 **and**

11 b. **Amended Complaint, on August 5, 2004.**

12
13 9. **In CR2004-01321-001, Respondent filed a Notice of Appearance**
14 **and appeared as counsel of record for the defendant on October 14, 2004.**

15
16 **COUNT ONE (File No. 04-1790)**

17 10. **In the summer of 2004, Respondent represented Mitchell D. Sokol,**
18 **the Petitioner in a Domestic Relations matter in the Maricopa County Superior**
19 **Court in *Sokol v. Sokol*, FC 2003-09220.**

20
21 11. **During the period of his representation of Mr. Sokol, Respondent**
22 **knew he was suspended from the practice of law.**

1 12. On August 20, 2004, Respondent served a *subpoena duces tecum* in
2 the domestic relations matter on third party, Steven Clark. Mr. Clark complied
3 with the *subpoena duces tecum*.
4

5 13. In the fall of 2004, Mr. Clark hired attorney Steven S. Guy to
6 represent him in a tort matter against Mr. Sokol. In the process of the
7 representation, Mr. Clark informed Mr. Guy of the August 20, 2004 *subpoena*
8 *duces tecum*.
9

10 14. Mr. Guy attempted to find a listing for Respondent in the State Bar's
11 directory and website, but could not find one. Mr. Guy instructed his secretary to
12 contact the State Bar to determine Respondent's status and contact information.
13

14 15. Mr. Guy's secretary contacted the State Bar and was informed that
15 Respondent had been suspended from the practice of law as of March 29, 2004.
16

17 16. In a letter dated October 20, 2004, to the Honorable David K. Udall,
18 Maricopa County Superior Judge, Mr. Guy notified the court that Respondent
19 was suspended from the practice of law. Mr. Guy also forwarded a copy of the
20 letter to the State Bar.
21

22 17. By letter dated December 17, 2004, the State Bar informed
23 Respondent of the allegations received from Mr. Guy concerning his conduct.
24

25 18. In a letter dated December 27, 2004 to the State Bar, Respondent
responded to the December 17, 2004 letter as follows:

1 a. His suspension was a result of his failure to complete one hour
2 of ethics Continuing Legal Education (CLE) prior to the MCLE deadline;

3 b. On the MCLE deadline, he filed his Certificate of Compliance
4 noting that he was one hour of ethics CLE short and that he had attempted
5 to go on line to complete the requirement but was unable to login to the
6 State Bar's website;

7 c. He telephoned the State Bar to notify it of his situation and
8 was told to complete the hour of ethics CLE as soon as possible;

9 d. He subsequently had additional computer login difficulties;

10 e. He received the Notice of MCLE Summary Suspension on
11 March 30, 2004;

12 f. He completed the hour of ethics CLE in June 2004;

13 g. He filed for reinstatement on September 27, 2004;

14 h. The State Bar notified him that he needed to comply with
15 Rules 64(d) and 65, Ariz. R. S. Ct., because he waited longer than six (6)
16 months to apply for reinstatement;

17 i. He contacted the Disciplinary Court Clerk who told him to file
18 a Motion for Waiver of Rules 64(d) and 65, Ariz. R. S. Ct.;

19 j. He filed a Motion for Waiver of Rules 64(d) and 65, Ariz. R.
20 S. Ct., on September 29, 2004;

1 k. He admitted that he procrastinated in completing the needed
2 hour of ethics CLE before the MCLE deadline and in filing the request for
3 reinstatement until September 2004;
4

5 l. He admitted that he mistakenly viewed the MCLE Summary
6 Suspension as something he could remedy quickly, at any time and
7 continued to represent his clients and made court appearances while
8 suspended;
9

10 19. Respondent practiced law in a jurisdiction in violation of the
11 regulation of the legal profession in that jurisdiction; violated the Rules of
12 Professional Conduct; engaged in conduct that was prejudicial to the
13 administration of justice; and practiced law in Arizona while on suspension.
14

15 20. Respondent's conduct as described in this count violated Rule 42,
16 Ariz. R. S. Ct., specifically, ERs 5.5 and 8.4(a) & (d), and Rule 31(b), Ariz. R. S.
17 Ct.
18

19 **COUNT TWO (File No. 04-1801)**

20 22. In the summer of 2004, Respondent represented Mitchell D. Sokol,
21 the Petitioner in a Domestic Relations matter in the Superior Court of Maricopa
22 County, *Sokol v. Sokol*, FC2003-09220.
23

24 23. During the period of his representation of Mr. Sokol, Respondent
25 knew he was suspended from the practice of law.

1 24. In October of 2004, Maria E. Lawrence, counsel for Kim Sokol,
2 learned that Respondent had been suspended from the practice of law as of March
3 29, 2004.
4

5 25. In a letter to the State Bar dated October 20, 2004, Ms. Lawrence
6 alleged that Respondent had filed numerous pleadings, made court appearances,
7 and had been awarded attorney's fees in the Domestic Relations matter while on
8 suspension from the practice of law.
9

10 26. By letter dated December 17, 2004, the State Bar informed
11 Respondent of the allegations received from Ms. Lawrence concerning his
12 conduct.
13

14 27. In a letter to the State Bar dated December 27, 2004, Respondent
15 responded to the December 17, 2004 letter as follows:

16 a. His suspension was a result of his failure to complete one hour
17 of ethics Continuing Legal Education (CLE) prior to the MCLE deadline;

18 b. On the MCLE deadline, he filed his Certificate of Compliance
19 noting that he was one hour of ethics CLE short and that he had attempted
20 to go on line to complete the requirement but was unable to login to the
21 State Bar's website;
22

23 c. He telephoned the State Bar to notify it of his situation and
24 was told to complete the hour of ethics CLE as soon as possible;
25

- 1 d. He subsequently had additional computer login difficulties;
- 2 e. He received the Notice of MCLE Summary Suspension on
- 3 March 30, 2004;
- 4
- 5 f. He completed the hour of ethics CLE in June 2004;
- 6 g. He filed for reinstatement on September 27, 2004;
- 7
- 8 h. He was notified by the State Bar that he needed to comply
- 9 with Rules 64(d) and 65, Ariz. R. S. Ct., because he waited longer than six
- 10 (6) months to apply for reinstatement;
- 11 i. He contacted the Disciplinary Court Clerk who told him to file
- 12 a Motion for Waiver of Rules 64(d) and 65, Ariz. R. S. Ct.;
- 13
- 14 j. He filed a Motion for Waiver of Rules 64(d) and 65, Ariz. R.
- 15 S. Ct., on September 29, 2004;
- 16 k. He admitted that he procrastinated in completing the needed
- 17 hour of ethics CLE before the MCLE deadline and in filing the request for
- 18 reinstatement until September 2004;
- 19
- 20 l. He admitted that he mistakenly viewed the MCLE Summary
- 21 Suspension as something he could remedy quickly, at any time and
- 22 continued to represent his clients and made court appearances while
- 23 suspended;
- 24
- 25

1 28. Respondent practiced law in a jurisdiction in violation of the
2 regulation of the legal profession in that jurisdiction; violated the Rules of
3 Professional Conduct; engaged in conduct that was prejudicial to the
4 administration of justice; and practiced law in Arizona while on suspension.
5

6 29. Respondent's conduct as described in this count violated Rule 42,
7 Ariz. R. S. Ct., specifically, ERs 5.5 and 8.4(a) & (d), and Rule 31(b), Ariz. R. S.
8 Ct.
9

10 CONDITIONAL ADMISSIONS

11 Respondent conditionally admits that his conduct, as set forth above, violated
12 Rule 42, Ariz.R.S.Ct., specifically, ERs 5.5 and 8.4(a) & (d), and Rule 31(b),
13 Ariz.R.S.Ct.
14

15 ABA STANDARDS

16 The ABA *Standards* list the following factors to consider in imposing the
17 appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the
18 actual or potential injury caused by the lawyer's misconduct, and (4) the
19 existence of aggravating or mitigating circumstances. ABA *Standard* 3.0.
20

21 The parties indicated that *Standard* 6.0 and 7.0 are the most applicable in
22 this matter. A review of ABA *Standard* 6.0 (Violations of Duties Owed to the
23 Legal System) and 7.0 (Violations of Duties Owed as a Professional) indicates
24 that suspension is the presumptive sanction for Respondent's misconduct.
25

1 **Standard 6.12 (False Statements, Fraud, and Misrepresentation) specifically**
2 **provides:**

3
4 **Suspension is generally appropriate when a lawyer knows**
5 **that false statements or documents are being submitted to**
6 **the court or that material information is improperly being**
7 **withheld, and takes no remedial action, and causes injury or**
8 **potential injury to a party to the legal proceeding, or causes**
9 **an adverse or potentially adverse effect on the legal**
10 **proceeding.**

11 **Respondent violated his duty to his clients by continuing to be listed as the**
12 **attorney of record and/or participating in their legal representation, including but**
13 **not limited to the filing, drafting, and preparation of legal documents, appearing**
14 **in court or other legal proceedings, and providing legal advice while summarily**
15 **suspended from the practice of law. Respondent further violated his duty to his**
16 **clients by failing to inform them of his summary suspension from the practice of**
17 **law.**

18 **Respondent violated his duties to the legal system and to the profession by**
19 **failing to comply with the ethical rules. Respondent knowingly practiced law in a**
20 **jurisdiction in violation of the regulation of the legal profession in that**
21 **jurisdiction; violated the Rules of Professional Conduct; engaged in conduct that**
22 **was prejudicial to the administration of justice by appearing in court while**
23 **summarily suspended from the practice of law; and practiced law in Arizona**
24 **while on suspension.**
25

1 Respondent admits that his conduct, taken as a whole, has violated his duty
2 to his clients, the profession, and the legal system.

3 Respondent knowingly practiced law in Arizona in violation of the regulation
4 of the legal profession when Respondent failed to comply with MCLE
5 requirements, failed to timely remedy the MCLE deficiency, failed to timely and
6 properly file his request for reinstatement when summarily suspended from the
7 practice of law for MCLE non-compliance, and failed to inform his clients,
8 opposing counsel, and the courts in which he appeared of his suspension and
9 continued to practice law while suspended.
10

11 Respondent's conduct included being listed as the attorney of record and/or
12 participating in the legal representation of his clients, including but not limited to
13 the filing, drafting, and preparation of legal documents on their behalf, appeared
14 in court or other legal proceedings, and providing legal advice. Respondent's
15 knowing conduct violated the Rules of Professional Conduct and was prejudicial to
16 the administration of justice.
17
18

19 There was no actual injury to Respondent's clients, the profession or the
20 court system. There was, however, potential injury to Respondent's clients, the
21 profession, and the court system in all of Respondent's rule violations.
22
23

24 If this matter were to proceed to a hearing, Respondent would take the
25 position that his conduct caused no actual harm to his clients, the profession, or

1 the court system, and his conduct exposed his clients, the profession or the court
2 system to no potential harm. The State Bar would take the position that
3 Respondent's failure to comply with MCLE requirement and continuing to
4 practice law while summarily suspended exposed his clients, the profession, and
5 the court system to potential injury.
6

7 AGGRAVATING AND MITIGATING FACTORS

8 This Hearing Officer then considered aggravating and mitigating factors in
9 this case, pursuant to *Standards* 9.22 and 9.32, respectively.
10

11 This Hearing Officer agrees with the parties that there are two applicable
12 aggravating factors in this matter:
13

14 (d) multiple offenses; and,

15 (i) substantial experience in the practice of law.¹

16 This Hearing Officer agrees with the parties that three factors are present in
17 mitigation:
18

19 (a) absence of a prior disciplinary record;

20 (d) full and free disclosure to disciplinary board or cooperative attitude
21 toward proceedings; and,

22 (l) remorse.
23
24

25 ¹ Respondent was admitted in 1991.

1 **PROPORTIONALITY REVIEW**

2 To have an effective system of professional sanctions, there must be
3 internal consistency, and it is appropriate to examine sanctions imposed in cases
4 that are factually similar. *In re Peasley*, 208 Ariz. 27, 35, ¶ 33, 90 P.3d 764, 772
5 (App. 2004). However, the discipline in each case must be tailored to the
6 individual case, as neither perfection nor absolute uniformity can be achieved. *Id.*
7 at 41, ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614
8 (2002) and *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).
9
10

11 In this case, the most serious instance of misconduct involves Respondent's
12 continued practice of law in Arizona while summarily suspended. The following
13 cases are instructive concerning these types of misconduct.
14

15 In *In re Rhees*, SB-01-0161-D (2001), Rhees remained attorney of record
16 for eighteen clients after he had been suspended for failing to file his MCLE
17 affidavit and payment of late fees pursuant to Rule 45, Ariz.R.S.Ct. While
18 suspended Rhees filed motions and pleadings on behalf of his clients, attended
19 one hearing, and made representations to the court and clients about his MCLE
20 affidavit. The Disciplinary Commission found that the *Standards* governing lack
21 of candor towards the tribunal applied. Rhees knowingly violated his duty owed
22 to his clients, the public and the legal system by misrepresenting his ability to
23 practice law and by practicing while suspended causing actual or potential injury.
24
25

1 There were two aggravating factors present in *Rhees*: multiple offenses and
2 substantial experience in the practice of law. There were four mitigating factors
3 present: absence of a prior disciplinary record; cooperation with the State Bar;
4 mental disability; and remorse. The Disciplinary Commission gave weight to
5 *Rhees*' mental disability and his probation requiring him to continue with
6 treatment. *Rhees* received a four-month suspension.
7

8
9 In *In re Allred*, SB-98-0049-D (1998), Allred continued to practice law
10 while suspended for failure to comply with MCLE requirements. While
11 suspended Allred continued to have oral and written communication with
12 opposing counsel and filed pleadings on behalf of a client. Further, after Allred
13 had been suspended for nearly a year, she appeared at a hearing and erroneously
14 told the judge that she had taken care of her suspension with the State Bar. She
15 had not completed to the required MCLE requirements despite her assertions.
16

17 The *Standards* governing lack of candor to the tribunal applied in *Allred*.
18 Allred knowingly violated her duty owed to her clients; the public and the legal
19 system by misrepresenting her ability to practice law and by practicing while
20 suspended causing actual or potential injury. There was one aggravating factor
21 present in *Allred*: substantial experience in the practice of law. There were four
22 mitigating factors present: personal or emotional problems; mental disability; no
23
24
25

1 dishonest motive; and cooperation with the State Bar. Allred was suspended for
2 six months and one day.

3
4 In *In re Larriva*, SB-96-0020-D (1997), Larriva continued to practice law
5 while suspended for failure to comply with MCLE requirements. Larriva failed
6 to respond to the State Bar's requests for information during the investigation,
7 and failed to answer the formal complaint. Larriva also had prior discipline. The
8 Disciplinary Commission found three mitigating factors: lack of dishonest
9 motive, cooperation with the State Bar (but only after formal proceedings were
10 initiated), and Larriva's alcoholism. However, the Disciplinary Commission
11 found there was no causal link between Larriva's alcoholism and his conduct.
12
13 There were three factors in aggravation present: substantial experience in the
14 practice of law (thirty years); failure to respond to the State Bar; and prior
15 discipline. The Disciplinary Commission found the final factor significant, in
16 that Larriva received an informal reprimand in 1993 (four years earlier) for failing
17 to cooperate in a State Bar investigation. For these reasons, the Disciplinary
18 Commission increased the hearing officer's recommended sanction of a censure
19 to a suspension of six months and one day.
20
21
22

23 In this case, Respondent knowingly practiced law in Arizona in violation of
24 the regulation of the legal profession; violated the Rules of Professional Conduct;
25 and engaged in conduct that was prejudicial to the administration of justice.

1 Respondent continued to practice in at least forty-one cases during his seven-
2 month suspension and failed to notify his clients, the court, or opposing counsel
3 that he was suspended. The parties agree that Respondent's conduct is most
4 similar to the conduct shown in *Rhees*. Here, as in *Rhees*, Respondent continued
5 to practice in a number of cases during his suspension. The parties acknowledge,
6 however, that Respondent did not make any *affirmative representation* concerning
7 is ability to practice.
8
9

10 Respondent's conduct does not rise to the level of misconduct shown in
11 *Allred and Larriva*, warranting a suspension of more than six months.
12 Respondent made no affirmative misrepresentations to the court or opposing
13 counsel about his active status. Respondent has been candid with the State Bar
14 regarding his conduct and he has fully investigated with the disciplinary
15 proceedings. Furthermore, there are no personal or emotional problems or a
16 mental disability that would require a reinstatement proceeding to determine
17 whether Respondent was fit to practice after he serves his suspension.
18
19

20 While the parties note that there are some discipline cases involving
21 attorneys continuing to practice while suspended that resulted in censure, *see e.g.*
22 *In re Gwilliam*, SB-03-0004-D (2003); *In re Rodgers*, SB-04-0136-D (2004), the
23 sanction proposed here is appropriate. In the cases resulting in a censure, the
24 conduct generally involved negligent violations of the Rules of Professional
25

1 Conduct and/or the cases involved significant mitigating factors that reduced to
2 presumptive sanction from a suspension to a censure. Neither of those factors are
3 applicable in this case.
4

5 The Supreme Court "has long held that 'the objective of disciplinary proceedings is
6 to protect the public, the profession and the administration of justice and not to
7 punish the offender.'" *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002)
8 (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)).
9

10 RECOMMENDATION

11 The purpose of lawyer discipline is not to punish the lawyer, but to protect
12 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
13 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
14 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
15 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
16 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
17 (1994).
18
19

20 In imposing discipline, it is appropriate to consider the facts of each case,
21 the American Bar Association's *Standards for Imposing Lawyer Sanctions*
22 ("*Standards*") and the proportionality of discipline imposed in analogous cases.
23 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
24
25

1 Upon consideration of the facts, application of the *Standards*, including
2 aggravating and mitigating factors, and a proportionality analysis, this Hearing
3 Officer recommends acceptance of the Tender of Admissions and Agreement for
4 Discipline by Consent and the Joint Memorandum in Support of Agreement for
5 Discipline by Consent and the Joint Memorandum in Support of Agreement for
6 Discipline by Consent which provides for the following:

7 1. Respondent shall be suspended for a period of 90 days.

8 2. Respondent will be placed on probation for a period of one year
9 effective upon the signing of the probation contract. The State Bar will notify the
10 Disciplinary Clerk of the exact date of commencement of probation. The term of
11 probation is as follows:

12 a. Respondent shall, within thirty days of the Supreme Court's final
13 judgment and order, contact the director of the State Bar's Law Office
14 Management Assistance Program (LOMAP) to schedule an audit of his law
15 office. The LOMAP director or his/her designee will conduct an audit of
16 Respondent's law office no later than sixty days thereafter. Following the audit,
17 Respondent shall enter into a Memorandum of Understanding that will be
18 effective for a period of one year from the date upon which all parties have signed
19 the Memorandum. Respondent shall comply with all recommendations of the
20 LOMAP director or his/her designee. Respondent shall pay the cost of the
21 LOMAP assessment.
22
23
24
25

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2 Respondent
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8 by: William

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