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NOV 04 2005

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

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

IN THE MATTER OF A MEMBER) No. 04-2019
OF THE STATE BAR OF ARIZONA,)
)
SUSAN M. ROBBINS,)
Bar No. 012331)
) **HEARING OFFICER'S REPORT**
RESPONDENT.)

PROCEDURAL HISTORY

A Probable Cause Order was filed on April 26, 2005. A Complaint was filed on May 31, 2005. Respondent filed an Answer on June 27, 2005. A settlement conference was held on August 23, 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 September 19, 2005. A hearing on the Tender and Joint Memo was held on September 22, 2005.

FINDINGS OF FACT

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on October 21, 1988.

1 2. In or about July 2003, Respondent and/or members of her staff were
2 consulted by Larry Bishop ("Mr. Bishop") with regard to Respondent's possible
3 representation of him in a medical malpractice claim Mr. Bishop sought to bring
4 against Francisco Rodriguez, M.D ("Dr. Rodriguez").
5

6 3. After Mr. Bishop's consultation with Respondent's staff, her office
7 began to obtain his medical records and sent a letter to Dr. Rodriguez dated
8 August 21, 2003, requesting that all of Mr. Bishop's medical records, including
9 billing information, be provided to Respondent within 14 days. The letter stated
10 that "this firm represents Larry Bishop," but did not indicate that the Bishops
11 intended to make any claim against Dr. Rodriguez.
12

13 4. Although Respondent received some of Mr. Bishop's medical
14 records during the early Fall of 2003, it appeared that the records she received
15 were incomplete, as they did not contain, among other things, chart notes.
16

17 5. Respondent encountered difficulty in obtaining the services of a
18 medical expert who could or would opine on whether Dr. Rodriguez's treatment
19 fell below the standard of care.
20

21 6. Respondent's legal relationship with Mr. Bishop and his wife,
22 Rosaline Bishop ("Mrs. Bishop"), was formalized on or about October 24, 2003,
23 when Mr. and Mrs. Bishop signed a contingent fee agreement.
24
25

1 7. Respondent filed a civil complaint in Mr. Bishop's matter in
2 Maricopa County Superior Court on October 29, 2003, within the statute of
3 limitations period.
4

5 8. Based on the date on which the complaint was filed, and pursuant to
6 the Arizona Rules of Civil Procedure, Respondent was required to accomplish
7 service on the defendant within 120 days, by February 26, 2004.
8

9 9. Respondent filed a motion with the Court seeking an extension of
10 the service deadline from February 26, 2004 to June 25, 2004.

11 10. In her Request for Extension of Time to Serve Complaint, dated
12 February 12, 2004, Respondent stated, "Plaintiffs have entered into
13 correspondence with the defendants, and will require additional time to ascertain
14 whether settlement can be reached without commencing formal litigation."
15

16 11. Respondent affirmatively asserts that at the time she filed the
17 motion to extend time for service, she believed that the letter referenced in
18 Paragraph 13 below, was being or had been mailed to Dr. Rodriguez
19 concurrently with her filing of the motion, and that her statements in the motion
20 were therefore not made in violation of ER 3.3. The State Bar conditionally
21 accepts Respondent's assertion.
22

23
24 12. The Court granted Respondent's request on February 17, 2004 and
25 the order was filed and appeared on the electronic docket on February 23, 2004.

1 13. By letter dated February 24, 2004, Respondent advised Dr.
2 Rodriguez that a Complaint alleging medical malpractice had been filed, and that
3 Mr. and Mrs. Bishop were prepared to serve the lawsuit on him and Valley
4 Surgical Clinics, Ltd., his medical corporation unless some agreement for
5 monetary compensation could be reached. Respondent affirmatively asserts, and
6 the State Bar conditionally does not contest Respondent's assertion, that due to
7 administrative delay in her office, this letter, that she believed had been mailed
8 on or about February 12, 2004, was not mailed on or about February 12, 2004,
9 and was later reprinted and dated consistent with the date of mailing on or about
10 February 24, 2004.13.
11
12

13
14 14. In a motion filed approximately five months later in Maricopa
15 County Superior Court on or about July 24, 2004, by Jeffrey J. Campbell ("Mr.
16 Campbell"), the attorney for defendants Dr. Rodriguez and Valley Surgical
17 Clinics, Ltd., the defendants argued that the extension granted to Respondent was
18 based on a misrepresentation of facts to the Court, that therefore the extension
19 should be set aside, and the claim filed by Respondent for the Bishops should be
20 dismissed.
21

22
23 15. Respondent conditionally admits that she should have, at that time,
24 realized what had occurred and advised the Court that she had been mistaken
25 about the timing of the mailing of the demand letter to Dr. Rodriguez, and

1 corrected the facts underlying her assertion in the February 12, 2004 request for
2 extension of time to serve complaint, regarding correspondence with Dr.
3 Rodriguez and Valley Surgical Clinics, Ltd. Respondent conditionally admits
4 that she failed to do so and by that failure violated ER 3.3(a)(1).
5

6 16. Oral argument on the defendant's motion was heard on October 21,
7 2004, by the Honorable Colleen McNally, Presiding Judge, Superior Court of
8 Maricopa County, Northwest Regional Court. The Court found, as stated in the
9 minute entry filed on or about November 2, 2004, that the extension of time was
10 "improvidently granted" as the Court had relied on and had been misled by
11 Respondent's statements in her February 12, 2004, Request for Extension of
12 Time.
13
14

15 17. The Court sanctioned Respondent for her misrepresentation to the
16 Court. Respondent asserts that she has complied with the sanction imposed by
17 the Court.
18

19 **CONDITIONAL ADMISSIONS**

20 Respondent conditionally admits that her conduct violated ER 3.3(a)(1)
21 and ER 8.4(d), Rule 42, Ariz. R. S. Ct.
22

23 **CONDITIONAL DISMISSALS**

24 The State Bar conditionally agrees, for purposes of the agreement only, to
25 dismiss the alleged violations of ERs 3.3(d) and 8.4(c), Rule 42, Ariz. R. S. Ct.,

1 as the conduct underlying those violations is the same conduct underlying the
2 conditionally admitted violation of ER 3.3(a)(1) and the additional violations
3 would not increase either the range of sanction or the proposed sanction.
4

5 DISMISSALS

6 The State Bar dismisses the alleged violation of ER 4.1, Rule 42, Ariz. R.
7 S. Ct., as the State Bar would be unable to prove that violation by clear and
8 convincing evidence.
9

10 ABA STANDARDS

11 The *ABA Standards* list the following factors to consider in imposing the
12 appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the
13 actual or potential injury caused by the lawyer's misconduct, and (4) the
14 existence of aggravating or mitigating circumstances. *ABA Standard 3.0*.
15

16 "The *Standards* do not account for multiple charges of misconduct. The
17 ultimate sanction imposed should at least be consistent with the sanction for the
18 most serious instance of misconduct among a number of violations; it might well
19 be and generally should be greater than the sanction for the most serious
20 conduct." *Standards, p. 6 In re Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994).
21
22

23 A review of *ABA Standard 6.0* (Violations of Duties Owed to the Legal
24 System), specifically 6.1 (False Statements, Fraud, and Misrepresentation)
25

1 indicates that the presumptive sanction for Respondent's misconduct falls
2 somewhere between censure and suspension. *Standard 6.12* specifically provides:

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

8 *Standard 6.13* specifically provides:

9 Reprimand (censure in Arizona) is generally appropriate when a
10 lawyer is negligent either in determining whether statements or
11 documents are false or in taking remedial action when material
12 information is being withheld, and causes injury or potential
13 injury to a party to the legal proceeding, or causes an adverse or
potentially adverse effect on the legal proceeding.

14 Respondent violated her duty to the legal system by failing to take timely
15 and appropriate remedial actions to correct the misleading statement made to the
16 Court in her motion to extend time for the service of her client's complaint.
17 Respondent recognizes that she had a duty to take remedial steps, and failed to
18 do so in response to the motion brought by the opposing party and/or during the
19 evidentiary hearing on the motion. Respondent further recognizes that by failing
20 to act promptly to correct the misleading statement made previously, she also
21 acted in a manner prejudicial to the administration of justice as the Court held a
22 hearing that might otherwise have been unnecessary.
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24
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1 The parties agree that Respondent acted knowingly when she failed to
2 correct the misleading statement made in her motion, and that as a result, she
3 also acted in a manner prejudicial to the administration of justice.
4

5 Respondent's failure to take timely and appropriate remedial steps to
6 correct the misleading statement contained in her motion caused potential
7 interference with the legal proceeding as evidenced by the Court's finding in the
8 November 2, 2004 minute entry that: "[a]lthough Plaintiff's counsel contends
9 that the statements are technically true, the Court finds the statements to be
10 misleading [as] Plaintiff's request implies that there had been correspondence
11 regarding the suit and that settlement negotiations were currently taking place."
12

13 The parties agree that Respondent's failure to correct the misleading statement
14 after the opposing party's attorney filed his motion to dismiss caused actual
15 harm to the legal system as a potentially otherwise unnecessary hearing was
16 held.
17

18 AGGRAVATING AND MITIGATING FACTORS

19 This Hearing Officer then considered aggravating and mitigating factors in
20 this case, pursuant to *Standards* 9.22 and 9.32, respectively.
21

22 This Hearing Officer agrees with the parties that there is one aggravating
23 factor in this matter:
24
25

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

2 This Hearing Officer agrees with the parties that six factors are present in
3 mitigation:

4 (a) absence of a prior disciplinary record;²

5 (b) absence of a dishonest or selfish motive;³

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

8 (g) character or reputation;⁴

9 (k) imposition of other penalties or sanctions;⁵ and,

10 (l) remorse.

11 Based on the mitigating factors under the specific facts of this case the
12 appropriate sanction is censure.

13 PROPORTIONALITY REVIEW

14 In the past, the Supreme Court has consulted similar cases in an attempt to
15 assess the proportionality of the sanction recommended. *See In re Struthers*, 179

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21 ¹ Respondent was admitted in 1988. The aggravating factor of substantial experience in the
22 practice of law is often offset by the corresponding factor of an unblemished disciplinary
23 record during the same time period. *Matter of Shannon*, 179 Ariz. 52, 68 (1994).

24 ² While substantial experience in the practice of law can be an aggravating factor, when
25 combined with the absence of any prior discipline, it may be considered a mitigating factor.
Matter of Marce, 177 Ariz. 25, 867 P.2d 845 (1993).

³ Respondent asserts, and the State Bar conditionally agrees, that Respondent acted in what she,
at the time, believed was the best interest of her client, with no intent to benefit herself.

⁴ See Exhibit A to Joint Memo.

⁵ Respondent was sanctioned by the Court and required to pay the opposing party's attorney
fees and costs.

1 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized
2 that the concept or proportionality review is "an imperfect process." *In re Owens*,
3 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases
4 "are ever alike." *Id.*

6 To have an effective system of professional sanctions, there must be
7 internal consistency, and it is appropriate to examine sanctions imposed in cases
8 that are factually similar. *Peasley, supra*, 208 Ariz. at ¶ 33, 90 P.3d at 772.
9 However, the discipline in each case must be tailored to the individual case, as
10 neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶
11 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002);
12 *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

15 Lawyers who have made misrepresentations to the Court have received
16 sanctions ranging from suspension to censure. However, after a review of the
17 proportional cases, the parties conditionally agree that censure is appropriate
18 under the facts of this case.

20 In *In re Hansen*, 179 Ariz. 229, 877 P.2d 802 (1994), the attorney, a City of
21 Phoenix prosecutor, was censured for violations of ERs 1.3, 3.3(a), 4.1(a) and
22 8.4(a), (b) and (c). The attorney had prematurely dismissed a witness and then,
23 when the case was called for trial, lied to the court and said that she had not heard
24 from the witness, going so far as to check in the hallway for the witness she knew
25

1 no longer to be present. In imposing a censure, the Court specifically noted the
2 attorney's inexperience and her resignation from her position as a prosecutor on
3 the day of the events as reasons that suspension was not the appropriate sanction
4 in that matter. While those mitigating factors are not present in Respondent's
5 matter, there are significant and numerous mitigating factors present and only a
6 single aggravating factor, making censure a more reasonable outcome than
7 suspension.
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10 In *In re Alcorn* and *In re Feola*, 202 Ariz. 62, 41 P.3d 600 (2002), the
11 Supreme Court held that suspension for six months was an appropriate
12 disciplinary sanction for two attorneys who, in a medical malpractice action,
13 failed to disclose to the trial court and the defendant hospital a secret agreement
14 that produced a "sham" trial. In addition, in answering the trial judge's questions,
15 the lawyers made evasive or misleading statements to avoid revealing the
16 agreement. The Supreme Court, on *sua sponte* review, found that the attorneys
17 had violated ERs 3.3(a)(1), 8.4(c) and 8.4(d) and increased the Disciplinary
18 Commission's recommended sanction to six months from 30 days. Significantly,
19 the Court found that the misconduct was intentional, rather than knowing (as in
20 the instant case). The Court also found there was no selfish motive, no pattern of
21 conduct and only a single offense. As in Respondent's matter, the attorneys in
22 *Alcorn and Feola* were motivated only by the desire to help their client.
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1 In *In re Moak*, 205 Ariz. 351, 71 P.3d 343 (2003), the Supreme Court
2 suspended the lawyer for six months and one day for knowingly failing to
3 disclose critical information that misled the defendants, the judge and the jury.
4

5 In *Moak*, the Court found that the attorney had violated ERs 3.3 as well as 8.4(d),
6 in addition to numerous other ethical rules. However, in *Moak*, the attorney's
7 misrepresentations were far more extensive than that found in the instant case,
8 and unlike *Alcorn and Feola* and the instant case, numerous aggravating factors
9 were found.
10

11 Finally, in *In re Risley*, SB-05-0015-D (2005), the attorney was censured
12 and placed on probation pursuant to a consent agreement, for violations of ERs
13 3.3(a) and 8.4(d), as well as a violation of ER 1.1 and 3.1. The attorney falsely
14 represented to the court that it had previously granted a motion that had, in fact,
15 been denied, and then in a separate matter, failed to determine whether his clients
16 actually qualified for a temporary restraining order and falsely alleged in the
17 application that they did. While there were more instances of misconduct in
18 *Risley*, the ethical violations were similar enough to make the matter useful in
19 determining the appropriate sanction in Respondent's matter.
20
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22 In the instant case, Respondent's misconduct arises from her subsequent
23 failure to remedy the misleading statement made in her motion to extend time for
24 service, particularly during the hearing on opposing counsel's motion to dismiss.
25

1 The Bar asserts that Respondent's misconduct is perhaps most similar to that in
2 *Hansen*. In *Hansen*, as here, the presumptive sanction included suspension,
3 however in *Hansen*, as here, there was significant mitigation present. The parties
4 conditionally agree that Respondent's conditional admissions in the Tender, her
5 satisfaction of the sanctions imposed by the Court, her remorse, her lack of prior
6 disciplinary history and her excellent reputation should be heavily weighed in
7 determining that the appropriate sanction is censure, and payment of the expenses
8 and costs of this action.
9

11 RECOMMENDATION

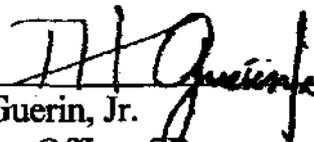
12 The purpose of lawyer discipline is not to punish the lawyer, but to protect
13 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
14 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
15 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
16 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
17 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
18 (1994).
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 receive a censure.
8
9 2. Respondent shall pay the costs and expenses incurred in this
10 disciplinary proceeding.

11 DATED this 4th day of November 2005.

12
13 
14 T.H. Guerin, Jr.
15 Hearing Officer *TR*

16
17
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19 Original filed with the Disciplinary Clerk
20 this 4th day of November, 2005.

21 Copy of the foregoing was mailed
22 this 4th day of November 2005, to:

23 Nancy A. Greenlee
24 Respondent's Counsel
25 821 East Fern Drive North
Phoenix, AZ 85014-3248

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by: *P. Williams*