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MAR 21 2006

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

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

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5 IN THE MATTER OF A MEMBER) No. 04-1144
6 OF THE STATE BAR OF ARIZONA,)
7)
8 SUZANNE BAFFA,)
Bar No. 022807)
9) **HEARING OFFICER'S REPORT**
RESPONDENT.)
10

11 **PROCEDURAL HISTORY**

12 The parties filed a Tender of Admissions and Agreement for Discipline by
13 Consent (Tender) and a Joint Memorandum in Support of Agreement for
14 Discipline by Consent (Joint Memo) on January 17, 2006. A hearing on the
15 Tender and Joint Memo was held on February 9, 2006. Respondent was present
16 with counsel Barry Mitchell and Walter Ulrich and the State Bar was represented
17 by Clarence Matherson, Jr.
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21 **FINDINGS OF FACT**

22 1. Respondent is licensed to practice law in Arizona, having been first
23 admitted to practice in this state on May 27, 2004. The conduct that is the subject
24 of this report occurred prior to Respondent's admission to the Bar.
25

1 2. Respondent received her law degree from Whittier Law School in
2 Costa Mesa, California on May 16, 2003.

3 3. In spring 2003, the Honorable Patrick J. Walsh, Magistrate Judge of
4 the United States District Court for the Central District of California, engaged
5 Respondent to work in his chambers as an extern. Respondent was participating
6 in the law school's externship program, and she was slated to receive four credit
7 hours for the externship in Judge Walsh's chambers. The scheduled term of the
8 externship was January 2003 through May 2003. (Tender)

9 4. At the time, Respondent was in her third and final year of law school
10 at Whittier Law School. (Tender)

11 5. Respondent went to work in Judge Walsh's chambers in January,
12 February and March 2003. Respondent did not work in Judge Walsh's chambers
13 in April or May 2003. (Tender)

14 6. Respondent generally did not call Judge Walsh and notify him when
15 she would not be in to work. (Tender)

16 7. On the occasions when Respondent called Judge Walsh to notify him
17 that she would not be at work, she would leave messages at odd hours when no
18 one was in the office. (Tender)

19 8. Judge Walsh contacted Whittier Law School and complained about
20 Respondent's failure to show up for work. (Tender)

1 9. After Judge Walsh complained to the law school about Respondent's
2 attendance, Respondent contacted his office to discuss the situation. (Tender)

3
4 10. During a conversation with Judy Proctor, Judge Walsh's law clerk,
5 Respondent stated that she had failed to appear in chambers during the semester
6 because she was suffering from cancer. (Tender)

7
8 11. Ms. Proctor conveyed Respondent's health information to Judge
9 Walsh. (Tender)

10 12. Subsequently, Judge Walsh and Respondent had a conversation
11 regarding Respondent's condition and her failure to appear at work. Although
12 neither Judge Walsh nor Respondent mentioned "cancer" during the conversation,
13 they were both aware that Respondent told Ms. Proctor that she suffered from the
14 serious health condition and that Ms. Proctor conveyed that information to Judge
15 Walsh. (Tender)

16
17 13. Respondent did not have cancer in the spring of 2003. The
18 statements Respondent made to Ms. Proctor and Judge Walsh during her
19 conversations with them regarding her serious health condition were false, and
20 Respondent knew they were false. (Tender) Respondent admitted lying to Judge
21 Walsh because she was "under a lot of stress" due to law school-related
22 commitments. (Reporter's Transcript, page 6, lines 9-25; p. 7, lines 1-25; p. 8,
23 line 1)
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1 14. On or about September 16, 2003, Respondent sent a cover letter and
2 resume to the Honorable Paul A. Magnuson, United States District Court Judge in
3 and for the District of Minnesota. In her cover letter, Respondent explained that
4 she had recently graduated from Whittier Law School and was interested in
5 pursuing a volunteer intern position in his chambers. (Tender)
6

7 15. Respondent spoke with Judge Magnuson's law clerks and further
8 explained that she had recently moved to Minnesota and was anxious to have
9 some local legal experience while she awaited the results of the bar exam.
10 (Tender)
11

12 16. Judge Magnuson accepted Respondent's offer to work in his
13 chambers on a volunteer basis. (Tender)
14

15 17. On September 18, 2003, Respondent began the voluntary internship
16 and was scheduled to continue into December 2003. (Tender)
17

18 18. Respondent interned in Judge Magnuson's chambers three days per
19 week. The voluntary internship included observing courtroom practice and
20 procedures and conducting research and drafting memoranda concerning a civil
21 case. (Tender)
22

23 19. In late October or early November 2003, Respondent stopped going
24 to Judge Magnuson's chambers. Respondent never called or otherwise notified
25 Judge Magnuson of her absence. (Tender)

1 20. On or about November 5, 2003, Judge Magnuson's judicial assistant
2 received a phone call from Robin LeDonne. Ms. LeDonne, like Respondent, was
3 a graduate of Whittier Law School. (Tender)
4

5 21. Ms. LeDonne advised Judge Magnuson's staff that she had recently
6 received a message from Respondent, and Respondent requested that she call
7 Judge Magnuson and inform him of her family situation. In her message to Ms.
8 LeDonne, Respondent explained that a family member had passed away under
9 unfortunate circumstances, and she was returning to Arizona to be with her
10 family. (Tender)
11

12 22. Because of their concern for Respondent, Judge Magnuson's staff
13 attempted to contact Whittier Law School to obtain a forwarding address for
14 Respondent to send condolences to the family. (Tender)
15

16 23. In spring 2004, Respondent sent a gift basket with a thank you note
17 to Judge Magnuson's chambers. (Tender)
18

19 24. On June 14, 2004, Judge Magnuson received a second note from
20 Respondent. In the note, Respondent expressed her appreciation for the
21 opportunity to work in Judge Magnuson's chambers. Respondent also expressed
22 her thanks for Judge Magnuson's "thoughts and understanding during [her]
23 family loss." (Tender)
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1 25. Respondent's assertion to Judge Magnuson, through Ms. LeDonne,
2 that a family member had passed away in October or November 2003 was false.
3
4 Respondent's assertion that she had to return to Arizona due to the family
5 member's death was false. (Tender) Respondent admitted to misleading Judge
6 Magnuson due to the stress of having to re-take the bar exam and because she had
7 recently broken up with her fiancé. (R.T., p. 8, lines 9-25; p. 9, lines 1-15)
8

9 26. Also in June 2004, Judge Walsh received a note from Respondent.
10 In her note, Respondent stated, "Over the past year I graduated, took and passed
11 the Arizona bar, and have been in remission for over one year." Respondent's
12 statement about "remission" was false, as Respondent had not had cancer, and
13 Respondent knew it was false. (Tender)
14

15 27. On July 1, 2004, the State Bar of Arizona ("State Bar") received a
16 letter from Judge Walsh concerning Respondent's conduct as alleged above. On
17 August 2, 2004, the State Bar received a second letter from Judge Walsh
18 concerning Respondent's conduct as alleged above. (Tender)
19

20 28. On August 6, 2004, the State Bar forwarded Judge Walsh's letters to
21 Respondent and requested that she respond to the charges. (Tender)
22

23 29. At Respondent's request, the State Bar granted Respondent several
24 extensions of time to respond to the charges. (Tender)
25

1 30. On April 29, 2005, Respondent submitted a preliminary response to
2 the charges. Respondent acknowledged having engaged in "misconduct in this
3 matter and that probable cause exists for purposes of proceeding under Rule 54,
4 Ariz.R.S.Ct." (Tender)
5

6 31. In a supplemental response dated May 10, 2005, Respondent again
7 acknowledged having engaged in misconduct, but she denied violating the
8 Arizona Rules of Professional Conduct. (Tender)
9

10 32. In her May 10, 2005, submission, Respondent stated:

11 a) The misconduct occurred while she was a third-year law
12 student;

13 b) She "made material omissions to the Judge and his
14 chambers concerning her intention and attendant execution of
15 completing a significant amount of work outside judicial chambers";

16 c) She did not seek permission from the judge to complete
17 the assigned work outside of chambers, and she never told the judge
18 or his staff about the manner in which she completed the assigned
19 tasks. (Tender)

20 33. Respondent knowingly engaged in conduct involving dishonesty,
21 fraud, deceit, or misrepresentation when she represented to Judge Walsh's
22 chambers that she failed to appear in chambers because she suffered from a
23 serious health condition. (Tender)

24 34. Respondent knowingly engaged in conduct involving dishonesty,
25 fraud, deceit, or misrepresentation when she sent a thank-you note to Judge

1 Walsh in June 2004 stating that she had been in remission for over one year.

2 (Tender)

3
4 35. Respondent knowingly engaged in conduct involving dishonesty,
5 fraud, deceit, or misrepresentation when she requested that Ms. LeDonne contact
6 Judge Magnuson and inform him that Respondent had to return to Arizona due to
7 the death of a family member and when she sent Judge Magnuson a thank-you
8 note expressing her thanks for his thoughts and understanding during her family
9 loss. (Tender)

10
11 36. Respondent's conduct as described herein violated Rule 42,
12 Ariz.R.S.Ct., specifically ERs 8.1 and 8.4(c). (Tender)

13
14 **CONDITIONAL ADMISSIONS**

15 Respondent conditionally admits that her conduct, as set forth above,
16 violated the following Rules of Professional Conduct and the Rules of the
17 Supreme Court, specifically, Rule 42, Ariz.R.S.Ct., ER 8.4(c) engaging in
18 conduct involving dishonesty, fraud, deceit, or misrepresentation .

19
20 **CONDITIONAL DISMISSED ALLEGATIONS**

21 In its complaint, the State Bar alleged violations of the Rules of
22 Professional Conduct and Rules of the Supreme Court involving allegations that
23 Respondent submitted misleading or false information to Whittier Law School,
24 the Arizona Supreme Court's Committee on Character and Fitness, and the
25

1 Maricopa County Public Defender's Office. As part of the settlement, and in
2 light of evidentiary concerns, the State Bar has agreed to dismiss these
3 allegations. (R.T., p. 15, lines 10-25; p. 16, lines 1-25; p. 17, lines 1-13)
4
5 Additionally, the State Bar has agreed, as part of the settlement, to conditionally
6 dismiss the allegation of a violation of ER 8.1.

7
8 **RESTITUTION**

9 There are no issues of restitution in this matter.

10 **SANCTIONS**

11 Respondent and the State Bar agree that based on the conditional
12 admissions, the following disciplinary sanctions shall be imposed:

13
14 1) Respondent will receive a nine-month suspension for violating Rule
15 42, Ariz.R.S.Ct., specifically ER 8.4(c);

16 2) Respondent will contact MAP to begin a MAP assessment within
17 30 days of the execution of this agreement; and

18
19 3) Respondent will pay all costs and expenses incurred by the State
20 Bar in this disciplinary proceeding.

21 **ABA STANDARDS**

22
23 In determining the appropriate sanction, the parties considered both the
24 American Bar Association's *Standards for Imposing Lawyer Sanctions*
25 ("*Standards*") and case law. The *Standards* provide guidance with respect to an

1 appropriate sanction in this matter. The Supreme Court and Disciplinary
2 Commission consider the *Standards* a suitable guideline. *In re Peasley*, 208 Ariz.
3 27, 33, 35, 90 P.2d 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791
4 P.2d 1037, 1040 (1990).

6 When determining an appropriate sanction, the Supreme Court and the
7 Disciplinary Commission consider several factors, including the duty violated,
8 the lawyer's mental state, the actual or potential injury caused by the misconduct
9 and the existence of aggravating and mitigating factors. *See Peasley*, 208 Ariz. at
10 35, 90 P.3d at 772; *Standard 3.0*.

11 The *Standards* do not specifically address the situation in this case in
12 which much of Respondent's conduct occurred prior to her admission to the bar.
13 However, *Standard 5.1* (Failure to Maintain Personal Integrity) provides a
14 guideline to determine the appropriate sanction. The parties agree that the most
15 serious misconduct is Respondent's knowing misrepresentations to two federal
16 court judges regarding her health and the health of a family member. The parties
17 understand that the "most fundamental duty, which a lawyer owes the public, is
18 the duty to maintain the standards of personal integrity upon which the
19 community relies." *Standard 5.0*. The public, rightly so, expects lawyers to be
20 honest, and confidence in the legal system is eroded when lawyers engage in
21 dishonest conduct. *See id.*

25 ABA *Standard 5.11(b)* provides:

1 Disbarment is generally appropriate when:

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

5 *ABA Standard 5.13* provides:

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

10 As discussed above, this case presents a situation where the Standards do
11 not exactly fit the conduct. Standard 5.13 provides that knowing
12 misrepresentations such as that admitted to by Respondent should result in
13 censure. However, the parties agree that Respondent's conduct seriously
14 adversely reflects on her fitness to practice because had the Committee on
15 Character and Fitness been aware of the conduct at the time of her application for
16 admission, Respondent might not have been admitted to practice law. Therefore,
17 Standard 5.11(b) is implicated.
18

19
20 Taking into account the guidance offered by the Standards, the parties
21 believe that suspension is appropriate. Respondent's conduct does not warrant
22 disbarment provided by Standard 5.11(b) because her conduct was knowing and
23 not intentional. However, the conduct is far more serious than conduct that
24 would normally result in a censure as provided for by Standard 5.13.
25

1 Additionally, although Respondent's conduct occurred while in law school and
2 before she was admitted to the practice of law, knowing misrepresentations to
3 judicial officers are serious no matter what the circumstances, and they seriously
4 adversely reflect on a lawyer's fitness to practice. Therefore, Respondent is
5 subject to lawyer discipline and the recommended sanction is appropriate.¹
6

7 To determine the applicability of the *Standards* in this case, the following
8 analysis is necessary:
9

10 **A. The duty violated**

11 As described above, Respondent failed to maintain personal integrity and
12 failed to abide by the ethical rules of professional conduct when she engaged in
13 conduct involving dishonest, fraud, deceit, or misrepresentation. Respondent
14 admits that her conduct violated her duty to the profession, the public and the
15 legal system.
16

17 **B. The lawyer's mental state**

18 As described above in the *Standards* analysis, the State Bar believes that
19 Respondent's mental state was "knowing." If this matter were to proceed to an
20 evidentiary hearing, Respondent would take the position that her conduct was
21 something less than "knowing."
22
23

24 ¹ The Arizona Supreme Court has established that it has authority at all times to
25 investigate the moral fitness of lawyers admitted to practice in Arizona, and, if necessary,
to sanction them when it is in the best interests of the public and the profession. *In re Van
Bever*, 55 Ariz. 368, 371, 101 P.2d 790, 791 (1940).

1 **C. The extent of the actual or potential injury**

2 The State Bar believes that there was actual injury to the legal profession.
3
4 Respondent's conduct in this matter involved knowing misrepresentations to two
5 federal court judges. The knowing misrepresentations have had the effect of
6 eroding the perception that attorneys are honest and truthful no matter what the
7 outcome for themselves or their clients.

8 If this matter were to proceed to a full evidentiary hearing, Respondent
9 would take the position that there was no actual or potential injury to the legal
10 profession.
11

12 **D. The aggravating and mitigating circumstances**

13
14 The parties agree that the following factors should be considered in
15 aggravation:

- 16 • *Standard 9.22 (b)* - dishonest or selfish motive: Respondent made
17 the knowing misrepresentations to justify her failure to appear in
18 chambers with Judges Walsh and Magnuson;
- 19 • *Standard 9.22(c)* – a pattern of misconduct: Respondent made
20 knowing misrepresentations to Judge Walsh when she informed him
21 that she was suffering from a serious health condition and when she
22 sent him a thank you note in which she stated that she was in
23 remission from that serious health condition. Likewise, Respondent
24 made misrepresentations to Judge Magnuson regarding the health of
25 a family member.

23 The parties agree that the following factors should be considered in
24 mitigation:

1 that are factually similar. *See Peasley*, 208 Ariz. at 35, 90 P.3d at 772. However,
2 the discipline in each case must be tailored to the individual case, as neither
3 perfection nor absolute uniformity can be achieved. *See id.* at 41, 90 P.3d at 778
4 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines* 135
5 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).
6

7 It does not appear that Arizona has any discipline cases of record that are
8 factually similar to the instant case. However, several cases from other
9 jurisdictions may be instructive as to the appropriate sanction. The following
10 cases demonstrate that a period of suspension is an appropriate sanction.
11

12 In *In re Lamberis*, 443 N.E.2d 549 (Ill. 1982), the Illinois Supreme Court
13 addressed a respondent's conduct while enrolled as a student at Northwestern
14 University School of Law master's program. Lamberis had been admitted to the
15 practice of law for over seven years when he submitted his second thesis for the
16 master's degree². *Id.* at 550. Within that thesis, the faculty discovered that "a
17 substantial portion of his thesis, which the respondent misrepresented as his own
18 work, was the work of other authors." *Id.* The school notified Lamberis of its
19 concerns and he attempted to resign from the program. *Id.* The university,
20 however, rejected the resignation and proceeded with disciplinary proceedings,
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25 ²The faculty had, about a year earlier, rejected Lamberis' first thesis as unsatisfactory.

1 which concluded with respondent's expulsion for plagiarism. *Id.* The university
2 then submitted a complaint to the disciplinary board. *Id.*

3
4 In disciplinary proceedings, Lamberis argued that the court could not
5 impose discipline for plagiarism "that occurred in an academic forum that was
6 removed from the practice of law." *Id.* at 551. The Illinois Supreme Court held
7 that, on the contrary, it had often disciplined attorneys for conduct outside the
8 practice of law, although those cases generally involved illegal conduct, fraud on
9 the court, or situations "closely analogous to those which an attorney confronts in
10 the practice of law." *Id.* In its findings, the Court stated,

12 [a]lthough no violation of law or fraud on the court is
13 alleged here, and although the academic forum may
14 appear to be fairly distant from the practice of law, we
15 believe that the respondent's conduct warrants
16 discipline. In imposing discipline in this case we do not
17 intend to imply that attorneys must conform to
18 conventional notions of morality in all questions of
19 conscience and personal life. "We are charged with the
20 responsibility of supervising the professional conduct of
attorneys practicing in this State, and we are interested
in their private conduct only in so far as such relates to
their professional competence or affects the dignity of
the legal profession."

21 *Id.* A divided court censured Lamberis after citing, as a mitigating factor, his 10
22 years of practice without prior discipline.³

23
24 ³ Two justices, in a dissenting opinion, argued that Respondent's conduct warranted a
25 term of suspension.

1 In *In re Lavery*, 587 P.2d 157 (Wash. 1978), Lavery was suspended for 90-
2 days for dishonestly misrepresenting his abilities and achievements and misusing
3 the professional credentials of his law school professors. After failing the bar
4 exam shortly after graduating from law school, Lavery undertook an alleged
5 “research project, apparently designed to reflect his disillusionment and
6 discouragement with the law school and the legal profession.” *Id.* at 157. Lavery
7 falsified his law school transcript to show a much-improved grade point average
8 and wrote fraudulent and extremely favorable letters of recommendation over the
9 photocopied signatures of several of his law school professors. *Id.* Lavery then
10 sent the falsified documents to prospective employers. *Id.* Lavery further
11 perpetrated the fraud by sending additional letters of recommendation to a
12 prospective employer who requested more information. *Id.* The fraud came to
13 light when the interested employer contacted the law school to verify Lavery’s
14 references and discovered that the documents had been falsified. *Id.* The law
15 school subsequently filed a complaint with the Bar association against
16 respondent. *Id.*

17 During disciplinary proceedings, Lavery asserted that he did not have any
18 intention of interviewing for or accepting a job based on the falsified documents
19 and claimed that his research was meant to prove that the search for employment
20 was “influenced by factors other than competence.” *Id.* The court found that the
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1 materials and letters maintained by Lavery as documentation of his research
2 project “consistently reflect[ed] his troubled state of mind and negative attitude
3 toward the institution of the practice of law.” *Id.* The court also found that
4 Respondent did not have sponsorship for the project, nor approval from his
5 professors to use their professional credentials. *Id.*

7 Despite Lavery’s argument that his conduct was an error in judgment and
8 that he was nonetheless morally qualified to continue to practice law, the
9 appearance that he was a “sincere, stable and courteous” individual, and lack of
10 evidence demonstrating that he made any attempts to “reap personal gain from
11 the project,” the Court in a 5-to-4 decision⁴, found his dishonest use of false
12 documents to misrepresent his own abilities and achievements to be “an act of
13 blatant dishonesty which call[ed] into question his fitness to practice law” that
14 warranted the 90-day suspension.⁵ *Id.* at 158-59.

17 In *In re Mitchell*, 1 Cal. State Bar Ct. Rptr. 332, 1991 WL 11660 (1991),
18 Mitchell was suspended for one year⁶, and placed on probation for one year, for

21 ⁴ Dissenting justices believed the conduct required a more severe discipline.

22 ⁵ The Bar had recommended a 30-day suspension. The Court also noted that disbarment
23 was not necessary because Lavery’s conduct was not founded on dangerous or corruptive
24 motives.

24 ⁶ Mitchell’s suspension was stayed and his sanction resulted in only a 60-day actual
25 suspension. The Review Department also considered Mitchell’s deceit in his answers to
State Bar interrogatories as a serious factor in aggravation and perhaps as the more
serious of the two charged offenses.

1 misrepresenting his educational background on his resume, which Mitchell
2 distributed to prospective legal employers. During an employment interview
3 Mitchell failed to correct the misrepresentation related to the name of his law
4 school. *Id.* at 337. The employer hired Mitchell and he maintained employment
5 with the firm for approximately one year. *Id.* After that time, Mitchell submitted
6 his resume, still misrepresenting his educational background, to another law firm.
7
8 *Id.* Mitchell asserted that he initially sent 100 to 200 resumes listing his law
9 school and received no responses. *Id.* at 338. After a recommendation from the
10 owner of an employment agency, who attributed the lack of response to
11 Mitchell's law school, Mitchell began to leave the name of the school off of his
12 resume. *Id.* Personal and financial reasons caused him to again submit the
13 incorrect resume when he left his first employer. *Id.* The Review Department
14 concluded that Mitchell's misrepresentations were dishonest and a period of
15 suspension was appropriate. *Id.* at 339. The Review Department stated that
16 although Mitchell's conduct did not happen during the actual practice of law,
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20 they did occur while respondent was seeking
21 employment *as a lawyer*. When we consider the
22 purposes of attorney discipline, respondent's
23 willingness to repeatedly use false and misleading
24 means to secure a perceived advantage in the
25 employment process is a matter of serious concern,
despite the lack of misconduct during the "practice of
law."

Id. (citations omitted).

1
2 The Review Department also stated,

3 [W]e deem very serious an attorney's deliberate use of
4 dishonesty to further attempts to gain employment,
5 particularly as a lawyer Since any act of
6 dishonesty by an attorney is an act of moral turpitude,
7 and ground for serious professional misconduct,
8 whether or not arising in the course of attorney-client
9 relations, an attorney's dishonesty in seeking to further
10 his or her career is simply inexcusable. An attorney's
11 statements in a resume, job interview or research paper
12 should be as trustworthy as that professional's
13 representation to a court or client.

14 *Id.* (citations omitted).

15 In *In re Norwood*, 438 N.Y.S.2d 788 (App. Div.1 1981), Norwood was
16 censured for misrepresenting on his resume and job questionnaire that he had
17 received an undergraduate degree from Yale University, when Norwood was
18 actually two credits short. Norwood claimed that, although dishonest, the
19 information on his resume was not fraudulent or deceitful. *Id.* at 788. Norwood
20 asserted that the information did not constitute professional misconduct because
21 "it was not a material factor in producing the job offer" and because he corrected
22 the misrepresentation in a subsequent job questionnaire. *Id.* Finding several
23 mitigating factors, including the fact that Norwood lost his job and was not
24 practicing law, the Court determined that a censure was appropriate, in part,
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1 because Norwood's "conduct, although certainly not excusable, has its roots in
2 more than mere self-aggrandizement." *Id.* at 789.

3
4 Finally, in *In re Scruggs*, 475 N.W.2d 160 (Wis. 1991), Scruggs was
5 suspended for two years for submitting a fraudulent law school transcript to
6 obtain employment and for repeatedly making false statements regarding the
7 validity of the transcript after its fraudulent nature was discovered. *Id.* at 161.
8 Scruggs also made false statements to the disciplinary board investigating the
9 matter. *Id.* While interviewing with a law firm for employment, as a third year
10 law student, Scruggs provided the firm with a school transcript that he purported
11 to be his law school transcript. *Id.* In fact, the transcript was that of another law
12 student and Scruggs had substituted his name and biographical information. *Id.*
13 Scruggs additionally misrepresented educational and degree information on an
14 employment application to a technical college that was submitted during the
15 pendency of the disciplinary proceedings and following the termination of his
16 employment with the law firm. *Id.* The court found that Scruggs engaged in
17 conduct involving dishonesty, fraud, deceit and misrepresentation in violation of
18 Wisconsin's version of 8.4(c). *Id.* at 162-63. The court imposed the two-year
19 suspension after considering a similar case involving an attorney's intentional
20 misrepresentation to a prospective employer of her grade point average, class
21 rank and placement on the dean's list in law school. *Id.* (discussing *Disciplinary*
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23
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1 *Proceedings Against Robinson*, 411 N.W.2d 137 (Wis. 1987)). The Court agreed
2 that Scruggs' conduct was more egregious than Robinson's and warranted more
3 than the one-year suspension ordered in *Robinson*. *Id.* at 163.
4

5 In this case, Respondent made at least three knowing misrepresentations to
6 two federal court judges. Similar to the conduct shown in *Mitchell* and *Scruggs*,
7 Respondent made the misrepresentations for a dishonest or selfish motive, in that
8 she made them to justify her absence from chambers during the course of her
9 externship with Judge Walsh and her voluntary internship with Judge Magnuson.
10 As in most of the above-cited cases, Respondent's misrepresentations were not
11 made in the actual practice of law. However, they were made while she was in
12 law school or while she was preparing to take the bar exam. The parties agree
13 that Respondent's conduct is no less egregious because she was not licensed at
14 the time the misrepresentations were made.
15
16

17 The parties' agreement provides for a sanction that meets the goals of the
18 disciplinary system. While Respondent's conduct may have warranted a harsher
19 punishment under different circumstances as evidenced by the above-cited cases,
20 the parties believe that the mitigating factors far outweigh the aggravating factors,
21 thus justifying the lesser sanction. Moreover, the reinstatement required by the
22 length of suspension will provide Respondent with an opportunity to convince the
23 disciplinary commission and the Supreme Court that she is able to conform to
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1 Rules of Professional Conduct and the expectations of the public. Finally, the
2 terms of the agreement serve to protect the public, instill confidence in the legal
3 system, deter other lawyers from similar conduct, and maintain the integrity of
4 the bar.
5

6 RECOMMENDATION

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

16 This hearing officer recommends that the Commission approve the parties'
17 agreement, however, it is not without some reservation. Of particular concern is
18 the pattern of Respondent's misconduct, with no apparent explanation. The
19 undersigned feels no more enlightened about the cause of Respondent's
20 misconduct following the hearing than she did prior to the hearing. At the
21 hearing, this hearing officer requested some proof that Respondent is indeed in
22 counseling and addressing her problems. At this time Respondent has not
23 submitted even so much as a confirmation letter from a counselor or doctor (see
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1 Respondent counsel's Motion to Withdraw as Counsel with Client's Consent).

2 While Respondent, in the Tender, claims remorse, it is not at all clear that
3 remorse is truly present, as evidenced by her claim in the Joint Memorandum that
4 should this matter proceed to evidentiary hearing on the merits she would take the
5 position that her conduct was something less than "knowing", an untenable
6 position since the conduct in question is knowingly lying to two judges.
7 However, Respondent has voluntarily stopped practicing law, currently
8 volunteers for a variety of community services, and testified that she is indeed
9 attending counseling to address her problems. (R.T., p. 10, lines 5-10, 17-25; p.
10 11, lines 1-3, 12-18; p. 18, lines 15-17)

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12
13
14 In light of all of the foregoing and upon consideration of the facts,
15 application of the *Standards*, including aggravating and mitigating factors, and a
16 proportionality analysis, this Hearing Officer recommends acceptance of the
17 Tender of Admissions and Agreement for Discipline by Consent and the Joint
18 Memorandum in Support of Agreement for Discipline by Consent which provides
19 for the following:

- 20
21 1. Respondent shall be suspended for a period of nine months.
- 22
23 2. Respondent will contact MAP to begin a MAP assessment within 30
24 days of the execution of this agreement; and

3
4 Respectfully submitted this 21st day of March, 2006.

5
6 
7 Anne R. Phillips
8 Hearing Officer 9Y

9 Original filed with the Disciplinary Clerk
10 this 21st day of March, 2006.

11 Copy of the foregoing mailed
12 this 21st day of March, 2006, to:

13 Clarence E. Matherson, Jr.
14 Bar Counsel
15 State Bar of Arizona
16 4201 North 24th Street, Suite 200
17 Phoenix, AZ 85016-6288

18 Suzanne Baffa
19 Respondent
20 10401 North 100th Street, House 5
21 Scottsdale, AZ 85258

22
23
24
25
by: Williams