

FINDINGS OF FACT

1 1. Cochran received his law degree in 1976, graduating *summa cum laude*
2 from Arizona State University College of Law, and has been admitted to practice in
3 Arizona at all times since 1976. (Ex. R; Tr. at 162:10-14.)

4 2. Cochran is currently a solo practitioner, with a primary focus on real estate
5 law. Cochran is a Certified Real Estate Specialist in Arizona. (Ex. R; Tr. at 163:4-9; JPS
6 ¶ 51.)
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8 3. Barbara Fullmer ("Fullmer") was Cochran's legal assistant at the times
9 material hereto. Fullmer had a paralegal certificate from Phoenix College. (Tr. at 168:9-
10 11; JPS ¶ 56.) As Cochran's paralegal, Fullmer was designated considerable duties by
11 Cochran, and worked closely with his clients and opposing counsel. (JPS ¶ 56; Tr. at
12 168:23-25.) Cochran considered Fullmer to be knowledgeable, thorough and
13 dependable. (JPS ¶ 56; Tr. at 168:12-22.)
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15 4. Cochran had represented Jeff Blevins ("Blevins"), the principal of Horizon
16 Dairy, and Horizon Dairy ("Horizon") for over 10 years at the time of the events
17 considered herein. Cochran's representations of Horizon included debt collection
18 actions. (Ex. 9 at 398-400, 414; Tr. at 166:6-167:6.)
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20 5. In an effort to keep costs manageable for the client, Cochran delegated
21 much of the factual investigation and discovery-related issues in Horizon matters to
22 Fullmer. Fullmer frequently dealt directly with Blevins as to the facts of any contested
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1 matters. (Tr. at 166:20-167:24, 168:23-25; Deposition of Jeffrey Blevins (“Blevins
2 Dep.”) at 21:9-13.¹)

3 6. Cochran trusted and relied on Blevins’ factual descriptions of the matters
4 on which Blevins requested legal assistance. (Tr. at 167:8-14.)

5 7. Horizon historically had multiple collection matters pending at any given
6 time. (*Id.* at 40:9-14.)

7 8. Both actions at issue here began, from Cochran’s point of view, as routine
8 debt collection matters against Horizon and Blevins. (*Id.* at 39:24-40:4.)

9 9. The Wright Dairy complaint was filed against Horizon in Maricopa
10 County Superior Court (“Arizona case”) on October 7, 2002. (*See* Ex. 1 at 7-40.)
11 Respondent was served with the complaint in the Arizona case because he was the
12 statutory agent for Horizon. (Tr. at 50:7-16.)

13 10. Respondent had the complaint in the Arizona case faxed to Blevins and
14 then requested Fullmer to coordinate with Blevins to decide what, if any, defenses to
15 assert. (Tr. at 52:4-10.)

16 11. The Wright Dairy complaint was a debt collection for delivery of cows to
17 Horizon. (Ex. 9 at 414; Tr. at 40:5-21, 45:15-19.)

18 12. The answer in the Arizona case was drafted by Fullmer with the assistance
19 of Blevins and briefly reviewed by Cochran before filing. (*Id.* at 52:4-10, 57:16-58:5.)

20 13. The answer in the Arizona case admitted liability on a promissory note but
21 asserted an offset for damage caused because the cows purchased from Wright Dairy
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¹ The Blevins deposition was admitted as exhibit 42.

allegedly introduced mycoplasma, a damaging disease, into the Horizon herd. (Ex. 16.)

1 This defense was factually supported by documents provided by Blevins and attached to
2 the answer. (*Id.*; Tr. at 56:1-5.)

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4 14. Fullmer received, on behalf of Cochran, a complaint filed against Horizon
5 by Morgan Carter Dairy in Utah (“Utah case”) on October 28, 2002. (*See* Ex. 9 at 414.)
6 The complaint was for debt for cows delivered to Horizon. (Ex. 9 at 414; Tr. at 40:9-21,
7 45:15-19.)

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9 15. The answer in the Arizona case was filed on November 8, 2002. (Ex. 1 at
10 41-51.)

11 16. At the time Mr. Cochran reviewed and filed the Arizona Answer, he had
12 not seen the Utah complaint. (Tr. at 44:7-13, 50:17-22.)

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14 17. Fullmer drafted the Utah answer with Blevin’s assistance and input.
15 Cochran briefly reviewed the answer, but did not notice it was for a Utah case before
16 filing the answer on December 5, 2002. (Tr. at 44:7-13; Blevins Dep. at 20:24-21:13.)

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18 18. The answer in the Utah case admitted liability on a promissory note but
19 alleged an offset for damages caused to Horizon’s herd by alleged sick cows purchased
20 from Morgan Carter and imported into Horizon’s herd. The answer attached documents
21 purporting to support the offset. (Ex. 9 at 415.)

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23 19. After the answer in the Arizona case was filed, Fullmer worked with
24 Blevins to prepare Horizon’s 26.1 Disclosure Statement. (Tr. at 40:15-41:9; Blevins
25 Dep. at 28:5-7.) The Initial Rule 26.1 Disclosure Statement was served on the plaintiff
26 on January 28, 2003. (*See* Ex. 1 at 68-76.) Prior to serving the disclosure statement,

1 Cochran asked Blevins for all documents related to the matter. Blevins assured him that
2 all such documents in Blevins' and Horizon's possession had been provided. (Tr. at
3 54:13-20.)

4 20. On February 3, 2003, Cochran received notice of the setting of a
5 scheduling conference in the Utah case. (See JPS ¶ 16.) Cochran then realized that he
6 had answered a complaint filed in Utah and would have to withdraw. (Tr. at 129:17-25.)

7 21. Nevertheless, Respondent spoke to Doug Rands, Nevada counsel for
8 Morgan Carter ("Rands"), by telephone on February 10, 2003. (JPS at 4:16-17.)

9 22. On or about February 19, 2003, Respondent also participated in a
10 telephonic settlement conference call with Rands concerning the Utah case. (JPS at
11 4:19-21; Ex. 29) Cochran also participated in at least one telephonic settlement
12 discussion with Morgan Carter's Utah counsel. (TR. 114:13 – 115:21.)

13 23. On or about February 24, 2003, Respondent received a settlement offer
14 from Rands which was rejected because the offer was not acceptable to Blevins and
15 Horizon Dairy. (JPS at 4:23-25).

16 24. Cochran billed approximately an hour and a half of his time on the Utah
17 case between December 2002 and March 11, 2003, when he filed his Notice of
18 Substitution. (See Ex. I; Ex. 41 at B0279-81; 283-89.)

19 25. After March 11, 2003, Cochran had no further involvement in the Utah
20 case. (Tr. at 130:16-20, 150:9-18.) He did not discuss the case with Blevins or anyone
21 else until October 2003. (Tr. at 149:23-150:8.)

1 26. Respondent was not admitted to practice law in the State of Utah at
2 anytime. (JPS at 4:9-10).

3 27. Between serving the initial disclosure statement in the Arizona case in
4 January 2003 and Blevins' deposition in October, 2003, Blevins assembled records
5 tracing the cows and the spread of infection in the Horizon herd. (Blevins Dep. at 26:6-
6 27:4.) As a result of this work, Blevins produced a book describing the spread of
7 mycoplasma and tracing its source. (Tr. at 145:15-22, 147:24-149:10.)

8 28. During this time, Blevins repeatedly assured Cochran that all records in his
9 possession had been produced. (*Id.* at 54:13-20.)

10 29. The Initial Disclosure Statement did not disclose that Horizon Dairy
11 purchased cattle from Morgan Carter prior to purchasing cattle from Wright Dairy; did
12 not state that Horizon contended that the Morgan Carter cows infected the Horizon Dairy
13 herd; did not list the Utah complaint or other documents concerning the purchase of
14 cows from Morgan Carter; and did not list the laboratory reports or other documents
15 reflecting that the Horizon Dairy herd tested positive for mycoplasma prior to the time
16 the Wright Dairy cows were purchased in February 2001. (Ex. 1 at 125-131).

17 30. Blevins indicated to Cochran that there was more lab information coming
18 from Dairy Herd Laboratories. (Ex. J, B-1006.)

19 31. In a letter from Fullmer to Wright Dairy's counsel dated February 21,
20 2003, Respondent indicated that Blevins would provide further lab reports the following
21 week. (Tr. at 186:25, 187:1-5; February 21, 2003 letter, Res. Exh. J, BSN B-1005.)
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1 Respondent does not know if these further lab reports were ever provided. (Tr. at 187:6-
2 9.)

3 32. Wright Dairy propounded its first set of Non-Uniform Interrogatories on or
4 about February 19, 2003 to Blevins and Horizon Dairy in the Arizona case. (JPS at
5 5:23-25; Ex. 1, BSN 000123-000150.)

6 33. Blevins' and Horizon Dairy's responses were served on Wright Dairy on
7 or about March 31, 2003. (JPS at 6:1-2.)

8 34. Respondent reviewed Blevins' and Horizon Dairy's answers to the
9 interrogatories and discovery in the Wright Dairy matter very briefly prior to serving
10 them on March 31, 2003. (JPS at 6:4-6; Tr. at 133:15-17.)

11 35. Respondent signed the answers to interrogatories. (Tr. at 133:7-9, 141:11-
12 17.)

13 36. Respondent discussed the answers to interrogatories with Fullmer, who
14 had met with Blevins concerning the answers, but he did not review any other documents
15 or evidence, including those produced to Wright Dairy in March 2003, before signing the
16 answers. (Tr. at 133:18-25, 134: 1-2.)

17 37. Respondent relied upon Blevins to draft the responses to the interrogatories
18 and Respondent made no other effort to ensure that the responses were accurate before
19 serving them upon Wright Dairy. (Tr. at 134:14-20, 136:16-20.)

20 38. The answers did not reveal that test results existed for the time period
21 before the Wright Dairy cows arrived at Horizon. (Ex. 1, BSN 000082, 000087-
22 000095.)
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1 39. The answers did not reveal the purchase from Morgan Carter. (JPS at
2 6:11-14; Tr. at 135:18-25, 136:1-3; Interrogatories, SB Exh. 1, BSN 000082, 000101.)

3 40. Instead the answers took the position that Horizon Dairy had no
4 mycoplasma before the Wright Dairy cattle arrived. (TR. at 137:24-25, 138:1-3; Ex. 1,
5 BSN 000084, 000103.)

6 41. Wright Dairy propounded a Request for Production of Documents on or
7 about March 4, 2003 to Blevins and Horizon Dairy in the Arizona case. (JPS at 6:24-25;
8 Requests for Production, SB Exh. 1, BSN 000162-000166.)

9 42. Respondent prepared the responses to said Production Request on behalf of
10 Blevins and Horizon Dairy and served the responses on Wright Dairy on or about March
11 31, 2003. (JPS at 7:1-4.)

12 43. No documents relating to the Morgan Carter Farms' transaction and/or
13 Utah case were produced by Blevins or Horizon Dairy in response to the discovery
14 request in March 2003. (JPS at 7:9-10.)

15 44. Wright Dairy's counsel later discovered that some Horizon cows had
16 tested positive for mycoplasma before Wright Dairy's cows were introduced into the
17 Horizon herd. The laboratory reports reflecting these positive tests were not disclosed
18 by Horizon or Blevins, ostensibly because Horizon did not retain such records. (Blevins
19 Dep. at 38:13-39:8.) The records were ultimately obtained by subpoena to the dairy
20 laboratory that tested Horizon's herd. (Tr. at 67:4-17.)

21 45. Approximately the time of Blevins' deposition in the Arizona case, around
22 September 30 or October 1, 2003, Cochran reviewed Wright Dairy's Fourth
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1 Supplemental Disclosure Statement, which included disclosures related to the Utah
2 lawsuit. He consciously recognized for the first time the factual overlap of the
3 contentions in the Arizona case and the Utah case. (*Id.* at 56:13-20; 174:14-17).

4 46. Cochran then explained to Blevins that the non-disclosure of the Utah case
5 in Arizona was improper and unprofessional. (Tr. 175:1-11; Ex. N; Blevins Dep. at
6 48:19-49:2.) Cochran also apologized to counsel for Wright Dairy, and explained that he
7 would review the disclosure issue with his client and that he may be forced to withdraw
8 from representing Blevins and Horizon. (Tr. at 175:18-24.)

9 47. Blevins implored Cochran not to quit, explaining that he could not afford
10 to hire a new attorney. Cochran agreed to continue representing Horizon *only* if full
11 disclosure was promptly made in both cases *and* if a legal and factual analysis supported
12 the mycoplasma defense asserted in each case. (Tr. at 153:24-154:6, 176:20-177:16;
13 Blevins Dep. at 49:3-7.)

14 48. After Cochran was assured that Horizon's defenses in both lawsuits were
15 not mutually exclusive and were supported by facts – including the disclosure made by
16 Wright that its cattle were ill before they were purchased by Horizon – he then agreed to
17 continue working on the case. (Tr. at 153:24-154:20, 178:6-179:9.)

18 49. On November 3, 2003, Wright Dairy filed a motion for summary judgment
19 and a contemporaneous motion for sanctions. (Ex. 1 at 108-23; Ex. 17; Tr. at 89:22-
20 90:4.)

21 50. Cochran argued in response to the motion for summary judgment that
22 under Arizona law, Wright Dairy and Morgan Carter could be jointly liable for the
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1 damage to Horizon's herd because the injuries caused by each could not be separated.
2 (See Exs. 37-38.) Cochran relied on Wright's own disclosures that indicated that the
3 Wright herd had high somatic cell counts before being purchased by Horizon, an
4 indication that Wright's herd was infected prior to joining the Horizon herd, and the
5 presence of infection in "first calf" or "dry" cows among the cows purchased from
6 Wright Dairy. (See *id.*; Tr. at 140:23-141-5, 148:10-23.)

7 51. The court granted Wright Dairy's Motion for Summary Judgment. The
8 court also granted, without comment, Wright's motion for sanctions, stating merely that
9 the "sanction for non-disclosure" would be split between defendants and defendants'
10 counsel. No evidentiary hearing was held and no findings of fact were entered. The
11 only basis for the sanction mentioned by the trial court was Ariz. R. Civ. P. 26.1 and 37.
12 Of these, only Ariz. R. Civ. P. 37 authorizes monetary sanctions. The court did not
13 specify which subsection of Rule 37 was implicated. (See Ex. 39.)

14 52. Cochran satisfied his portion of the sanctions ordered and a partial
15 satisfaction of judgment was entered. (See Ex. 19; Tr. at 195:15-21.)

16 53. Upon learning that Wright Dairy had not been fully compensated for the
17 costs and fees incurred in the Arizona case, Cochran voluntarily paid an additional
18 \$11,0001.51 to Wright Dairy, and sent with the payment a letter of apology. (See Ex.
19 43; Tr. at 87:4-88:17.) Cochran expressed remorse to Mr. Wright for what had
20 transpired in the Arizona case. (Ex. 43; Tr. 182:8-23.)

21 54. Respondent stated that "...it has become obvious that I did not pay enough
22 attention to various discovery requests and relied too heavily upon my paralegal and the
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1 client to have the primary responsibility to respond to those requests....I should have
2 been paying more attention directly to this mater at an earlier stage, followed up in more
3 detail on the information provided to me by my client, and been more active in the
4 preparation and review of materials presented. My negligence and inattention in this
5 matter caused a delay in the parties focusing upon the real issues in the case" [Letter
6 dated November 15, 2005 at page 1, SB Exh. 43.]

7 55. The total amount in controversy in the Arizona case was approximately
8 \$50,000 to \$80,000. (Tr. at 169:16-19.)
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10 56. The costs incurred by Wright Dairy to obtain the records were reimbursed
11 by Cochran and his client through their satisfaction of the order of sanctions, as well as
12 through Cochran's voluntary restitution payment. (See Exs. 19, 43.)
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14 57. After Cochran withdrew from the Utah case, discovery deficiencies similar
15 to those that occurred in the Arizona case took place in the Utah case. For example, the
16 Arizona case was not disclosed in the Utah case until October 10, 2003. (Tr. at 110:10-
17 22.) It is undisputed that Cochran did not handle and was not involved in any discovery
18 matter in the Utah case. (*Id.* at 121:16-17.)
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20 58. Randy Allen, Blevins' Utah attorney who succeeded Cochran, had the
21 same discovery problems as Cochran encountered, also as the result of his reliance on
22 Blevins to provide the requisite documents and factual background. (*Id.* at 119:5-10.)
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24 59. Cochran has a reputation and history of being professional, honest,
25 competent and straightforward in his professional dealings. (*Id.* at 98:21-100:9, 104:2-
26 15, 125:19-126:11; Ex. 1, at 000005.)

1 65. The State Bar has not demonstrated by clear and convincing evidence that
2 Cochran either advanced defenses that were not supported by any reasonable legal
3 theory, or that Cochran had an improper motive for making the arguments. *See Matter*
4 *of Levine*, 174 Ariz. 146, 153, 847 P.2d 1093, 1100 (1993). (Violation of ER 3.1 may
5 occur if defense is objectively unreasonable or undertaken by the lawyer for a
6 subjectively improper motive.) Indeed, if the facts had been as related by his client, the
7 defenses advanced by Cochran were valid.²
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9 66. An attorney is entitled to rely on his or her client's recitation of the facts.
10 An attorney is not, ordinarily, required to conduct an independent investigation. *See*
11 *Boone v. Superior Court*, 145 Ariz. 235, 241, 700 P.2d 1335, 1341 (1985) (discussion of
12 Ariz. R. Civ. P. 11).
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14 67. The next underlying issue then becomes whether the filing of two answers
15 in fairly close proximity which raise the same issue required Cochran to investigate
16 further. The State Bar has not proven, by clear and convincing evidence, that Cochran
17 was required to investigate further, under all the circumstances.
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19 68. The facts are, that upon an admittedly belated recognition of the fact that
20 Horizon and Blevins were asserting the same factual defense to both cases, Cochran did
21 commence an additional investigation and did set forth reasonable grounds for asserting
22 the argument of indivisible injury.
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² Ironically, had Blevins accurately conveyed the underlying facts to Cochran, Horizon
would have been in a better position as to liability, at least in the Arizona case.

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69. The indivisible injury theory asserted by Cochran on behalf of Horizon and Jeff Blevins – after his realization that the Arizona and Utah cases alleged identical defenses – is not an affirmative defense that must be pled in the Answer. *See, e.g., Ariz. R. Civ. P. 8(c)*;

70. Cochran’s argument that both Wright and Morgan Carter were liable as indivisible tortfeasors is a correct statement of Arizona law. *Piner v. Superior Court of Arizona*, 192 Ariz. 182, 189, 962 P.2d 909, 916 (1998) (“When damages cannot be apportioned between multiple tortfeasors, there is no reason why those whose conduct produced successive but indivisible injuries should be treated differently from those whose independent conduct caused injury in a single accident.”). Under this theory, once the claimant proves that the conduct of two or more actors was a cause of the injury, and those actors seek to limit liability on the “ground that the harm is capable of apportionment,” then “the burden of proof as to the apportionment is upon each such actor.” *Id.* (quoting RESTATEMENT (SECOND) OF TORTS § 433B).

71. The State Bar has not alleged or offered any proof that Cochran acted with an improper purpose or bad faith in answering the Utah or Arizona complaints or advancing the indivisible injury theory.

72. The court did not find that Mr. Cochran had willfully, intentionally or knowingly withheld disclosures from Wright. (Ex. 39)

73. The State Bar also alleges a violation of ER 3.4, which prohibits a lawyer, “in pretrial procedure” from “fail[ing] to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.” ER 3.4(d).

1 74. To commit a violation of ER 3.4, an attorney must have actual knowledge
2 of his failure to comply with discovery requests. *Cf. Matter of Shannon*, 179 Ariz. 52,
3 64, 876 P.2d 548, 560 (1994) (discussing knowledge requirement); *see* ER 1.0(f)
4 (defining “knowingly,” “known,” or “knows”).

5 75. Here, the State Bar has not demonstrated that Cochran had the requisite
6 mental state. Indeed, the facts indicate that as soon as Cochran became consciously
7 aware of the misleading discovery responses, he acted promptly to rectify the issue
8 created by his client.

9 76. The State Bar also alleges a violation of ER 4.1, which prohibits a lawyer
10 from “knowingly mak[ing] a false statement of material fact or law to a third person.”
11 ER 4.1(a).
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13 77. Again, the State Bar has failed to prove by clear and convincing evidence
14 the requisite mental state. ER 1.0; *Matter of Tocco*, 194 Ariz. 453, 456-57, 984 P.2d
15 539, 542-43 (1999).
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17 78. The only objective factor the State Bar references is the signing of the two
18 answers in the cases in fairly close proximity to each other. While this certainly imputes
19 knowledge to Cochran under Ariz. R. Civ. P. 11, imputed knowledge is not sufficient to
20 demonstrate the mental state of “knowingly” for purposes of the ethical violation
21 alleged. Actual knowledge is required. *Id.*; *In re Zawada*, 208 Ariz. 232, 92 P.3d 862
22 (2004) (“Knowing behavior is established by invoking, among other things, objective
23 factors that include ‘the situation in which the [respondent] found himself, the evidence
24 of actual knowledge and intent and any other factors which may give rise to an
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1 appropriate inference or conclusion.”) (citing *Poole v. Superior Court*, 139 Ariz. 98,
2 108 n.9, 677 P.2d 261, 271 n.9 (1984)). There is insufficient evidence to find actual
3 knowledge by a clear and convincing standard of proof.

4 79. Next, the State Bar alleges a violation of ER 5.3, which requires a lawyer
5 to make “reasonable efforts to ensure that the firm has in effect measures giving
6 reasonable assurance that the [non-lawyers’] conduct is compatible with the professional
7 obligations of the lawyer” and to “make reasonable efforts to ensure that the person’s
8 conduct is compatible with the professional obligations of the lawyer.” However, there
9 is not clear and convincing evidence that Cochran failed to meet this standard.
10 Assuming, without finding, that Fullmer, or a lawyer in her position should have
11 uncovered the misrepresentations and omissions, does not suffice to find a failure to
12 supervise by Cochran. The delegation of factual investigation to Fullmer does not
13 establish a failure to supervise. ER 5.3.

16 80. The State Bar next alleges a violation of ER 8.4(c). Again, the State Bar
17 has not proven, by clear and convincing evidence the requisite mental state of a purpose
18 to deceive. ER 1.0(d). To prove a violation of ER 8.4(c) the State Bar must prove more
19 than negligence. *In re Owens*, 182 Ariz. 121, 125, 893 P.2d 1284, 1288 (1995).

21 81. The State Bar next alleges a violation of ER 8.4(d). The State Bar does not
22 present any specific argument of a violation of ER 8.4 (d), and under the circumstances
23 in this matter, this hearing officer cannot find a violation of ER 8.4 (d) to be established
24 by clear and convincing evidence. *Compare* ANNOTATED MODEL RULES 615-17 (5th ed.
25 2003) (ER 8.4(d) proscribes disrespect for the court, abusive or uncivil behavior towards
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opposing counsel or parties, sexual misconduct, abuse of public office, and deceitful
conduct.)

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2 82. Finally, the State Bar alleges a violation of former Supreme Court Rule
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4 51(e) which prohibited a willful violation of a court order. Although it is doubtful
5 whether Rule 51(e) adds any substantive prohibition not previously addressed, the State
6 Bar makes no specific argument pertaining to Rule 51(e) and there is no clear and
7 convincing evidence of any violation. Willful conduct would at least require a knowing
8 violation, and except as to the unauthorized practice of law, there is insufficient evidence
9 of knowing misconduct. *Compare Matter of Stevens*, 178 Ariz. 261, 262, 872 P.2d 665,
10 666 (1994).

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12 83. The parties stipulate, and the record supports, the existence of one
13 aggravating factor: Standard 9.22(i) (substantial experience in the practice of law).

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15 84. The parties stipulate, and the record supports, the existence of the
16 following mitigating factors: absence of a prior disciplinary record; timely good faith
17 effort to make restitution or to rectify consequences of misconduct; full and free
18 disclosure to a disciplinary board or cooperative attitude toward proceedings; good
19 character or reputation; imposition of other penalties or sanctions; and remorse:
20 Standard 9.31(a), (d), (e), (g), (k), (l). (JPS at 21.)

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22 85. The record also supports an additional mitigating factor: Standard 9.32(b)
23 (absence of a dishonest or selfish motive). At no time was there any attempt by Cochran
24 to achieve a personal gain.
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RECOMMENDED SANCTION

1 Recommendation

2 The purpose of lawyer discipline is not to punish the lawyer, but to protect the
3 public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d
4 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public,
5 the profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d
6 1297 (1985). Yet another purpose is to instill public confidence in the bar's integrity.
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8 *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

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10 In imposing discipline, it is appropriate to consider the facts of the case, the
11 American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards")
12 and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*,
13 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

14 ABA Standards

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16 ABA *Standard* 3.0 provides that four criteria should be considered when
17 imposing discipline: (1) the duty violated; (2) the lawyer's mental state and (3) the
18 actual or potential injury caused by the lawyer's misconduct; and (4) the existence of
19 aggravating or mitigating factors. Here, the only violation proved by clear and
20 convincing evidence is the unauthorized practice of law. The unauthorized practice of
21 law is properly considered a violation of duties owed as a professional. *Stevens*, 178
22 Ariz. at 262, 872 P.2d at 666.

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25 Standard 7.0 addresses violations of duties owed as a professional, which
26 includes the duty to avoid the unauthorized practice of law. The State Bar vigorously

1 argues for a sanction of suspension citing, in part, Standard 7.2. Respondent argues
2 for the application of Standard 7.4 (informal reprimand). Cochran's initial filing of an
3 answer in Utah was negligent. However, his activities after discovering his error but
4 prior to rectifying his error were not. On the other hand, it is difficult to argue that
5 Cochran's actions after discovering his error caused any injury or even a reasonable
6 potential for injury. Cochran attempted to settle a case for approximately a month
7 after he knew he was not authorized to represent the client. Under the circumstances,
8 censure seems adequate to accomplish the purposes of attorney discipline. Even if
9 suspension is the correct presumptive sanction, censure would still be the correct result
10 in this case given the overwhelming mitigating factors compared to the single
11 aggravating factor.
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13 **Proportionality Review**

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15 The Supreme Court has held in order to achieve proportionality when imposing
16 discipline, the discipline in each situation must be tailored to the individual facts of the
17 case in order to achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660
18 P.2d 454 (1983) and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993).
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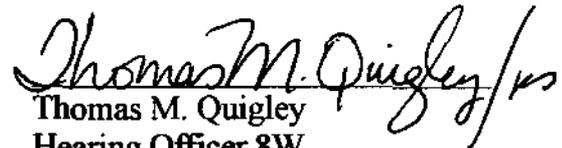
20 With respect to the admitted 5.5 violation, *Matter of Stevens* is instructive. There,
21 the attorney, while suspended, knowingly represented a client in court. However, like
22 Cochran here, the *Stevens* respondent was merely attempting to help a long-term client,
23 with no selfish motive. As here, the mitigating factors of: no prior disciplinary history;
24 no selfish motive; fully cooperative with the State Bar ; and remorse were present.
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1 Cochran has also demonstrated good character and reputation.³ Based on *Stevens*,
2 censure is the appropriate sanction.

3 Upon consideration of the facts, application of the *Standards*, including
4 aggravating and mitigation factors, and a proportionally analysis, this Hearing Officer
5 recommends the following:

- 6 1. Respondent shall be censured.
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8 2. Respondent shall pay the costs and expenses incurred in these
9 disciplinary proceedings.

10 DATED this 24th day of January, 2006.

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13 Thomas M. Quigley
14 Hearing Officer 8W

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17 Original filed with the Disciplinary Clerk
18 this 24th day of January, 2006.

19 Copy of the foregoing mailed
20 this 24th day of January, 2006, to:

21 Mark I. Harrison
22 Diane M. Meyers
23 Respondent's Counsel
24 *Osborn Maledon, P.A.*
25 2929 North Central Avenue, Suite 2100
26 Phoenix, AZ 85012-2794

³ The imposition of sanctions and timely restitution were not related to the unauthorized practice of law.

Denise K. Tomaiko
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

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by: *P. Williams*