

**FILED**

JAN 19 2006

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

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

1  
2  
3  
4  
5 IN THE MATTER OF A MEMBER ) No. 03-2156  
6 OF THE STATE BAR OF ARIZONA, )  
7 )  
8 **MICHAEL J. DOYLE,** )  
9 **Bar No. 009446** )  
10 )  
11 ) **HEARING OFFICER'S REPORT**  
12 )  
13 ) **RESPONDENT.** )

**PROCEDURAL HISTORY**

12 The State Bar filed a Complaint on December 10, 2004. Respondent filed  
13 an Answer on January 7, 2005. A hearing was then scheduled for April 6, 2005.  
14 The Settlement Officer conducted a settlement conference on March 17, 2005, at  
15 which the parties were unable to reach an agreement. The parties requested  
16 additional time to file consent documents, which was granted and the hearing was  
17 vacated. The parties filed a Tender of Admissions and Agreement for Discipline  
18 by Consent (Tender) and a Joint Memorandum in Support of Agreement for  
19 Discipline by Consent (Joint Memo) on April 12, 2005. No hearing was held. The  
20 Disciplinary Commission considered the matter on August 20, 2005. On  
21 September 19, 2005 the Commission remanded the matter back to this Hearing  
22 Officer. The parties filed a Revised Tender of Admissions and Agreement for  
23 Discipline by Consent and a Revised Joint Memorandum in Support of  
24  
25

1 Agreement for Discipline by Consent on November 14, 2005. A hearing on the  
2 consent documents was held on December 1, 2005.

3  
4 **FINDINGS OF FACT**

5 1. Respondent was at all relevant times an attorney licensed to practice  
6 law in Arizona, having been admitted to the State Bar on May 12, 1984.

7  
8 2. A formal complaint was filed on December 10, 2004. A copy of the  
9 complaint is attached hereto as Exhibit A.

10  
11 3. Respondent represented Peter Horne in a lawsuit against Melton and  
12 Patricia Holling for foreclosure on a tax lien on property in Lake Havasu City  
13 (“the property”).

14  
15 4. Mr. Horne obtained a money judgment, in the amount of \$1,034.28  
16 for costs and attorney’s fees, against Mr. Holling on April 25, 1991. Respondent  
17 later renewed this judgment on April 22, 1996, and again on March 19, 2001.

18  
19 5. On December 26, 2001, Mr. Horne assigned his beneficial interest  
20 under that judgment to Respondent, as payment for costs and attorney’s fees  
21 owed for work performed in the tax lien foreclosure proceeding. By November  
22 2002, with accrued interest on the judgment and taxes paid on the property  
23 included, the judgment had grown to \$9,254.07.

24  
25 6. Melton Holling died on April 6, 2000.

1           7.     On November 1, 2002, a Sheriff's sale was held on the property to  
2 satisfy judgments against Mr. Holling. Respondent attended the sale representing  
3 his own interests as a judgment creditor and representing his client and wife Amy  
4 Backus Doyle.  
5

6           8.     Respondent's wife is a real estate agent who uses her maiden name  
7 professionally, and Respondent has represented her several times over the years  
8 in other tax lien foreclosures.  
9

10          9.     Respondent bid in his own right up to the amount of his judgment  
11 against Mr. Holling and also bid for his client. Respondent's bids were  
12 unsuccessful. The property was sold to the highest bidder, James Irvine, with a  
13 bid of \$19,440.00.  
14

15          10.    The sale bid was an amount sufficient to satisfy Respondent's  
16 judgment against Mr. Holling, and upon expiration of the redemption period,<sup>1</sup>  
17 Respondent would be paid.  
18  
19  
20  
21  
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23  
24 <sup>1</sup>Under Arizona law, the judgment debtor or her successor in interest may "redeem" real  
25 property sold to satisfy judgments by paying creditors the amount owed to them anytime within  
six months of the sale. A.R.S. § 12-1281 (2004). The redemption period for the property at  
issue in this case expired on May 1, 2003. It is only after the expiration of this period that  
judgment creditors are actually paid from the proceeds of a sale.

1           11. After the sale, but before the end of the redemption period,  
2 Respondent learned that Mr. Holling had been married at the time of his death to  
3 Myra Jayne Holling ("Mrs. Holling").  
4

5           12. Respondent called Mrs. Holling on or about February 4, 2003, and  
6 informed her that he was a lawyer in Arizona and that he was aware of real  
7 property in Arizona that had belonged to her late husband in which she might  
8 have some rights. He also informed Mrs. Holling that he had a judgment against  
9 her late husband for almost \$10,000.  
10

11           13. Respondent offered to purchase of the property from Mrs. Holling in  
12 order to satisfy Mr. Holling's outstanding debt, and sent her documents to  
13 effectuate the transfer of title.  
14

15           14. On February 5, 2003, Respondent drafted a letter to Mrs. Holling.  
16 (A copy of the letter is attached as Exhibit B.) Respondent did not state in the  
17 letter that Mrs. Holling should consult independent legal counsel in connection  
18 with the documents, and did not state that there had been a Sheriff's sale on the  
19 property that had produced sufficient funds to satisfy her husband's debt to  
20 Respondent, regardless of whether she quit-claimed the property to Respondent.  
21 Respondent did not state in the letter that he was personally interested in the  
22 property. Respondent did not state in the letter that the person to whom the  
23  
24  
25

1 property would be transferred was his wife, Amy Backus. Respondent did not  
2 state that there was a possible overage from the Sheriff's sale.  
3

4 15. If the matter proceeded to hearing, Respondent would testify that he  
5 told Mrs. Holling in a telephone conversation that she should get a lawyer and  
6 that he was interested in the property in his own right.  
7

8 16. Shortly after receiving the documents, Mrs. Holling signed and  
9 returned them to Respondent. Respondent then sent Ms. Holling a check for  
10 \$500.00, as indicated in the February 5, 2003 letter. Mrs. Holling cashed the  
11 check. Respondent recorded the quitclaim deed in the Mojave County Recorder's  
12 Office on March 24, 2003.  
13

14 17. On April 4, 2003, Respondent sought to exercise a right of  
15 redemption on the property on Ms. Backus' behalf, as she was the successor in  
16 interest to Ms. Holling, the judgment debtor (see footnote 1). Respondent sent a  
17 letter to the Mojave County Sheriff's Office enclosing all the necessary  
18 documentation.  
19  
20

21 18. On May 9, 2003, these items were returned to Respondent by the  
22 Sheriff's office. Respondent attempted to contact the Sheriff's Office several  
23 times to work out the problem, but was told by Deputy Ben Renton that the  
24 redemption would not be accepted.  
25

1           19. In his responses to the State Bar's investigation, Respondent stated  
2 that he attended the Sheriff's sale on behalf of a client. Respondent did not state  
3 that his client was also his wife. Not until after the State Bar had completed its  
4 investigation and formal proceedings had been initiated, did Respondent provide  
5 information indicating that he had a personal interest in the property, beyond that  
6 of a judgment creditor, and that his client was also his wife.  
7

8  
9           20. In dealing on behalf of his wife, also a client, and by failing to  
10 disclose his personal interest in writing, Respondent violated ER 4.1, ER 4.3 and  
11 ER 8.4(d) by failing to disclose to Mrs. Holling, an unrepresented person, the  
12 implications and status of the judgment against Mr. Holling as it was affected by  
13 the Sheriff's sale of the property. Though Respondent did not intend to mislead  
14 Mrs. Holling at the time he drafted the letter to her, he knew or reasonably should  
15 have known that Mrs. Holling would misunderstand his role.  
16  
17

18           21. Respondent violated ER 4.4 and ER 8.4(d) by including language in  
19 his letter to Mrs. Holling that suggested she could be personally liable for Mr.  
20 Hollings' debt to Respondent, thereby implying a threat of collection, although  
21 the debt would have been satisfied from proceeds from the sale of the property.  
22

23           22. Respondent violated ERs 8.1(b) and 8.4(d) by failing to disclose  
24 promptly to the State Bar that he was present at the Sheriff's sale on behalf of  
25 Amy Backus, his wife and client, and that he had a personal interest in the

1 property beyond merely satisfying the outstanding judgment, where such  
2 knowledge would have corrected a misapprehension by the State Bar.

### 3 CONDITIONAL ADMISSIONS & DISMISSALS

4 Respondent conditionally admits that his conduct, as set forth above,  
5 violated ER 4.1; ER 4.3; ER 4.4; ER 8.1(b); and ER 8.4(d), Rule 42  
6 Ariz.R.Sup.Ct.  
7

8 The State Bar conditionally agrees to dismiss the alleged violations of ER  
9 1.7, and ER 8.4(c), Rule 42, Ariz.R.S.Ct.  
10

### 11 ABA STANDARDS

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

17 The parties indicated that *Standard* 7.2 is the most applicable in this matter.  
18

19 A review of ABA *Standard* 7.0 (Violations of Duties Owed as a  
20 Professional) indicates that suspension is the presumptive sanction for  
21 Respondent's misconduct; specifically, *Standard* 7.3 provides:  
22

23 Suspension is generally appropriate when a lawyer  
24 knowingly engages in conduct that is a violation of a duty  
25 owed to the profession, and causes injury or potential injury  
to a client, the public, or the legal system.

1 Respondent violated his duties to a person other than his client, specifically  
2 Mrs. Holling, an unrepresented person, and violated his duties to maintain the  
3 integrity of the legal profession. These duties were violated by his letter to Mrs.  
4 Holling dated February 5, 2003, wherein Respondent omitted certain material  
5 facts as stated in the Tender of Admission.  
6

7 Respondent recognizes his affirmative duty to make reasonable efforts to  
8 avoid and/or correct any misunderstanding that he knew or should have known  
9 Mrs. Holling experienced as a result of his communication to her, as well as his  
10 affirmative duty to correct any misapprehension by the State Bar during its  
11 investigation.  
12

13  
14 For the purposes of this agreement, the State Bar and Respondent agree  
15 that Respondent knowingly failed to adequately apprise Mrs. Holling of the  
16 details of the Sheriff's sale, the redemption right, and Respondent's judgment  
17 against her deceased husband. If the matter were to proceed to a hearing,  
18 Respondent would testify that in a telephone conversation he told Mrs. Holling  
19 that she should consult a lawyer, that there was some amount of money from the  
20 sale of the property to which she might have a legal claim, and that Respondent  
21 was interested in the property in his own right. Additionally, Respondent would  
22 testify that in so doing, he was attempting to convey information to Mrs. Holling  
23 he was required to convey pursuant to ER 4.3, while attempting to avoid  
24  
25

1 "crossing the line" into giving Mrs. Holling, an unrepresented person, substantive  
2 legal advice, which ER 4.3 forbids. The parties conditionally agree that  
3 Respondent knowingly failed to memorialize the entirety of his telephone  
4 conversation in the February 5, 2003 letter, including certain pertinent  
5 information.  
6

7 Respondent acknowledges his misconduct in dealing with an unrepresented  
8 person. Respondent recognizes his affirmative duty to advise Mrs. Holling to  
9 secure counsel. He further acknowledges that he knew or reasonably should have  
10 known that, as an unrepresented person and given the totality of the  
11 circumstances, Mrs. Holling may have misunderstood his role. As such,  
12 Respondent should have made reasonable efforts to correct the misunderstanding.  
13  
14

15 The State Bar and Respondent do not have sufficient information to  
16 determine any actual or potential financial injury to Mrs. Holling. That issue  
17 may be resolved in related pending litigation. There is actual injury in that Mrs.  
18 Holling feels misled and may suffer continued negative feelings about lawyers  
19 and the legal profession. Injury was caused to the integrity of the profession.  
20  
21

### 22 **AGGRAVATING AND MITIGATING FACTORS**

23 This Hearing Officer then considered aggravating and mitigating factors in  
24 this case, pursuant to *Standards* 9.22 and 9.32, respectively. This Hearing Officer  
25

1 agrees with the parties that two aggravating factors apply and should be  
2 considered in this matter:

3  
4 (h) vulnerability of the victim. Respondent dealt with Mrs. Holling, an  
5 elderly widow with little, if any, knowledge about the law or real property issues,  
6 and as such was interacting with a vulnerable person.

7  
8 (i) substantial experience in the practice of law. At the time in question,  
9 Respondent had substantial experience in the practice of law, having been  
10 admitted in 1984. Moreover, Respondent has experience in the specialized area  
11 of the law at issue underlying this discipline matter.

12  
13 This Hearing Officer agrees with the parties that two factors are present in  
14 mitigation:

15 (a) absence of a prior disciplinary record. Respondent has been practicing  
16 for more than twenty years and has no history of discipline with the State Bar.

17  
18 (g) character or reputation. Respondent has been practicing law for more  
19 than twenty years, and is a member of the Maricopa County Bar Association with  
20 an excellent reputation in the legal community. He has also been a member of  
21 the Scottsdale Charros, a non-profit charitable and leadership organization, for  
22 the last four years, and currently serves on its Board of Directors. Respondent  
23 acts as the Charros' general counsel on a pro bono basis, and has conservatively  
24 spent 1,000 hours of his time during the last two years performing services for  
25

1 the Charros. Those hours, in part, have been expended in Respondent's role as  
2 Chairman of the Scottsdale Unified School District/Scottsdale Charros  
3 Outstanding Educators and Students Awards and Banquet program for the 2004 -  
4 2005 school year. The program recognizes outstanding educators, employees,  
5 volunteers and students from the Scottsdale Unified School District. In the early  
6 1990's, for approximately five years, Respondent was the president of and  
7 member of the board of directors for "Rainbows Way Inn, Inc.," a non-profit  
8 organization, which consisted of a number of care facilities and residences for  
9 troubled teenage girls. Respondent is a lector in his church (Shepherd of the  
10 Desert Lutheran Church) and for the last six years has volunteered his time as  
11 coach, manager, and member of the board of directors for the Desert Foothills  
12 Little League. (See letters of character and reputation attached as Exhibit A1 -  
13 A13).

### 14 PROPORTIONALITY REVIEW

15 To have an effective system of professional sanctions, there must be  
16 internal consistency, and it is appropriate to examine sanctions imposed in cases  
17 that are factually similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567  
18 (1994) (quoting *In re Wines*, 135, Ariz. 203, 207 (1983)). However, the  
19 discipline in each case must be tailored to the individual case, as neither  
20  
21  
22  
23  
24  
25

1 perfection nor absolute uniformity can be achieved. *Matter of Riley*, 142 Ariz.  
2 604, 615 (1984).

3  
4 There are no published Arizona cases specifically addressing ER 4.3 and  
5 very few addressing ER 4.4. Many of the cases involving violations of ER 8.4(c)  
6 also involve either lack of candor to the tribunal or acts of dishonesty wherein a  
7 duty to a client has been violated. Few cases were found which deal with the  
8 specific circumstances set forth in the instant case, misrepresentation by omission  
9 to an unrepresented third party. Other jurisdictions have similarly scant case law  
10 on these particular ethical rules. In terms of proportionality, the following cases  
11 are therefore helpful and instructive:  
12

13  
14 In *In re Paulter*, 47 P.3d 1175 (Colo. 2002), a deputy district attorney  
15 impersonated a public defender and deceived a murder suspect so as to encourage  
16 his surrender. The Colorado Supreme Court held that this conduct violated ER  
17 4.3 and found reasonable a sanction of a three-month suspension stayed during  
18 twelve months of probation (during which the Respondent was to fulfill various  
19 condition, including re-taking the MPRE). *Id.* at 1182-83.  
20

21 In contrast to *Paulter*, Respondent did not affirmatively represent to Mrs.  
22 Holling that he was her lawyer, as did the lawyer in *Paulter*. Instead, certain  
23 knowing omissions by Respondent led Mrs. Holling to misunderstand his role in  
24 the matter.  
25

1 In *In re Wagner*, 744 N.E. 2d 418 (Ind. 2001), respondent violated ER 4.4  
2 by charging a homeowner \$1,000 to release his client's judgment lien, which had  
3 earlier been formally avoided in the homeowner's bankruptcy. The court noted  
4 that not only did the judgment lien not even exist, but charging the homeowners  
5 \$1,000 bore no relation "at all to any residual lien right the respondent's client  
6 may have had." *Id.* at 421-22. The court found a reprimand [censure in Arizona]  
7 and admonishment appropriate under the circumstances. *Id.* at 422.  
8  
9

10 Again, in contrast to *Wagner*, Respondent's misrepresentations were  
11 because of his omissions, not affirmative misrepresentations. Nonetheless,  
12 Respondent acknowledges that he was acting in his personal interest and that it  
13 was his responsibility to make certain that Mrs. Holling understood his role in the  
14 transaction.  
15

16 In *In re Clark*, the Supreme Court affirmed a finding that the Respondent  
17 had violated ER 8.4(d) by transferring the assets of his sole proprietorship into a  
18 professional corporation, notifying another creditor of the transfer, and thereby  
19 possibly depriving a former client of partial recovery of his judgment. 207 Ariz.  
20 414, 418, 87 P.3d 827, 831 (2004). The court noted that E.R. 8.4(d) "does not  
21 require a mental state other than negligent," and affirmed the Disciplinary  
22 Commission's conclusion that Respondent's conduct violated ER 8.4(d). The  
23 hearing officer had recommended censure and one year of probation, a sanction  
24  
25

1 that the Disciplinary Commission had increased. The Supreme Court clarified  
2 that the Disciplinary Commission cannot make new findings of fact absent a  
3 determination that the hearing officer's findings were "clearly erroneous," and  
4 declined to impose the increased sanction recommended by the Disciplinary  
5 Commission, remanding instead for "appropriate discipline" as to E.R. 8.4(d).  
6

7 Unlike Respondent Clark, the facts now in issue involve knowing conduct,  
8 specifically knowing misrepresentations by omission, rather than negligent  
9 conduct. The hearing officer in the Clark matter found that Clark had  
10 "negligently violated a duty to the courts and to his former client" and that "his  
11 mental state did not demonstrate a state of mind of maliciousness or avarice." *Id.*  
12 at 416. In this case, the parties are asking that the hearing officer make specific  
13 factual findings that Respondent's actions were knowing, not merely negligent,  
14 and therefore apply an equally appropriate sanction.  
15  
16

17 In *In Re Brinton* SB-03-0154-D (2004) the respondent was suspended for  
18 thirty days for violating ERs 3.3, 4.1, 8.4(c) and 8.4(d). Respondent prepared a  
19 stipulation to add eight plaintiffs to a lawsuit and then sent the stipulation to  
20 opposing counsel who signed and returned the document. Respondent then  
21 substantively altered the stipulation by removing one plaintiff and changing the  
22 date and filed it with the court without notification to opposing counsel. In  
23 *Brinton* there was one aggravating factor, substantial experience in the practice of  
24  
25

1 law, and the mitigating factors included no prior discipline, respondent's  
2 cooperativeness and remorse and a showing that Respondent was under going  
3 mental health counseling.  
4

5 Although the facts in Respondent's case now under consideration are  
6 distinct from those set forth in *Brinton*, the spirit of the violations is at least  
7 similar because knowing omissions which harmed the integrity of the profession  
8 warranted a brief suspension from the practice of law.  
9

10 With regard to Respondents admission to a violation of ER 8.1(b), the  
11 parties ask that *In re O'Brien-Reyes*, 177 Ariz. 362, 868 P.2d 945 (1994), be  
12 considered. Respondent O'Brien-Reyes violated ER 8.1(b) by failing to timely  
13 respond to the State Bar's inquiries, which required that the State Bar depose her  
14 concerning her misconduct. The Disciplinary Commission believed the  
15 Respondent's failure to respond to the State Bar was not a knowing failure to  
16 cooperate, and the respondent received censure plus one year probation.  
17  
18

19 Unlike the Respondent in *O'Brien-Reyes*, Respondent in this case did in  
20 fact respond in a timely manner to the State Bar's inquiries and did not force the  
21 State Bar to depose him in order to get information. However, Respondent failed  
22 to timely disclose relevant information and thereby failed to correct the  
23 misapprehension that he was representing a disinterested client at the Sheriff's  
24 sale. Respondent did not disclose to the State Bar that he was acting on his  
25

1 personal interest and the interest of a client who also happened to be his wife,  
2 until after the State Bar's investigation was completed and formal proceedings  
3 had been initiated.

### 4 RECOMMENDATION

5  
6 The purpose of lawyer discipline is not to punish the lawyer, but to protect  
7 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859  
8 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the  
9 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.  
10 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in  
11 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361  
12 (1994).  
13  
14

15 In imposing discipline, it is appropriate to consider the facts of the case, the  
16 American Bar Association's *Standards for Imposing Lawyer Sanctions*  
17 ("*Standards*") and the proportionality of discipline imposed in analogous cases.  
18 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).  
19

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

1           1. Respondent shall receive a 90 day suspension.

2           2. Respondent shall be placed on probation for a period of one year  
3 effective upon the signing of the probation contract. Bar Counsel will notify the  
4 Disciplinary Clerk of the date on which the probation begins. The terms of  
5 probation are as follows:  
6

7           a. Respondent shall participate in the Ethics Enhancement Program  
8 (EEP) and the State Bar Continuing Legal Education (CLE) program entitled  
9 "Ten Deadly Sins of Conflict."  
10

11           b. Respondent shall refrain from engaging in any conduct that  
12 would violate the Rules of Professional Conduct or other rules of the Supreme  
13 Court of Arizona.  
14

15           c. In the event that Respondent fails to comply with any of the  
16 foregoing conditions, and the State Bar receives information, bar counsel shall  
17 file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule  
18 60(a)5, Ariz. R. S. Ct. The Hearing Officer shall conduct a hearing within thirty  
19 days after receipt of said notice, to determine whether the terms of probation  
20 have been violated and if an additional sanction should be imposed. In the event  
21 there is an allegation that any of these terms have been violated, the burden of  
22 proof shall be on the State Bar of Arizona to prove non-compliance by clear and  
23 convincing evidence.  
24  
25

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

3 DATED this 19<sup>th</sup> day of January 2006.

4  
5 Christopher D. Thomas  
6 Christopher D. Thomas  
7 Hearing Officer 8Z

8 Original filed with the Disciplinary Clerk  
9 this 19<sup>th</sup> day of January, 2006.

10 Copy of the foregoing was mailed  
11 this 19<sup>th</sup> day of January, 2006, to:

12 Mark I. Harrison  
13 Sara Southern  
14 Respondent's Counsel  
15 *Osborn Maledon, P.A.*  
16 2929 North Central Avenue, Suite 2100  
17 Phoenix, AZ 85012-2794

18 Angela M. B. Napper  
19 Bar Counsel  
20 State Bar of Arizona  
21 4201 North 24<sup>th</sup> Street, Suite 200  
22 Phoenix, AZ 85016-6288

23  
24  
25  
26 by: William