

FILED

JUN 1 2 2006

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

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SUPREME COURT OF ARIZONA
BY

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IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
SUSAN V. STERMAN)
Bar No. 016312)
)
RESPONDENT.)
_____)

No. 05-1326

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

The State Bar filed a Complaint on December 9, 2005. Respondent filed a Request for Extension on December 28, 2005. Her motion was granted. Respondent filed an Answer on January 19, 2006. An initial Case Management Conference was held on January 30, 2006. A Settlement Conference was held February 21, 2006. On April 5, 2006, the parties filed a Tender of Admissions and Joint Memorandum in Support of Agreement by Consent. No hearing has been held in this matter and there are no issues of restitution.

FINDINGS OF FACT

1. At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted on July 11, 1995.

2. Respondent is not licensed to practice in the State of California.

Count I

3. Respondent, at all times relevant hereto, was employed as a Deputy County Attorney in Coconino County, Arizona.

1 4. In or about October, 2004, Respondent married Dean A. Cody. Respondent
2 subsequently learned that Mr. Cody had an outstanding child support in Tulane County,
3 California and that Mr. Cody was in arrears on that order.

4 5. Thereafter, Respondent contacted the child support division of Tulane County,
5 California as her husband's "representative" in order to attempt to settle the arrearage
6 issue. Respondent informed the child support division that she was an attorney.

7 6. Respondent proceeded to negotiate the issue concerning the support arrearages
8 with Tulane County, California child support division on behalf of Mr. Cody.
9 Respondent's main contact was with a worker named Tammy Billups.

10 7. Upon reaching an agreement, the child support division sent Respondent a
11 stipulation for her signature, and for Mr. Cody's signature, to be presented to the court for
12 approval.

13 8. Initially, Respondent had Mr. Cody sign the stipulation, but she did not sign it,
14 even though there was a signature line for her as "Attorney for Father." Respondent then
15 sent the stipulation back to the child support division.

16 9. Tammy Billups of the child support division then contacted Respondent
17 indicating that she needed to sign the stipulation as well as Mr. Cody. Ms. Billups faxed
18 the stipulation back to Respondent. Respondent signed the stipulation over the designation
19 on the stipulation as "Attorney for Father" and sent it back to the child support division in
20 California.
21

22 10. At all times relevant hereto, Ms. Billups believed the Respondent represented
23 Mr. Cody as his attorney in the child support matter, and was admitted to practice law in
24 California.
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CONDITIONAL ADMISSIONS

1 Respondent conditionally admitted that she engaged in the unauthorized practice of
2 law when she represented to the child support division of Tulane County, California that she
3 was her husband 's attorney and signed the stipulation as such.

4 Respondent conditionally admitted that her conduct as described in this count violated
5 Rule 42, Ariz R.S.Ct., specifically ER 5.5. The State Bar has agreed to dismiss allegations
6 that Respondent ERs 8.1(b), 8.4(c) and (d). in exchange for settlement in this matter and in
7 light of evidentiary concerns.
8

ABA STANDARDS

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10 The *Standards* provides that four criteria should be considered: (1) the duty
11 violated; (2) the lawyer's mental state and (3) the actual or potential injury caused by the
12 lawyer's misconduct; and (4) the existence of aggravating or mitigating factors.
13

14 Given the conduct in this matter, the most applicable *Standard* is 7.3 regarding the
15 unauthorized practice of law. *Standard* 7.3 provides: "[Censure] is generally appropriate
16 when a lawyer is negligently engages in conduct that is a violation of a duty owed to the
17 profession, and causes injury or potential injury to a client, the public or the legal system."
18 Respondent has asserted that her actions in this matter were committed negligently. For
19 purposes of this agreement, the State Bar does not dispute that assertion.
20

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

AGGRAVATING FACTORS

23
24 There are no significant aggravating factors applicable in this matter
25
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MITIGATING FACTORS

1 The Respondent has no prior disciplinary record with the State Bar of Arizona.
2 *Standard 9.32(a).*

3 The Respondent was forthcoming and cooperative throughout the investigative
4 stage of these proceedings and continued to be cooperative after the filing of a formal
5 complaint. *Standard 9.32(e).*

6 In evaluating the aggravating and mitigating factors, the parties agree that they do
7 not justify varying from the presumptive sanction of a censure.
8

PROPORTIONALITY REVIEW

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11 The Supreme Court has held in order to achieve proportionality when imposing
12 discipline, the discipline in each situation must be tailored to the individual facts of the
13 case in order to achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d
14 454 (1983) and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993).

15
16 In terms of proportionality, there are several similar prior cases supporting the agreed-
17 upon sanction in this case. The Arizona Supreme Court has previously imposed censures for
18 violations of ER 5.5 in several cases involving the unauthorized practice of law.¹

19 In the case of *In re Menor*, SB-97-0052-D (1997), Menor was an attorney, residing
20 in Arizona but not licensed to practice law here. Menor prepared and filed several
21 pleadings on behalf of a friend, and wrote demand letters and other non-litigation
22 documents for a few other people. She violated, among others, ERs 5.5, 7.1, 7.5 and
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24
25 ¹ It should be noted that case law precludes the imposition of a sanction more severe than
26 censure on lawyers who are not members of the State Bar of Arizona. See *Matter of Olsen*, 180 Ariz. 5, 881 P.2d 337 (1994); *In re Alcorn*, 202 Ariz. 62 n.7 (2002).

Rule 31, Ariz.R.S.Ct. Menor received a censure and the Disciplinary Commission stated:

1 “Regardless of the good will and harmless intent involved, there is simply no provision or
2 authority in this state for a lawyer who is not admitted to the State Bar or admitted *pro hac*
3 *vice* to practice law.”

4 In *Matter of Sodaro*, SB-00-0013-D, 2002 Ariz. LEXIS 125, (2002), and SB-02-
5 0111-D, (2002), Sodaro provided legal services to a client in Arizona and sent letters to
6 potential dealers of the client’s swimming pool chlorination system on letterhead that
7 included an Arizona address but failed to note on her letterhead that she was not admitted
8 to practice in Arizona. Sodaro violated ERs 5.5, 7.1, 7.5 and Rules 31 and 33, Ariz.R.S.Ct.
9 Sodaro agreed to a censure and payment of the costs and expenses of the disciplinary
10 proceedings.

11 In *In re Savoy*, SB-00-0070-D, (2000), Savoy prepared a will for a long-time
12 friend/client while suspended from the practice of law in Arizona and transmitted the
13 documents to devisees under the will using his legal letterhead. Savoy received no
14 compensation and his friend was aware of Savoy’s suspension. Savoy consented to a
15 censure.

16 Based on the *Standards* and case law, the parties believe that censure is within the
17 range of appropriate sanction in this case and will serve the purposes of lawyer discipline.
18 The sanction will serve to protect the public, instill confidence in the public, deter other
19 lawyers from similar misconduct, and maintain the integrity of the bar.

20 RECOMMENDATION

21 The purpose of lawyer discipline is not to punish the lawyer, but to protect the
22 public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315,
23

1320 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

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

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

1. Respondent shall receive a censure for her conduct.
2. The Respondent shall pay all costs and expenses incurred in this discipline matter.

DATED this 12th day of June, 2006.

Joseph J. Lodge /cs
Joseph J. Lodge
Hearing Officer 9V

Original filed with the Disciplinary Clerk
this 12th day of June, 2006.

Copy of the foregoing mailed
this 12th day of June, 2006, to:

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