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NOV 13 2007

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

BY: *[Signature]*

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

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IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
CYNTHIA A. LEYH,)
Bar No. 017333)
)
RESPONDENT)
_____)

No. 06-0600

**DISCIPLINARY COMMISSION
REPORT**

This matter first came before the Disciplinary Commission of the Supreme Court of Arizona on August 15, 2007, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed May 25, 2007, recommending acceptance of the Tender of Admissions and the Agreement for Discipline by Consent (Tender) and the Joint Memorandum (Joint Memorandum) in Support of Agreement for Discipline by Consent providing for censure, one year of probation with the State Bar's Ethics Enhancement Program (EEP), and costs.

The Commission continued the matter, set it for oral argument, and requested the parties brief Respondent's alleged violation of ER 4 1(a), false statement of material fact or law; specifically identifying the false statement of fact or law and discussing the materiality of the statement. *See* Commission Order filed August 30, 2004. Both parties filed briefs on October 1, 2007.

The matter again came before the Commission for consideration on October 13, 2007. Respondent, Respondent's counsel and counsel for the State Bar were present for oral argument.

1 The State Bar asserts that Respondent violated ER 4.1(a) by making false
2 statements of material fact to¹ third persons and by misleading them through withholding
3 relevant material facts Respondent falsely stated that Zephyr Lager does exist and that she
4 was a marketing representative for the company that was testing this new beer
5 Respondent falsely told Ms Kill that Ms Kill had to provide Respondent her contact
6 information before Ms. Kill could obtain the (non existent) beer. Respondent's false
7 statements were material and were substantial and important as to influence the tribe
8 members and affected the outcome. Respondent attached importance to her false
9 statements and significantly influenced the decision making process and the success of her
10 ruse depended on the materiality of her false representations.

11 Respondent asserts that she agreed to accept the sanction of censure and probation
12 as she did not wish to prolong the matter and because the agreed-upon sanction was within
13 the realm of reasonable sanctions Respondent admits that she did not sufficiently
14 undertake an analysis of what false statement of material fact or law was made, nor did she
15 analyze the materiality of such misstatements. Respondent further asserts that the Hearing
16 Officer found numerous misstatements made by Respondent to Ms. Kill but none of those
17 misstatements were relevant to any material fact surrounding the serving of the subpoena
18 upon Ms. Kill. Pursuant to A.R.S. § 13-4072, a subpoena can be served by any person and
19 Respondent's failure to explain that she was Mr Wathogoma's attorney was not germane
20 to the representation of Mr. Wathogoma.
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25 ¹ A material representation may be defined as one "relating to matter which is so substantial and
26 important to influence the party to whom it is made" (in the context of the Professional Rules of
Conduct, ER 4 1(a) relating to false statements of material fact to third parties), *Black's Law
Dictionary*, p 880 (5th Ed. 1979)

1 Respondent advises that on the facts of this matter, she is willing to abide by the
2 Agreement but maintains there is not a sufficient basis for finding that Respondent's
3 conduct violated ER 4 1(a) The *Comment* to ER 4 1(a) does not specifically deal with a
4 false statement that is immaterial and there is no case law on the issue Respondent
5 however, freely admits that her conduct violated ER 8.4(c) conduct involving dishonesty
6 and misrepresentation.

7 **Decision**

8 The eight members of the Disciplinary Commission by a majority of seven,²
9 recommend accepting and adopting the Hearing Officer's findings of fact, conclusions of
10 law, and recommendation for censure, one year of probation (EEP), and costs of these
11 disciplinary proceedings³ The Commission determined that given the unique
12 circumstances of this matter and Respondent's position regarding her violation of ER
13 4.1(a), it would not be appropriate to cite this matter for future proportionality analysis of
14 cases involving false statements of material fact or law The terms of probation in this
15 matter are as follows

17 **Terms of Probation**

- 18 1. Respondent shall be placed on probation until such time as she completes
19 EEP, which shall be completed within one year. Once Respondent has completed EEP,
20 probation will terminate.
- 21 2. Respondent shall pay all costs incurred in these disciplinary proceedings
- 22 3. In the event that Respondent fails to comply with any of the foregoing

25 ² Commissioner Flores was opposed having concluded that absent Respondent's conditional
26 admission that she violated ER 4 1(a), there is no agreement before the Commission

³ A copy of the Hearing Officer's Report is attached as Exhibit A.

1 conditions, and the State Bar receives information, bar counsel shall file with the
2 Disciplinary Clerk a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct.
3 The Hearing Officer shall conduct a hearing within thirty days after receipt of said notice,
4 to determine whether the terms of probation have been violated and if an additional
5 sanction should be imposed. In the event there is an allegation that any of these terms have
6 been violated, the burden of proof shall be on the State Bar of Arizona to prove non-
7 compliance by clear and convincing evidence.

8 RESPECTFULLY SUBMITTED this 13th day of November, 2007.

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11 J. Conrad Baran, Chair
12 Disciplinary Commission

13 Original filed with the Disciplinary Clerk
14 this 13th day of November, 2007.

15 Copy of the foregoing mailed
16 this 13th day of November, 2007, to:

17 Honorable H. Jeffrey Coker
18 Hearing Officer 6R
19 P.O. Box 23578
20 Flagstaff, AZ 86002

21 Nancy A. Greenlee
22 821 East Fern Drive North
23 Phoenix, AZ 85014

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by 

/mps