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

MAY 09 2010
S. J. ...
P. M. ...

4)
5) File No 06-0823
6)

7)
8) IN THE MATTER OF A MEMBER OF
9) THE STATE BAR OF ARIZONA.
10)

11)
12) **PHILLIP D. HINEMAN JR.,**
13) **Bar No. 011887,**

14) **HEARING OFFICER'S REPORT**
15)

16)
17) **RESPONDENT**
18)
19)

20 **PROCEDURAL HISTORY**

21 There was a trust prepared for the Popp's in the year 2008 There was a separation
22 of the parties due to infirmities that occurred later The care of each of the parties was taken over
23 individually by different children The children attempted to get certain things accomplished but
24 the Respondent was unwilling to help and created problems which eventually allegedly amounted
25 to a conflict Based upon these conflicts, the State Bar filed a Complaint against the Respondent
26 for conflicts of interest

27 **FINDINGS OF FACT**

28 1 The Respondent has been licensed to practice law in the State of Arizona since
2 5/21/88
3 Mr and Mrs Pops, a husband and wife, had a trust prepared in the year, 2000
4 Mr Popp and his wife could not live together because Mrs Popp could not take
5 care of Mr Popp as he had been diagnosed with dementia
6 Mr Popp moved in with one of his daughters
7 The daughter, Cynthia, took Mr Popp to an attorney to get documents prepared to
8 give the daughter, Cynthia, control over Mr Popp's half of the community
9 property

1 6 It was determined that Mr Popp could not make decisions for himself Based
2 upon Mr Popp suffering from Alzheimer's Disease and was confirmed by two
3 persons
4 7 Mrs Popp met with her own attorney and gave up her rights under the living trust
5 and the power of attorney as to Mr Popp's interests
6 8 Mr Popp's daughter, Cynthia, took Mr Popp to see the Respondent who prepared
7 a general power of attorney in favor of the daughter The Respondent also
8 prepared his own personal affidavit attesting to Mr Popp's competency to execute
9 a valid power of attorney The Respondent then informed the previous attorney for
10 the daughter, stating that the most recent power of attorney superceded the earlier
11 one
12 9 The son, James, hired an attorney who filed suit in court for appointment as
13 temporary guardian and conservator for Mr Popp in Yuma County The
14 Respondent then filed a notice of appearance in Yuma County, stating that he was
15 an attorney for Mr Popp and the daughter, Cynthia
16 10 In the Yuma County case, there was an allegation that the Respondent was
17 involved in a conflict of interest by representing both Mr Popp and the daughter,
18 Cynthia
19 11 The Respondent attempted to represent Mr Popp and have the daughter receive an
20 attorney from some other source The Respondent informed the court that he
21 represented Mr Popp and his interests
22 12 The court issued an emergency appointment of temporary guardian and temporary
23 conservator under the authorization of the public fiduciary
24 13 When the issue as to the competency of Mr Popp came into being, there became
25 the necessity of looking at the affidavit that the Respondent drew up in which he
26 attested to the capacity of Mr Popp and the power of attorney that was signed by
27 Mr Popp in favor of his daughter
28 14 On or about 4/4/06, the court determined that a conflict of interest in violation of

1 E R 1 7 existed because of Respondent's simultaneous representation of Mr Popp
2 and his daughter, Cynthia

3 **CONCLUSIONS OF LAW**

4 Respondent's actions with regard to Mr and Mrs Popp and their daughter,
5 Cynthia, were in violation of E R 1 1, 1 7 1 14, 1 16, 3 1, 3 7 and 8 4(D) Rule 42.
6 Ariz R Sup Ct

7 **A.B.A. STANDARDS**

8 The Standards are intended to promote consistency in the imposition of sanctions
9 by identifying relevant factors that the court should consider, and then applying these factors to
10 situations where lawyers have engaged in various types of misconduct In re Rivkind, 164 Ariz
11 154, 791 P 1d 1037 (1990), In re Kaplan, 179 Ariz 175, 877 P 2d 274 (1994)

12 Given the conduct in this matter the most applicable Standard is 4 3, the failure to
13 avoid conflicts of interest Specifically, Standard 4 33 provides "censure is generally appropriate
14 when the lawyer is negligent in determining whether the representation of a client may be
15 materially affected by the lawyer's own interest or the representation will adversely affect another
16 client, and causes injury or potential injury to a client "

17 **Aggravating Factors:**

18 Standard 9 22(a) Prior Disciplinary Offenses Respondent was censured and
19 placed on probation on two previous occasions and was additionally informally reprimanded by
20 Order in 2004

21 Standard 9 22(h) Vulnerability of Victim,

22 Standard 9 22(I)Substantial Experience in the Practice of Law,

23 **Mitigating Factors:**

24 Standard 9 32(e) Full and Free Disclosure to Disciplinary Board or Cooperative
25 Attitued Toward Proceedings,

26 Standard 9 32(l) Remorse

1 **PROPORTIONALITY ANALYSIS**

2 In In re Ellett, SB-06-0163 (2006) Mr Ellett was censured, placed on probation for one year and
3 ordered to participate in the LOMAP program In In re Clark, SB-02-0017-D (2002), Mr Clark
4 was censured and assessed costs for violations in a conflicts situation wherein Mr Clark agreed
5 to prepare Answers for both tenants without discussing potential conflicts of interests Remorse
6 was also present in this case

7 **SANCTIONS**

8 This Hearing officer agrees and adopts the Tender of Admissions and Agreement
9 for Discipline by Consent to the effect that

10 1 Respondent shall receive a censure

11 2 Respondent shall be placed on probation for one year

12 3 Respondent shall utilize the services of a practice monitor The practice monitor
13 shall be an attorney approved by the State Bar of Arizona

14 4 Respondent shall view the continuing legal education program entitled, "The
15 ABC's of Guardianships "

16 5 Respondent shall view the continuing legal education program entitled
17 "Conservatorships and Probate "

18 6 Respondent shall view the continuing legal education program entitled, "The
19 Basics of Dementia "

20 7 Respondent shall view the continuing legal education program entitled, "The Ten
21 Deadly Sins of Conflict "

22 8 Respondent shall provide to the State Bar within the period of probation
23 certificates of completion for each of the above-mentioned continuing legal
24 education programs or shall provide to the State Bar copies of his hand-written
25 notes taken during the completion of the continuing educational programs

26 9 Respondent shall pay all costs incurred by the State Bar in bringing these
27 disciplinary proceedings In addition, Respondent shall pay all costs incurred by
28 the Disciplinary Commission, the Supreme Court and the Disciplinary Clerk's

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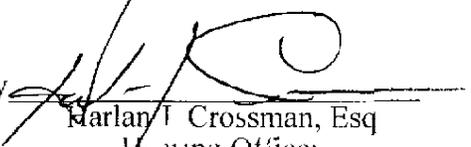
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Office in this matter An Itemized Statement of Costs and Expenses is attached to the Tender of Admissions and Agreement for Discipline by Consent as Exhibit "A," and incorporated herein

10 In the event that the Respondent fails to comply with the terms of probation and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Non-Compliance with the imposing entity, pursuant to Rule 60(a)(5) Ariz R Sup Ct The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practicable time, but in no event later than 30 days after receipt of notice, to determine whether a term of probation has been breached, and if so to recommend an appropriate action and response If there is an allegation that Respondent failed to comply with any of the terms, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence

CONCLUSION

The sanctions agreed upon and accepted by this Hearing Officer seem to be in the best interests of all parties and in the administration of our legal system

By 
Marlan T. Crossman, Esq
Hearing Officer

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