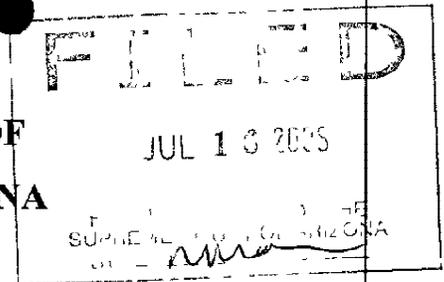


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**BEFORE A HEARING OFFICER OF
THE SUPREME COURT OF ARIZONA**



IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,

File No 06-0517

MARGO A. SHORR,
Bar No. 016752,

**HEARING OFFICER'S
REPORT**

Respondent.

(Assigned to Hearing Officer 9I,
Dwight M. Whitley, Jr.)

PROCEDURAL HISTORY

A Probable Cause Order was issued in this matter on February 2, 2007.

A Complaint was filed by the State Bar of Arizona on May 31, 2007. On June 15, 2007, the Law Offices of Mark Rubin, P L.C., filed a Notice of Appearance on behalf of Respondent Mr. Rubin filed an Answer on June 20, 2007.

On July 12, 2007, a Notice of Settlement was filed. On August 21, 2007, a Joint Memorandum in Support of Agreement for Discipline by Consent and a Tender of Admissions and Agreement for Discipline by Consent (the "Agreement") were filed. The Hearing Officer, in his report dated December 20, 2007, recommended acceptance of the Agreement.

The matter was heard by the Disciplinary Commission on January 12, 2008. The Commission rejected the recommendation of the Hearing Officer to

1 accept the Agreement and impose a censure. The Matter was remanded to the
2 Hearing Officer on January 28, 2008.

3
4 Pursuant to the remand, a hearing was held on April 28, 2008. The
5 primary issue to be addressed at the hearing was Respondent's mental state.
6 Respondent testified, as did Christine Misker, Respondent's former client.
7
8 Additional documentary evidence was also introduced. Based on the evidence
9 presented, the Hearing Officer makes the following Findings of Fact,
10 Conclusions of Law and Recommendation.

11
12 **FINDINGS OF FACT**

13 1. At all relevant times, Respondent was an attorney licensed to practice
14 law in Arizona, having been admitted to practice in this state on October 21, 1995.

15 **Count One (File No. 06-0517)**

16
17 2. Respondent was retained to represent a paternal aunt and the aunt's
18 adult daughter ("petitioners"), in a private dependency matter in Juvenile Court
19 regarding the petitioners' fourteen-year-old niece and cousin respectively.

20
21 3. The petitioners alleged that the child should be made a ward of the
22 Court and that temporary physical custody be awarded to them because there was
23 no parent or legal guardian who would minimally care for the minor child

24
25 4. Because the child's mother ("the mother") was determined to be
26 indigent, Mr. Daniel Wallin ("Mr. Wallin"), was appointed to represent her.

1 5. The mother and Child Protective Services (“CPS”) opposed the
2 petition.

3
4 6. The Honorable Michael McVey (“Judge McVey”) was assigned to
5 the case in Maricopa County Superior Court.

6 7. The trial was held on October 10, 2005, and October 27, 2005. The
7 trial was continued to February 6, 2006.

8
9 8. After October 27, 2005, but before February 6, 2006, Respondent did
10 not believe the petitioners would prevail in the dependency action and discussed
11 with her clients the options for going forward.

12
13 9. Christine Misker, a cousin of the child for whom protection was
14 sought, testified that the child had been in an abusive situation in that the child’s
15 mother had not been seeking appropriate help for her mental disorders and
16 addictions and had become very volatile toward the child.

17
18 10. Christine and her mother retained the Respondent to file the
19 dependency action.

20
21 11. Prior to the hearing before Judge McVey on February 6, 2006, after
22 consultation with Respondent, Christine and her mother decided to dismiss the
23 dependency action.

1 12. Judge McVey believed that the parties had agreed that it was in the
2 best interests of the child for the petition to be dismissed and for the child to return
3 to her mother so CPS could initiate counseling to help repair their relationship.
4

5 13. The parties answered affirmatively when Judge McVey asked if
6 everyone agreed that for the family preservation program to work, the child would
7 go back home with her mother.
8

9 14. Judge McVey believed that Respondent's withdrawal of the petition
10 in Juvenile Court was a settlement of the matter.
11

12 15. On the same day that Judge McVey dismissed the petition,
13 Respondent filed an *in loco parentis* petition in Family Court
14

15 16. Although the mother was indigent and appointed a lawyer in the
16 dependency action, she had no right to appointed counsel in Family Court.
17

18 17. When Mr. Wallin learned of Respondent's filing in Family Court he
19 prepared a motion to vacate the order of dismissal in the dependency action in
20 Juvenile Court and requested that the Family Court matter be consolidated with
21 the dependency matter, and requested that the Family Court matter be dismissed.
22 CPS joined Mr. Wallin's motion.
23

24 18. Judge McVey set an emergency hearing for February 7, 2006.

25 19. Respondent admitted at the February 7, 2006, emergency hearing,
26 that it was petitioners' plan all along to dismiss the dependency action and file the

1 matter in Family Court, and that the Family Court documents were ready to be
2 filed February 7, 2006.

3
4 20. At the February 7, 2006 hearing Judge McVey expressed his
5 displeasure with Respondent's actions. He expressed a belief that the parties
6 had reached a settlement of their differences, and expressed a belief that
7 Respondent had not been candid with the tribunal.
8

9 21. In a February 7, 2006, minute entry Judge McVey vacated the order
10 of dismissal, consolidated the dependency and Family Court Action, and
11 dismissed the Family Court action.
12

13 22. In the same minute entry filed February 7, 2006, Judge McVey
14 ordered that the child be placed in physical custody of her mother and that there be
15 no contact between the child and either petitioner, except upon direct approval of
16 the Department
17

18 23. Christine Misker testified that neither she nor her mother suffered any
19 harm as a result of the misunderstanding between Respondent and Judge McVey
20 as to the significance of the dismissal of the dependency action as it related to an
21 overall settlement. Judge McVey had indicated at the hearing that he was
22 restricting the ability of the Miskers to visit the child. In fact, visitation had
23 already been denied by the child's mother.
24
25
26

1 24. Respondent made a misrepresentation by omission when she failed to
2 inform Judge McVey that her withdrawal of the petition in Juvenile Court was not
3 a settlement of the matter. The transcript of the February 6, 2006, hearing does not
4 reflect a representation by Respondent to the Court that the matter was settled,
5 only that the petition was being withdrawn. Respondent reviewed the transcript
6 and realizes that that was the impression conveyed to Judge McVey, an impression
7 created, in large part, because she did not indicate that she would be filing another
8 action. She testified that she had had discussions with the child's CPS
9 caseworker, who felt that the matter was more appropriately a custody matter as
10 opposed to a dependency. Additionally, two mediations were held during which it
11 was hoped that CPS would provide individual and family counseling to both the
12 child and her mother, but that assistance was very slow to materialize.
13
14
15
16

17 25. Respondent made a misrepresentation by omission when she failed to
18 inform Judge McVey that she planned to file an *in loco parentis* petition in Family
19 Court on February 6, 2006, after he dismissed the dependency action.
20

21 26. Respondent engaged in conduct prejudicial to the administration of
22 justice when she failed to inform Judge McVey that her withdrawal of the petition
23 in Juvenile Court was not a settlement of the matter
24

25 27. Respondent engaged in conduct prejudicial to the administration of
26 justice when she failed to inform Judge McVey that she planned to file an *in loco*

1 *parentis* petition in Family Court on February 6, 2006, after he dismissed the
2 dependency action.

3
4 28. Respondent testified that she regrets not fully informing Judge
5 McVey that the second action would be filed. Respondent expressed remorse for
6 her misconduct, which remorse is judged by the Hearing Officer to be genuine and
7 heartfelt. From the testimony of Respondent, it appears that the misunderstandings
8 between the Judge and Respondent were just that, misunderstandings, and not an
9 intentional effort to mislead the Court. Certainly, after an opportunity to reflect,
10 Respondent acknowledges that the matter could have been handled differently,
11 and has changed her practices to ensure that this situation is not repeated.
12 Similarly, it should be noted that the Court's impressions as to what had occurred
13 were also reasonable under the circumstances.
14
15
16

17 **CONCLUSIONS OF LAW**

18 Respondent violated the following Rules of Professional Conduct:

- 19
20 1. Rule 42, Ariz.R.S.Ct., ER 3.3(a) by knowingly failing to correct the
21 false statement regarding settlement to Judge McVey.
22
23 2. Rule 42, Ariz.R.S.Ct., ER 8.4(d): by engaging in conduct prejudicial
24 to the administration of justice by wasting judicial resources.
25
26

1 Respondent convincingly testified at the hearing that there was nothing legally
2 improper in her decision to file the *in loco* parentis petition. Her error was failing
3 to clearly inform the Court as to her intended course of action.
4

5 Although the *Standard*¹ for a knowing omission to the court suggest that
6 suspension is the appropriate sanction, the Hearing Officer, the Disciplinary
7 Commission and the Court have the option to select the appropriate sanction in
8 each case. (*In re Hansen*, 179 Ariz. 229, 877 P.2d 802 (1994)([T]he standards . . .
9 are not analogous to criminal determinate sentences, but are guidelines which give
10 courts the flexibility to select the appropriate sanction in each particular case of
11 lawyer misconduct.) Based upon the record in this matter, censure is the more
12 appropriate sanction in this case.
13
14

15 **The aggravating and mitigating circumstances**
16

17 The parties agree that the following factor should be considered in aggravation:

18 • *Standard* 9.22(a)- prior disciplinary offenses. Respondent was
19 censured November 2006 and placed on probation for violations of ERs 1.3, 1.4,
20 1.15 and 1.16, and Supreme Court Rules 43 and 44.
21

22 Mitigating factors to consider are:
23
24

25 ¹ *Standard* 6.12: Suspension is generally appropriate when a lawyer knows that material
26 information is being withheld and takes no remedial action, and causes injury or potential injury
to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal
proceeding

1 stating that the victim witness failed to appear for trial, thereby allowing the case
2 to be dismissed. One aggravating factor was found to exist: dishonest or selfish
3 motive (in that she lied to the Court to cover up her error in prematurely releasing
4 her victim witness) There were four mitigating factors found: no prior
5 disciplinary record, remorse for her actions, full and free disclosure and
6 cooperation throughout the disciplinary proceedings and inexperience in the
7 practice of law (only having been practicing law for little more than two years
8 when the conduct occurred).

11 In *In re Risley*, SB-05-0015-D (2005), Risley was censured and placed on
12 one year of probation for violating Ariz.R.Sup.Ct., Rule 42, specifically ERs 1.1,
13 1.3, 3.3(a) and 8.4(d) Risley filed a procedurally inappropriate motion to compel
14 and misrepresented to the Court and a non-party witness that the Court had issued
15 an order compelling production of documents when the Court had denied the
16 motion. Risley also misrepresented the facts to the Court in a second case
17 (although the Court stated that Risley apparently did not get full information from
18 his client in so doing). Three aggravating factors were found to exist: dishonest
19 or selfish motive, multiple offenses and substantial experience in the practice of
20 law. There were three mitigating factors found: absence of prior disciplinary
21 record, full and free disclosure throughout disciplinary proceedings and character
22 or reputation.

1 Respondent's conduct in failing to correct the Court's misapprehension that
2 the matter was settled is not as egregious as the two cases cited, although they
3 involve the same ethical violations. However, Respondent was recently censured,
4 as noted above, and although it was for a different type of misconduct, it still
5 needs to be considered in determining the appropriate sanction. Neither Risley nor
6 Hanson had prior discipline.
7

8
9 The Hearing Officer recommends that the following disciplinary sanctions
10 be imposed:

- 11 1. Respondent should receive a censure for violations of Rule 42,
12 Ariz.R S.Ct., specifically ERs 3 3(a) and 8.4(d). Probation is not
13 appropriate in this case.
14
- 15 2. Respondent will pay all costs and expenses incurred by the State Bar
16 in this disciplinary proceeding.
17

18
19 DATED this 16th day of July, 2008.
20

21
22
23 Dwight M. Whitley, Jr. /W/M
24 Dwight M. Whitley, Jr.
25 Hearing Officer
26

1 Original filed with the Disciplinary Clerk of the
2 Supreme Court this 16th day of July, 2008,
with:

3
4 Copies of the foregoing mailed this 16th day
of July, 2008, to:

5
6 Mark Rubin, Bar No 007092
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11 *Respondent's Counsel*

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by: Neeta Manelkar