

FINDINGS¹

3. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona, having first been admitted to practice in Arizona in 1999. Respondent was previously admitted to practice law in Illinois in 1977.
4. The Agreement set forth in the Tender of Admissions and Joint Memorandum requires no Censure and/or Reprimand, but does require the placement of the Respondent on probation for no less than one year, and no more than two years, with participation in the Member Assistance Program ("MAP"); that Respondent agrees to forbear ever accepting any clients for representation in a Domestic Relations or Family Court matter; and pay the costs and expenses of these disciplinary proceedings. The Terms of the Agreement of Probation shall be as deemed appropriate by the MAP director, but at a minimum shall require that Respondent undergo a MAP assessment to evaluate her physical, mental and/or emotional fitness to practice law, and to abide by the MAP director's recommendations and instructions. The MAP director shall have the discretion to accept an evaluation or evaluations similar to a MAP assessment from Respondent's own healthcare providers, accept periodic reporting from Respondent and/or her health care providers at intervals the MAP director deems appropriate, and to consult with Respondent's health-care providers regarding any treatment regimen they prescribe. The MAP director shall have the discretion to recommend termination of Respondent's probation after one year should he

¹ In that the tendered Agreement provides for probation only and no Censure, the matter is final if the Hearing Officer accepts the Agreement. The Hearing Officer accepts the Agreement and, therefore, an abbreviated Report is being generated.

determine that Respondent's continued probation under the foregoing terms and conditions is no longer necessary.

5. Respondent was involved in a very highly charged domestic relations case wherein she represented the wife. During the course of her representation of the wife, Respondent admitted that she violated Rule 41(c), maintaining respect due to the courts and judges; Rule 41(g), abstain from offensive personality; ER 1.1, providing competent representation to a client; ER 1.3, diligence in representing her client; ER 1.7, technical conflict of interest; ER 2.1, exercising independent judgment; ER 3.1, asserting meritorious claims; ER 4.4, respect for rights of others; and ER 8.4(d), conduct prejudicial to justice. The remaining allegations set forth in the Complaint were dismissed by the Bar. There were no issues of restitution in this matter, and the State Bar gave notice of the agreement for discipline to the complainants pursuant to Rule 52(b)(3), Ariz.R.Sup.Ct.

6. This matter originally had all of the markings of an extremely serious and strenuously contested case. After reviewing significant information provided by the Respondent as to both the nature of the dissolution proceedings, as well as Respondent's present circumstances, Bar Counsel decided that Respondent's conduct, when considered in light of this information, was not as serious as originally thought.

“... Respondent's misconduct in this case owed generally to her overzealous representation of a client in an area of law with which Respondent was unfamiliar, coupled with her emotional attachment to her client's cause that affected Respondent's judgment in the tactics she pursued.” (Joint Memorandum at p.4:6)

7. Bar Counsel decided not to pursue many of the more serious allegations that would have warranted either a Censure or a Reprimand, or more, and instead

agreed that Respondent's conduct was more appropriately deserving of a period of probation and evaluation.

8. This Hearing Officer has reviewed Respondent's sealed personal information and the mitigation letters on her behalf. Much like a judge cannot substitute his or her judgment for that of a prosecutor in weighing the strength of their case, this Hearing Officer, after reviewing the information provided, concludes that Bar Counsel has exercised his discretion appropriately in recommending that Respondent not receive a Reprimand or Censure, but be placed on probation with some very specific conditions.
9. The recommended sanction is appropriate to Respondent's conduct in light of the American Bar Association's *Standards for Imposing Lawyer Sanctions* and the Arizona case law. *Standards* 4.43, 4.34, 7.3 and 6.23 all state that a Reprimand or Censure would be applicable for violating the ER's that Respondent admitted to. Given Respondent's "negligent" state of mind, and after weighing the three aggravating factors and the six mitigating factors, as well as the "unique circumstances" of the case, the parties submit that the proposed probation with its unique terms is more fitting in this matter. The parties cite numerous proportionality cases, but refer the Hearing Officer specifically to *In re: McCarthy*, No. 05-1517, wherein the Commission reduced the presumptive sanction from a suspension and one year of probation to an Informal Reprimand because of the unique circumstances in that case. We often cite the precept that the discipline in each case must be tailored to the individual circumstances in the

case and this Hearing Officer feels that, given the unique circumstances of this case, the proposed sanction is appropriate to this case.

10. Based upon all the considerations set forth in this matter, the undersigned Hearing Officer accepts and approves the terms of the Joint Memorandum and Tender of Admissions and Agreement for Discipline by Consent submitted by the parties.

11. Respondent shall be placed on probation, which will begin to run at the time of the Judgment and Order, for not less than one year nor more than two years from the date that all parties have signed the “Terms and Conditions of Probation”, under the following terms and conditions:

- 1) Respondent’s participation in the Member Assistance Program (“MAP”);
- 2) Respondent shall not accept any clients for representation in domestic relations or Family Court;
- 3) Respondent shall be responsible for the payment of costs and expenses of the disciplinary proceedings;
- 4) Respondent shall contact the director of the State Bar’s Membership Assistance Program within 30 days of the date of the final judgment and order. The MAP director shall determine the specific “Terms and Conditions of Probation” but at a minimum shall require the following:

- a) Respondent shall undergo a MAP assessment to evaluate her physical, mental and/or emotional fitness to practice law;
- b) The MAP director shall have the discretion to accept an evaluation or evaluations similar to a MAP assessment from Respondent’s own healthcare providers;

- c) Respondent shall abide by the MAP director's recommendations and instructions including, but not limited to, any periodic reporting the MAP director deems appropriate;
 - d) The MAP director shall have the discretion to accept periodic reporting from Respondent and/or her healthcare providers at intervals the MAP director deems appropriate;
 - e) The MAP director shall have the authority to consult with Respondent's healthcare providers regarding any treatment regimen they prescribe;
 - f) Respondent shall furnish whatever confidential or private information releases and/or authorizations the MAP director requires in order to effectuate the foregoing provisions.
- 5) The MAP director shall have the discretion to recommend termination of Respondent's Probation after one year should he determine that Respondent's continued participation with a MAP is no longer necessary;
- 6) Respondent is responsible for any costs associated with MAP participation;
- 7) Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other rules of the Supreme Court of Arizona;
- 8) In the event that Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, 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 date, but in no event later than 30 days following the receipt of notice, to determine

whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence.

DATED this 17th day of February, 2009.

Hon. H. Jeffrey Coker / WJM
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 17th day of February, 2009.

Copy of the foregoing mailed
this 17th day of February, 2009, to:

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