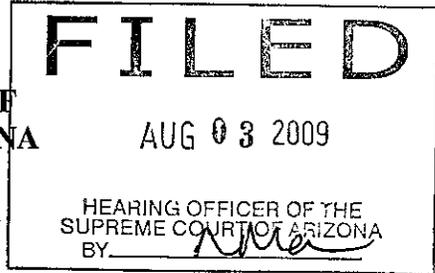


**BEFORE A HEARING OFFICER OF  
THE SUPREME COURT OF ARIZONA**



IN THE MATTER OF A )  
SUSPENDED MEMBER OF THE )  
STATE BAR OF ARIZONA )  
)  
)  
**MARY V. SCHAFFER,** )  
**Bar No. 017474** )  
)  
RESPONDENT. )

No. 04-1881

**HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

The Bar filed a Notice of Non-Compliance and Request for Order to Show Cause Why Respondent Should Not Be Found in Violation of the Order of Probation on May 28, 2009. The Hearing Officer was assigned on June 2, 2009. In the Notice of Assignment of June 2, 2009 (which was mailed to counsel for the Bar and to two working addresses for Respondent) the parties were informed that a telephonic status conference would be held on June 9, 2009 at 9:00 am. At the telephonic status conference only counsel for the Bar appeared. On the morning of June 9, 2009 at 9:00 am the Hearing Officer's assistant called an active phone number for Respondent but could only leave a message on voicemail. At the conference the Hearing Officer set the hearing on the alleged violation of probation for June 29, 2009. A Notice of Hearing was filed on June 9, 2009 (and sent to the same addresses as the Notice of Assignment) that informed the parties that the hearing would be on June 29, 2009 at 9:00 am at the Supreme Court of Arizona, Certification and Licensing Division. The hearing was held on June 29, 2009. Respondent did not appear. The Hearing Officer called Respondent from the hearing room to give her an opportunity to appear by telephone, but was only able to leave a message on Respondent's answering machine. (TR 13:8 through 15:10) Counsel for the Bar appeared and

presented the testimony of two witnesses, Hal Nevitt, Member Assistance Program (MAP) Director, and Tracy Ward, a practice management advisor to the Law Office Management Program (LOMAP) and an assistant to MAP. (TR 28:5-7 and 24:18 through 25:3)

### FINDINGS OF FACT

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to the practice in Arizona on October 19, 1996. (See Hearing Officer's Report May 17, 2006, page 2, line 23)
2. In a Judgment and Order of January 9, 2007, No. SB-06-0158-D, Disciplinary Commission No. 04-1881, the Supreme Court of Arizona ordered that Respondent was suspended for one hundred twenty (120) days and placed on probation for a period of two years. The probation was to run concurrently with the term of suspension. Respondent was directed to contact the Director of the Member Assistance Program (MAP) within thirty (30) days and submit to a MAP assessment. Respondent was ordered to enter into a MAP contract. The Order required Respondent to comply with the recommended terms (of the MAP contract) and the MAP contract was incorporated by reference into the Judgment and Order. (Exhibit One – Judgment and Order)
3. Respondent participated in a MAP assessment with director Hal Nevitt in February, 2007. Respondent and MAP entered into a Probation Contract – Member Assistance Program in early April, 2007. (Exhibit 2) The contract included among its terms that the Member (Respondent) must pay a \$50 per month fee to MAP "...for services rendered in monitoring Member's compliance with the terms of this agreement." (Exhibit 2, page 4, paragraph II. C.)

4. Respondent was billed \$450 for the cost of the MAP assessment. (Exhibit 3 – Invoices and Statements from MAP and checks from Respondent, see invoice 2/12/2007, #M1010267P)
5. Respondent paid the \$450 assessment fee in three installments, \$200 (check # 698, 2/23/07), \$100 (check #1377, 4/6/07) and \$150 (check # 102, 5/1/07) pursuant to a payment plan approved by MAP. (Exhibit 3) (TR 67:19-25)
6. In check # 706 on June 8, 2007 Respondent paid \$300 for \$50 per month probation fees from January 9, 2007 through July 8, 2007. (Exhibit 3) However, since her MAP contract was not signed until April, 2007, MAP did not begin to charge her the \$50 per month fee until the month of May, 2007. (TR 70:16-25) In an invoice of June 6, 2007, #M101487P MAP billed Respondent \$50 for May 2007. By June, 2007 Respondent had been granted by MAP a reduced monthly fee of \$25. (TR 67:8-14) This fee is reflected in invoice # M101533P on July 5, 2007. (Exhibit 3)
7. In a Statement issued by MAP on July 5, 2007 MAP gave Respondent credit for her \$300 payment toward monthly fees and subtracted \$75 for the \$50 Respondent owed in May 2007 and the \$25 Respondent owed for June 2007. (Exhibit 3) (TR 71:21 through 72:13)
8. From the June 8, 2007 payment of \$300 until the two-year term of the probation ended in January, 2009, Respondent made no other payments. By January, 2009 Respondent owed MAP \$225. (Exhibit 3) (TR 79:25 through 80:5) The Bar had sent invoices and statements to Respondent at P.O. Box 30335 in Tucson, Arizona, the address in the membership database for Respondent. (TR 65:8-25) Respondent had been receiving monthly invoices from June, 2007 through April, 2009. Until March,

2008 the statements were showing a credit for Respondent. On the March 27, 2008 statement Tracy Ward wrote "You are current"; which informed Respondent that she had a zero balance. (TR 75:14-21) Although Respondent was incorrectly billed \$50 in the June 30, 2008 invoice, this mistake was corrected by not billing Respondent for July, 2008. (TR 76:8 through 78:4) On the November 25, 2008 statement Tracy Ward wrote "Val, this is your last invoice. It covers the last two months. Tracy." (TR 79:20-24)

9. On February 10, 2009, an administrative assistant with the Bar's Lawyer Assistance Programs sent Respondent a letter reminding Respondent of the \$225 Respondent owed MAP in monthly fees. (Exhibit 4 – Letter from Davis Luna to Respondent)
10. Respondent has not paid any of the \$225 to MAP or the Bar.
11. In most other aspects of the probation Respondent was compliant. Director of MAP Hal Nevitt could not recall Respondent failing to comply with any of the other terms of probation or of the MAP contract. (TR 35:17-23 and 39:17 through 40:12) After Respondent was reinstated after her suspension (reinstatement July 3, 2007) Respondent was summarily suspended for failure to pay dues. Currently Respondent remains summarily suspended.

#### **CONCLUSIONS OF LAW**

The State Bar has proven by clear and convincing evidence that Respondent has failed to comply with the condition of Respondent's probation contract that Respondent pay monthly fees to MAP. Rule 53 (e), Ariz. R. Sup. Ct. Respondent waived her right to appear and participate in the proceedings. Respondent was notified of the telephonic conference and the hearing and did not attend.

## RESTITUTION

Respondent owes the Bar \$225. She should be required to pay these probation fees for MAP services.

## ABA STANDARDS

The ABA *Standards* are designed to promote efficiency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying these factors to situations where lawyers have engaged in various types of misconduct. ABA *Standard* 1.3, Commentary. The ABA *Standards* provide guidance with respect to an appropriate sanction in this matter. The Court and the Commission consider the ABA *Standards* a suitable guideline. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990); *In re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274, 276 (1994). In determining an appropriate sanction, both the Court and the Commission consider the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *In re Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA *Standard* 3.0.

Although no *Standard* specifically addresses violating orders of disciplinary probation (*Standard* 8.0 relates to violating prior disciplinary orders but focuses on repetitive conduct of the attorney who continues to violate similar orders), the most appropriate *Standard* for this case is found under *Standard* 7.0, "Violations of Other Duties Owed as a Professional". *Standard* 7.4 states, "Admonition (Informal Reprimand in Arizona) is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system". Respondent's conduct in not paying the probation fees can be characterized as violating

a duty owed to the legal profession to comply with all of the directives of probation. By not paying the fees Respondent has not injured a client, or the public. The injury to the profession is not as severe as engaging in conduct that lessens the public's perception of the integrity of members of the Bar. Respondent did not totally flaunt the orders to pay her fees. She paid more monies (\$750) toward her assessment and fees than she owed (\$250). Therefore her failure to complete her payments can be called an isolated instance of negligence. There is evidence in the record (Respondent's need for a payment plan to pay her \$450 assessment fee and the reduction of her monthly fee from \$50 to \$25) that Respondent was having financial difficulties. The Bar was making every effort to assist Respondent in paying her probation fees by permitting payments over time and by reducing the monthly payment for Respondent's MAP fee.

#### **DUTY VIOLATED**

Respondent violated a duty to the profession by not paying the remainder of her probation fees.

#### **LAWYER'S MENTAL STATE**

Respondent was negligent in not paying her probation fees. She did not intend to avoid paying fees. She paid \$450 for her MAP assessment and she paid \$300 in advance to cover her monthly MAP fees. Apparently she was trying to comply with the financial obligations of her probation. She was in compliance with the substantive portions of her probation.

#### **INJURY**

Respondent did not cause actual or potential injury to a client or to the public. She has caused the Bar not to be compensated \$225 for services provided by MAP staff personnel. Some of the services provided by MAP that may be covered by the monthly MAP fee include, the time for MAP staff to review the reports of Respondent's monitors, review of reports from

other professionals, travel of the MAP Director to meet with Respondent (she lived in Tucson), and administrative costs of sending invoices and monthly statements to Respondent about her fees. (TR 45:4 through 46:8 and 46:18 through 48:7 and 63:4-15)

## **AGGRAVATING AND MITIGATING FACTORS**

### **Aggravating Factors**

*Standard 9.22 (a) - Prior Disciplinary Offenses.* Respondent was suspended for 120 days and placed on two years of probation. This is the same probation for which Respondent is now non-compliant. The suspension and probation was because Respondent engaged in the unauthorized practice of law while she was suspended for failing to comply with MCLE requirements. Respondent filed court pleadings and made numerous appearances in court while suspended. Respondent failed to notify clients of her suspension and further failed to respond to the State Bar's investigation.

### *Standard 9.22 (e) - Bad Faith Obstruction of the Disciplinary Proceeding.*

Respondent did not attend the hearing in this matter. Respondent did not respond in any way to the Bar's Notice of Non-Compliance.

*Standard 9.22 (i) - Substantial Experience in the Practice of Law.* Respondent was admitted to practice in 1996.

### **Mitigating Factors**

*Standard 9.32 (c) - Personal or Emotional Problems.* Respondent was seeing a psychiatrist and a counselor for depression pursuant to the terms of her probation contract.

(Exhibit 2)

Although Respondent has more aggravating factors than mitigating factors the Hearing Officer concludes that the *Standards* sanction of informal reprimand is appropriate. In

this proceeding Respondent has failed to complete paying her probation fees. Her personal and emotional problems are balanced against her prior disciplinary matter (of which this probation was the sanction), her lack of participation in the non-compliance action and her experience in the practice of law. The Director of MAP testified that Respondent had complied with the terms of probation requiring her to 1) obtain CLE, 2) engage her counselors and 3) see her monitors. Respondent's issues were depression, stress and response and reaction to situations outside her practice of law. (TR 55:23 through 56:23)

### **PROPORTIONALITY REVIEW**

In the imposition of lawyer sanctions, the Court is guided by the principle that an effective system must have internal consistency. *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988) Therefore, a review of cases that involve conduct of a similar nature is warranted. To achieve internal consistency, it is appropriate to examine sanctions in cases that are factually similar. *In re Shannon*, 179 Ariz. 52, 876 P.2d 548 (1994) However, the discipline in each situation must be tailored for the individual case as neither perfection nor absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604 (1984). The following three cases involve informal reprimands for attorneys who were found to have violated Rule 53 (e), Ariz. R. Sup. Ct., the same Rule that Respondent has violated.

In *In re Erickson*, SB 03-0297, the attorney received an informal reprimand for failing to provide quarterly reports to the State Bar's Law Office Management Program (LOMAP) and for failing to make monthly payments to LOMAP pursuant to the probation contract. An order of diversion had been entered on November 10, 2003. Respondent had until November 30, 2003 to contact the LOMAP Director and make arrangements for a LOMAP audit. Respondent failed to

contact LOMAP and failed to return courtesy phone calls from LOMAP staff. Respondent had been previously placed on Diversion and had been required to take the State Bar Ethics Enhancement Program (EEP) for violations of ER 1.3 and 1.4.

In *In re Reddy*, SB 03-2261, the attorney received an informal reprimand for failing to comply with the terms of his diversion program. Respondent was required to participate in LOMAP, but failed to comply. He had no prior discipline history.

In *In re Leather*, SB 05-0973, Respondent received an informal reprimand when he failed for nearly three months after his client terminated his representation to refund any part of a \$1500 advance fee. He was found to have violated ER 8.4 (a) by attempting to withhold \$750 of the advance fee when he could only establish that he had earned \$190 of the fee. He also failed to advise the client that upon termination of the lawyer's services the client was entitled to a refund of any unearned portions of an advance fee.

**CONCLUSION**

The Hearing Officer concludes that as a sanction for violating probation by not paying some MAP fees Respondent should receive an informal reprimand, pay the costs of this proceeding and pay restitution to the Bar of \$225 within 90 days from the date this decision becomes final.

DATED this 3rd day of August, 2009.

Hon. Jonathan Schwartz W/M  
Honorable Jonathan H. Schwartz  
Hearing Officer 6S

Original filed with the Disciplinary Clerk  
this 3rd day of August, 2009.

Copy of the foregoing mailed  
this 31<sup>st</sup> day of August, 2009, to:

Mary V. Schaffer  
Respondent  
PO Box 30335  
Tucson, AZ 85751

Alternate Address:  
Mary V. Schaffer  
6305 East Tanuri Circle  
Tucson, AZ 85750

Harriet Bernick  
Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 200  
Phoenix, AZ 85016-6288

by: Evelyn J. Jara