

FILED

OCT 21 2004

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *William*

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

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

THEODORE E. HANSEN,
Bar No. 006359,

RESPONDENT.

No. 03-1463

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

The parties filed a Tender of Admissions and Agreement for Discipline by Consent, and a Joint Memorandum in Support of Agreement for Discipline by Consent on August 26, 2004. A telephonic status conference was held on September 24, 2004. The parties met and, as a result, Respondent filed on October 12, 2004 a Statement of Respondent Theodore E. Hansen in Support of Memorandum in Support of Agreement for Discipline by Consent. After a subsequent telephonic conference on October 6, 2004, Respondent submitted on October 20, 2004 a Letter from Dr. Robert Zenner, M.D., that was intended to supplement the October 12, 2004 supportive pleading. No hearing was held.

FINDINGS OF FACT

At all relevant times, Respondent was an attorney licensed to practice law in the State of Arizona (except during his suspension from practice), having been admitted to practice on October 4, 1980.

On January 11, 2001, the Arizona Supreme Court issued a Judgment and Order in case No. SB-00-0084-D, suspending Respondent from the practice of law for a period of sixty days.

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1 4. Once the draft of the settlement papers was completed, the president
2 of one of the principle entities on the other side, Mark Arnds, a friend and former client
3 of Respondent's, asked Respondent to review the settlement documents because of his
4 prior involvement with the entities in question. Mr. Arnds knew Respondent was
5 suspended from the practice of law, did not consider him his lawyer, and did not have
6 any expectation that what Respondent was doing for the parties in Mr. Arnds's group
7 would be interpreted as the practice of law because Respondent was also an officer of
8 Mr. Arnds's corporate entity.

9 5. Respondent found that there were many "inaccuracies and omissions"
10 in the draft settlement documents and was asked by Mark Arnds to communicate his
11 findings to the G&B lawyers starting in July 2003.

12 6. Respondent and the G&B lawyers exchanged communications
13 concerning modifications to the draft settlement documents. Respondent did not
14 identify himself as a lawyer to the G&B lawyers, although Respondent concedes that
15 his knowledge and demeanor could have caused the G&B lawyers to think he was.

16 7. During their dealing with Respondent from July 2003 through August
17 2003, the three G&B attorneys handling this matter believed that Respondent was
18 acting as the other side's attorney in this matter.

19 8. At no time prior to July 2003 during his interactions with the G&B
20 attorneys did Respondent explain that he was not acting as the lawyer for the other side
21 in the matter and was intending to act as an "agent."

22 9. At no time did Respondent inform the G&B attorneys about his status
23 as a suspended lawyer.

24 10. Respondent concedes that his conduct was such that if the case were
25 presented to a hearing officer as a contested matter, Respondent would not likely
26 prevail on his claim that his conduct was not the unauthorized practice of law.

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1 Respondent also concedes for purposes of this agreement that a hearing officer could
2 conclude that as a matter of law, Respondent's conduct in the matter violated ER 5.5
3 (Unauthorized Practice of Law) and Rule 31(b) of the Arizona Rules of the Supreme
4 Court.

5 **B. State Bar's Conditional Admissions**

6 The State Bar conditionally admits for purposes of the Tender of
7 Admissions and Agreement for Discipline by Consent the following:

8 11. Respondent did not expressly admit his status as a suspended lawyer
9 to the G&B lawyers, and in fact at one point identified himself as an "agent" for one
10 of the sides to the settlement and, at the time of the conduct, did not believe what he
11 was doing was the Unauthorized Practice of Law. The State Bar accordingly admits
12 Respondent did not have the requisite intent to be found to have violated ER 8.4(c)
13 (Misconduct involving Dishonesty) or to have willfully violated an Order of the
14 Arizona Supreme Court suspending him from the practice of law, in violation of Rule
15 53(c), Arizona Rules of the Supreme Court.

16 12. If called to testify, the individuals who asked Respondent to review
17 the settlement and communicate with the G&B lawyers knew that Respondent was
18 suspended from the practice of law and did not consider the services Respondent
19 provided to be "legal services."

20 **C. Acknowledgment of Duties of Respondent during Suspension**

21 13. Respondent acknowledges that his conduct in the underlying matter
22 violated Supreme Court rules prohibiting the Unauthorized Practice of Law.

23 14. Respondent further acknowledges his duty to comply with the Orders
24 of the Arizona Supreme Court suspending him from the practice of law and
25 acknowledges that he must not engage in activities defined by Rule 31(a)2.A.,

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1 Arizona Rules of the Supreme Court, as the “Practice of Law” or as the “Unauthorized
2 Practice of Law,” which are defined as follows:

3 A. *“Practice of Law” means providing legal advice or services to
4 or for another by:*

5 (1) *preparing any document in any medium intended to affect or secure
6 legal rights for a specific person or entity;*

7 (2) *preparing or expressing legal opinions;*

8 (3) *representing another in a judicial, quasi-judicial, or administrative
9 proceeding, or other formal dispute resolution process such as
10 arbitration and mediation;*

11 (4) *preparing any document through any medium for filing in any court,
12 administrative agency, or tribunal for a specific person or entity; or*

13 (5) *negotiating legal rights or responsibilities for a specific person or
14 entity.*

15 B. *“Unauthorized Practice of Law” includes but is not limited to:*

16 (1) *engaging in the practice of law by persons or entities not authorized
17 to practice pursuant to paragraphs (b) and (c) or specially admitted to
18 practice pursuant to Rule 33(d); or*

19 (2) *using the designations “lawyer,” “attorney at law,” “counselor at
20 law,” “law,” “law office,” “J.D.,” “Esq.,” or other equivalent words by
21 any persons or entity who is not authorized to practice law in this state
22 pursuant to paragraphs (b) and (c) or specially admitted to practice
23 pursuant to Rule 33(d), the use of which is reasonably likely to induce
24 others to believe that the person or entity is authorized to engage in the
25 practice of law in this state.*

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1 Law, the parties agree that Standards 8.2 and 8.3 should be considered herein.

2 **Standard 8.2 Provides:**

3 *Suspension is generally appropriate when a lawyer has been*
4 *reprimanded [censured, in Arizona] for the same or similar misconduct*
5 *and engages in further similar acts of misconduct that cause injury or*
6 *potential injury to a client, the public, the legal system, or the profession.*

7 **Standard 8.3 Provides:**

8 *Reprimand [censure, in Arizona] is generally appropriate when a*
9 *lawyer:*

10 *(a) negligently violates the terms of a prior disciplinary order and such*
11 *violation causes injury or potential injury to a client, the public, the legal*
12 *system, or the profession; or*

13 *(b) has received an admonition for the same or similar misconduct and*
14 *engages in further similar acts of misconduct that cause injury or*
15 *potential injury to a client, the public, the legal system, or the*
16 *profession.*

17 Respondent has conditionally admitted negligently engaging in the
18 Unauthorized Practice of Law in Count One. Moreover, Respondent maintains, and
19 for purposes of the agreement, the State bar concedes that Respondent's conduct herein
20 was the product of his misunderstanding of the kinds of conduct that constitute the
21 Unauthorized Practice of Law. In addition, the parties agree that Respondent's
22 judgment at the time this misconduct occurred was impaired by stress of his personal
23 financial situation affecting his mental status (in light of his psychiatric condition),

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25 as expressed by his treating psychiatrist. Accordingly, Respondent's mental state was
26 negligent rather than a deliberate disregard for his duties as a lawyer.

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1 Respondent understands that his misconduct could cause potential injury
2 to the legal system. Similarly, the State Bar concedes there is no clear and convincing
3 evidence of actual injury to the legal system or any of the parties involved in the
4 underlying matter.

5 **AGGRAVATING AND MITIGATING FACTORS**

6 This Hearing Officer then considered aggravating and mitigating
7 circumstances in this case, pursuant to *Standards* 9.22 and 9.32. This Hearing officer
8 agrees with the parties that two aggravating factors apply and should be considered in
9 this matter: (a) prior disciplinary offenses; and (i) substantial experience in the practice
10 of law.

11 This Hearing Officer agrees with the parties that four factors are present
12 in mitigation: (b) absence of a dishonest or selfish motive; (c) personal or emotional
13 problems; (e) full and free disclosure to the disciplinary board or cooperative attitude
14 toward proceedings; and (l) remorse.

15 **PROPORTIONALITY REVIEW**

16 The Arizona Supreme Court has stated that, “In determining the sanction
17 to impose in a lawyer disciplinary matter, this court has often consulted similar cases
18 to assess proportionality.” Matter of Horwitz, 180 Ariz. 20, 28-29, 881 P.2d 352
19 (1994). “In most cases, consideration of the Standards and the sanctions imposed in
20 similar cases is necessary to preserve some degree of proportionality, ensure that the
21 sanction fits the offense, and void discipline by whim or caprice.” Matter of Struthers,
22 179 Ariz. 216, 226, 877 P.2d 789 (1994).

23 The parties have only identified two prior cases in Arizona where
24 ...
25 lawyers received sanctions for engaging in the Unauthorized Practice of Law while on
26 disciplinary suspensions (as opposed to administrative suspensions for failure to pay
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