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MAY 20 2005

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

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

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2
3 IN THE MATTER OF A MEMBER
4 OF THE STATE BAR OF ARIZONA

No. 02-1831

5 **CRISTI B. McMURDIE**
6 **Bar No. 014845**

**HEARING OFFICER'S
REPORT**

7
8 **RESPONDENT**

PROCEDURAL HISTORY

9 A probable cause order was entered in this matter on June 12, 2003. No
10 formal Complaint was filed. The parties filed a Tender of Admissions and
11 Agreement for Discipline by Consent and a Joint Memorandum in Support
12 providing for a censure and costs on September 20, 2004. The Hearing Officer
13 filed a Report and Recommendations, recommending rejection of the Tender on
14 November 12, 2004. The State Bar appealed and the Disciplinary Commission
15 issued its Report on April 19, 2005, agreeing with the Hearing Officer's
16 recommendation to reject the Agreement and remanding this matter to the
17 Hearing Officer.

18 A telephonic status conference was held on April 25, 2005 and the parties
19 were given until May 6, 2005 to either file a revised agreement or for the State
20 Bar to file a Complaint. That deadline was subsequently extended to May 13,
21 2005 and on that date, the parties filed a Revised Tender of Admissions and
22 Agreement for Discipline by Consent and a Joint Memorandum in Support
23 providing for an informal reprimand and costs. A telephonic status conference
24 was held on May 17, 2005 to discuss the revised Tender. Patricia A. Sallen
25 appeared on behalf of the State Bar and Mark I. Harrison appeared on behalf of
26 Respondent.

1 **FINDINGS OF FACT**

2 1. At all relevant times, Respondent was an attorney licensed to
3 practice law in Arizona, having been admitted on May 15, 1993.

4 2. A probable-cause order was entered on June 9, 2003.

5 3. During the relevant time period, late 2001 through early 2002,
6 Respondent employed Lori Ann Gleason as a paralegal. On or about February 1,
7 2002, Ms. Gleason's status with Respondent changed from employee to
8 independent contractor.

9 4. Ms. Gleason was divorced from her husband, Eugene Ramirez. Mr.
10 Ramirez sought to collect child support he believed Ms. Gleason owed him.

11 5. On October 11, 2001, the Maricopa County Superior Court, in
12 Gleason v. Ramirez, DR- 0251638, issued an order of assignment of Ms.
13 Gleason's wages. Respondent was listed as Ms. Gleason's employer on the order
14 of assignment.

15 6. Respondent did not receive a copy of the order of assignment at the
16 time it was issued and avows that she first received it on or about February 13,
17 2002.

18 7. When he did not receive any payments pursuant to the order of
19 assignment, Mr. Ramirez sent a letter and a copy of the wage assignment by
20 certified and restricted delivery to Respondent on February 6, 2002. Respondent
21 signed for the delivery on February 13, 2002.

22 8. Mr. Ramirez spoke with Respondent by telephone on or about
23 February 22, 2002. Respondent told Mr. Ramirez that Ms. Gleason could not
24 afford to pay the court-ordered amount.

25 9. As early as fall 2001, Respondent and Ms. Gleason had discussed
26 Ms. Gleason's interest in becoming an independent contractor. If this matter

1 proceeded to a hearing, the State Bar's position would be that the decision to
2 change Ms. Gleason's status on or about February 1, 2002, was prompted by Ms.
3 Gleason's desire to avoid complying with the order of assignment. If this matter
4 proceeded to a hearing, Respondent's position would be that the decision to
5 change Ms. Gleason's status was prompted by the decrease in Respondent's
6 domestic relations practice and her transition to a career in personal coaching.

7 10. If this matter proceeded to a hearing, Respondent's position would
8 be that once Ms. Gleason became an independent contractor, Respondent did not
9 believe she was required to comply with the wage assignment. If this matter
10 proceeded to a hearing, the State Bar would take the position that Respondent had
11 the duty to advise the court that she did not believe that, as a legal matter, the
12 facially valid wage assignment applied to her.

13 11. At a status conference on or about May 31, 2002, Mr. Ramirez
14 advised the judge that Respondent was ignoring the wage assignment. The judge
15 attempted unsuccessfully to telephone Respondent to involve her in the status
16 conference. The judge ordered "the Mother's employer" and Mr. Ramirez to
17 meet to resolve the problems with the wage assignment. Respondent was not
18 endorsed on this minute entry, but Mr. Ramirez faxed her a copy on June 13,
19 2002.

20 12. In early September 2002, Mr. Ramirez filed a petition for contempt
21 because Respondent had neither complied with the wage assignment nor
22 contacted him to resolve the matter. He then filed a complaint with the State Bar
23 of Arizona.

24 13. The State Bar transmitted Mr. Ramirez's bar complaint to
25 Respondent via letter dated October 23, 2002.
26

1 14. The hearing on Mr. Ramirez's contempt petition was set for
2 February 12, 2003. About a week before the hearing, Mr. Ramirez advised the
3 State Bar that he and Respondent had settled his claims against her and that as a
4 result he would not participate any further in the bar complaint. In addition, he
5 advised that because of the settlement, he had stipulated to dismiss her from the
6 contempt action. As a result, the hearing on the contempt petition proceeded on
7 February 12, 2003, against Ms. Gleason, but Judge Talamante dismissed the
8 petition as to Respondent and took no action against her. In a subsequent order
9 dated April 1, 2003, Judge Talamante, *inter alia*, specifically credited Ms.
10 Gleason's arrearages in the amount paid by respondent to settle Mr. Ramirez's
11 claim.

12 15. Respondent, whose legal practice consisted almost exclusively of
13 domestic relations, did not contest the wage assignment, nor did she advise the
14 court that she did not believe the court order applied to her. If the matter
15 proceeded to a hearing, Respondent would testify that she relied on Ms.
16 Gleason's assurances that the wage assignment order had been satisfied and that
17 she was unaware of the wage assignment because Ms. Gleason intercepted it
18 when it arrived at Respondent's office so that Respondent would not see it.

19 16. Respondent's conduct in failing to comply with the wage assignment
20 or advising the court that she did not believe the court order applied to her caused
21 Mr. Ramirez to file a petition for contempt and a bar complaint, and meant that
22 his children did not timely receive court-ordered child support via his wife's
23 employer.

24 17. If this matter proceeded to a hearing, the State Bar would take the
25 position that Respondent knowingly failed to comply with the wage assignment
26 and knowingly agreed with Ms. Gleason to change Ms. Gleason's status from that

1 of an employee to that of an independent contractor, thus frustrating the wage
2 assignment.

3 18. Respondent conditionally admits that she knowingly failed to
4 comply with the wage assignment.

5 19. The *ABA Standards for Imposing Lawyer Sanctions* (“Standards”)
6 section 6.23 states that “reprimand [censure in Arizona] is generally appropriate
7 when a lawyer negligently fails to comply with a court order or rule, and causes
8 injury or potential injury to a client or other party. . . .”

9 CONDITIONAL ADMISSIONS

10 20. Respondent conditionally admits that her conduct, as set forth above,
11 violated the following Rules of Professional Conduct and the Rules of the
12 Supreme Court:

- 13 • One violation of ER 8.4(d), Rule 42, Ariz.R.S.Ct., which prohibits
14 conduct prejudicial to the administration of justice.

15 21. The State Bar conditionally admits that it cannot prove by clear and
16 convincing evidence the alleged violations of ERs 8.1 and 8.4(c), Rule 42,
17 Ariz.R.S.Ct., and Rules 51(e) and (k), Ariz.R.S.Ct., that were included in the
18 probable-cause order.

19 ABA STANDARDS

20 In determining the appropriate sanction, the parties considered both the
21 American Bar Association’s *Standards for Imposing Lawyer Sanctions*
22 (“Standards” or “Standard ___”) and Arizona case law.

23 The Supreme Court and the Disciplinary Commission consistently use the
24 Standards to determine appropriate sanctions for attorney discipline. *In re*
25 *Kaplan*, 179 Ariz. 175, 877 P.2d 274 (1994). The *Standards* are designed to
26 promote consistency in sanctions by identifying relevant factors the court should

1 consider and then applying these factors to situations in which lawyers have
2 engaged in various types of misconduct. *Standard* 1.3, Commentary.

3 In determining an appropriate sanction, the court and the commission
4 consider the duty violated, the lawyer's mental state, the actual or potential injury
5 caused by the misconduct and the existence of aggravating and mitigating factors.
6 *In re Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); *Standards*, Theoretical
7 Framework at 5; *Standard* 3.0.

8 In this matter, the applicable *Standard* is 6.2, abuse of the legal process.
9 *Standard* 6.23 addresses the appropriateness of a censure:

10 Reprimand [censure in Arizona] is generally
11 appropriate when a lawyer negligently fails to comply
12 with a court order or rule, and causes injury or potential
injury to a client or other party, or causes interference
or potential interference with a legal proceeding.

13 To determine the applicability of this *Standard* in this case, the factors
14 listed in the theoretical framework must be considered.

15 **A. The duty violated**

16 Respondent violated her duties to the legal system by knowingly failing to
17 comply with a court order. In addition, her conduct also interfered with the
18 underlying domestic relations action between Lori Ann Gleason (who was
19 Respondent's employee and then an independent contractor working for
20 Respondent), and Ms. Gleason's former husband, Eugene Ramirez. As the
21 recipient of the order of assignment, Respondent's knowing failure to file a
22 response and appear to explain why she did not believe it applied to her caused
23 the judge to spend unnecessary time at a status conference attempting to reach her
24 and also caused the court to expend time and effort scheduling a hearing on Mr.
25 Ramirez's motion for contempt.
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1 Even though Respondent was acting as an employer rather than as a
2 lawyer, she still must, as an officer of the court, uphold and comply with court
3 orders. In *In re Arrick*, 161 Ariz. 16, 775 P.2d 1080 (1989), the Supreme Court
4 suspended for six months a lawyer who had, among many other violations, failed
5 to comply with a court order directing him to reimburse overpayments of
6 attorney's fees to a probate client. The lawyer claimed he interpreted the court
7 order inaccurately, but the Supreme Court found the order clear.

8 **B. The lawyer's mental state**

9 Although Respondent takes the position that she did not believe the wage
10 assignment applied to her once Ms. Gleason became an independent contractor,
11 she knowingly did not advise the court of her position. Even though the Supreme
12 Court said in *In re Alcorn*, 202 Ariz. 62, 41 P.3d 600 (2002), that it would not
13 sanction attorneys for good faith errors of law, it also found, in *Alcorn*, that the
14 attorneys had intentionally violated the ethical rules, even though their legal
15 research and opinions solicited from other attorneys suggested that their behavior
16 was not inappropriate.

17 If this matter were to proceed to a hearing, Respondent would take the
18 position that she did not believe the wage assignment applied to her once Ms.
19 Gleason became an independent contractor. Respondent also would contend that
20 she (1) relied on Ms. Gleason's assurances that the wage assignment order had
21 been satisfied and (2) that she acted on the wage assignment by attempting to
22 negotiate with Mr. Ramirez, although she admits that she did not contest the wage
23 assignment in court or otherwise advise the court that she did not believe it
24 applied to her.

25 If this matter were to proceed to a hearing, the State Bar would take the
26 position that *Standard* 6.22 (which provides for suspension) applies because as an

1 attorney – and especially as a domestic-relations attorney -- Respondent knew or
2 should have known the only acceptable avenue for contesting a court order was to
3 do so in court. Instead, she failed to take any action on the wage assignment,
4 despite attempts by Mr. Ramirez to prompt her to comply.

5 **C. The extent of the actual or potential injury**

6 Respondent's failure to comply with the wage assignment injured her
7 employee's ex-husband, Mr. Ramirez. Mr. Ramirez, on behalf of his children,
8 had a wage assignment for child support that was not being fulfilled. He also had
9 to file a motion for contempt against Respondent. He represented himself,
10 however, so he did not incur any attorney's fees, and Respondent ultimately
11 settled Mr. Ramirez's wage assignment claim to his satisfaction.

12 In addition, the judicial system was injured in that Respondent – a lawyer –
13 unilaterally determined that she did not have to comply with a facially valid court
14 order.

15 **D. The aggravating and mitigating circumstances**

16 In light of this analysis, the presumptive sanction is a censure. However,
17 because of the following mitigating and aggravating factors, the matter can and
18 should be mitigated to an informal reprimand.

19 In aggravation:

- 20 • *Standard 9.22(i)* (substantial experience in the practice of law):
21 Respondent was admitted to practice on May 15, 1993.
22 Respondent had been practicing law for eight years when this
23 conduct occurred and is an experienced domestic relations
24 attorney who knew the import of a wage assignment resulting
25 from child-support orders.

26 In mitigation:

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- *Standard 9.32(a)* (absence of a prior disciplinary record): Respondent has practiced domestic-relations law for 11 years, in an area of law that historically has attracted the most bar complaints, and has never been disciplined.
- *Standard 9.32(c)* (personal or emotional problems): Respondent suffered a major house fire on October 12, 2001, just a week after she employed Ms. Gleason. The fire was in the back end of the house but caused major smoke damage to the entire house, resulting in the house having to be essentially rebuilt and most of Respondent's possessions destroyed, replaced or treated. In addition, she took charge of the rebuilding, which took a great deal of time and distracted her from her law practice. She was not able to move back into her home until June 2002, after having lived in a motel for nearly nine months and the effect of the fire, including the destruction of her home and possessions and the resulting disruption and dislocation, was personally and emotionally devastating.
- *Standard 9.32(e)* (full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings): Respondent generally cooperated with the State Bar in the investigation of this matter.
- *Standard 9.32(g)* (character or reputation): Respondent has submitted many letters from members of the bar, the bench and other professionals attesting to her good character and reputation.

1 · *Standard 9.32 (l) (remorse):* Respondent submitted a written
2 statement of remorse and sincerely regrets her actions in this
3 matter which have not been repeated.

4 **II. Proportionality analysis of analogous cases**

5 Lawyers who negligently violate a court order have generally receive a
6 censure. *See, e.g., In re Prince*, SB-99-0091-D (2000) (censure for filing a notice
7 of appearance and substantive pleadings for a childhood friend with a domestic
8 relations problem while suspended for not paying bar dues) and *In re Stevens*, 178
9 Ariz. 261, 872 P.2d 665 (1994) (censure for appearing in court while summarily
10 suspended for failing to submit MCLE affidavit).

11 In *In re Ames*, 171 Ariz. 125, 829 P.2d 315 (1992), the respondent was
12 censured and ordered to pay restitution for, in part, failing to comply with a
13 judge's specific schedule for responding to pleadings, supplementing discovery
14 and filing lists of witnesses and exhibits.

15 In *In re La Paglia*, 173 Ariz. 379, 843 P.2d 1271 (1992), the respondent
16 was censured for failing to attend a meeting of creditors and failing to timely file
17 the statement of affairs and schedules of income and expenses, as well as other
18 violations.

19 In *In re Gabriel*, 172 Ariz. 347, 837 P.2d 149 (1992), the respondent was
20 censured for failing to comply with discovery requests in a personal injury case in
21 which he was the defendant. He failed to respond to discovery requests for more
22 than six months. The plaintiffs filed motions to compel three times. Each time,
23 the court granted the motion and ordered the respondent to produce the requested
24 materials. Finally, a year after receiving the discovery requests, the respondent
25 produced the materials. The Disciplinary Commission pointed out that the
26 respondent was obliged to comply with the discovery orders, even though he was

1 not acting as a lawyer. It further noted that disciplinary action may be taken for
2 any act or omission either related or unrelated to the practice of law, citing *In re*
3 *Zussman*, 86 Ariz. 272, 274, 344 P.2d 1021, 1023 (1959), and *In re Lurie*, 113
4 Ariz. 95, 97-98, 546 P.2d 1126, 1128-29 (1976).

5 The terminology used in these cases is somewhat misleading. Virtually all
6 of them involve conduct which would traditionally be termed knowing. Clearly,
7 in this case Respondent knew that she was not responding to the wage
8 assignment. However, the cases turn on the culpability of the action and label as
9 “knowing” conduct which is deceptive or fraudulent. Isolated lapses, on the other
10 hand, are labeled as negligent. *See, e.g., Matter of Stevens*, 178 Ariz. at 263, 872
11 P.2d at 667 (Respondent knew he was suspended, but isolated lapse labeled
12 “negligent.”), *Matter of La Paglia*, 173 Ariz. 381, 843 P.2d at 1273 (In at least
13 one matter, Respondent knowingly failed to provide services, but Respondent’s
14 conduct did not arise out of selfish or dishonest motives).

15 The cases described above involved other violations in addition to what
16 was termed a negligent failure to comply with a court order. Even though
17 Respondent “knowingly” (negligently within the meaning of the cases) failed to
18 comply with the court order, the parties’ agreement provides that she violated
19 only ER 8.4(d), she did not act with a dishonest or selfish motive and her failure
20 arose from a unique set of circumstances. A censure comports with the cases
21 described above, particularly *Gabriel*. Although she was acting as an employer,
22 not a lawyer, Respondent was obliged to comply with a clear court order or, at the
23 very least, advise the court she contested whether the order of assignment applied
24 to her. In light of the fact that Respondent has no discipline history as well as the
25 fact that mitigating factors in general outweigh the aggravating factors, an
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1 informal reprimand – mitigated from the presumptive sanction of a censure -- is
2 an acceptable sanction in this case.

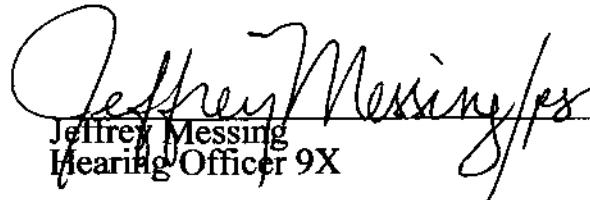
3 **RECOMMENDATION**

4 Based on the foregoing, I recommend acceptance of the parties' agreement
5 as follows:

6 1. Respondent will receive an informal reprimand for violating ER
7 8.4(d), Rule 42, Ariz.R.S.Ct.

8 2. Respondent will pay all costs and expenses incurred in this
9 disciplinary proceeding.

10 DATED this 20th day of May, 2005.

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13 
14 Jeffrey Messing
Hearing Officer 9X

15 Original filed with the Disciplinary
Clerk this 20th day of May, 2005.

16 Copy of the foregoing was mailed this
17 20th day of May, 2005, to:

18 Patricia A. Sallen
19 Senior Bar Counsel
20 State Bar of Arizona
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21 Mark I. Harrison
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