

FILED

FEB 22 2005

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

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

IN THE MATTER OF A NON-MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
CHARLES C. WELLER,)
)
)
RESPONDENT.)

No. 03-1734

**HEARING OFFICER'S
REPORT**

PROCEDURAL HISTORY

The State Bar filed a Complaint on October 8, 2004. An Answer to Complaint was filed by Respondent on December 6, 2004. The parties filed a Tender of Admissions and Agreement for Discipline by Consent (Tender) and a Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memo) on January 25, 2005. On February 15, 2005 the State Bar filed a Statement of Costs and Expenses¹. No hearing has been held.

FINDINGS OF FACT

1. At all times relevant hereto, Respondent was not an attorney licensed to practice law in the State of Arizona.

¹ Pursuant to Rule 56(b), the Statement of Costs and Expenses should have been filed as an exhibit.

1 2. Respondent was admitted to practice law in the State of Arizona *pro*
2 *hac vice*, pursuant to Rule 33(d), Ariz. R. S. Ct. on October 29, 2003.

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4 3. Respondent was admitted to practice law in the state of California on
5 June 1, 2000.

6 4. On or about September 1, 2003, Respondent signed and caused to be
7 filed a Verified Answer and Verified Counterclaim to the First Amended
8 Complaint in *YP. NET, INC. vs Pamela and Bernard Thompson, et al.* (YP. NET)
9 in CV2002-010117 in Superior Court in Maricopa County. Respondent signed the
10 Verified Answer and Counterclaim as attorney for defendants, Pamela and
11 Bernard Thompson, the Thompson Group, P.C., P.J. Thompson and Associates,
12 and Key Accounting Solutions, Inc.
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15 5. Said Verified Answer and Verified Counterclaim filed by
16 Respondent states at page one of the pleading, and in parentheses under
17 Respondent's name, as follows: "Arizona State Bar Admission Pending *Pro Hac*
18 *Vice.*" On the date when said pleading was filed with Superior Court in Maricopa
19 County, Respondent had not yet filed his motion to appear *pro hac vice* and
20 associated with local counsel as required by Rule 33(d), Ariz. R. S. Ct.
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23 6. On September 19, 2003, the Honorable Anna M. Baca, of Superior
24 Court in Maricopa County, entered a Minute Entry Order striking the Answer and
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1 Counterclaim to the First Amended Complaint as filed by Respondent, but
2 granting leave to re-file.

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4 7. On or about September 8, 2003, Respondent also signed and caused
5 to be filed in the YP. NET, INC., lawsuit a pleading captioned: "Opposition to
6 Plaintiff's Application for an Order to Show Cause Why Pamela Thompson
7 Should Not Be Held In Contempt; and Opposition to Plaintiff's Motion for
8 Contempt and Sanctions." Said pleading contains the statement in abbreviation
9 under Respondent's name that he is appearing as counsel for Defendants as
10 follows: "Arizona State Bar Admission Pending *Pro Hac Vice*." At the time said
11 pleading was filed by the Respondent with the Superior Court in Maricopa
12 County, a motion to appear *pro hac vice* pursuant to Rule 33(d), Ariz. R. S. Ct.,
13 was not yet filed and pending in the Superior Court or granted.
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16 8. Respondent subsequently filed on or about October 6, 2003, an
17 application for admission as a non-resident attorney, pursuant to Rule 33(d), Ariz.
18 R. S. Ct. On or about October 29, 2003, by Minute Entry Order issued by
19 Honorable Anna M. Baca, Respondent was admitted *pro hac vice* for the
20 aforementioned YP. NET, INC., lawsuit.
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23 9. Pursuant to Rule 33(d)3(d), Ariz. R. S. Ct., a non-resident attorney
24 "shall make no appearance in a cause until the court, board or administrative
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1 agency where the cause is pending enters the order granting the motion to
2 associate counsel *pro hac vice*".

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4 10. Respondent's filing of pleadings in Superior Court in Maricopa
5 County cause number CV2002-010117 prior to the entry of the Order admitting
6 him to practice in Arizona, *pro hac vice*, violated Rule 33(d)3(d), Ariz. R. S. Ct.,
7 and said conduct, therefore, constituted a violation of Rule 42, Ariz.R.S.Ct., ER
8 5.5 (Unauthorized Practice of Law) and, ER 8.4(d)(c) (Misconduct), and Rule
9 53(c), Ariz. R. S. Ct.
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11 11. If this matter went to hearing, Respondent would testify that he did
12 not intend to mislead the Superior Court or opposing counsel regarding his *pro*
13 *hac vice* status because he believed that his *pro hac vice* motion was filed with
14 the Court by local counsel with whom Respondent had associated to assist him
15 with the limited admission process.
16

17 12. Furthermore, Respondent failed to timely respond to a demand for
18 information from the State Bar of Arizona in connection with this disciplinary
19 matter. Specifically, correspondence dated 10/8/2003, from Maria L. Bahr, Bar
20 Counsel, was sent to Respondent at his office address in San Diego, California,
21 giving him notice of the specific allegations of Ethical Rule violation and
22 demanding response within twenty (20) days of the date of the letter.
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1 13. Respondent did not respond until after the Probable Cause Panelist
2 issued an Order of Informal Reprimand and Costs dated 2/20/2004. By letter
3 dated 3/1/2004, Respondent objected to the Order of Informal Reprimand and
4 Costs and demanded formal proceeding pursuant to Rule 54(b)(5), Ariz. R. S. Ct.

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6 14. Respondent failed to respond to Bar Counsel's letter of October 8,
7 2003, which was a violation of Rule 42, Ariz. R. S. Ct., ER 8.1(b) and Rule 53(f),
8 Ariz. R. S. Ct. However, Bar Counsel, in consideration for Respondent's
9 subsequent cooperation in this matter, has agreed to dismiss these charges.

10
11 15. Respondent is subject to personal and subject matter jurisdiction in
12 this matter pursuant to Rule 46(b) and 33(d)(4)(k), Ariz. R. S. Ct., which provides
13 that "non-members" practicing law in Arizona are deemed to have submitted to
14 the disciplinary jurisdiction of the Supreme Court of Arizona.

15
16 16. The Probable Cause Panelist subsequently issued an Order vacating
17 the Informal Reprimand and instituting an Order of Probable Cause. The
18 Probable Cause Order was entered on June 1, 2004 for violations of Rules
19 33(d)(4)(k), 46(b) and 51(h)² and (i)², Ariz. R. S. Ct., as well as Rule 42, Ariz. R.
20 S. Ct., including but not limited to ERs 3.3, 5.5, 8.1(b) and 8.4(d).
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25 ² Re-numbered as Rule 53(f) and (d), respectively, effective December 1, 2003.

1 actual or potential injury caused by the lawyer's misconduct, and (4) the
2 existence of aggravating or mitigating circumstances. *ABA Standard 3.0.*

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4 In the Joint Memo, the parties indicated that it was appropriate to consider
5 *Standards 5.0 (Violations of Duties Owed to the Public), 6.0 (Violations of*
6 *Duties Owed to the Legal System) and 7.0 (Violations of Other Duties Owed as a*
7 *Professional).*

8
9 A review of *Standard 6.0 (Violations of Duties Owed to the Legal System)*
10 indicates that informal reprimand is the presumptive sanction for Respondent's
11 misconduct. *Standard 6.14 (False Statements, Fraud and Misrepresentation)*
12 specifically provides:

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14 Admonition is generally appropriate when a lawyer engages in
15 an isolated instance of neglect in determining whether
16 submitted statements or documents are false or in failing to
17 disclose material information upon learning of its falsity, and
18 causes little or no actual or potential injury to a party, or causes
19 little or no adverse or potentially adverse effect on the legal
20 proceeding.

21 Respondent negligently misled the court regarding his *pro hac vice* status
22 by misrepresenting on pleadings filed in Superior Court in Maricopa County that
23 he was pending *pro hac vice* admission when no motion had been filed and no
24 court order admitting him to appear had yet been entered. The parties did not
25 provide any evidence regarding injury and so it can only be surmised that his
misconduct caused little injury.

1 *Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203,
2 207, 660 P.2d 454, 458 (1983)).

3
4 In *In re Mothershed*, 2001 Ariz. Lexis 63 (2001), Mothershed represented
5 himself as authorized to practice in Arizona, consulted with clients and filed
6 pleading in court which identified him as an attorney for the defendants.
7 Mothershed corresponded with individuals in Arizona with letterhead that failed
8 to indicate he was not admitted to practice in Arizona. In addition, he intimated
9 that he was admitted *pro hac vice* in Maricopa County Superior Court, and made
10 several disparaging remarks to a Superior Court Judge. Mothershed had also
11 received a prior public censure from the Supreme Court of Oklahoma. The
12 Disciplinary Commission found that Mothershed's actions were intentional, and
13 that there were several aggravating factors and only one mitigating factor. The
14 Commission determined that Mothershed's pattern of misconduct, which was
15 admitted by default, warranted disbarment. However, the Commission followed
16 the prior decision in *In re Menor*, SB-97-0052-D Disciplinary Commission No.
17 95-1601, and imposed a censure because Mothershed was not a member of the
18 State Bar of Arizona.

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21
22 Menor, was a resident of the State of Arizona but a member of the State
23 Bar of Wisconsin. Menor was charged with practicing law in Arizona when she
24 was not a member of the State Bar of Arizona. Menor admitted to drafting
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1 various pleadings on behalf of a friend who was the defendant in a lawsuit
2 involving a homeowner's association. The Commission also found that Menor
3 had drafted an employment agreement for prosecution of a medical malpractice
4 lawsuit, and that Menor's letterhead, used in her correspondence to a corporation
5 in connection with a separate legal matter, indicated that she was an "attorney at
6 law." The Commission found that Menor's conduct constituted the unauthorized
7 practice of law but that her conduct was negligent, rather than intentional. The
8 Commission determined that, although the mitigating factors outweighed the
9 aggravating factors, censure was the appropriate sanction.

12 *In re Richardson*, 2002 Ariz. Lexis 199 (2002), Richardson was censured
13 and ordered to pay restitution, costs and expenses for providing legal services in
14 Arizona on several occasions while never having been admitted to practice law in
15 Arizona. The Hearing Officer found that Richardson's conduct warranted a
16 suspension in excess of six months. Because Richardson was not a member of
17 the State Bar, censure was the most severe sanction that could be imposed.

20 *In re Sodaro*, 2002 Ariz. Lexis 125 (2002), was another case where a non-
21 member of the State Bar of Arizona was censured and ordered to pay costs and
22 expenses. Sodaro conditionally admitted that her misconduct included practicing
23 law in Arizona without being admitted to the State Bar, or admitted *pro hac vice*
24 by an Arizona court, and failing to indicate on her correspondence letterhead that
25

1 she was not a member of the State Bar of Arizona. In the analysis of the
2 appropriate *ABA Standards*, the Disciplinary Commission in *Sodaro* indicated
3 that *Standard 7.4* pertains to “an insolated instance of negligence,” therefore,
4 although Sodaro’s client and the subject matter remained the same, Sodaro
5 engaged in the practice of law on a number of occasions when she signed and sent
6 letters to various individuals that included legal statements and conclusions. The
7 Commission also found that, although either *Standard 7.3* or *7.4* could apply in
8 the *Sodaro* case, the facts of the case were sufficiently egregious to warrant a
9 sanction more severe than an informal reprimand.
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12 Finally, *In re Winiarski*, Commission no. 98-2052 (2000), concerned a non-
13 member of the State Bar of Arizona who received an informal reprimand and was
14 ordered to pay costs. Winiarski’s conduct, admitted by default, was found to have
15 violated ERs 5.5 (unauthorized practice of law) 8.4(c) (conduct involving
16 dishonesty, fraud, deceit and misrepresentation), as well as Rules 31(a)(3)
17 (privilege to practice) and 33(c) (practice in courts). Winiarski was licensed to
18 practice in the State of Maine but he was not employed in any capacity as an
19 attorney. Nevertheless, he appeared twice before the Arizona Registrar of
20 Contractors in connection with a sole proprietor licensing and bonding issue and
21 did not receive any compensation for his appearances. The State Bar considered
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1 Winiarski's appearance as one violation and the Hearing Officer and the
2 Commission treated Winiarski's conduct as an isolated act of negligence.

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4 In its proportionality analysis, the Disciplinary Commission found that
5 *Standard 7.4* was most applicable to the case since Winiarski's conduct was
6 negligent and did not cause any actual or potential harm to the public. In
7 addition, the Commission did not find any applicable aggravating factors, but
8 determined that four mitigating factors were present including the following:
9 absence of prior disciplinary record; absence of dishonest or selfish motive; and
10 cooperative attitude toward proceedings; and remorse.

11 RECOMMENDATION

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13 The purpose of lawyer discipline is not to punish the lawyer, but to protect
14 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
15 P.2d 1315, 1320 (1993).

16
17 In imposing discipline, it is appropriate to consider the facts of the case, the
18 American Bar Association's *Standards for Imposing Lawyer Sanctions*
19 (*"Standards"*) and the proportionality of discipline imposed in analogous cases.
20 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

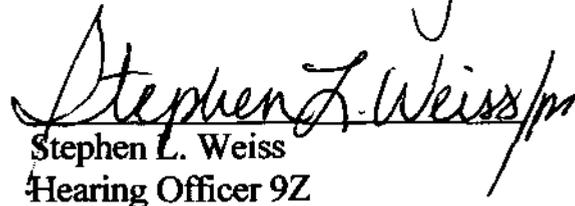
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22 Upon consideration of the facts, application of the *Standards*, including
23 aggravating and mitigating factors, and a proportionality analysis, this Hearing
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1 Officer⁴ recommends acceptance of the Tender of Admissions and Agreement for
2 Discipline by Consent and the Joint Memorandum in Support of Agreement for
3 Discipline by Consent⁵ providing for the following:
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5 1. Respondent shall receive an informal reprimand for violation of Rule
6 42, specifically ERs 5.5 and 8.4(d) and Rules 33(d)3(d) and 53(c), Ariz. R. S. Ct.

7 2. Respondent shall pay the costs and expenses incurred in this
8 disciplinary proceeding.
9

10 DATED this 22nd day of February, 2005.

11 
12 Stephen L. Weiss
13 Hearing Officer 9Z
14

15 Original filed with the Disciplinary Clerk
16 this 22nd day of February, 2005.

17 Copy of the foregoing was mailed
18 this 22nd day of February, 2005, to:

19 Charles C. Weller
20 Respondent
21 8740 Villa La Jolla Drive, Suite 16
22 La Jolla, CA 92037

23 ⁴ The Tender inaccurately indicates that the consent documents would be submitted to the
24 Settlement Officer and that the Settlement Officer would file a report with the Disciplinary
Commission recommending acceptance, rejection or modification.

25 ⁵ Pursuant to Rule 56(e)1, if an agreement is accepted by the hearing officer it shall be final
unless the sanction to be imposed includes disbarment, suspension or censure; therefore, if
neither party files a notice of appeal pursuant to Rule 58(a), this Hearing Officer will file an
order of informal reprimand and costs.

Phoenix, AZ 85003-1742

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by: Williams