

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A NON-MEMBER OF
THE STATE BAR OF ARIZONA,**

**JO ANN McDOLLE,
California Bar No. 153988,**

Respondent.

PDJ-2011-9087

**REPORT AND ORDER IMPOSING
SANCTIONS**

No. 10-2364

On March 29, 2012, the Hearing Panel ("Panel") composed of Anne B. Donahoe, a public member from Maricopa County, James M. Marovich, an attorney member from Maricopa County, and the Presiding Disciplinary Judge ("PDJ") held a one day hearing pursuant to Supreme Court Rule 58(j), Ariz.R.Sup.Ct. Russell J. Anderson, Jr., appeared on behalf of the State Bar of Arizona ("State Bar") and Jo Ann McDole appeared pro-per. The witness rule was invoked.¹ The Panel considered the testimony, the parties' individual pre-hearing statements, the admitted exhibits, and the parties' individual proposed findings of fact and conclusions of law, and evaluated the credibility of the witnesses.

The State Bar argues that a suspension of no less than 30 days is appropriate for similar misconduct by lawyers admitted in Arizona. Respondent argues that the matter should be dismissed as she had not engaged in any misconduct. The PDJ and Panel now issue the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz.R.Sup.Ct.

¹ Consideration was given to the testimony of Roger L. Cohen, Esq. and Le Bertha Umbreit, Esq.

I. SANCTION IMPOSED:

ATTORNEY REPRIMANDED AND COSTS OF THESE DISCIPLINARY PROCEEDINGS IMPOSED.

II. PROCEDURAL HISTORY

The Probable Cause Order was filed on October 19, 2011 and the Complaint in this matter was filed on December 1, 2011 alleging violations of ERs 3.1, 3.4(c), 4.4(a), 8.4(d) and Rule 54(c). An initial telephonic case management conference was held on January 4, 2012. On January 13, 2012, Respondent filed her Answer. A final prehearing conference was held on March 26, 2012. The matter was then set for an evidentiary hearing.

Upon conclusion of the hearing on the merits, the PDJ ordered the parties' to submit closing arguments and proposed findings of fact and conclusions of law. The State Bar filed its proposed facts and conclusions of law on May 16, 2012. Respondent filed her proposed findings of fact and conclusions of law on May 21, 2012.

III. FINDINGS OF FACT

1. At all times relevant, Respondent was a lawyer licensed to practice law in the State of California having been first admitted to practice in California on September 20, 1991. [Answer to Complaint (Answer), ¶ 1]

2. In 1989, Rosira Correia-Saser (Ms. Correia-Sasser) was appointed Trustee of the Alfredo Correia and Mary F. Correia Trust during the lifetime of Alfredo Correia and Mary F. Correia. The principal place of administration of the Trust was not transferred from the State of California and the choice of law set forth in the Trust was California. [Answer, ¶ 2]

3. In November 2004, a lawsuit was filed in California on behalf of two of Ms. Correia-Sasser's three sons, John Rogone and Jason Rogone. Respondent represented John and Jason Rogone. [Answer, ¶ 3]

4. On August 11, 2006, the California court pronounced judgment against Ms. Correia-Sasser, removed her as trustee, and surcharged her in the principal amount of \$400,003.00. A money judgment was later issued by the California court in the amount of \$414,003.00. The judgment was based on Ms. Correia-Sasser's breach of fiduciary duties as a trustee by taking trust funds for her own personal use. [Answer, ¶ 4; Respondent's Testimony]

5. At some point in time, Ms. Correia-Sasser lived in Arizona and had personal assets located in Arizona. [Answer, ¶ 5; Mr. Cohen's Testimony; Respondent's Testimony]

6. On August 20, 2007, a California judgment was registered in the Maricopa County Superior Court, Case No. CV2007-015015 in an attempt to secure Ms. Correia-Sasser's Arizona assets to satisfy the California judgment. [Answer, ¶ 6]

7. On October 17, 2007, Respondent was granted *pro hac vice* admission to appear in CV2007-015015. [Answer, ¶ 7 and Respondent's testimony]

8. Arizona attorney Lebertha Umbreit (Ms. Umbreit) served as local counsel sponsoring Respondent's *pro hac vice* admission in CV2007-015015. [Answer, ¶ 8; Respondent's testimony, Ms. Umbreit's Testimony]

9. On or about June 29, 2009, a three-day jury trial was held in CV2007-015015. [Answer, ¶ 9; Respondent's Testimony]

10. On July 1, 2009 an advisory jury found in favor of Respondent's clients. [Answer, ¶ 10; Respondent's Testimony]

11. After the advisory jury's verdict, Ms. Correia-Sasser retained Roger Cohen (Mr. Cohen) to handle a possible appeal and seek other post-trial relief in CV2007-015015. [Mr. Cohen's Testimony]

12. On November 25, 2009, a Notice of Substitution of Counsel was filed substituting Kathi Mann Sandweiss and Roger Cohen (Mr. Cohen) as Ms. Correia-Sasser's attorney of record in CV2007-015015. An Order Substituting Attorneys was filed December 4, 2009. [Answer, ¶ 12]

13. Respondent and Mr. Cohen's professional relationship was very adversarial. [Respondent's Testimony; Mr. Cohen's Testimony]

14. Mr. Cohen attempted to engage Respondent in negotiations to work out a deal to satisfy the judgments entered against Ms. Correia-Sasser, but negotiations were not successful. [Respondent's Testimony; Mr. Cohen's Testimony]

15. On December 7, 2009, Mr. Cohen filed a Rule 59(A) Motion for New Trial in CV2007-015015. Mr. Cohen also filed a Rule 59(L) Motion to Amend or Alter Judgment. [Answer, ¶ 13; Mr. Cohen's Testimony]

16. On December 11, 2009, Respondent filed an Opposition to Defendants' Rule 59(L) Motion to Amend or Alter Judgment and requested sanctions against Ms. Correia-Sasser and Mr. Cohen in the amount of \$2500.00 to cover attorney fees incurred in the opposing motion in CV2007-015015. [Answer, ¶ 15]

17. On December 21, 2009, Respondent filed an Opposition to Defendants' Motion for New Trial and requested sanctions against Ms. Correia-Sasser and Mr.

Cohen in the sum of \$5000.00 to cover attorney fees and costs incurred in opposing the motion in CV2007-015015. [Answer, ¶ 16]

18. On December 22, 2009, Mr. Cohen filed a Rule 62(B) and (J) Motion for Partial Stay of Execution of Amended Judgment Pending Disposition of Rule 59 Motions for New Trial or to Alter or Amend Judgment in CV2007-015015. [Answer, ¶ 17; State Bar Exhibit 1]

19. On December 28, 2009, Mr. Cohen filed a Motion for Determination of Bond Amount for Partial Stay of Execution of Amended Judgment Pending Appeal in CV2007-015015. [Answer, ¶ 18; State Bar Exhibit 2]

20. Mr. Cohen filed the various motions and requests for relief, described above, based on his good faith belief that additional remedies were legally permitted and could be sought on behalf of his client, Ms. Correia-Sasser. Mr. Cohen also engaged in negotiations with Respondent to settle pending issues regarding the judgments, which ultimately failed. Mr. Cohen did not file his requests specifically to burden Respondent or her clients, or to deliberately delay the collection process, but had a good-faith basis in law to file his requests and exhaust potential remedies prior to filing a formal appeal. [Mr. Cohen's Testimony]

21. On December 30, 2009, Respondent filed an Objection to Defendants' Motion for Determination of Bond Amount for Partial Stay of Execution of Amended Judgment Pending Appeal and requested monetary sanctions against Ms. Correia-Sasser and Mr. Cohen in the amount of \$3000.00 to cover attorney fees incurred in opposing the motion in CV2007-015015. [Answer, ¶ 19]

22. On January 7, 2010, Respondent filed an Opposition to Defendants' Rule 62(B) and (J) Motion for Partial Stay of Execution of Amended Judgment

Pending Disposition of Rule 59 Motions for New Trial or to Alter or Amend Judgment in CV2007-015015. Respondent also attached a declaration to her opposition motion. [Answer, ¶ 20; State Bar Exhibits 3, 4]

23. In Respondent's January 7, 2010 declaration, Respondent stated:

- a. "Cohen is now asserting his dislike for the method of sale...." [State Bar Exhibit 4]
- b. "The gall of Mr. Cohen to even think that [Ms. Correia-Sasser] should participate in the sale of the subject property causes me to question his involvement in the case." [State Bar Exhibit 4]
- c. "Mr. Cohen wants to convert a judicial sale...to an execution sale" [State Bar Exhibit 4]
- d. "Mr. Cohen threatened to frustrate the sale of the properties if plaintiffs did not accept his offer." [State Bar Exhibit 4]
- e. "Mr. Cohen's involvement in this case is highly suspect." [State Bar Exhibit 4]

24. On January 11, 2010, Mr. Cohen filed a Motion to Strike Respondent's declaration and asked that Respondent be admonished for her statements. He also argued that Respondent's statements in her declaration were personal attacks on him and were not relevant to the Rule 62 or Rule 59 motions. Respondent's statements were not factually accurate. [State Bar Exhibit 5; Mr. Cohen's Testimony]

25. On February 2, 2010, Respondent filed a reply to Defendant's Motion to Strike. [Answer, ¶ 23; State Bar Exhibit 7]

26. Respondent argued in her February 2, 2010 reply that Mr. Cohen was attempting to frustrate the execution of the judgment. In her reply, Respondent again attacked Mr. Cohen, stating:

- a. "The motive of defendants and their attorneys has always been to hinder, delay or defraud plaintiffs." [State Bar Exhibit 7]
- b. "Mr. Cohen's request that this court admonishes [Respondent] to refrain from personal attacks against him is improper in that it is foreseeable that under Rule 11 both counsel and his clients will be subject to such attacks." [State Bar Exhibit 7]

27. On February 12, 2010, a hearing was held on Mr. Cohen's request for a new trial and Respondent's multiple requests for Rule 11 sanctions. [Answer, ¶ 24; State Bar Exhibit 9]

28. As reflected by Minute Entry dated February 12, 2010, but filed on February 19, 2010, the Court issued an order "that any and all papers filed with this Court by [Respondent] must be co-signed by local counsel, Lebertha Umbreit, to monitor compliance with the professional and ethical rules of this jurisdiction and the Rules of Civil Procedure." [State Bar Exhibit 9]

29. In its February 12, 2010 Minute Entry, the Court further found Respondent's allegations to be "outrageous" and that her "serial" requests for sanctions were "meritless." The Court also struck specific references to Mr. Cohen from Respondent's January 7, 2010 Declaration. [State Bar Exhibit 9]

30. On February 18, 2010, Respondent personally informed Ms. Umbreit of the Court's Order requiring Ms. Umbreit's signature on all subsequent filings made by Respondent. [Answer, ¶ 26; Respondent's Testimony; Ms. Umbreit's Testimony]

31. Respondent did not believe the Court's order requiring Ms. Umbreit to co-sign all pleadings was valid or enforceable. [Answer, ¶ 27; Respondent's Testimony]

32. Respondent "was initially hesitant to obtain Ms. Umbreit's signature on the ground that [Respondent] was lead counsel, and had done all the work in the case...and was otherwise more familiar with the case than Ms. Umbreit." [State Bar Exhibit 19]

33. On February 18, 2010, a status conference was held in CV2007-015015. [Answer, ¶ 28]

34. During the February 18, 2010 status conference, the Court admonished Respondent "to follow the Arizona Rules of Civil Procedure, as well as the basic rules of professionalism and ethics. [Respondent] is threatened with contempt if these rules are not followed in the future." [State Bar Exhibit 10]

35. Respondent and Ms. Umbreit then began discussing appropriate language to include with Ms. Umbreit's signature on any future pleadings and how to best implement the Court's ruling. Specific language was not agreed upon until April 29, 2010. [State Bar Exhibit 14; Respondent's Testimony; Ms. Umbreit's Testimony]

36. On February 27, 2010, Respondent filed Plaintiff's Post-Trial Brief on the Issue of Defendant Rosira Correia and John Sasser's Homestead Exemption Claim without Ms. Umbreit's signature. [Answer, ¶ 30]

37. Between February 27, 2010 and May 4, 2010, Respondent filed the following nine (9) documents in CV2007-015015 without obtaining Ms. Umbreit's signature:

- a. Objection to Defendants' Motion to Hold Plaintiff's Counsel in Contempt and Revoke her Pro Hac Vice Status, filed March 15, 2010; [Answer, ¶ 31i]
- b. Supplemental Objection to Defendants' Motion to Hold Plaintiffs' Counsel in Contempt of Court and Revoke Her Pro Hac Vice Status, filed March 17, 2010; [Answer, ¶ 31ii]
- c. Reply to Defendant's Opposition to Form of Second Amended Judgment, filed March 21, 2010; [Answer, ¶ 31iii]
- d. Reply to Defendants' Post-Trial Brief re Homestead Exemption, filed March 21, 2010; [Answer, ¶ 31iv]
- e. Response to Defendants' Reply to Plaintiffs' Supplemental Objection to Motion to Hold Plaintiffs' Counsel in Contempt and Revoke her Pro Hac Vice Status, filed March 29, 2010; [Answer, ¶ 31v]
- f. Notice of Taking Deposition of Roger Cohen, filed April 7, 2010; [Answer, ¶ 31vi]
- g. Motion for Entry of Signed Orders Corresponding to Unsigned Minute Entries Dated 02/23/2010 and 3/31/2010 Pertaining to Rulings Made by the Honorable Douglas Rayes, filed April 25, 2010; [Answer, ¶ 31vii]

- h. Opposition to Motion to Quash Deposition of Counsel and for Protective Order to Preclude Plaintiffs From taking Deposition of Defendants' Attorney, filed April 28, 2010; and [Answer, ¶ 31viii]
- i. Reply to Defendants' Opposition to Plaintiffs' Motion to Reconsider Defendants' Motion for New Trial or to Alter or Amend Judgment, filed May 10, 2010. [Answer, ¶ 31ix]

38. Respondent did not notify Ms. Umbreit that she was filing or had filed the ten pleadings referenced above in CV2007-015015 on and between February 27, 2010 and May 4, 2010 that were required to have Ms. Umbreit's signature. [Ms. Umbreit's Testimony]

39. Respondent did not believe that the court's order was valid and enforceable, and therefore did not have to follow that order as she was lead counsel. While she states she wanted to protect Ms. Umbreit from Rule 11 Sanctions and the vindictiveness she claimed of opposing counsel, Mr. Cohen, the panel finds this rationalization implausible. [Respondent's testimony and Respondent's Proposed FOF and COL, p.12]

40. On March 1, 2010, a Motion to Hold Plaintiff's Counsel in Contempt of Court and Revoke Her Pro Hac Vice Status was filed by Mr. Cohen in CV2007-015015. [Answer, ¶ 33; State Bar Exhibit 12]

41. A copy of the March 1, 2010 petition to revoke Respondent's *pro hac vice* status was sent to Ms. Umbreit. [Mr. Cohen's Testimony]

42. Ms. Umbreit's receipt of the March 1, 2010 petition to revoke Respondent's *pro hac vice* status was the first notice Ms. Umbreit had that

Respondent had filed pleadings without her signature and against the Court's order.

[Ms. Umbreit's Testimony]

43. Respondent's failure to notify Ms. Umbreit of the pleadings Respondent was filing with the underlying court without obtaining Ms. Umbreit's signature in violation of the underlying court's orders caused Ms. Umbreit to file a Motion to Withdraw. [Ms. Umbreit's Testimony]

44. On May 14, 2010, an Order to Show Cause hearing was held in CV2007-015015 before Judge J. Richard Gama based on the request to revoke Respondent's *pro hac vice* status. During the hearing, the Court found Respondent to be in contempt, and in order to purge the contempt, Respondent was directed to comply with the prior court orders by obtaining Ms. Umbreit's signature on all court filings, and comply with court rules and rules of ethics. Respondent's *pro hac vice* status was not revoked at this hearing. The Court did not rule on Ms. Umbreit's request to withdraw and ordered her to continue to participate until substitute local counsel could be found. A Purge Review Hearing was then set for June 25, 2010 to determine Respondent's compliance with the Court's orders. [Answer, ¶ 35; Respondent's Testimony]

45. On June 25, 2010, the Purge Review Hearing was held. During the hearing, Respondent was personally ordered to pay \$8500.00 in attorney's fees to opposing counsel. The Court also permitted Ms. Umbreit to withdraw and Respondent's *pro hac vice* status was revoked as there was no local counsel to replace Ms. Umbreit. [Answer, ¶ 36; Respondent's Testimony; State Bar Exhibit 17]

46. Respondent paid all sanctions as ordered by the Court. [Answer, ¶ 37, Respondent's Testimony]

IV. CONCLUSIONS OF LAW

The Panel finds clear and convincing evidence is present that Respondent violated Rule 42, Ariz.R.Sup.Ct, specifically Rule 3.1(meritorious claims and contentions/good faith basis in law and fact), 3.4(c) knowingly disobey an obligation under rules of tribunal), 4.4(a) use means that have no substantial purpose other than to embarrass, delay, or burden any other person...), 8.4(d) conduct prejudicial to the administration of justice, and Rule 54(c) knowing violation of any rule or order of the court).

V. SANCTIONS

In determining an appropriate sanction, Court generally utilizes the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") as a guideline. Rule 58(k), Ariz.R.Sup.Ct. The appropriate sanction however, depends on the facts and circumstances of each case.

Analysis under the ABA STANDARDS

When imposing a sanction, consideration is given to 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 Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004). See also *Standard 3.0*.

The *Standards* however, do not account for multiple charges of misconduct and advise that the ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct See 1992 amended *Standards, Theoretical Framework*, p. 7.

In this matter, Respondent violated her duties owed to the legal system and to her clients. Standard 6.2, Abuse of the Legal Process is applicable to

Respondent's violation of ERs 3.1, 3.4(c),² 4.4, and Rule 54. Standard 6.22

provides:

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Respondent was found to be in contempt and knowingly failed to comply with the Court's order to obtain attorney Umbreit's signature on all pleadings filed with the court. Her misconduct caused actual injury to her clients and caused interference with the proceedings as court time and resources were needed to address Respondent's failure to adhere to the Court's order. Respondent's misconduct caused her *pro hac vice* status in Arizona to be dismissed and local counsel, Ms. Umbreit was forced to withdraw from the underlying case. The clients were left temporarily without the benefit of local counsel, thereby causing potential harm to the clients. At hearing, Respondent admitted that she did not follow the court's mandate.

In addition, Respondent knowingly made meritless personal attacks against opposing counsel in pleadings for no other purpose than to embarrass and harass. The Panel therefore, determined that the presumptive sanction in this matter is suspension.

DISCUSSION

Rule 46(b), Non-members, provides in relevant part that a non-member engaged in the practice of law in Arizona submits himself or herself to the disciplinary jurisdiction of the court in accordance with this court's rules. Here, Respondent was admitted *pro hac vice* in Arizona and thereafter, repeatedly failed to obey the court's

² A violation of ER 3.4(c) and Rule 54(c) both require a knowing mental state.

order which required her to obtain her sponsoring local attorney's signature on pleadings filed with the court.

Upon review of relevant case law, the Panel considered *In re Olsen*, 180 Ariz. 5, 881 P.2d 337 (1994). In *Olsen*, the court held that censure is the most severe sanction that may be imposed on a non-member. Had Respondent been a member of the State Bar of Arizona, the Panel would have imposed a sixty day suspension for her misconduct.

Standard 9.0, Aggravating and Mitigating factors

After an ethical violation has been established, aggravating and mitigating circumstances may be considered by the Panel in determining the appropriate sanction. We are reminded that aggravating factors in attorney discipline proceedings need only be supported by reasonable evidence. *Matter of Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). The Panel finds the following aggravating factors are present in this matter:

9.22(c), pattern of misconduct; Respondent repeatedly requested sanctions against opposing counsel and repeatedly ignored the court's mandate when she filed numerous pleading without local counsel's signature.

9.22(g), refusal to acknowledge wrongful nature of her misconduct. Throughout the disciplinary process, Respondent has not been willing to accept any responsibility for her misconduct and argued that others needed to just "get out of her way."

9.22(i), substantial experience in the practice of law. Respondent was licensed to practice law in California in December 1991.

The Panel finds the following mitigating factors present:

9.32(a), absence of prior disciplinary offenses. Respondent has not been previously sanctioned in Arizona and has no prior discipline in CA.

9.32(k) imposition of other penalties or sanctions. Respondent was found to be in contempt, her *pro hac vice* status revoked and she was ordered to pay \$8,500.00 in attorney fees, which has since been paid.

CONCLUSION

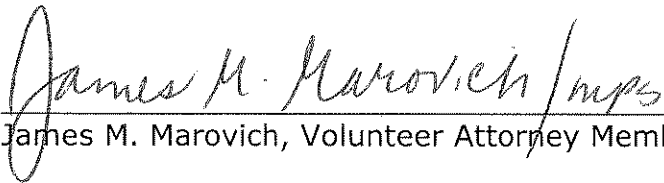
Based on the facts in this matter, consideration of the *Standards* including the aggravating and mitigating factors present, the Panel determined that since Respondent is a non-member, censure and the payment of costs of these disciplinary proceedings is the appropriate sanction. However, a sixty (60) day suspension would have been imposed if Respondent were admitted to practice law in Arizona.

DATED this 25 day of May, 2012.

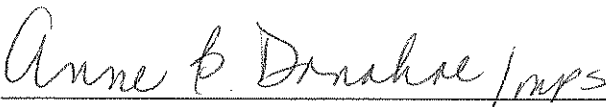


**William J. O'Neil, Presiding Disciplinary Judge
Office of the Presiding Disciplinary Judge**

CONCURRING



James M. Marovich, Volunteer Attorney Member



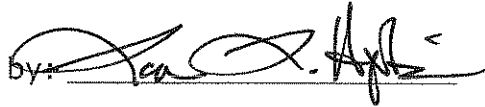
Anne B. Donahoe, Volunteer Public Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 25th day of May, 2012.

Copies of the foregoing mailed/emailed
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