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BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **LOURDES SALOMON LOPEZ,** Bar No. 011338 Respondent.	No. 04-2051 **HEARING OFFICER REPORT**

I. PROCEDURAL HISTORY

On April 23, 2005, State Bar of Arizona Probable Cause Panelist, Daniel J. McAuliffe, filed a Probable Cause Order finding that probable cause existed to issue a complaint against the Respondent for violations of Rule 42, Ariz. R. Sup. Ct. (hereinafter referenced with "Rule" followed by the relevant rule's numerical designation), including but not limited to ER 8.4(b) and ER 8.4(c).

The State Bar of Arizona filed the Complaint against the Respondent on November 7, 2005. Respondent, through her attorney, accepted service of process of the Complaint on November 9, 2005.

The matter was assigned to this Hearing Officer on November 18, 2005.

On November 28, 2005, Respondent filed a Motion for Extension of Time to Answer Complaint. The State Bar did not object to the motion. The motion was granted on November 28, 2005, and the Respondent was given until December 9, 2005 to file an answer.

Respondent filed her Answer to the Complaint on December 9, 2005.

On December 13, 2005, this matter was assigned to Settlement Officer 9I, Dwight M. Whitley, Jr., for the sole purpose of facilitating a settlement of the case.

On December 15, 2005, this matter was reassigned to Settlement Officer 9H, David H. Lieberthal, for the sole purpose of facilitating a settlement of the case.

The telephonic Initial Case Management Conference was held on December 20, 2005. A hearing on the merits was scheduled for March 8, 2006.

On January 3, 2006, the State Bar filed a Motion for Leave to File Amended Complaint. No response was filed by the Respondent to the motion. The motion was granted on January 24, 2006.

On January 3, 2006, Respondent filed a Motion to Reschedule Hearing Date. The State Bar had no objection to the motion. The motion was granted on January 6, 2006, and the hearing was rescheduled to March 6, 2006.

On January 25, 2006, the State Bar filed the Amended Complaint.

On February 2, 2006, the Settlement Conference took place. The parties were unable to reach a settlement.

On February 13, 2006, the Respondent filed her Answer to the Amended Complaint.

On February 23, 2006, Respondent filed a Motion to Continue the March 6, 2006 hearing. The State Bar had no objection to the motion. The motion was granted and the Disciplinary Commission extended the time within which to hold the hearing to April 19, 2006.

On March 27, 2006, the State Bar filed a Motion to Stay Formal Proceedings. Respondent had no objection to the motion. On April 5, 2006, the Disciplinary Commission granted the motion and stayed the matter for a period of 90 days.

On July 3, 2006, the State Bar filed a Motion for Leave to File Second Amended Complaint. The Respondent did not object to the motion.

On August 25, 2006, the Respondent filed her Answer to the Second Amended Complaint.

On September 1, 2006, this Hearing Officer filed a Motion for Extension of Time Within Which to Conduct Hearing. On September 5, 2006, the Disciplinary Commission granted the motion. On September 7, 2006, the Supreme Court of Arizona granted the extension of time and ordered that the hearing could be continued to November 10, 2006.

On October 23, 2006, the State Bar filed a Motion to Preclude Witnesses. The Respondent opposed the motion. On October 26, 2006, Respondent filed a Motion to Preclude Witnesses. The State Bar opposed the motion.

On October 30, 2006, a telephonic hearing on the motions to preclude witnesses took place. This Hearing Officer denied both motions.

A hearing on the merits took place in front of this Hearing Officer on November 6 and 7, 2006, at the State Bar of Arizona Tucson Offices.

II. FINDINGS OF FACT[1]

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on October 18, 1997. (Respondent's Answer ¶1)

2. Respondent has no prior disciplinary history, and is well-regarded by colleagues and judges in the community as an ethical, professional, and highly competent lawyer. (Transcript dated November 6, 2006; page 60, lines 21-25; page 61, lines 1-6; page 240, lines 5-25; page 241, lines 1-25; page 242, lines 1-2; page 244, lines 16-25; page 245, lines1-2;page 248, lines 6-25; page 249, lines 1-25)[2]

3. Between 1999 and August 2002, Respondent was a Deputy County Attorney in Pima County. (TR 142:6-7; Exhibit 8, page 35, lines 1-2; Exhibit 22)

4. In December 2000, Respondent's foster daughter required eye surgery. Respondent took her child to Dr. Bradley Schwartz, a Tucson pediatric ophthalmologist, to whom she had been referred. (TR 144:13-20)

5. Respondent was not only impressed by Dr. Schwartz's academic and professional achievements, but by the high degree of respect he seemed to have garnered in the Tucson medical community. He was also quite personally charming. (TR 145:7-24)

6. Respondent claims she fell in love with Dr. Schwartz. (TR 148:4-6)

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[1] The State Bar has argued that various conversations the Respondent had with Bradley Schwartz, about his wanting "to kill" Dr. Brian Stidham prior to the murder of Dr. Stidham in October 2004, should be considered by this Hearing Officer as part of this proceeding. This Hearing Officer finds that any such conversations are not relevant to this proceeding.

[2] Hereafter, citations to the hearing transcript will be cited as "TR (Page): (Line)"

7. According to Drug Enforcement Agent David Wickey, Dr. Schwartz was an inveterate liar and was adept at exploiting and manipulating other people. (TR 48:11-22,49:8-13)

8. Dr. Schwartz had for some time been addicted to painkillers and several years earlier had begun illegally acquiring large amounts of the painkiller hydrocodone, a schedule III controlled substance. (Ex. 40 ¶3.)

9. Dr. Schwartz would write prescriptions in the name of actual persons who were not his patients. (Ex. 40 ¶3.) Once filled, he would self-medicate his chronic jaw and back pain. (Ex. 40 ¶3.)

10. In June 2001, Dr. Schwartz asked Respondent if he could use her name to obtain a prescription for hydrocodone and she agreed. (Ex. 40 ¶3.)

11. Dr. Schwartz again asked Respondent for permission to use her name to obtain additional painkillers, and she again agreed. (Ex. 40 ¶3.) Dr. Schwartz used Respondent's name to obtain a third prescription of painkillers, in August 2001, this time without her knowledge. (Ex. 40 ¶3.)

12. From early 2001 through May 2004, Respondent was involved in a romantic relationship with Dr. Schwartz. (Respondent's Answer ¶ 2)

13. From June 24, 2001 through August 25, 2001, Respondent knowingly and intentionally conspired with Dr. Schwartz to fraudulently acquire and obtain possession of a schedule III controlled substance. (Respondent's Answer ¶ 3; Exhibit 4)

14. Respondent knowingly allowed Bradley Schwartz to use her name to write prescriptions to fraudulently obtain controlled substances. (TR 92:17-21)

15. When conspiring with Bradley Schwartz, Respondent knew that she would keep some of the illegal drugs for her personal use. (TR 92:20-25; Exhibit 2)

16. Respondent knew during the commission of her acts that her conduct was unlawful. (TR 93:6-9; Exhibit 7 page 31, lines 11-16; Exhibit 8, page 19, lines 8-11, page 20, line 17; pg. 25, line 8; page 27, line 20)

17. On or about October 22, 2001, an investigator from the Department of Justice, Drug Enforcement Administration, contacted Respondent to arrange an interview regarding the fraudulent prescriptions for hydrocodone prescribed to Respondent by Dr. Schwartz. (Respondent's Answer ¶ 4)

18. On or about October 23, 2001, Respondent contacted the investigator and consented to an interview. (Respondent's Answer ¶ 5)

19. On or about October 24, 2001, Respondent met with two investigators from the Drug Enforcement Administration. (Respondent's Answer ¶ 6)

20. Respondent was advised at the start of the interview that the DEA was investigating Bradley Schwartz. (TR 30:6-9; 52:14-24)

21. During the interview, Respondent lied to the agent concerning her relationship with Dr. Schwartz and the circumstances under which the prescriptions were written. (Respondent's Answer ¶ 6; Exhibit 2; Exhibit 6 page 27, line 14-16)

22. During the interview, the agents asked the Respondent to locate certain pill bottles from the prescriptions that she had been issued. Respondent made several phone calls to the agents indicating that she could not find the pill bottles, but would continue looking, and that there was one other place she had not looked. (TR 34:19-25; 351-4)

23. During this meeting, Ms. Lopez told the investigators that she was involved with Dr. Schwartz "socially", but declined to comment further on the nature or extent of their relationship. (Exhibit 40, ¶ 6; Exhibit 1) She further told investigators that she could not recall the details of those incidents in which Dr. Schwartz had used her name to obtain hydrocodone. (Exhibit 40, ¶ 6; Exhibit 1)

24. Respondent knew it was unlawful to lie to DEA Investigators. (TR 95:1-4; Exhibit 8 page 23, lines 20-25; page 24, lines 1-9; page 36, lines 12-16)

25. At the conclusion of the interview, Respondent was advised that there was an ongoing federal investigation and she was not to discuss their meeting with Bradley Schwartz in order to protect the integrity of the ongoing criminal investigation. (Exhibit 1)

26. Respondent told the agents that she would not discuss their meeting with Bradley Schwartz. (TR 99: 8-13; Exhibit 1)

27. Within 24 hours of the interview with DEA agents, Respondent told Bradley Schwartz about the investigation and her interview. (TR 99:24-25; 100:1; 42:10-16)

28. As a prosecutor, Respondent knew that alerting the "target" of an investigation about the investigation could hinder or obstruct the investigation. (TR 99:17-22)

29. Respondent lied to the DEA Agents, at least in part, to shield herself from being criminally charged. (Exhibit 8, page 27, lines 10-13; page 28, lines 2-12)

30. Respondent met with her supervisor, Lee Roads, following the interview with the DEA. Respondent misled Ms. Roads regarding the nature of the DEA's investigation. (TR 101:20-23)

31. In May 2002, Bradley Schwartz told the DEA of Respondent's involvement in the conspiracy to fraudulently obtain a controlled substance. (TR 103:21-25; 104:1-4)

32. Respondent knew that Bradley Schwartz had told the DEA of her involvement in the crime during the May 2002 Proffer Agreement meeting. (Exhibit 2, page 3, ¶7)

33. On or about July 18, 2002, Respondent arranged a meeting, through her then counsel, with the U.S. Attorney. At that meeting, Respondent spoke with the investigators who originally questioned her on October 24, 2001. (Respondent's Answer ¶ 8)

34. During the interview, Respondent admitted that she lied during her initial interview on October 24, 2001. Respondent admitted that she had a romantic relationship with Dr. Schwartz and that she allowed Dr. Schwartz to prescribe controlled medications to her and that some portion of that medication would be for her own personal use. (Respondent's Answer ¶ 9; Exhibit 2)

35. On or about September 26, 2002, Respondent was indicted on two separate counts; one count of conspiracy to obtain a schedule III controlled substance by misrepresentation, fraud, forgery, deception and subterfuge and one count of acquiring possession of a schedule III controlled substance, by misrepresentation, fraud, forgery, deception and subterfuge. (Respondent's Answer ¶ 11; Exhibit 3)

36. On October 3, 2002, United States Marshals took Respondent into custody based on the indictment. (Respondent's Answer ¶ 12)

37. On October 3, 2002, Respondent appeared before the Court and she was released subject to the terms of her "Conditions of Release and Appearance." (Respondent's Answer ¶ 13)

38. The conditions of release required Respondent to report all contacts with law enforcement. (TR 111:16-25; 112:1-5)

39. On January 22, 2003, Respondent, as required by her conditions of release, reported to Lydia Jacobs, the U.S. Pretrial Services officer assigned to Monitor Respondent's release, that she had received a speeding ticket. (Exhibit 30; See Fax Cover Sheet from the Gonzales Law Firm)

40. On August 19, 2004, Respondent, as required by the conditions of release that were incorporated into her plea agreement, reported to Ms. Jacobs that she had received a speeding ticket on that date. (Exhibit 30, See, Letter to Lyda Jacobs dated August 19, 2004)

41. In or about June 2003, Respondent and Bradley Schwartz were engaged in a domestic altercation. Law enforcement was contacted. (Respondent's Answer ¶ 14)

42. Respondent was cited for disorderly conduct. (TR 134:24)

43. Respondent advised Ms. Jacobs of her 2003 contact with law enforcement, as it was a condition of her release to advise Ms. Jacobs of any contact with law enforcement. (Respondent's Answer ¶ 15)

44. Based on the 2003 incident, Ms. Jacobs recommended that Respondent's conditions of release be amended to include that Respondent have no contact of any kind with Bradley Schwartz. (Respondent's Answer ¶ 16; Exhibit 30, Memo dated 8/13/03 from Lyda Jacobs)

45. Respondent advised Ms. Jacobs that she did not want to maintain a relationship with Bradley Schwartz and was agreeable to the entry of a "no contact" order. (Exhibit 30, Memo dated 8/13/03 from Lyda Jacobs; Exhibit 11)

46. On August 29, 2003, U.S. Magistrate Judge Bernardo Velasco issued an order prohibiting Respondent from having contact of any kind with Bradley Schwartz. (Exhibit 11)

47. Almost immediately following the entry of the Court's order, Respondent began having both in person and telephonic contact with Bradley Schwartz on a regular basis. (Respondent's Answer ¶ 18; TR 113-115)

48. Respondent knew that by having contact with Bradley Schwartz she was violating the Court's order. (Respondent's Answer ¶ 22)

49. Respondent knew that by having contact with Bradley Schwartz she was violating her Conditions of her Release. (Exhibit 32; Admission 12)

50. Respondent knowingly and intentionally committed a criminal act, the necessary elements of which included misrepresentation, fraud, deception and subterfuge. (Exhibit 4)

51. On February 24, 2004, Respondent entered into a plea agreement based on the criminal indictment. (Exhibit 4)

52. The plea agreement included the following:

(a) An admission that on or about June 24, 2001, up to and including August 25, 2001, Respondent did knowingly and intentionally conspire with Bradley A. Schwartz and to acquire and obtain possession of a schedule III controlled substance, by misrepresentation, fraud, deception, and subterfuge, in violation of Title 21, United States Code, Sections 843(a)(3), 843(d)(1) and 846.

(b) The elements of the crime included an agreement between two or more persons to obtain controlled substances by misrepresentation, fraud, deception, and subterfuge; and, Respondent

became a member of the conspiracy knowing of its object and intending to help accomplish the conspiracy. (Respondent's Answer ¶ 19; Exhibit 4)

53. Pursuant to the plea agreement, Respondent remained subject to all conditions of her pretrial release i.e., the Conditions of Release and Appearance and the no contact order. (Respondent's Answer ¶ 19; Exhibit 4)

54. As part of the plea agreement, the parties jointly requested that Respondent's guilty plea and the plea agreement be taken under consideration for a period of time and that should Respondent fully comply with all the terms of the agreement, the Government would acquiesce in Respondent's motion to withdraw her plea and move to dismiss the indictment with prejudice. (Respondent's Answer ¶ 19; Exhibit 4)

55. If Respondent failed to comply with any of the terms of the plea agreement, the parties would jointly ask the Court to accept Respondent's guilty plea and the plea agreement and proceed to sentencing. (Respondent's Answer ¶ 19; Exhibit 4)

56. When Respondent signed the plea agreement, she knew that the plea agreement incorporated the conditions of her release, i.e., that she was prohibited from having any contact with Bradley Schwartz. (TR 113:14-17; Exhibit 4)

57. Respondent knew that by having contact with Bradley Schwartz she was in violation of the terms of her plea agreement. (Exhibit 32, Admission 12 and 16)

58. Respondent knew that if she violated the terms of her plea agreement that the terms of agreement itself allowed the Court to impose on her a felony conviction. (Exhibit 32, Admission 9)

59. At the time Respondent was violating the terms of her plea agreement she did not know what the Court would do if her violations were discovered. (Exhibit 32, Admission 9)

60. Respondent's plea agreement required that Respondent have regular contact with Pretrial Services Officer Jacobs (Respondent's Answer ¶ 24)

61. As part of the conditions of release, Respondent was obligated to report to Ms. Jacobs noncompliance with any of the terms of the conditions of Respondent's release. (TR 112:6-8)

62. From August 29, 2003 through November 1, 2004, Respondent had regular contact with Ms. Jacobs. (Exhibit 32 Admission 13)

63. At no time during that period did Respondent disclose to Ms. Jacobs her violation of the Court's no contact order. (Respondent's Answer ¶25)

64. At no time during that period did Respondent disclose to Ms. Jacobs her violation of the terms of her plea agreement.

65. At no time during that period did Respondent disclose to Ms. Jacobs her violation of the conditions of her release.

66. On March 18, 2004, Bradley Schwartz moved the Court to modify the conditions of release to allow contact with Respondent. Respondent agreed to the modification of the order. (Respondent's Answer ¶ 20)

67. By order dated March 18, 2004, the Court allowed Respondent and Bradley Schwartz to have contact. (Respondent's Answer ¶ 21)

68. From August 29, 2003 through March 18, 2004, Respondent knew that her contact with Bradley Schwartz was in violation of a court order. (Respondent's Answer ¶ 22)

69. Respondent knowingly and intentionally violated the Court's no contact order. (Exhibit 32 Admission 12)

70. From February 24, 2004 through March 18, 2004, Respondent knew that her contact with Bradley Schwartz was in violation of the terms of her plea agreement. (Respondent's Answer ¶ 23)

71. Respondent knowingly and intentionally violated the terms of her plea agreement. (Exhibit 32 Admission 16)

72. Between August 29, 2003 and March 18, 2004, during the period in which no contact was ordered, Respondent had frequent and consistent contact with Bradley Schwartz, both in person and by telephone. (TR 115; Exhibit 32, Admission 11)

73. Between August 29, 2003 and March 18, 2004, Respondent became engaged to Bradley Schwartz, undertook religious instruction with him in preparation for marriage, rented a house with him, worked in his office to maintain his books, cleaned his office, spent days and nights with him, attended unrelated court proceedings with him and gave him legal advice. (TR 117-119; Exhibit 7, page 6, lines 21-25; page 42, lines 13-16; Exhibit 8, page 6, lines 15-18)

74. Respondent offered legal advice to and attended a court proceeding with Bradley Schwartz in Northeast Phoenix Justice Court on a traffic citation on December 1, 2003. (Exhibit 24 Bates 364)

75. Respondent represented Bradley Schwartz in a civil traffic case in Tucson City Court. The representation began on June 16, 2004 and ended September 27, 2004. (Exhibit 34, Response 3)

76. Respondent represented Bradley Schwartz in a personal injury matter beginning August 17, 2004 and withdrew from representation on March 3, 2005. (Exhibit 34, Response 3)

77. Respondent provided legal advice to Bradley Schwartz relating to his divorce action. (Exhibit 7, page 56, lines 18-25; Exhibit 8, page 116, lines 3-5)

78. On November 1, 2004, Respondent, along with her counsel, personally appeared before Judge Velasco for a status conference. During that court appearance, Respondent's counsel affirmatively stated to the Court that Respondent had met all the conditions of the plea agreement and that he was moving to withdraw her guilty plea. Counsel further urged the Court to recommend that the indictment be dismissed with prejudice. (Respondent's Answer ¶ 27)

79. At that same time, the assigned U.S. Attorney reported to Judge Velasco that Respondent was in compliance with all the terms of the plea agreement and he, too, moved to dismiss the indictment with prejudice. (Respondent's Answer ¶ 28)

80. Based on the affirmations to the Court, Judge Velasco found that Respondent had "complied with conditions and recommends to the District Court that the indictment be dismissed and the plea of guilty withdrawn." (Respondent's Answer ¶ 29)

81. By Order dated November 3, 2004, the United States District Court accepted and adopted Judge Velasco's report and recommendation and ordered that Respondent's indictment be dismissed and her guilty plea withdrawn. (Respondent's Answer ¶ 30)

82. Respondent knowingly allowed both her lawyer and a U.S. Attorney to make misrepresentations to the Court concerning her

compliance with the terms of her plea agreement. (Respondent's Answer ¶ 31)

83. There is evidence that Respondent's violation of the no-contact order, had it been disclosed prior to the November 1, 2006 hearing, would not have resulted in a rejection of her plea agreement or the entry of a criminal conviction against her. Judge Velasco testified that, had the Pretrial Services Division of the United States Attorney's Office known of her conduct, they likely would not have asked for the plea agreement to be rejected or a conviction entered against Respondent. Judge Velasco further testified that, had he been aware of Respondent's conduct, he likely would not have entered a conviction against her. (TR 228:11 to 230:16)

84. In the early stages of the State Bar's investigation of Respondent's involvement in fraudulently obtaining a controlled substance, Respondent advised the State Bar by letter dated January 27, 2005, that, "the United States Attorney's Office in Tucson interviewed Ms. Lopez about her involvement in these matters in late 2001 and early 2002. Ms. Lopez told the prosecutors all that she knew, including admitting to her own misconduct." (Exhibit 22, Bates 362)

85. Respondent was not truthful with the State Bar when she characterized her involvement with the DEA's investigation as candid. (Respondent's Answer ¶ 6; Exhibit 2; Exhibit 6 page 27, line 14-16)

86. Respondent also advised in the letter dated January 27, 2005 that, "Ms. Lopez fully complied with the terms of the agreement and moved to withdraw her plea." (Exhibit 22, Bates 362)

87. Respondent was not truthful with the State Bar in her January 27, 2005 letter regarding her "full compliance" with the terms of the conditions of her release and her plea agreement." (TR 85:5-25)

88. In a letter dated October 26, 2005, Respondent again advised the State Bar that, "the United States Attorney's Office in Tucson interviewed Ms. Lopez about her involvement in these matters in late 2001 and early 2002. Ms. Lopez told the prosecutors all that she knew, including admitting to her own misconduct." (Exhibit 23, Bates 365)

89. Respondent also advised in the letter dated October 26, 2005 that, "Ms. Lopez fully complied with the terms of the agreement and moved to withdraw her plea." (Exhibit 23, Bates 365)

90. Respondent was not truthful with the State Bar in her letter dated October 26, 2005. (TR 87:17-25; 88:1-4)

91. On November 7, 2005, the State Bar filed a formal complaint against Respondent for her involvement in fraudulently obtaining a controlled substance. (Exhibit 35)

92. In Respondent's formal answer to the State Bar's complaint, she "affirmatively alleges that she fully complied with the terms of the agreement..." (Exhibit 36 ¶ 7)

93. By letter dated May 6, 2005, Judge John Leonardo, the Presiding Judge of the Pima County Superior Court, advised the State Bar that it was reported that Ms. Lopez testified under oath that she, "...did in fact have regular contact with Dr. Schwartz during the time period she was prohibited from doing so..." (Exhibit 16)

94. In response to Judge Leonardo's letter, the State Bar opened an investigation and requested a response from Respondent. (Exhibit 17)

95. By letter dated July 20, 2005, Respondent advised the State Bar that she "testified" that, "there had been at some point a 'no contact' order preventing her from having any contact with Dr. Schwartz. That is the entirety of her testimony on this subject." (Exhibit 18, Bates 346)

96. Respondent's letter further stated, "Judge Leonardo's judicial referral is based on incomplete and inaccurate information. As such, we believe the referral should be rejected and this matter closed." (Exhibit 18, Bates 346)

97. Based upon Respondent's July 20, 2005 response, the State Bar's investigation into the matter was closed.

98. By letter dated March 21, 2006, the State Bar reopened the investigation into the allegation that Respondent had regular contact with Bradley Schwartz during the "no contact" period. (Exhibit 19)

99. Respondent's subsequent response dated March 28, 2006 stated, "...there is no question that Ms. Lopez violated the Court's 'no contact' order..." (Exhibit 20, Bates 359)

100. On March 16, 2006, Respondent signed a verification to her Response to the State Bar's First Set of Non-Uniform Interrogatories. (Exhibit 28)

101. Respondent's Response to the State Bar's First Set of Non-Uniform Interrogatory No. 2 asserted that she was entitled to mitigation based on her "full and free disclosure to the disciplinary board or cooperative attitude toward proceedings..." (Exhibit 28, Page 2)

102. In the early morning hours of July 22, 2006, Respondent was operating a motor vehicle that was involved in a head-on collision with another motor vehicle. (TR 196; Exhibit 9)

103. During the Tucson Police Department's investigation into the accident, Respondent had watery bloodshot eyes and emitted a strong odor of alcohol. Respondent could not balance herself and was holding on to the car door or the vehicle itself. Respondent refused to perform field sobriety tests. (TR 197-198; 199:1-6; Exhibit 9)

104. When directly asked by investigating Officer Flores if she had been drinking, Respondent said "no." (TR 198:16-20; Exhibit 9, Bates 297)

105. It is unlawful for a person to knowingly misrepresent a fact for the purpose of interfering with the orderly operation of a law enforcement agency. (Exhibit 26; A.R.S. §13-2907.01)

106. Respondent was arrested for driving under the influence. (Exhibit 9)

107. On July 22, 2006, Tucson Police Officer Eppley was dispatched to the scene of the accident where he was to assist with a DUI investigation. Officer Eppley attempted to administer a breathalyzer test on Respondent. Respondent was antagonistic and uncooperative and refused to provide a sufficient sample. (TR 215:3-8; 216: 3-7; 221-222; Exhibit 41)

108. Officer Eppley obtained a search warrant to draw Respondent's blood. Respondent's blood alcohol level was .174. (TR 216-217:1-5; Exhibit 25, Bates 387)

109. On August 25, 2006, Respondent was criminally charged with DUI and Extreme DUI in violation of A.R.S. § 28-1381(A)(2) and A.R.S. § 28-1382(A). (Exhibit 25)

III. CONCLUSIONS OF LAW

This Hearing Officer finds the State Bar has proven by clear and convincing evidence the following:

1. Respondent knowingly and intentionally engaged in conduct that constituted a criminal act that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of ER 8.4(b).

2. Respondent knowingly and intentionally engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of ER 8.4(c).

3. Respondent knowingly and intentionally engaged in conduct prejudicial to the administration of justice in violation of ER 8.4(d).

4. Respondent knowingly violated an obligation under the rules of the court in violation of ER 3.4(c) and Rule 53(c).

IV. DISCUSSION

A. ABA Standards

The ABA *Standards for Imposing Lawyer Sanctions* ("Standards") provide guidance with respect to an appropriate sanction in this matter. The Supreme Court and the Disciplinary Commission are consistent in utilizing the Standards to determine appropriate sanctions for attorney discipline. *In re Kaplan*, 179 Ariz. 175, 877 P.2d 274 (1994). The Standards provide that four factors should be considered in determining a sanction: the duty violated; the lawyer's mental state; the actual or potential injury; and aggravating and mitigating factors. Also, according to the Standards and *In re Cassalia*, 173 Ariz. 372, 843 P.2d 654 (1992), where there are multiple acts of misconduct, the Respondent should receive one sanction that is consistent with the most serious instance of misconduct, and the other acts should be considered as aggravating factors.

Because the discipline in each situation must be tailored for the individual case, neither perfection nor absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604, 691 P.2d 695 (1984). The Standards are designed to promote consistency in sanctions by

identifying relevant factors the Court should consider and then applying those factors to situations in which lawyers have engaged in various types of misconduct. Standard 1.3, Commentary.

1. The Duty Violated

The Standards identify four distinct categories where a lawyer has a specific duty; those duties are to his client, the general public, the legal system, and the profession. Respondent has violated a duty to the legal system and to the general public.

> Lawyers are officers of the court, and must abide by the rules of substance and procedure which shape the administration of justice. Lawyers must always operate within the bounds of the law, and cannot create or use false evidence, or engage in any other illegal or improper conduct.

Standards at p. 5 The community expects lawyers to exhibit the highest standards of honesty and integrity and lawyers have a duty not to engage in conduct involving dishonesty..." *Id.*

2. Mental State

The parties agree, and this Hearing Officer finds, that Respondent's conduct was intentional or knowing.

3. Applicable Standards

The applicable Standard is 5.1, which states:

> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyers honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."[3]

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.[4]

5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

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[3] "A lawyer who engages in any of the illegal acts listed [in Standard 5.11] has violated one of the most basic professional obligations to the public, the pledge to maintain personal honesty and integrity." Standard 5.11, Commentary. See also, In the Matter of Fresquez, 162 Ariz. 328, 783 P.2d 774 (1989).

[4] The Commentary to Standard 5.12 states: Lawyers who engage in criminal conduct other than that described in Standard 5.11 should be suspended in cases where their conduct seriously reflects on their fitness to practice. As in the case of disbarment, a suspension can be imposed where no criminal charges have been filed. Not every lawyer who commits a criminal act should be suspended. As pointed out in the Model Rules of Professional Conduct:

Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated, offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

a. The State Bar's Position

The State Bar argues that Standards 5.11(a) and (b) are applicable in the instant matter. Respondent knowingly and intentionally conspired to obtain illicit drugs by fraud. She pled guilty to that offense and provided a detailed factual basis for her plea. (Factual basis found in Exhibit. 4, Bates 18-19). Respondent knowingly and intentionally engaged in a criminal act for the purpose of obtaining a controlled substance, in part, for her own personal use. Respondent was a prosecutor who engaged in a felony criminal act, which included the element of fraud and deception. The State Bar argues that Respondent's criminal act reflects adversely on her honesty, trustworthiness or fitness as a lawyer. As a result, the State Bar argues disbarment is the presumptive sanction for Respondent's misconduct.

The State Bar further argues that the Respondent did far more than commit a felony offense involving fraud or misrepresentation, however. She also knowingly and intentionally misled the Court, the U.S. Attorney and U.S. Pretrial Services into believing she had complied with all of the terms of her plea agreement, thereby warranting dismissal of her charges pursuant to her plea agreement. Respondent knew that on countless occasions she violated her no contact order. Yet she knowingly and intentionally stood silent while her own lawyer and the prosecutor misinformed the Court that she was in compliance with the terms and conditions of the plea.

In addition, the State Bar argues Respondent knowingly and intentionally lied to DEA agents in order to avoid criminal prosecution. Admittedly, Respondent knew that it was a crime to lie to the DEA investigators. Respondent knew that she was obstructing a federal

investigation by lying. Respondent affirmatively agreed that she would not discuss her meeting with the agents and knew that by "tipping" off the target (Bradley Schwartz) she was obstructing their investigation. Despite promising DEA agents that she would not tell Schwartz of the investigation, within 24 hours Respondent alerted Schwartz of the investigation.

The State Bar's position is that Respondent's every action in this case reveals someone who is calculated, dishonest, untruthful, manipulative and lacking in the most basic and fundamental characteristics that makes one fit to practice law.

b. Respondent's Position

The Respondent's position is that she should be suspended for 6 months.

The Respondent argues that under the circumstances, her conduct appears to fall somewhere between the conduct described in Section 5.11 (criminal fraud) and that described in Section 5.13 (non-criminal fraud). The Respondent further argues the evidence establishes that her conduct was not the kind of "serious criminal conduct" generally included in Section 5.11. The Respondent also points out that several other individuals who engaged in the same conduct as she were never indicted. Finally, Respondent states she was never convicted of any offense, let alone one involving fraud or dishonesty. While the standard does not require a criminal conviction, the Respondent argues the absence of one here strongly suggests her conduct does not alone warrant disbarment.

4. Aggravating and Mitigating Factors

Standards 9.2 and 9.3 set forth factors which may be considered in aggravation or mitigation.

a. Aggravating Factors

This Hearing Officer finds the following aggravating factors present:

Standard 9.22(b)- dishonest or selfish motive.

Standard 9.22(c) - pattern of misconduct.

Standard 9.22(d) - multiple offenses.

Standard 9.22 (f) - submission of false evidence, false statements, or other deceptive practices during the disciplinary process.

Standard 9.22(i) - substantial experience in the practice of law.

Standard 9.22(k) - illegal conduct.

b. Mitigating Factors

This Hearing Officer finds the following mitigating factors present:

Standard 9.32(a) - absence of a prior disciplinary record.

Standard 9.32(c) – personal or emotional problems.

Standard 9.32(g) – character or reputation

Standard 9.32(j) – interim rehabilitation

Standard 9.32(j) – imposition of other penalties or sanctions

Standard 9.32(l) – remorse

B. Proportionality

The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). When imposing lawyer sanctions, the Court is guided by the principle that an effective system of professional sanctions must have internal consistency. *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1998). Therefore, a review of cases that involve conduct of a similar nature is warranted.

In *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983), Wines entered a plea of guilty to a misdemeanor violation for willfully failing to supply information relating to income taxes. He was ordered imprisoned for one year, but the sentence of imprisonment was suspended, and he was placed on unsupervised probation upon the condition that he spend three months in a work release program at a community treatment center. After a hearing before the disciplinary board, Wines was found to have engaged in fraudulent, deceitful and dishonest acts by knowingly misrepresenting his income.

The Court found that while Wines was convicted of only a misdemeanor, the facts and circumstances leading to the conviction involved moral turpitude. The Court stated:

> The law requires proper recording and proper reporting of income, and we believe that an attorney who has knowingly failed to adopt procedures which would bring him into compliance and has employed various artifices to avoid these requirements has not only violated the law but has been guilty of fraud, dishonesty and misrepresentation of such a nature as to make suspension reasonable if not absolutely necessary.

Id at 206, 660 P.2d at 457.

Wines was suspended for five years for violating Disciplinary Rule ("DR") DR 1-102(A)(3) and (4) and Rule 29(c).

In *In re Witt*, SB-06-0131-D (2006), the Supreme Court accepted the Disciplinary Commission's recommendation that Witt be disbarred for engaging in fraudulent conduct over a four-year period for theft of public monies by fraudulent Medicare billing. The Commission found that Witt contended that she had overcome the problems that had

contributed to her misconduct, and that the integrity of the profession was not harmed, as she was "virtually anonymous" and not acting as a lawyer within the legal system at the time of the misconduct.

The Commission found that Witt engaged in numerous dishonest acts in support of the fraudulent scheme that resulted in her felony conviction and noted that Witt had not demonstrated the level of mitigation rehabilitation established in *In re Piccolli*, SB-05-0144-D (2005) (Piccolli received a two-year and six-month suspension for an engaging in an isolated instance of fraud in which he played a minimal role) and in *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001). The Disciplinary Commission determined that disbarment was the presumptive sanction "for cases involving the commission of a criminal act... or in cases involving dishonesty, fraud, deceit, or misrepresentation." Witt was convicted of a Class D felony, sentenced to probation, placed on home detention and ordered to pay various fines and assessments.[5] Despite numerous mitigating factors, the sanction was disbarment.

In *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001), Scholl developed a gambling habit and for several years failed to report all income attributable to gambling. At the time, Scholl was a Superior Court Judge. He was found guilty and convicted in federal court of seven felony offenses, including four counts of filing a false tax return and

[5]In aggravation, the Commission agreed that a dishonest pattern of misconduct was present (Standard 9.22(b): dishonest or selfish motive), and found that a pattern of misconduct was also supported by the record, Standard 9.22(b). In mitigation, the Commission agreed with the hearing officer's finding of Standards 9.32(a) absence of a prior disciplinary record; 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; 9.32(g) character and reputation; and 9.32(l) remorse. However, the Commission did not agree that the record supported a finding of personal or emotional problems, Standard 9.32(c).

three counts of structuring currency transactions to avoid treasury reporting requirements. The court found that Scholl's convictions caused harm to the public, the justice system, and the legal profession. *Id.* at 225, 25 P.3d at 710.

Three aggravating factors were found: dishonest or selfish motive, a pattern of misconduct, and substantial experience in the practice of law. Four mitigating factors were found: absence of a prior disciplinary record, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, good character or reputation, and imposition or other penalties or sanctions. Scholl was suspended for six months for violating Rule 42, specifically ER 8.4(b), and Rule 51(a).

In *In re Schwartz*, 176 Ariz. 455, 862 P.2d 215 (1993), involved what was considered to be an ambiguous Arizona social gambling statute. It was commonly believed that sports betting was no different than blackjack or craps. Over a period of eight weeks, Schwartz accepted sports bets from a man whose losses totaled approximately $300-$400. That man turned out to be a paid informant. Essentially, Schwartz accepted bets on an informal basis as he had no business, books, records etc. In other words, this was social and not an organized business. *Id.* at 457, 862 P.2d at 217.

Schwartz was indicted for promotion of gambling and other charges and pled guilty to conspiracy to commit promotion of gambling, a class 5 felony. He was sentenced to three years probation and applied for and received early termination of his probation. Schwartz was also ordered to pay fines and reimbursements and required to cooperate with the county attorney's office in the prosecution of other individuals. *Id.*

Schwartz was placed on interim suspension in April 1992, and approximately one year later, on April 17, 1993, the Disciplinary Commission accepted an agreement for a six-month suspension for violations of ER 8.4(b), Rule 42 and Rule 51(a).

Respondent argues to "not lose sight of the fact that Ms. Lopez was never convicted of any crime, felony or misdemeanor" and cites *In re Beren*, 178 Ariz. 400, 847 P.2d 320 (1994). Former Rules 51 and 57 allowed for discipline based on a conviction for a felony or serious misdemeanor. Relying only on Beren's convictions, the State Bar filed a complaint against Beren. The State Bar postponed further disciplinary action until Beren's offenses were designated either misdemeanors or felonies. Upon successful completion of probation, Beren's crimes were designated misdemeanors and his convictions were vacated. *Id.* at 401, 847 P.2d at 321.

Since the State Bar had only based its complaint on the actual convictions and not the underlying conduct, vacating the convictions removed the basis for the complaint. The Supreme Court found that, "[b]ecause the charge against Beren rest[ed] solely on the existence of felony convictions, and not underlying conduct, the complaint was dismissed." *Id.* at 401, 847 P.2d at 323.

In *In re Piccioli*, SB-05-0144-D (2005), Piccioli became involved in an illegal investment scheme, both as an investor and as an employee of one of the conspirators behind the scheme. At some point during his involvement, Piccioli became aware of significant legal problems with the investment scheme. Nevertheless, he continued to work on the project and, ultimately, prepared a fraudulent invoice and faxed that invoice to an undercover FBI agent. Shortly thereafter, Piccioli turned

himself in to the FBI and pled guilty to conspiracy to commit wire fraud and wire fraud. He was convicted in Federal District Court, sentenced to fifteen months in federal prison, and given two years of probation upon release. Piccioli committed a single, isolated incident of misconduct and played a minimal role in the crime.

One aggravating factor was found: dishonest or selfish motive. Six mitigating factors were found: 1) absence of a prior disciplinary record; 2) personal or emotional problems; 3) full and free disclosure to the disciplinary board or cooperative attitude toward proceedings; 4) remorse, 5) character and reputation; and 6) imposition of other penalties or sanctions. Piccioli was suspended for two years and six months and subject to a two-year probation upon reinstatement.

In *In re Savoy*, 181 Ariz. 368, 891 P.2d 236 (1995), Savoy was convicted of one count of perjury based on statements he made while testifying before the Arizona State Grand Jury. Savoy was sentenced to two years' probation and fined $15,000. The Court found that: "Savoy's conviction of perjury is a serious matter, ... one that should result in disbarment in most cases, ... the circumstances [of this case] are unusual." *Id.* at 371, 891 P.2d at 239.

Upon review of the record on appeal, the Court agreed that Savoy's guilt was a very close question and was seen as one circumstance that supported a sanction less than disbarment. No aggravating factors were found.

Five mitigating factors were found: 1) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; 2) remoteness of prior offenses; 3) no dishonest or selfish motive; 4) character or reputation; 5) and imposition of other penalties or sanctions.

The Court also gave mitigating weight to Savoy's actions in contacting his clients after his conviction and notifying them that they might need substitute counsel.

Savoy was suspended for two years for violating Rule 42, specifically, ERs 3.3(a)(1) and 8.4(b), (c) and (d), and Rule 51(a).

Matter of Rivkind, 164 Ariz. 154, 791 P.2d. 1037 (1990) involved consideration of the appropriate sanction to be imposed upon a lawyer who developed a substance abuse problem. The Court began its consideration of that issue as follows:

> The main aggravating circumstance in this case is that respondent repeatedly violated the laws of this state for an extended period of time. If the evidence in mitigation were not so overwhelming, we would not permit respondent to deal with the public as a lawyer again. But this is an exceptional case in that respondent has not only done everything to demonstrate his contrition and rehabilitation, but also is actively engaged in educating and assisting others who suffer from substance abuse.

Id. at 158, 791 P.2d at 1041.

The Court also found that Rivkind's crimes did not impact or affect his work. The lack of impact on his work did not deter the court from imposing an intermediate term suspension, which was deemed appropriate because of his " overwhelming" evidence of rehabilitation.

In re Carrasco, No. 02-1896 (2004), concerned a lawyer who, while representing his cousin on charges of sexual abuse of a minor, had repeated contact with one of the child victims. Carrasco, who initially contacted the victim by falsely representing to a Child Protective Services ("CPS") shelter worker that he was the girl's attorney, told the

girl not to speak to CPS or the police. In addition, he continued to have contact with one of the minors, despite knowing that she had been appointed a lawyer, and contrary to specific instruction from CPS not to have any further contact with her. Carrasco was ultimately charged with and convicted of obstructing a criminal investigation or prosecution, a class 5 felony. He was sentenced to 18 months probation in September 2002, after which the Bar opened a file alleging violations of ERs 4.1, 1.7, 8.4 (b), (c), and (d).

In addition, Carrasco had three prior disciplinary offenses, the first two resulting in informal reprimands. The third offense -- a violation of ER 1.7 (conflict of interest), for trying to represent both the defendant and a material witness in a sexual abuse case -- resulted in a six-month suspension for which Carrasco was still on probation when he engaged in the conduct described above.

The hearing officer found that Carrasco violated his ethical duties to his client, the public, the legal system, and the profession. He further found that Carrasco met the requisite mental state (as he had been convicted of a specific intent crime), and that he harmed the legal profession by creating the appearance of impropriety through his actions. Noting the prior disciplinary offenses and the pattern of misconduct, the hearing officer recommended a two-year suspension. The Disciplinary Commission found this recommendation to be "unduly harsh and punitive" given that "heightened emotions were present and several family members were involved" and that Carrasco was "blinded by ... emotion". The Commission further found that mitigating factor 9.32(k) (imposition of other penalties and sanctions) applied to the probation Carrasco had received as part of his conviction. Weighing all of the

factors, the Commission imposed a suspension of six months and one day.

Not only did Carrasco use his status as a lawyer to obstruct a criminal investigation, he used it to influence a young girl who had been sexually victimized by his client. Moreover, the 2004 case was the fourth disciplinary action against Carrasco. Although the first two occasions involved relatively minor conduct, the third was a serious violation of ER 1.7 which, of course, Carrasco violated again in the 2004 case. He was still on probation for his third violation when his actions giving rise to his fourth instance of misconduct took place. Finally, Carrasco violated every duty the Standard articulates -- duties to his client, the public, the legal system, and the profession. Notwithstanding all of that, the Commission reduced a two-year suspension to one for six-months and one day given Carrasco's "heightened emotions," the "involvement of family members," and that he had already been punished by having probation imposed as part of his criminal case.

In re Morris, 164 Ariz. 391 (1990), involved a lawyer who had been both a deputy district attorney and president of a local bar association. Morris pled guilty to one count of misprision of a felony, after which he was given an interim suspension of his bar license. The hearing committee recommended a one-year suspension which the Disciplinary Commission recommended be shortened to six-months and applied retroactively. The Supreme Court adopted the *retroactive* six-month suspension based on a number of factors that also apply to this case. The Supreme Court found that the conduct giving rise to the criminal charge did not involve attempting to deceive or defraud a

tribunal and that Morris was only a minor participant in the criminal case in which he had been convicted.

Other courts have also addressed similar issues. In *Matter of Moore*, 453 N.E.2d 971 (Ind. 1983), Moore was charged with knowingly possessing more than 30 grams of marijuana, in violation of Indiana Code 35-48-4-11, which provided that a person was guilty of such crime when he knew that marijuana was growing on his premises and failed to destroy the marijuana plants. The Disciplinary Commission charged Moore with engaging in illegal conduct involving moral turpitude and engaging in other conduct that adversely reflected on his fitness to practice law. (DR 1-102(3) and (6)) Moore was a Deputy Prosecuting Attorney in Jennings County, Indiana at the time of the criminal investigation, the filing of criminal charges and the subsequent disciplinary proceeding.

Shortly after being criminally charged, Moore's son informed the prosecuting attorney that he was responsible for the marijuana growing on the premises. The criminal charges against Moore were dismissed.

The Supreme Court of Indiana reviewed the discipline matter and concluded that the evidence clearly and convincingly established that Moore knew of the marijuana growing on the premises yet failed to destroy the plants. Moore's conduct violated DR 1-102(A)(1), (3) and (6) of the Code of Professional Responsibility. The Court noted that Moore:

> acted in contravention of the laws of the State of Indiana at the time he was serving a public trust to enforce such laws. This betrayal of public trust scorns the orderly and impartial administration of justice. ... A lawyer who betrays his public trust and ignores his responsibility for the impartial

> administration of justice, not only suggests to the public an absence of integrity, but also demonstrates an unfitness to continue in the practice.

Id. at 974-975.

The Court concluded that "the strongest disciplinary sanction available must be imposed" and disbarred Moore from the practice of law in Indiana.

In summary, while there are no cases directly on point, conduct of a nature similar to the Respondent's has generally resulted in suspension or disbarment.

V. CONCLUSION

The Supreme Court has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'' *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (*quoting In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). Discipline in each situation must be tailored to the individual facts of the case in order to achieve the purposes of discipline. *Matter of Rivkind,* 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990); *Matter of Wines*, *supra.*

The instant case presents a very specific set of facts. There are no Arizona cases directly on point given the facts.

There is no question about the impropriety of the Respondent's behavior. However, it is important to this Hearing Officer that the

Respondent's conduct which gives rise to the allegations by the State Bar uniformly occurred within the context of a personal, emotional and ill-fated relationship with Bradley Schwartz, and not when she was engaged in the practice of law. It is within the circumstances of this relationship that the Respondent's actions must be viewed.

This Hearing Officer finds there is clear and convincing evidence that Respondent violated Rule 42, specifically ER 8.4(b), ER 8.4(c), ER 8.4(d), ER 3.4(c)) and Rule 53(c).

Based upon the ABA Standards and in review of the Arizona case law, it is this Hearing Officer's finding that the appropriate sanction for the Respondent is a suspension of one year. Respondent should also be assessed the costs and expenses incurred in these disciplinary proceedings.

The recommended sanction is not disproportionate to sanctioning in cases involving similar conduct under the cited circumstances. This sanction is not recommended in order to punish Respondent. This sanction is recommended in order to set a standard by which other lawyers may be deterred from similar conduct, while protecting the interest of the public and the profession.

DATED this 28th day of December 2006.

Bruce G. Macdonald /cs
Bruce G. Macdonald
Hearing Officer 6M

Original was filed with the Disciplinary
Clerk's Office of the Supreme Court of
Arizona this 28th day of December, 2006.

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