BEFORE THE DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **LOURDES SALMON LOPEZ,** **Bar No. 018479** RESPONDENT	No. 04-2051 **DISCIPLINARY COMMISSION REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on April 14, 2007, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the Hearing Officer's Report filed December 28, 2006, recommending a one-year suspension and costs. The State Bar filed an objection and requested oral argument. Respondent, Respondent's Counsel and counsel for the State Bar were present.

The State Bar argues that over an extended period of time, Respondent knowingly and intentionally engaged in numerous acts of misconduct demonstrating a pattern of deceit and dishonesty, criminal misconduct, and extreme indifference to legal obligations Specifically, Respondent conspired to obtain a controlled substance, lied to federal investigators, tipped off the target of a federal investigation, repeatedly violated a court order, lied to the court to avoid a felony conviction, lied to the State Bar during its investigation of these matters, and counseled Dr. Bradley Schwartz in the commission of the murder. The State Bar urges *de novo* review of the sanction and asserts the substantive facts in this matter warrant disbarment

Respondent argues that the Hearing Officer's findings were not clearly erroneous, and the prior cases establish that the recommended sanction of suspension is appropriate in this matter

Respondent further argues that the State Bar could not sustain its burden of proof on this record the allegation that Respondent's violation of the no contact order would have resulted in a criminal conviction. Therefore, it was appropriate to allow Judge Bernardo Velasco to testify regarding the no contact order because the majority of his testimony was in the general sense and how those issues are handled in his courtroom

Respondent maintains that four previous cases should guide the Commission's assessment of this matter *Matter of Carassco, Scholl, Schwartz* and *Morris* These cases support the position that the involvement in criminal acts of dishonesty in the attorney's personal life does not necessitate disbarment. Respondent asserts that no rational person would engage in this type of misconduct, particularly with the knowledge she acquired as a Prosecutor and that she was protecting her relationship with Dr Schwartz

In closing, Respondent contends that disbarment is not an appropriate disposition of this matter as one's personal life and professional life are not the same. Often bad judgment can overlap and bleed into professional life, but there is no evidence that occurred in this matter

Decision

The nine members[1] of the Disciplinary Commission by a majority of six[2] recommend accepting and adopting the Hearing Officer's findings of fact and conclusions of law, but modify *de novo* the recommended sanction to reflect disbarment and costs.[3]

Discussion

The Disciplinary Commission's standard of review is set forth in Rule 58(b), Ariz.R.Sup Ct., which states that the commission reviews questions of law *de novo*. In reviewing findings of fact made by a hearing officer, the commission applies a clearly erroneous standard. *Id.* Mixed findings of fact and law are also reviewed *de novo* *State v Blackmore,* 186 Ariz. 630 925 P.2d 1347 (1996) citing *State v Winegar*, 147 Ariz 440, 711 P 2d 579 (1985)

The Disciplinary Commission adopts the Hearing Officer's findings of fact which are briefly summarized as follows

From 1999 to August 2002, Respondent was employed as a deputy Pima County attorney During that time Respondent began a relationship with her foster daughter's ophthalmologist, Dr. Bradley Schwartz. Dr. Schwartz was addicted to painkillers and Respondent helped him illegally acquire large quantities of hydrocodone, a Schedule III controlled substance, some of which Respondent kept for herself. The Hearing Officer found that Respondent knew her conduct was unlawful *See* Hearing Officer's Report, p. 6, Finding of Fact 16.

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[1] Commissioners Atwood and Horsley did not participate in these proceedings Former Commissioner Steven Nelson, M D , and Hearing Officer Frederick Steiner participated as ad hoc members

[2] Commissioners Gooding, Katzenberg and Steiner were opposed and would have supported a lengthy suspension *See* Commissioner Katzenberg's dissenting opinion below

[3] A copy of the Hearing Officer's Report is attached as Exhibit A

In October 2001, Respondent was contacted by the Drug Enforcement Agency (DEA) in connection with its investigation of Dr Schwartz. During her interview with DEA, Respondent lied to the investigators and subsequently told Dr. Schwartz about the investigation, despite being instructed not to do so. The Hearing Officer found that Respondent knew it was unlawful to lie to the investigators and as a prosecutor, knew that alerting the target could hinder or obstruct a criminal investigation The Hearing Officer further found that Respondent lied to the investigators, at least in part, to protect herself from criminal prosecution. *See* Hearing Officer's Report, p. 7, Findings of Fact 24 and 29. Respondent subsequently met with her supervisor and lied to her about the nature of DEA's investigation.

In May 2002, Dr Schwartz informed DEA about Respondent's involvement Respondent thereafter, met with the DEA in July 2002 and disclosed her involvement and was subsequently indicted on three drug-related counts In June 2003, Respondent was involved in a "domestic altercation" with Dr. Schwartz and cited for disorderly conduct. As a result, her Conditions of Release and Appearance were amended to include a requirement of no contact of any kind with Dr. Schwartz. Respondent violated that requirement and had regular, almost daily, contact with Dr. Schwartz. During this time period, Respondent and Dr. Schwartz became engaged, Respondent performed bookkeeping duties on behalf of Dr. Schwartz, and represented him as his lawyer. The Hearing Officer found that Respondent knew she was violating the conditions of her release. *See* Hearing Officer's Report, p 5, Finding of Fact 49.

On February 24, 2004, Respondent pled guilty to 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 controlled substance by misrepresentation, fraud, forgery, deception and subterfuge Her plea agreement maintained all of her prior conditions including the no contact order. It also provided that if Respondent complied with all of the terms and conditions, the Government would move to dismiss the indictment. The Hearing Officer found Respondent knew that by continuing her contact with Dr. Schwartz, Respondent was violating the plea agreement and as a consequence, the Court could impose a felony conviction. However, the Hearing Officer also found Respondent did not know what the Court would actually do if it discovered a violation *See* Hearing Officer's Report, p 12, Findings of Fact 59

In November 2004, Respondent appeared before Federal Magistrate Bernardo Velasco and allowed her counsel to state she had complied with all of the terms of her plea agreement Judge Velasco ultimately recommended that the District Court dismiss the indictment, which it did The Hearing Officer found Respondent knowingly allowed both her lawyer and the Assistant U.S. Attorney to make the misrepresentations to the Court regarding her compliance with the plea agreement. *See* Hearing Officer's Report, p. 14, Findings of Fact 82. Respondent also lied to the State Bar regarding her role in the DEA investigation during the early stages of its investigation and also gave conflicting answers regarding her compliance with the no contact order

Regarding the no contact order, Judge Velasco testified, over the Bar's objection below, that if he had known that Respondent had violated the no contact portion of the plea agreement, it would not have made a difference in his recommendation Both parties argue about whether it was appropriate to allow Judge Velasco to testify to what he would have done if he had knowledge that Respondent had violated the no contact portion of the plea

agreement Clearly, Judge Velasco should not have been allowed to testify not because his testimony was speculative, but because as a matter of public policy, Judges are not allowed to be examined on why they did or did not rule in a certain way Judges can be compelled to testify as fact witnesses as to what happened in their Court, but not as to their mental processes *See Reed v Mitchell & Timbanard*, 183 Ariz 313, 317-18, 903 P 2d 621, 625-26 (App. 1995) (Judge who handled dissolution is the only one who could give definitive answer on issue of whether he would have signed different form of judgment than that presented "and his testimony is precluded as a matter of public policy"), *Phillips v Clancy*, 152 Ariz. 415, 733 P 2d 300 (App. 1987). Here, Judge Velasco testified as to how additional facts might have affected his ruling, which is precisely the type of testimony the Court refused to allow in *Reed*

Based on the Hearing Officer's findings, the Disciplinary Commission agrees that clear and convincing evidence is present that Respondent violated Rule 42, Ariz.R.Sup.Ct , specifically, Respondent knowingly and intentionally violated ER 8 4(b) (criminal conduct reflecting adversely on honesty, trustworthiness, fitness as lawyer), ER 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); ER 8 4(d) (conduct prejudicial to the administration of justice), ER 3.4(c) (disobey an obligation under the rules of a tribunal) and Rule 53(c) (violation of obligation under rules of the court).

When determining an appropriate sanction, our Supreme Court considers the ABA *Standards for Imposing Lawyer Sanctions* ("*Standards*") a suitable guideline *In re Kaplan*, 179 Ariz. 175, 877 P 2d 274 (1994) The Supreme Court and the Commission are also consistent in utilizing the *Standards* to determine appropriate sanctions for attorney discipline. In imposing a sanction after a finding of misconduct, 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. *See Standard* 3.0

In the instant matter, the Hearing Officer considered *Standards* 5 11 (disbarment) and 5.12 (suspension) but did not specifically identify the presumptive sanction or discuss whether any injury was caused by the misconduct His findings however, establish that Respondent's misconduct was knowing and intentional

Absent aggravating or mitigating circumstances and 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 lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud deceit, or misrepresentation: *Standard* 5.1, *Violations of Duties Owed to the Public* and the *Failure to Maintain Personal Integrity* provides that:

> 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 intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
>
> 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.

Given Respondent's intentional interference with the DEA's investigation and her initial misrepresentations to the State Bar, the Commission determined that the presumptive sanction in this case is disbarment

Having concluded that disbarment is the presumptive sanction, the Disciplinary Commission reviewed *Standards* 9 22 and 9 32, aggravating and mitigating factors, respectively to determine whether and to what extent aggravating and mitigating factors should affect the ultimate sanction imposed. *In re Augenstein*, 178 Ariz 133, 136, 871 P 2d 254, 257 (1994)

The Commission agrees with the Hearing Officer that seven aggravating factors are present: 9.22 (b) (dishonest or selfish motive; 9.22(c) pattern of misconduct; 9.22(d) multiple offenses; 9 22(f) submission of false evidence/statements during disciplinary process; 9 22(i) substantial experience in the practice of law; 9.22 (k) (illegal conduct); and six mitigating factors are present 9 32(a) (absence of prior disciplinary record; 9 32(c) personal or emotional problems, 9.32(g) character or reputation; interim rehabilitation;[4] 9.32 (k) imposition of other penalties or sanctions, and 9.32(l) remorse).

Considering the cases offered by the parties for a proportionality analysis, the Hearing Officer found none of them directly on point, but concluded that prior similar cases have generally resulted in suspension or disbarment Hearing Officer's Report, p 34 None of those cases reflect the depth of deception and misrepresentation present in the instant matter

[4] Interim rehabilitation was deleted as a mitigating factor in the 1992 revision to the ABA *Standards*, but case law holds that it can still be considered when applicable. *See In re Peasley*, 208 Ariz 27, 39, 90 P.3d 764, 776 (2004)

There are seven serious aggravating factors present that outweigh or at minimum, balance the six existing mitigating facts. The record includes testimony from Respondent that she is now receiving psychological treatment and voluntarily entered the State Bar's Member Assistance Program (MAP) prior to the evidentiary hearing in this matter. But little or no evidence was presented to show she had made any progress through that treatment

On balance and based on the seriousness of the misconduct, the Disciplinary Commission does not believe the presumptive sanction of disbarment should be reduced in this case. Respondent's misconduct occurred over an extended period of time and demonstrates a pattern of criminal conduct, deceit, dishonesty and deception. Specifically, lying to police, federal investigators, the court, the State Bar, and her supervisors. Such conduct by an attorney cannot be tolerated. A lawyer must avoid misconduct that involves dishonesty, fraud, deceit, or misrepresentation as that duty is considered the most fundamental ethical duty and supremely important. *Matter of Frezquez*, 162 Ariz 328, 783 Pp.2d 774 (1989) Lawyers have a professional obligation to maintain personal honesty and integrity as they are the cornerstone of the legal profession

Recently, *Matter of Peasley*, 208 Ariz 27, 90, P.3d 764 (2004), held that the courts generally recognize that the *Rules of Professional Conduct* impose a high degree of ethical standards on prosecutors The Hearing Officer found that most of Respondent's conduct occurred in the course of her personal life, and not when she was engaged in the practice of law. *See* Hearing Officer's Report, p. 35 However, it is undisputed that some of Respondent's misconduct occurred while she was employed as a prosecutor. It is precisely because of Respondent's legal background, her understanding of the law and the position

she held as a prosecutor, that if she is unable to distinguish between her personal and professional life and if her personal life has rendered her judgment impaired, then she is not fit to practice law

Conclusion

One purpose of lawyer discipline is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz 20, 29, 881 P.2d, 352, 362 (1994). Additionally, the sanction imposed should deter other attorneys from engaging in similar unethical conduct *In re Kleindiest,* 132 Ariz. 95, 644 P.2d 249 (1982)

Upon consideration of the facts in this matter, application of the ABA *Standards* including aggravating and mitigating factors, the Commission recommends disbarment and costs of these disciplinary proceedings

RESPECTFULLY SUBMITTED this 16th day of May, 2007.

J. Conrad Baran, Chair
Disciplinary Commission

Commissioner Katzenberg dissenting

The Respondent's conduct warrants a severe sanction However, it is difficult to reconcile the sanction of disbarment imposed by the Commission with the sanctions imposed in other Arizona cases for similar conduct Therefore, I respectfully dissent

In *In re Scholl*, 200 Ariz 222, 25 P.3d 710 (2001), the respondent was an acting Pima County Superior Court judge during the time he failed to report gambling losses and winnings on his tax returns. This conduct was not an isolated incident, having occurred over a period of several years He was convicted of seven felony offenses, including three

counts of structuring currency transactions to avoid U.S. Treasury reporting requirements His conduct was knowing and dishonest However, the sanction imposed for this misconduct was a six-month suspension, resulting in automatic reinstatement when the six-period ended.

In this case, as in *Scholl*, the Respondent held a government position as a deputy county attorney with the Pima County Attorney's Office during some of the time she was violating the ethical rules. However, as in *Scholl*, the Hearing Officer found that Respondent's conduct was solely related to her personal life and not to any case to which she was assigned as a prosecutor (See Hearing Officer's Report, pp 34-35)

Here, as in *Scholl,* the Respondent has no prior discipline, was cooperative in the disciplinary process, and has incurred significant other penalties and sanctions as a result of the very extensive, public coverage of the Schwartz case Yet Scholl received a six-month suspension with automatic reinstatement, while the Commission recommends the ultimate sanction of disbarment for Respondent.

In *In re Carrasco*, No 02-1896 (2004), the respondent, while representing a criminal defendant on charges of sexual abuse of a minor, had repeated contact with one of the victim children He contacted the victim by falsely advising a CPS worker that he was the victim's attorney, and then told the girl not to talk to CPS or the police He was ultimately charged and convicted of obstruction of justice, a Class 5 felony He had three prior disciplinary cases and was, in fact, on probation for one of them at the time of the misconduct involving the victims here For this conduct, he received a disciplinary sanction of six months and one day by the Commission, which was affirmed by the Arizona Supreme Court The Commission determined that there were "heightened

emotions" because all of the parties were family members and because there were other penalties and sanctions imposed

Again, Respondent in this case has no prior convictions, has no disciplinary history, was not on probation as a result of a previous disciplinary sanction when her conduct occurred, was also caught up in an emotionally charged relationship and has incurred severe penalties and sanctions Carrasco received six months and one day Given the egregious conduct in *Carrasco,* disbarment is not a proportional sanction here

In *In re Walker*, 200 Ariz. 155, 24 P.3d 602 (2001), the respondent engaged in inappropriate sexual contact with a client, was cooperative at all stages of the disciplinary proceedings, and had no prior discipline The sanction ultimately imposed was a censure, in part due to the Arizona Supreme Court's recognition that the Respondent had been publicly and personally humiliated

> "He was arrested at his office and taken to jail in handcuffs. The charges against him were made public by the local press. He was prosecuted for sexual indecency and prostitution and forced to participate in a diversion program. He was the subject of Muldrew's [the Complainant's] malpractice allegations and agreed to take a $50,000 00 settlement, including the $2,500.00 deductible he paid personally. Thus, we agree with the hearing officer's statement that '[w]hat has happened to [Walker] as a result of his touching should be sufficient deterrence to other attorneys.'" *Id*, 24 P 3d at 608

. It is difficult to distinguish the facts of this case with the cited cases above. Here, as in *Scholl*, Respondent's conduct was knowing and dishonest, but did not continue for a period of years as was the case with Scholl. She has not made any attempt to excuse or minimize her conduct She has fully accepted responsibility here and did not attempt to use rehab or counseling as justification She acknowledged what she did

Here, as in *Carrasco,* she was caught up in a highly charged emotional relationship. She made no apologies for it Again, she has readily admitted her conduct.

Here, as in *Walker,* Respondent has been subjected to public and personal humiliation While public and private humiliation is not listed as a mitigating factor in the *Standards,* the Arizona Supreme Court has found it to be a mitigating factor in certain circumstances. See *Walker,* 200 Ariz. At 161, 24 P.3d at 608 She has been required to testify in two lengthy, public, criminal trials against her former boyfriend, Brad Schwartz, and that of Biggers, the man accused of being the hit man hired by Schwartz to commit the murder of Schwartz's partner, Dr Stidham. It has been reported repeatedly in local news accounts that the victim's family has sued her personally, along with other parties, in a civil personal injury case There is no doubt that there has been a substantial, significant, negative impact on her ability to practice law in the community.

In sum, despite years of breaking the law, conduct which was found to be intentional, dishonest and fraudulent by the jury's determination, all occurring while he was a sitting jurist and possibly sentencing others for similar criminal conduct, Scholl received a six-month suspension Despite egregious conduct for which he was convicted of obstruction of justice, Carrasco received a six-month and one day suspension And, despite the fact that he was an attorney with years of practice, who should have known better, Walker received a censure for inappropriate sexual conduct with a vulnerable client. It is not suggested that the sanctions imposed in *Scholl, Carrasco* or *Walker* were inappropriate However, if proportionality review is to have any meaning, then Respondent's conduct in this case does not warrant disbarment.

Finally, throughout these proceedings, in both legal memoranda and at the hearing in this matter, the State Bar argued that Respondent advised Schwartz regarding his desire to murder Dr Stidham. Respondent was never charged with that offense, even as an accessory. There has never been any evidence that she was involved in the crimes for which Schwartz was convicted The Hearing Officer ruled that evidence regarding Schwartz was irrelevant to the disciplinary case and his findings are not clearly erroneous In any event, what is clear, is that she immediately contacted law enforcement to relate what she knew about Schwartz when she learned of the murder of Dr. Stidham Respondent has cooperated fully with law enforcement, including extensive testimony in two criminal trials with intensive media coverage.

There is no question that it is of great concern that some of the Respondent's conduct, specifically lying to the federal agents who were investigating Schwartz for his prescription drug conduct, and then tipping Schwartz off about the investigation, occurred while she was a deputy county attorney sworn to uphold the law. The ethical rules impose high ethical standards on prosecutors. *In re Peasley,* 208 Ariz. 27, 35; 90 P.3d 764, 772 (2004). However, there is no evidence that she abused her power or used resources at her disposal as a prosecutor to impede the federal investigation Her conduct did not compromise the investigation since both she and Schwartz were indicted and prosecuted for those charges She was not charged with obstruction of justice Her conduct occurred within the context of a personal relationship and an investigation of her own criminal conduct Thus, her case is distinguishable from *Peasley*, who used his considerable power and resources as a prosecutor to manipulate evidence and use false testimony against two capital murder defendants.

On balance, it is difficult to reconcile the sanction of disbarment in this case as compared with the sanctions imposed in *Scholl*, *Carrasco* and *Walker* and other cases cited in the Hearing Officer's Report. (See Hearing Officer's Report, pp 25-29). There is no question that Respondent's conduct warrants a severe sanction. Her conduct was knowing and dishonest However, there are mitigating factors, including no prior discipline, cooperation with the disciplinary process, personal and emotional problems, good character and reputation, imposition of other penalties and sanctions, and remorse The Hearing Officer's recommendation of a one-year suspension is also inappropriate.

Accordingly, I would recommend imposing a three-year suspension, to be followed by a period of monitoring by MAP and a practice monitor. Formal reinstatement proceedings would be required and Respondent would have to convince the State Bar, a hearing officer, the Disciplinary Commission, and the Arizona Supreme Court that she has been rehabilitated and is fit to practice The only difference between this sanction and disbarment is that Respondent would not be required to retake the bar exam. The conduct in this case did not relate to competence or knowledge of the law, but rather intentionally violating it. There is nothing to be gained by retaking the bar exam. Respondent has acknowledged the wrongfulness of her conduct and has expressed remorse, which the Hearing Officer found credible. I would recommend imposing a three-year suspension followed by a period of probation as the sanction for her misconduct

Original filed with the Disciplinary Clerk
this 16th day of May, 2007.

Copy of the foregoing mailed
this 16th day of May, 2007, to:

Bruce G Macdonald
Hearing Officer 6M
1670 E. River Road, #200
Tucson, AZ 85718

Mark I. Harrison
Timothy J. Eckstein
Respondent's Co-Counsel
Osborn Maledon, P A
2929 North Central Avenue, Suite 2100
Phoenix, AZ 85012-2793

Maret Vessella
Deputy Chief Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by Brenda Hernandez

/mps