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OCT 13 2010

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY M. Smith

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA

No. 09-0717

CHARNA R. JOHNSON,
Bar No. 007422

**DISCIPLINARY COMMISSION
REPORT**

RESPONDENT.

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 11, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed June 28, 2010, recommending a six month and one day suspension, two years of probation upon reinstatement with the State Bar's Member Assistance Program ("MAP") and costs. Respondent and the State Bar each filed an objection and requested oral argument. Respondent, Respondent's counsel and counsel for the State Bar were present.

The State Bar argues that Respondent lied to her client, when she claimed to be receiving the thoughts of his deceased wife and later lied to the hearing officer in a previous disciplinary matter File No. 07-1645 when she denied having provided any "spiritual services" to any of her clients. The Bar contends that Respondent continued those lies over an extended period in an effort to minimize her conduct. The State Bar asserts Respondent's lies were material as it affected the outcome of the prior matter.

The State Bar asserts that the Hearing Officer correctly found that disbarment is the presumptive sanction for intentionally providing false and dishonest testimony to protect

1 herself from discipline but erred by mitigating the sanction to a six month and one day
2 suspension. *See In re Fresquez*, 162 Ariz. 328, 783 P.2d 774 (1989).

3 The State Bar further argues that case law involving perjury reveals that disbarment
4 is the appropriate sanction. The State Bar urges the Commission to recommend
5 disbarment.

6 In her appeal, Respondent argues that she did not intentionally lie in the prior
7 proceedings. She asserts that she had no time to reflect or consult with her attorney before
8 being questioned about “channeling” the thoughts of a deceased person. Respondent
9 contends that given the lapse in time and the lack of connection between the prior
10 disciplinary proceeding and the incident in which she claims to have received the thoughts
11 of her client’s dead wife, she simply misunderstood the question. She argues the Hearing
12 Officer’s finding that she knowingly lied under oath is clearly erroneous.

13 **Decision**

14 Upon consideration, the seven members¹ of the Disciplinary Commission
15 unanimously recommend accepting the Hearing Officer’s findings of fact and conclusions
16 of law but modify the recommended sanction to reflect a one year suspension, two years of
17 probation upon reinstatement (MAP), and costs of these disciplinary proceedings including
18 any costs incurred by the Disciplinary Clerk’s office. The terms of probation are as
19 follows:
20
21

22 **Terms of Probation**

23 1. Upon reinstatement, Respondent shall be placed on probation (MAP) for a
24 period of two years. Within 30 days from the date of reinstatement, Respondent shall
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26

¹ Commissioners Houle and Horsley did not participate in these proceedings.

1 contact the MAP director and submit to MAP evaluation. Respondent shall comply with
2 any directives as ordered by the MAP director or designee.

3 2. If Respondent fails to comply with any of the foregoing conditions and the
4 State Bar receives information about noncompliance, Bar Counsel shall file with the
5 imposing entity a Notice of Noncompliance. The matter may be referred to a Hearing
6 Officer to conduct a hearing at the earliest applicable date, but in no event later than 30
7 days after receipt of notice, to determine whether a term of probation has been breached,
8 and if so, to recommend an appropriate sanction. If there is an allegation that Respondent
9 failed to comply with any of the foregoing conditions, the burden of proof shall be on the
10 State Bar to prove noncompliance by a preponderance of the evidence.

11 **Background**

12 The State Bar filed a one count Complaint on November 13, 2009 alleging
13 violations of Rule 41(g) and ERs 1.7², 3.3(a)(1), 3.3(a)(3),³ 8.1(a), 8.1(b), 8.4(c) and (d).
14 The Hearing Officer analyzed Respondent's conduct in two phases and his findings are
15 briefly summarized as follows:
16

17 In Phase One, Respondent was retained to represent a client in a dissolution
18 proceeding on January 19, 2000. The client's spouse committed suicide on April 12, 2000
19 before the action was concluded and the dissolution action was terminated. A few days
20 after the suicide, Respondent informed the client that his deceased wife's spirit was inside
21 of her and she could communicate the deceased wife's thoughts to the client. Respondent
22

23
24 ² The Probable Cause Order referenced ER 1.7. The Bar's Complaint cited ER 1.7(a), which by
25 that time was in its present form and includes the language prohibiting a lawyer from representing
26 a client if representation may be materially limited by the "personal interest of the lawyer." At the
time of the underlying conduct in 2000, similar language prohibiting representation that may be
materially limited "by the lawyer's own interest" was contained in ER 1.7(b).

³ The State Bar moved at hearing to amend its Complaint to reflect a violation of ER 3.4(a)(4).

1 subsequently represented the client in his now deceased wife's probate proceedings but
2 associated co-counsel experienced in probate matters. Respondent purported to continue
3 communicating the deceased wife's thoughts to the client throughout that representation.
4 The Bar's Complaint also alleged that Respondent engaged in a sexual relationship with
5 the client during the course of that representation.

6 Phase two relates to Respondent's conduct in a prior discipline matter, File No. 07-
7 1645 which occurred after the above-referenced representation had concluded. Respondent
8 entered into an Agreement for Discipline by Consent providing for censure and one year of
9 probation. In that matter, Respondent represented a client in a dissolution proceeding and
10 drafted a will for the client leaving all of the assets to herself. The client's ex-husband was
11 dissatisfied with the agreed upon sanction and testified that he believed that Respondent
12 was exercising undue influence on his clients by purporting to channel the thoughts of their
13 deceased loved ones. Respondent was specifically asked during that hearing if she
14 "channeled" deceased persons and she responded "no". *Id* at 13 ¶ 43. At that time, the
15 State Bar did not have direct evidence related to Respondent's purported ability to
16 communicate with the relatives of deceased persons and therefore, recommended that the
17 Agreement for Discipline by Consent be accepted.
18

19 Discussion of Decision

20 The Disciplinary Commission's standard of review is set forth in Rule 58(b),
21 Ariz.R.Sup.Ct., which states that the commission reviews questions of law *de novo*. In
22 reviewing findings of fact made by a hearing officer, the commission applies a clearly
23 erroneous standard. Mixed findings of fact are also reviewed *de novo*. *State v.*
24
25
26

1 *Blackmore*, 186 Ariz. 630, 925 P.2d 1347 (1996) citing *State v. Winegar*, 147 Ariz. 440,
2 711 P.2d 579 (1985).

3 Regarding Phase One, the Hearing Officer found that the evidence was insufficient
4 to prove by clear and convincing evidence that Respondent engaged in a sexual
5 relationship with the client during the course of her representation. However, the Hearing
6 Officer did find that “there was a significant risk that the representation could have been
7 materially limited.” Hearing Officer’s Report, p. 10, ¶ 35. ER 1.7(a) provides:

8 (a) Except as provided in paragraph (h), a lawyer
9 shall not represent a client if the representation involves a
10 concurrent conflict of interest. A concurrent conflict of
11 interest exists if:

12 (1) no representation of one client will be directly
13 adverse to the other client; or

14 (2) **there is a significant risk that the
15 representation of one or more clients will be
16 materially limited by the lawyer’s responsibilities to
17 another client, a former client or a third party or by a
18 personal interest of the lawyer.**

19 (Emphasis added.)

20 The *Comment* to ER 1.7 explains that the critical question is whether a lawyer’s
21 own interest could have an adverse effect on the representation. The comment explicitly
22 notes that if “a lawyer’s own conduct in a transaction is in serious question, it may be
23 difficult or impossible for the lawyer to give a client detached advice.” At oral argument,
24 Respondent acknowledged the *potential* that conflict could have affected the
25 representation. *See* Transcript, p. 12.

26 The Hearing Officer focused on his inability to conclude that Respondent’s sexual
relationship with her client began before the representation ended, which would clearly
have implicated ER 1.7, among other rules, and did not expressly reach the issue of

whether there was a potential the representation would be materially limited. Based on the facts the Hearing Officer did find, however, the Commission on *de novo* review concludes that there was a substantial risk that Respondent's representation would be materially limited by her purported communication of her client's dead wife's thoughts to her client. Respondent's continued representation of her client while purporting to communicate those thoughts therefore violated ER 1.7.

In Phase Two, the Hearing Officer found Respondent was dishonest in the prior disciplinary proceeding and caused injury to the integrity of the disciplinary proceedings. *See Report*, p. 20. The Commission adopts the Hearing Officer's findings and conclusions that Respondent knowingly and/or intentionally violated ERs 3.3(a)(1), 3.3(a)(4), 8.1(a), 8.4(c) and 8.4(d). The Hearing Officer observed Respondent's testimony and expressly found her explanations "flimsy and weak." *Report* at p. 17. The Commission cannot and will not substitute the Hearing Officer's credibility finding with its own.

Conclusion

The purposes of attorney discipline process are to protect the public and the legal profession and to deter other attorneys from engaging in unprofessional conduct. *In re Scholl*, 200 Ariz. 222, 227 ¶ 29, 25 P. 3d 710, 715 (2001). Even without the additional ER 1.7 violation discussed above, the Commission concludes, based on its independent analysis of the facts as found by the Hearing Officer, the *ABA Standards*, the significant aggravating factors present and the limited mitigating factors that a one year suspension

followed by two years of probation is appropriate and necessary in this case.

1 RESPECTFULLY SUBMITTED this 13 day of October, 2010.

2
3
4 Pamela M. Katzenberg
5 Pamela M. Katzenberg, Chair
6 Disciplinary Commission

7 Original filed with the Disciplinary Clerk
8 this 13th day of October, 2010.

9 Copy of the foregoing mailed
10 this 14 day of October, 2010, to:

11 Hon. H. Jeffrey Coker
12 Hearing Officer 6R
13 P.O. Box 23578
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15 Nancy A. Greenlee
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24 by: Deann Barker

25 /mps
26

EXHIBIT

A

FILED

JUN 28 2010

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY

No. 09-0717

HEARING OFFICER'S REPORT

Respondent.

1. Probable cause was found in this matter on October 21, 2009, and a Complaint was filed on November 13, 2009. Service was accomplished on November 17, 2009, and, after one continuance, an Initial Case Management Conference was held on December 21, 2009. From that Initial Case Management Conference a Final Hearing was set on March 11 and 12, 2010. Respondent filed an Answer on January 13, 2010. This Hearing Officer filed a Motion for Extension of Time to Hold Final Hearing on February 26, 2010, which was granted by the Disciplinary Commission. The matter went to a contested hearing on May 5 and 6, 2010.

2. At all times relevant herein, Respondent was a member of the State Bar of Arizona, having been admitted on October 23, 1982.¹

¹ Unless otherwise cited, the facts cited herein are taken from the Joint Pre-Hearing Statement.

Factual Summary

3. This case involves two alleged sets of ethical violations tied together by subject matter but factually different. In the first phase, Respondent is alleged to have represented a client in a probate matter in the year 2000 involving the estate of the client's deceased wife, while involved in a sexual/intimate relationship with the client, and also while Respondent claimed to be able to convey the thoughts of the deceased wife to the client. The contested issues are whether there was an inappropriate relationship, and whether the time frame of Respondent's conduct and her representation of the client overlapped.²
4. The second phase of this case occurred in the year 2008 when Respondent was involved in an unrelated disciplinary proceeding. At a hearing to consider a tendered agreement in that disciplinary matter, Respondent was specifically asked whether she had ever "channeled" the thoughts of a deceased person to a client. Respondent, under oath, denied ever having done so, and the State Bar alleges that this was false and the Respondent knew it to be false because of the evidence in Phase one.

Phase One

5. Respondent and Mr. Chad Lakridis ("Mr. Lakridis") knew each other as a result of the Respondent taking ballroom dancing lessons from Mr. Lakridis starting in December of 1999. On or about January 19, 2000, Mr. Lakridis retained Respondent to represent him in a dissolution from his wife Jan Martin ("Jan").

² The client testified that he suffered financial and emotional harm from Respondent's conduct, but there was insufficient evidence to support this claim.

6. On or about April 12, 2000, Mr. Lakridis' wife, Jan, committed suicide. With her death, the dissolution action was terminated, as was the attorney client relationship between Respondent and Mr. Lakridis.
7. A few Days later, at the funeral home where funeral arrangements were being made for Jan's burial, Respondent had her first experience, feeling the presence of Jan, and getting the feeling that Mr. Lakridis, who had stepped outside, intended to harm himself by stepping in front of traffic. Respondent went outside and found Mr. Lakridis in a very emotional state, Transcript of Record ("T/R") 310:23-311:19. Also within days of Jan's death, Respondent began making statements to Mr. Lakridis that his deceased wife Jan had "come" to her and that Jan's "spirit" was "inside" her and that she could communicate Jan's thoughts to Mr. Lakridis, T/R 62:19-63:10.
8. Through personal conversations, e-mails and phone messages, Respondent made numerous statements to Mr. Lakridis speaking in the first person plural "we", as in Respondent/Jan, and also speaking in the first-person singular as "Jan" communicating to Mr. Lakridis what Respondent claimed were Jan's thoughts, T/R 20:25-21:1, 21:2-8, Hearing Exhibit ("H/E") 1-9.³
9. The timing of when the personal conversations, e-mails, and phone messages occurred is important because it is disputed as to whether they occurred during the period of subsequent representation by Respondent of Mr. Lakridis in a probate matter, so a timeline of the proven messages and context is attached as Exhibit 1

³ The State Bar Hearing Exhibits are numbered, and under Exhibit #1 there are 22 sub-exhibits numbered 1-2, 1-3, etc.

to this Report. In the attached summary of **e-mails** the specific hearing exhibit is referred to and each email is dated.

10. The transcripts of messages left by Respondent on Mr. Lakridis' answering service submitted by the Bar at the hearing in this matter, H/E 1-22 SBA 0041 (tapes) and H/E 2 SBN 0042-0065 (transcripts), are problematic in that Mr. Lakridis, while he taped his conversations with Respondent and the messages left by Respondent, at some point in the past took control of the tapes of these conversations and phone messages left by Respondent, sorted through them, kept only selected ones and had the rest destroyed, T/R 321:9-24, 276:8-21. Of concern to this Hearing Officer is the fact that we only have the phone messages left by Respondent and no record of Mr. Lakridis' calls to Respondent. Additionally, while Mr. Lakridis testified that the calls and phone messages started right after his wife's death, both the subject matter of the messages, T/R 325:7-5, and the fact that there were **messages** left, indicate that these undated messages all occurred in and after 2001.
11. Various witnesses verified that the subject matter referred to in the messages occurred in and after 2001. Respondent testified that during 2000 Mr. Lakridis would always take her calls and they talked almost daily so she did not have to leave messages in 2000, T/R 362:1-363:3. It was only in 2001 that Mr. Lakridis quit taking her calls (after the period of representation was over) so she had to leave the messages, T/R 320:9-21, 328:14-329:5. Because there is no other verification of when these phone messages were kept, there is no clear and convincing evidence that the phone messages occurred during the period of

Respondent's representation of Mr. Lakridis so, other than to help understand how the relationship evolved after the period of representation was over, they are of no probative value.

12. Mr. Lakridis and Respondent both testified that they genuinely believe that Jan's spirit was in Respondent, T/R24:5-14. Mr. Lakridis felt that when Respondent spoke to him as his deceased wife he considered it to be a collective of both personalities, Respondent ("Charna") and his wife Jan, sometimes referred to herein as "Charna/Jan", T/R 23:13-24:4, 46:15-47:2. Mr. Lakridis felt that his deceased wife's spirit had come back to try and heal some of the damage of her excessive use of prescription drug use, T/R 20:21-24.
13. An independent witness, Karen Kent ("Ms. Kent"), a friend of Mr. Lakridis, came to visit him in May 2000. Ms. Kent went to lunch with Mr. Lakridis and Respondent and noted Respondent acting strangely. Later, at Mr. Lakridis' home, Ms. Kent testified that she felt Jan's presence and saw Jan's face on Respondent's body, T/R 129:19-20, 131:11-132:2, 134:7-12. When discussing the experience with Mr. Lakridis and Respondent, Ms. Kent could feel Jan's thoughts, T/R 135:4-36:8.
14. Another independent witness, Marianne Boyer, testified that she counseled Mr. Lakridis and Respondent and felt Jan's presence at times during these counseling sessions and has no doubt that Jan's spirit was present, T/R 183:20-184:9.
15. Following her death in April 12, 2000, Jan's parents, representing Jan's estate, sued Mr. Lakridis in probate court. The marriage between Mr. Lakridis and "Jan" was of brief duration and she had substantial separate assets.

16. Initially, Mr. Lakridis requested that Respondent represent him in the probate matter, but she declined because she stated that she did not have any probate experience. Respondent made a recommendation to Mr. Lakridis of an attorney he could retain and he did so.
17. Fairly quickly Mr. Lakridis began to express dissatisfaction with his attorneys in the probate proceedings and began to repeatedly ask Respondent to represent him, T/R 315:25-316:19, 176:14-23.
18. Ultimately, Respondent agreed to act as co-counsel in the probate proceedings if Mr. Lakridis hired a primary probate attorney, which he did. Mr. Lakridis retained Yvonne Yragui ("Ms. Yragui") as his probate attorney, T/R 85:3-7, 316:24-317:7. Respondent testified that she did not know Ms. Yragui prior to this, T/R 317:8-9. The division of duties was that Respondent would handle the negotiation portion of the case, and leave the court proceedings and document preparation to primary probate counsel, Ms. Yragui, T/R 318:2-6.
19. Respondent made her appearance as Mr. Lakridis' attorney on June 8, 2000, T/R 316:24-317:7, H/E 20.
20. On August 1, 2000, a settlement of the dispute between Jan's parents and Mr. Lakridis, negotiated by Respondent, was signed, and thereafter approved by the Court on September 1, 2000, T/R 320:23-321:3. The settlement was very beneficial to Mr. Lakridis, T/R 321:22-322:9. Mr. Lakridis testified that now he is not happy with the settlement, T/R 109:11-112:4, but gave no specifics of how the settlement was not a good resolution of the dispute with Jan's parents, and not

until he and Respondent had a personal falling out several years later did he raise an objection, T/R 389:24-390:20.

21. The last court hearing in the probate involving Mr. Lakridis was on December 15, 2000, at which Respondent appeared with Mr. Lakridis. While the Bar initially argued that Respondent's representation went throughout the pendency of the probate (closed by the parents in 2007) because there was no formal motion to withdraw and there were some subsequent minor paperwork matters. The evidence is that this December 15, 2000, hearing concluded Respondent's representation of Mr. Lakridis in the probate matter, and the Hearing Officer so finds.
22. Mr. Lakridis testified that in April/May, during a court hearing wherein his first attorneys were appearing for him, Respondent fondled his thigh, T/R 26:14-27:22. Mr. Lakridis testified that very soon after his wife's death, while acting as Jan, Respondent began to say "I love you" and put pressure on him to engage in sexual conduct, T/R 62:19-63:10. Mr. Lakridis also claimed that he and Respondent engaged in sexual conduct on four to six occasions between June 18, 2000, and mid August, 2000, T/R 25:7-13, 24:15-25:6.
23. Respondent denies having any inappropriate contact with Mr. Lakridis, T/R 318:23-24, 325:24-326:6 or that she pressured Mr. Lakridis to have sex with her, T/R 326:7-10, 388:25-389:11. Respondent also testified that at the start of the Charna/Jan situation there were clear boundaries set up, no kissing, no sex and touching of any kind, T/R 327:3-20.

24. As to why Respondent would say in her emails and phone messages that she “loved” him, Respondent testified that she did and does “love” Mr. Lakridis, but only as a friend, not as romantic love, T/R 332:5-19.
25. As to the vague references to wanting to have sex in the emails, Respondent claims that was Jan speaking, T/R 360:9-6.
26. The claim that Respondent had an intimate relationship with her client during the period that she represented him rests essentially on Mr. Lakridis’ word against Respondent’s. Several witnesses testified that Mr. Lakridis is not honest and remembers things as it suits his own interests, not as they occur, 187:8-21, 188:13-25, 190:19-22, 276:22-25, 277:8-12, 278:1-4, 182:5-24, 278:7-280:11, 296:6-297:8. This Hearing Officer noted many instances of Mr. Lakridis’ version of the “facts” being very different from the version testified to by other witnesses.
27. The only dated documentary evidence during the period of representation are the emails from Respondent, as Jan, to Mr. Lakridis, H/E 1-10 (October 22, 2000), 1-7 (November 24, 2000), 1-8 (November 23, 2000), see summary in Exhibit One to this Report. These emails to Mr. Lakridis are from Respondent as Jan and from Respondent as Respondent. Respondent insists that, except as noted where she spoke as herself, she had no intent to act on her own, only on behalf of Jan.
28. While Ms. Kent felt that Respondent acted very unprofessionally in her activities with Mr. Lakridis, Ms. Boyer, a mutual close friend of both parties, did not think there was an intimate relationship between Mr. Lakridis and Respondent, T/R 180:10-23, 190:19-22.

29. The communication by Respondent between Jan's spirit and Mr. Lakridis lasted from April 2000 to sometime in 2003, when she and Mr. Lakridis stopped dancing together and parted ways, T/R 332:21-333:4.
30. Respondent called an expert, Dr. Joel Glassman, who evaluated the Respondent and concluded that the relationship with Mr. Lakridis was emotionally abusive to Respondent. Dr. Glassman further opined that he does not agree with the State Bar's expert, Dr. Michael Bayless, that Respondent was suffering from a "delusional disorder" because we are relying on today's information to form an opinion about what happened seven years ago, and he simply does not feel there is enough data to make that conclusion, T/R 221:1-19.
31. Dr. Glassman went on to say that he felt it was inappropriate to say that Respondent was delusional because she claimed to talk to dead people, because to do so is to make a value judgment and could well be used as a basis to challenge the religious beliefs of millions of people, T/R 221:20-222:6.
32. The State Bar's expert, Dr. Bayless, testified that Respondent was extensively tested and, while all of her test scores were within normal limits, he still concluded that based upon his interview with her and reviewing all the evidence, Respondent suffered from a delusional disorder, fixed on Mr. Lakridis. The bottom line for Dr. Bayless was that because he does not believe there is any scientific evidence that a live person can receive information from a deceased person, Respondent must have been delusional.

Conclusions of Law as to Phase One

33. It would be easy in this case to get bogged down in a discussion of whether in fact a living person can communicate thoughts of a deceased person. As shown above, those that believe it is possible received Respondent's story with a receptive ear. On the other hand, those that do not believe it is possible conclude that Respondent is delusional. However, this case is not about whether Respondent in reality did receive the thoughts of Mr. Lakridis' deceased wife, rather, it is about whether the Respondent had an inappropriate relationship with her client during the period of her representation of him.
34. A review of the evidence dealing specifically with the period of time that Respondent represented Mr. Lakridis, June 8 – December 15, 2000, tells us that there simply is not sufficient evidence to find by clear and convincing evidence that during this period Respondent engaged in a sexual relationship with Mr. Lakridis. Respondent did have a unique relationship with Mr. Lakridis during the period of her representation of him on the suit brought by Jan's parents. The "channeling" of Jan's thoughts to Mr. Lakridis during this period was by all accounts encouraged by Mr. Lakridis, verified by at least two independent witnesses and had no adverse effect on the representation of Mr. Lakridis.
35. The Bar is certainly correct that there was a significant risk that the representation could have been materially limited, although there was no evidence that it was. A reading of the phone messages left by Respondent after the representation was over is proof that when an attorney assumes a role any other than independent advocate, there is the potential for disaster for both.

36. This Hearing Officer questioned Respondent at some length about how she could remain as Mr. Lakridis' attorney all the while having such a close and personal relationship with him by conveying his deceased wife's most intimate thoughts as well as presumably Mr. Lakridis'. Respondent admitted that she considered Mr. Lakridis a close friend, T/R 390:21-392:7. Respondent also testified that that was one of the reasons for having Ms. Yragui as lead probate counsel: Ms. Yragui knew probate and Respondent did not; Ms Yragui provided a second set of eyes on the matter to make sure that Mr. Lakridis was getting good representation, T/R 317:20-318:1, 388:3-18.
37. Admittedly, once the phone messages Respondent left **after** the period of representation are read, it is hard to remember that we are only addressing the period from June 8 – December 15, 2000. The evidence is that these phone messages occurred after the period of representation and they represent what could have been had the representation continued. ER 1.7 proscribes Respondent representing a client if there is a significant risk that her personal interests would materially limit her representation of the client. While having Ms. Yragui as lead counsel in the probate matter was good insurance, it is clear that Mr. Lakridis looked to Respondent for advice and the potential that the "Charna/Jan" dynamic could limit Respondent's duty to her client should have been more on her mind than it was. Given that the much more serious misconduct is dealt with in Phase 2, the conduct in Phase 1 is considered only as it gives context to what happened in Phase 2.

Findings of Fact in Phase Two

38. These allegations rose in 2008, while Respondent was in the midst of a subsequent unrelated disciplinary proceeding. Respondent, in that matter, had, through her attorney arrived at an agreed upon sanction of Censure and was set to have a hearing before a Hearing Officer on that agreement on September 12, 2008.
39. The facts of the case were that Respondent had represented a wife, *redacted* in a dissolution proceeding against her husband David Hecht. Mr. Hecht was very upset by Respondent's representation of his wife, feeling that she had acted unprofessionally in "channeling" *deceased* deceased father and inappropriately manipulated *redacted*. Respondent was before the disciplinary process for writing a will for *redacted* wherein *redacted* left everything to Respondent. Respondent did this at *redacted* request because of Ms. Hecht's concern that her ex-husband would get everything, and with the understanding that Respondent would make sure *redacted* children received everything, H/E 14 BSN 0088, p. 9:5-21.
40. Mr. Hecht had done some research about Respondent, heard about the case involving Respondent and Mr. Lakridis (Mr. Hecht's then wife had talked to Mr. Lakridis), was concerned that the Censure Respondent was to receive in that matter would not address what Mr. Hecht considered fraud by Respondent and so wrote a letter dated September 4, 2008, and delivered it to Bar Counsel at the hearing on the Agreement, H/E 13 BSN 0082.

41. A copy of the letter from Mr. Hecht was given to Respondent's counsel and Bar Counsel just before the hearing, but Respondent denies that she had an opportunity to read it before her testimony, T/R 341:24-342:4.
42. At the hearing, Respondent testified first, and during her testimony Bar Counsel was concerned about Mr. Hecht's allegations and questioned the Respondent about the contents of Mr. Hecht's letter. After admitting that she, at least, had a chance to "look at" the letter, H/E 14 BSN 0089, p. 12:16-18, Respondent was asked by Bar Counsel if she was a psychic, which Respondent denied, H/E 14 BSN 0090, p. 14:6-9. When asked what she did, Respondent answered that she owned a retail store that was also a new-age boutique with Tarot readings and astrology, then said "spiritual growth and exploration", H/E 14 BSN 0090, p. 14:10-16.
43. Bar Counsel then asked Respondent about Mr. Hecht's allegation: "...that you channel the deceased for your clients" and asked if it was true. Respondent said that she did not, H/E 14 BSN 0090, p. 14:18-22. Then the following exchange took place:
- Q. (By Bar Counsel) "Do you do any channeling of deceased persons?"
- A. (By Respondent) No.
- Q. Have you ever channeled a person for one of your clients?
- A. No.
- Q. Do you provide any – I'm sorry I've already forgotten the term for your business. It's spiritual. Do you provide any spiritual services for your clients?

A. For the divorce clients or anybody in my law office, no. I keep them totally separate.

Q. Have you ever provided services for somebody after they were a client?

A. Occasionally, I have a few clients who either were friends before I did their divorce or who became friends after their divorce was completed, and so those people that are my friends might have, after their divorce was over, come to the store and come to some workshops or had a Tarot card reading, or bought some things at the store, but not while a case was pending.” H/E 14 BSN 0090 p. 14:23-15:16.

44. Subsequently, after Respondent testified, Mr. Hecht was sworn and testified that, among other things, his wife had talked to someone who was represented by the Respondent in a divorce case and his [the client’s] “...ex-wife-to-be committed suicide and then the day after that happened, she [being Respondent] came to her client and said she is now that ex-wife-to-be or wife, and I can take care of everything and-- inferred as far as--- it went pretty extensive. [H/E 14 BSN 0091 p. 21:6-10]... So I don't have direct testimony to see her channeling of the one, but the one person did state directly she was channeling a deceased wife.” H/E 14 BSN 0091 p. 21:18-20.

45. Bar Counsel expressed concern that he didn't have direct evidence about the “channeling of the dead persons” sufficient to allow him to withdraw from the agreement and so went ahead and recommended to the Hearing officer that the agreement be accepted, H/E 14 BSN 0092 p. 24:17-24.

46. Respondent, after hearing Mr. Hecht's testimony, made no effort to either correct the record or explain her testimony.
47. In these proceedings, when confronted with the letter from Mr. Hecht, and why she did not tell the Hearing Officer and Bar Counsel about the Charna/Jan experience, Respondent states that she did not actually read Mr. Hecht's letter prior to the hearing, although early in her testimony at that hearing testified as though she had, H/E 14 BSN 0089 p. 11:13-14:5. As to Mr. Hecht's testimony, Respondent claims that she does not remember his testimony and says that she might have been reading his letter during the hearing, or her lawyer was trying to communicate with her, T/R 342:16-343:6. Respondent also stated that she felt that when Mr. Hecht said that Respondent had approached the client in a channeled state representing herself as the deceased wife, it "never even occurred" to her that Mr. Hecht was referring to Mr. Lakridis, T/R 344:14-19, so at least she acknowledges that she heard this much.
48. When Respondent was confronted by her current counsel in the hearing of this matter that in reading of Mr. Hecht's letter it is pretty clear that he is referring to the Charna/Jan situation, Respondent responded that she does not consider her communication of Jan's thoughts to Mr. Lakridis as "channeling". Respondent goes on to explain that, because of her close friendship with Mr. Lakridis it took a lot to pull away from him, she shut the door on that relationship, tried to block it out, and just wanted to move forward, T/R 345:6-346:3, 372:19-374:12. Respondent also testified that she felt that the focus of the examination of her in the previous hearing was about her business, T/R 374:17-375:7.

49. As to the difference in what Respondent did between Jan and Mr. Lakridis and channeling, Respondent went to great lengths to try to differentiate the two. When specifically questioned about the differences, Respondent's description of what she did between Jan and Mr. Lakridis is not very different from the popular understanding of what 'channeling' is, T/R 370:17-372:16. The differences that she sees is that in the channeling she has seen, the person communicating with the dead "gets paid", T/R 373:23-374:12. Respondent also testified that people that channel are different in their presentation as well as their ability to call up the deceased's spirit at will, which she did not do, T/R 383:9-385:14. Respondent sees a further distinction in that Jan was only present within her when Mr. Lakridis was present, T/R 386:4-15. Respondent states that the word "channeling" was not a word that she ever used, T/R 385:13. Respondent, tried to describe her speaking on behalf of a deceased person to a live person as "psychic mediumship", T/R 384:16.
50. Respondent testified that it never even occurred to her that what Mr. Hecht was talking about, and Bar Counsel was questioning her about at the previous disciplinary hearing, dealt with her dealings with Mr. Lakridis, until she received a copy of Mr. Lakridis' complaint against her, T/R 344:14-23.
51. This Hearing Officer had an opportunity to observe Respondent's demeanor while testifying and assess her overall explanations as to why she did not tell the previous Hearing Officer about her previously being possessed by the spirit of Jan over a period of approximately 3 years and during that time conveying Jan's thoughts to Mr. Lakridis. It is clear to this Hearing Officer that Respondent's

attempts to distinguish what she was doing between Jan and Mr. Lakridis, and what she was being asked about at the 2008 disciplinary hearing, are both flimsy and weak. A close examination of the differences she tries to make between what she did and what a person that “channels”, shows that it is a distinction without a difference. Of particular note to this Hearing Officer is that Respondent stated how difficult and emotionally draining it was to be occupied by Jan's spirit and convey Jan's thoughts to Mr. Lakridis, and yet it never even occurred to her that the specific references in the previous disciplinary hearing by both Bar Counsel, as well as Mr. Hecht in his letter and testimony, accusing her of channeling, applied to what she had done between Jan and Mr. Lakridis. According to Respondent she did not call her dealings between Jan and Mr. Lakridis “channeling”, therefore it wasn't channeling, T/R 385:8.

52. The testimony was that Respondent is a very bright and articulate person. There was also testimony that she, at one time, owned a new age boutique that dealt with spirituality, Tarot card reading, and spiritual growth and exploration. For Respondent to pretend that she did not understand the common vernacular of what channeling is, and so not disclose her experience with Jan and Mr. Lakridis in the prior proceedings, cannot be believed. Then to say that after the 2008 hearing it never even occurred to her until Mr. Lakridis filed his complaint that Mr. Hecht and Bar Counsel were referring to her dealings with Jan and Mr. Lakridis similarly is not believable. Respondent's testimony, both then and now defy belief.

53. There is clear and convincing evidence that Respondent knew what Mr. Hecht was talking about and she responded dishonestly to Bar Counsel when being questioned in the 2008 disciplinary hearing.

Conclusions of Law as to Phase Two

54. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz.R.Sup.Ct., specifically:
- ER 3.3(a)(1), making a false statement of fact to a tribunal, and failing to correct a false statement of material fact previously made to a tribunal;
- ER 3.3(a)(3), failing to take reasonable remedial measures to correct false information;
- ER 8.1(a), knowingly making a false statement of material fact in a disciplinary matter;
- ER 8.4(c), engaging in conduct involving dishonesty and misrepresentation;
- ER 8.4(d), engaging in conduct prejudicial to the administration of justice.

ABA STANDARDS

55. ABA *Standard* 3.0 provides that four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; (4) the existence of aggravating and mitigating factors.

The Duty Violated

56. Respondent's most serious violation, is her violation of a duty owed to the legal system. *Standard* 6.1 of the ABA *Standards* deals with false statements and misrepresentations by an attorney. *Standard* 6.1 calls for disbarment when an

attorney, with the intent to deceive the court, makes a false statement or improperly withholds material information, and causes significant or potentially significant adverse effect on legal proceedings. *Standard 6.12* states that suspension is generally appropriate when a lawyer knows that false statements are being submitted or material information is improperly being withheld and takes no remedial action and causes an adverse or potentially adverse effect on the legal proceedings.

The Lawyer's Mental State

57. Respondent knowingly did not tell Bar Counsel or the previous Hearing Officer about her conduct that spanned a period of almost 3 years, wherein she communicated the thoughts of a deceased person to a living person. This Hearing Officer must make note of one aspect of this case not previously discussed. Respondent, and Mr. Lakridis, in addition to two other people genuinely believed that Jan's spirit came to Respondent. A review of not only the e-mails, but the telephone messages left by Respondent shows that, indeed, this was not an entirely pleasant experience for Respondent. When Respondent stated that having Jan's spirit inside her caused turmoil and emotional strain on her, that certainly can be believed. While this Hearing Officer does not believe that her desire to forget about this phase of her life could possibly excuse her failure to discuss it openly when asked about it under oath, it does perhaps help explain why she did not want to talk about it.

Actual or Potential Injury

58. A review of the transcript of the 2008 disciplinary hearing shows that Bar Counsel was concerned about Mr. Hecht's allegations even to the extent of noting it in his closing remarks. Bar Counsel noted that only because he did not have, at that time, direct evidence upon which he could rely, he was willing to go forward with the agreement that had been reached. While it is conjecture, it seems certain that the previous agreement which called for Censure and probation would not have been submitted had Bar Counsel known the full story. It should also be pointed out that in her representation of Mr. Lakridis as co-counsel to Ms. Yragui, Mr. Lakridis suffered no ill effects, and in fact he did quite well as a result of Respondent's negotiations on his behalf. So while Respondent was dishonest in the disciplinary process, the dishonesty was not directly connected to any harm to her client. The "injury" here is to the integrity of disciplinary proceedings when the whole story is not fully examined.

Aggravating and Mitigating Factors

Aggravating Factors

59. *Standard 9.22(a)*, Prior disciplinary offenses. Respondent was Censured on January 6, 2009, for a violation of ER's 1.8 and 8.4(d).
60. *Standard 9.22(b)*, dishonest or selfish motive. Respondent gave false and dishonest testimony to protect herself from professional discipline.
61. *Standard 9.22(f)*, submission of false evidence, false statements or other deceptive practices during the disciplinary process.
62. *Standard 9.22(g)*, refusal to acknowledge the wrongful nature of her conduct.

63. *Standard 9.22(i)*, Substantial experience in the practice of law. Respondent was admitted to practice in the state of Arizona on October 23, 1982.

Mitigating Factors

64. Respondent submitted no mitigating factors, but this Hearing Officer finds that the factor set forth in 9.32(j) is an appropriate mitigating factor. While there was no substantial delay in these proceedings, Mr. Lakridis did not file his complaint until several years after the 2000 through 2003 relationship was over. This made it difficult to accurately recreate everything that took place, and perhaps contributed slightly to the disconnect between what concluded in 2003, and the 2008 hearing.

PROPORTIONALITY ANALYSIS

65. The Supreme Court has held that one of the goals of attorney discipline should be to achieve consistency when imposing discipline. It is also recognized that the concept of proportionality is “an imperfect process” because no two cases are ever alike, *In re Struthers*, 179 Ariz. 216, 887 P.2d 789 (1994), *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983). In order to achieve internal consistency, it is appropriate to examine sanctions imposed in cases that are factually similar, *In re Peasley*, 208 Ariz. 90, 90 P.3d 772 (2004). It is also the goal of attorney discipline that the discipline imposed be tailored to the individual case and that neither perfection nor absolute uniformity can be achieved, *Peasley*, *supra*.
66. The issue of candor to a tribunal and the courts is a matter of significant importance to our profession in general, and this Hearing Officer in particular. A review of the cases that have ER 3.3, 8.1 and 8.4 violations shows that they

generate some of the most serious sanctions. There are both disbarment as well as suspension cases.

67. In *In re Kirkland*, SB-03-0010-D (2003), Mr. Kirkland was suspended for four years for exhibiting a lack of candor in his dealings with the court, opposing parties and counsel. Mr. Kirkland admitted to submitting false pleadings and failed to take remedial action upon discovering the pleadings were false. Mr. Kirkland was found to have violated ER's 1.1, 1.3, 3.1, 3.3(a)(1), 3.4(c), 4.4, 5.3, and 8.4(d).
68. In *re Peasley*, SB-03-0015-D, Mr. Peasley was disbarred for prosecutorial misconduct when he deliberately and repeatedly introduced false testimony against two criminal defendants. Similarly, *In re Gregory*, SB-08-0155-D (2008), is cited because the Respondent in that case consented to disbarment after being charged with engaging in a conflict of interest and giving false statements in a disciplinary deposition.
69. In *In re Marquez*, SB-03-0072-D, a case involving sexual misconduct and then providing false statements in the disciplinary process, *Standard 9.22(f)* was found applicable, as were other aggravating factors, and Mr. Marquez received a 30 day suspension.
70. In *In re Fresquez*, 162 Ariz. 328 (1989), Fresquez was disbarred for lying during a disciplinary proceeding.
71. In *In re Fuller*, SB-04-0130-D, Fuller received a suspension for six months and a day for trust account violations and then providing the Bar false information. *Standard 9.22(f)* was found in that case.

RECOMMENDATION

72. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, the administration of justice and deter future misconduct, *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993), *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). It is also the purpose of attorney discipline to instill public confidence in the Bar's integrity, *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).
73. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's *Standards for Imposing Lawyer Sanctions* and the proportionality of discipline imposed in analogous cases, *Matter of Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994).
74. The State Bar is asking that Respondent be disbarred as a result of the deception she caused during the previous disciplinary hearing. A comparison of *Standard* 6.11, which calls for disbarment and *Standard* 6.12 which calls for suspension shows that the difference between suspension and disbarment is whether the Respondent intentionally deceived by making false statements or improperly withholding material information, and causes significant or potentially significant adverse effect on the legal proceedings; versus when a lawyer knows that false statements are being submitted to a court or that material information is improperly being withheld, takes no remedial action and causes an adverse report or potentially adverse effect on the legal proceedings.
75. Respondent's conduct in this matter could fit in either one of these categories. This Hearing Officer has gone back and reviewed the ABA *Standards*,

specifically the Preface and the Theoretical Framework and notes that there is language in these sections of the ABA *Standards* that essentially recognizes that there may be particular cases of lawyer misconduct that are not easily categorized, and that the *Standards* are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct.

76. While this Hearing Officer has found that Respondent intentionally did not disclose information that she should have at the previous disciplinary hearing, it is only fair to go back and look at how Respondent got involved with Mr. Lakridis in the first place.
77. As previously noted, it is not up to this Hearing Officer to decide whether in fact Respondent was or was not truly possessed by and speaking for Mr. Lakridis' deceased wife. Respondent believed it, Mr. Lakridis believed it, as did at least two other independent people who witnessed it. Given all of this, it is hard to believe that Respondent schemed and connived to make all this up. Once it happened, it is certainly possible that Respondent got carried away with the attention she received as a result of it and either embellished or exaggerated. On the other hand, Respondent could have genuinely believed in and felt controlled by the circumstances.
78. A review of all of the telephone messages as well as the e-mails shows that having the spirit of Mr. Lakridis' deceased wife within her was not an entirely pleasant experience for Respondent and the degree of her voluntary participation in it simply cannot be determined. The experts hired by the State Bar and Respondent cannot even agree on what was really going on.

79. While there is clear and convincing evidence that Respondent was deceptive in the previous disciplinary process, the degree to which she had control over what had been happening in the years 2000 through 2003, and the impact it had on her, is much less clear. This case is, therefore, not like the normal situation where disbarment is called for because an attorney is deceptive for monetary or personal gain. Certainly, it would have done Respondent no good had she admitted her dealings with Mr. Lakridis and his deceased wife during the 2008 disciplinary process. However, this Hearing Officer can also understand that Respondent might not have wanted to go into that because of embarrassment, anxiety, or just not wanting to "go there".
80. The case law says that while we should strive for uniformity, the discipline imposed should be tailored to the individual case. This case is indeed unique and it is hard to fit it into any particular category of cases. While this Hearing Officer agrees with the language in *Fresquez* that it is hard to conceive of a more serious ethical violation than a lawyer lying under oath, the circumstances that took place between 2000 and 2003 and the effect that it had on Respondent should be considered.
81. After weighing the unique facts of this case, application of the *ABA Standards*, including the aggravating and mitigating factors, and considering the proportionality cases, this Hearing Officer recommends the following:

- 1) Respondent shall be suspended for six months and one day;

- 2) Should Respondent be reinstated, she should be subject to a period of probation for two years, with an evaluation by the MAP Director and compliance with any directives ordered by the MAP Director;
- 3) If Respondent fails to comply with any of the foregoing conditions and the State Bar receives information about noncompliance, Bar Counsel shall file with the imposing entity a Notice of Noncompliance. The matter may be referred to a Hearing Officer to conduct a hearing at the earliest applicable date, but in no event later than 30 days after receipt of notice, to determine whether a term of probation has been breached, and if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing conditions, the burden of proof shall be on the State Bar to prove noncompliance by a preponderance of the evidence.
- 4) Respondent shall be required to pay all of the costs of these proceedings expended by the State Bar, the Supreme Court, the Disciplinary Commission, and the Disciplinary Clerk.

DATED this 28th day of June, 2010.

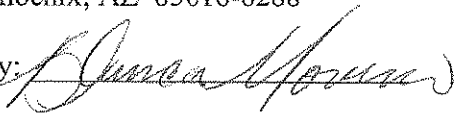
H. Jeffrey Coker / R. D'Auone
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 28th day of June, 2010.

Copy of the foregoing mailed
this 28th day of June, 2010, to:

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by: 

/jsa

EXHIBIT

A

EXHIBIT ONE

Time line and summary of communications between Mr. Lakridis and Respondent relating to Jan during the period of representation

1. January 19, 2000 - Respondent is retained by Mr. Lakridis as dissolution counsel.
2. April 12, 2000 - Mr. Lakridis' wife, Jan Martin, commits suicide.
3. Days later, at the funeral home where Jan is, Respondent has a feeling that Mr. Lakridis is intent on harming himself and intervenes.
4. Thereafter Respondent receives the thoughts of Jan essentially asking Respondent to communicate Jan's thoughts to Mr. Lakridis. The number and frequency of these "visits" varies depending on who is recalling the events. The subject matter of these thoughts from Jan varied from apologies from Jan to the desire by Jan that Mr. Lakridis have an intimate relationship with Respondent as Jan.
5. May, 2000 - Karen Kent sees Jan's face on Respondent's body and can "see" Jan's thoughts.
6. June 8, 2000 - Respondent makes an appearance as co-counsel for Mr. Lakridis in the probate suit.
7. October 22, 2000 - First email that we have record of, H/E 1-9 BSN 0027. The email is clearly written by Respondent as Respondent to Mr. Lakridis and at the end is closed with the initials "C J", referring to Charna and Jan. This email goes in to some detail about how Respondent is interpreting to Mr. Lakridis Jan's progress in healing. There is some oblique reference on page two to a physical relationship.
8. November 23, 2000 - Second email that we have record of, H/E 1-8 BSN 0025. This email is written by Respondent as Respondent giving thanks for having the experience of Jan in her life. The email closes with "WE LOVE YOU, Jan and Charna".
9. November 24, 2000 - Third email that we have record of, H/E 1-7 BSN 0025, entitled "Jan's Journal". This email is written by Respondent as **Jan**. This email is hard to summarize and is troubling at the same time. The subject matter is how much Jan misses the intimacy of her previous marriage with Mr. Lakridis. The email closes simply with a "J" for Jan.
10. December 24, 2000 - The fourth email that we have record of, H/E 1-16 BSN 0034 entitled "Apology", while it is created after the conclusion of Respondent's representation in the probate suit, is written by Respondent as Respondent and

gives some insight regarding what she is saying when she purports to be speaking solely for herself. It closes as "Charna" with a P.S. from Jan.