



BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

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

CYNTHIA A. LEYH,
Bar No. 017333

RESPONDENT.

No. 07-1927

DISCIPLINARY COMMISSION
REPORT

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on August 14, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed June 7, 2010, recommending a six month suspension, two years of probation (view video entitled "*Ten Deadly Sins of Conflict*" and complete State Bar's Professionalism Course), and costs.

Decision

Having found no facts clearly erroneous, the five members¹ of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for a six month suspension, two years of probation (view video entitled "*Ten Deadly Sins of Conflict*" and complete State Bar's Professionalism Course), and payment of costs of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk's office.² The Commission further recommends *de novo* that Respondent's term of probation include participation in the State Bar's Member Assistance Program ("MAP"). The terms of probation are as follows:

¹ Commissioners Belleau, Flores, Horsley and Osborne did not participate in these proceedings.

² The Hearing Officer's Report is attached as Exhibit A.

Terms of Probation

1 1. Within 30 days of reinstatement, Respondent shall contact the MAP director
2 and submit to a MAP assessment. Respondent shall thereafter enter into a MAP contract
3 based on the recommendations made by the MAP director or designee. Respondent shall
4 comply with the terms of the MAP contract and shall be responsible for costs associated
5 with MAP.

6 2. Respondent shall view the video entitled "*Ten Deadly Sins of Conflict*" and
7 complete the State Bar's Professionalism Course.

8 3. Respondent shall refrain from engaging in any conduct that would violate the
9 Rules of Professional Conduct or other Rules of the Supreme Court of Arizona.

10 4. In the event that Respondent fails to comply with any of the foregoing
11 conditions, and the State Bar receives information thereof, bar counsel shall file with the
12 imposing entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct.
13 The imposing entity may refer the matter to a hearing officer to conduct a hearing at the
14 earliest practicable date, but in no event later than 30 days after receipt of notice, to
15 determine whether the terms of probation have been breached and, if so, to recommend
16 appropriate action and response. If there is an allegation that Respondent failed to comply
17 with any of the foregoing terms, the State Bar of Arizona bears the burden to prove non-
18 compliance by a preponderance of the evidence.

19 RESPECTFULLY SUBMITTED this 3 day of September 2010.

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24 Pamela M. Katzenberg
25 Pamela M. Katzenberg, Chair
26 Disciplinary Commission

1 Original filed with the Disciplinary Clerk
this 3rd day of September, 2010.

2 Copy of the foregoing mailed
3 this 3 day of September, 2010, to:

4 Hon. H. Jeffrey Coker
5 Hearing Officer 6R
6 P.O. Box 23578
7 Flagstaff, AZ 86002

8 Nancy A. Greenlee
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EXHIBIT

A

FILED
JUN 07 2010
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: *[Signature]*

No. 07-1927

HEARING OFFICER'S REPORT

Respondent.

1. Probable cause was found in this matter on December 3, 2008. A Complaint was filed by the State Bar on November 23, 2009, and service was accomplished on December 1, 2009. The matter was assigned to the undersigned Hearing Officer on December 7, 2009, and an Initial Case Management Conference was held on December 22, 2009. A Final Hearing was scheduled on April 19, 2010. After a Motion to Extend Time to Answer was granted, Respondent filed her Answer on January 13, 2010. A contested Final Hearing was held on April 19, 2010.

2. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on October 19, 1996.¹

¹ Unless otherwise noted, the facts cited herein are taken from the stipulated facts contained in the Joint Pre-Hearing Statement submitted by the parties.

COUNT ONE (File No. 07-1927)

Factual Summary

3. This case involves a criminal defense attorney who had a personal and intimate relationship with a person that she later represented in a probation violation process. During that process the Respondent is alleged to have submitted a false and misleading pleading to the Court on behalf of her client (Phase One), and then later to have acted in contravention of the Court's order regarding where Respondent's client could live (Phase Two).

Phase One

4. On July 12, 2006, Mr. Walter Stringer's ("Mr. Stringer") Probation Officer, Stephanie Prince, filed a Petition to Revoke Probation in Maricopa County Superior Court in CR 2004-013284 and CR 2003-040237, State v. Stringer, against Mr. Stringer for various probation violations, including Condition #7, possession or use of methamphetamine on or about July 3, 2006.
5. On July 28, 2006, Respondent began representing Mr. Stringer regarding the probation revocation proceedings in CR 2004-01328 and CR 2003-040237.
6. Respondent agreed to represent Mr. Stringer at the behest of mutual friends even though she was romantically involved with him at the time.²
7. Respondent received a copy of the Petition to Revoke Probation (alleging his drug use) filed on July 12, 2006, as she was Mr. Stringer's attorney of record at the time.

² There was some question of whether the relationship between Respondent and Mr. Stringer actually started after the representation began, but the majority of the evidence was that the relationship preceded the representation.

8. On November 15, 2006, Mr. Stringer was reinstated onto Intensive Probation Supervision for three years for the underlying offenses of Forgery and Unlawful Use of Means of Transportation. Mr. Stringer was also sentenced to four months incarceration in the county jail.
9. In or around August 2007, Mr. Stringer asked his probation officer, Stephanie Prince, if he could move from his approved residence at 3122 E. Campo Bello Drive in Phoenix across the street to Respondent's residence at 3123 E. Campo Bello Drive.³ This request was denied, Transcript of Record ("T/R") 46:11-22.
10. Mr. Stringer's probation officer testified that there were multiple reasons why she did not want Mr. Stringer to live at Respondent's home. Respondent, who was going through a divorce proceeding at the time, had someone prepare a phony check to "check on" the bookkeeper for her then husband to make sure that she was receiving checks paid by her clients. In this phony check, Mr. Stringer's telephone number was used and the probation officer was concerned because one of the charges Mr. Stringer was on probation for was forgery, T/R 49:16-50:3. In addition, the probation officer felt that Mr. Stringer could be swayed by a stronger personality, such as Respondent. The probation officer also testified that Mr. Stringer had mental health issues, suffered from depression and drug use, and that the duality of Respondent's position as his girlfriend as well as his lawyer, combined with her interference with his compliance with the terms of his probation, could negatively affect his success on probation, T/R 93:5-22.

³ When a Defendant is on Intensive Probation Supervision, his residence must be approved by his probation officer and/or the Court and he may not be in any location not approved by his Probation Officer, T/R 29:2-30:23.

11. In or around September 2007, Mr. Stringer confirmed to his probation officer, Stephanie Prince, that he had a personal relationship with the Respondent, his attorney, T/R 50:13-51:1; 86:14-25.
12. Mr. Stringer repeatedly asked his probation officer if he could live with his attorney, and his request was repeatedly denied.
13. On October 11, 2007, Respondent filed, on behalf of Mr. Stringer, a Motion for Early Termination of Probation or in the Alternative, Modify Terms and Conditions of Probation ("Motion") with the Court, Hearing Exhibit ("H/E") 14. In the Motion, Respondent stated that Mr. Stringer had been completely alcohol and drug free for 18 months, H/E 14, BSN 086:8.
14. In the Motion for Early Termination prepared by Respondent, she requested that if his probation was not terminated early, in the alternative, that Mr. Stringer's authorized address be changed from 3122 E. Campo Bello Drive, Phoenix, AZ to 3123 E. Campo Bello Drive, Phoenix, Arizona (Respondent's home address). Respondent did not disclose in the Motion that the address change that she was requesting was her personal residence, H/E 14, BSN 089:25-BSN090:2. Respondent also did not advise the Court that she was romantically involved with Mr. Stringer, or that Mr. Stringer's probation officer was opposed to the relocation.
15. A central point of contention during these proceedings is the allegation that Respondent was not candid with the Court when she made the claim in the Motion that Mr. Stringer was completely drug and alcohol free for 18 months, and omitted other factors that would be important to the Court. The State Bar points to

the following factors that were known to the Respondent which were not disclosed to the Court in her motion:

- a) Mr. Stringer admitted during the 18 month period that he had used meth, and that he had been disguising his urine tests by consuming baking soda;
- b) That Mr. Stringer had signed an acknowledgment of his drug use, H/E 5, BSN 0346, H/E 8, BSN 347;
- c) That during approximately 8 months of Mr. Stringer's claimed sobriety and abstinence he was in the county jail;
- d) That Mr. Stringer had missed a urinalysis test, and that according to the terms of his probation, a missed urinalysis test is considered a positive;
- e) There is a probation presentence report prepared by probation wherein Mr. Stringer's admission to drug use was set forth, and Respondent had that report.
- f) In the Motion, Respondent states that Mr. Stringer attended self-help meetings even when not directed by probation, H/E 14 BSN 086:16, when in fact, attendance at the self-help meetings was required as a term of his probation. T/R 53:11-54:23.
- g) Respondent requested, in the alternative, that Mr. Stringer be allowed to move to an address that she failed to disclose to the Court was her own. Respondent also failed to tell the Court that probation had repeatedly denied Mr. Stringer's request to move in with Respondent, and why.

16. Respondent also failed to mention in the Motion for Early Termination that Mr. Stringer's probation officer had mentioned to Mr. Stringer on several occasions that he should not be at the home of his girlfriend, the Respondent, without

permission of the probation officer. Mr. Stringer was found by his probation officer to be at Respondent's home address on multiple occasions without prior authorization.

17. As to the failure to list Mr. Stringer's substance abuse issues in the Motion, Respondent responds that she did not intentionally put anything inaccurate or incorrect in the Motion, T/R 436:17-437:17. Respondent testified that, although she did receive information from probation that Mr. Stringer was using meth and disguising it by ingesting baking soda, she did not give any credence to Mr. Stringer's admission to drug use because of the "coercive situation" where a probation officer confronts a defendant, and because her client denied drug use, T/R 437:9-438:4. Respondent also points out that the urinalysis test showed positive but on a subsequent retest it was negative, T/R 439:7-9. Respondent also testified that she did not think that a "failure to test" was considered a positive, T/R 437:5-7. Also, regarding the missed test on June 8, 2007, Respondent points out that Mr. Stringer, after realizing he had missed the test, went to an unauthorized testing facility and took the U/A. However, because the testing facility was not certified, probation would not accept the test. Mr. Stringer also had a failure to take a urinalysis test on July 27, 2007, that was not explained, H/E 16, BSN 037. While Respondent concedes that she saw her client's admission to drug use in a previous Pre-sentence Report, she gave it no credence because of what her client was telling her, T/R 440:20-443:20.

18. As to including Mr. Stringer's time in incarceration within the 18 months of alleged sobriety and abstinence, Respondent points out that drugs are available in jail, and yet Mr. Stringer did not use while in jail, T/R 455:1-16.
19. As to failing to tell the Court that the address she asked Mr. Stringer to be allowed to live at was her address, Respondent testified that she did not think it was her job to tell the Court that 3123 East Campo Bello was her address, T/R 446:20. Respondent also testified that she felt that probation knew the address was her address, and that because probation knew, the Court would also know, T/R 447:6-22.
20. When Mr. Stringer's probation officer learned of Respondent's Motion to Terminate Probation Early, she submitted a "Memo to the Court" on October 23, 2007, H/E 16.⁴ In this memo, Mr. Stringer's probation officer pointed out to the Court the inaccuracies of Respondent's motion, and submitted the Probation officer's perspective on Mr. Stringer's performance while on probation. The Memo also explained to the Court the nature of the relationship between Mr. Stringer and Respondent, and why probation was opposed to Mr. Stringer living with Respondent.
21. On November 3, 2007, the Motion for Early Termination was denied by Judge Rosa Mroz. The Court Order stated: "It is ordered denying Defendant's Motion to Terminate Early or in the Alternative Modify Terms and Conditions of Probation Pending the Expiration of Probation." H/E 17.⁵

⁴ The date on this exhibit is December 18, 2007. However, the date of the original Memo was October 23, 2007. Because the original memo was lost after the judge had reviewed it, a copy was re-filed with the Court and has the date of December 18, 2007.

⁵ Note that the Judge listed the entire name of the Motion in her Order.

22. Respondent received a copy of the Order denying the Motion for Early Termination (or modification of the terms thereof).
23. Both before and as well as after the Judge's ruling on the Motion for Early Termination, Mr. Stringer was found at Respondent's residence, was advised repeatedly by probation that he must live at his approved residence at 3122 East Campo Bello, that he could not live at Respondent's home, and Respondent was aware of this.
24. Respondent testified that because Mr. Stringer only had a few more months left on his probation, she and Mr. Stringer decided not to follow up on Judge Mroz' ruling, T/R 445:22-446:8
25. On January 9, 2008, Mr. Stringer received new standard directives as conditions of his probation and again the address of 3122 East Campo Bello was listed as his approved residence. Mr. Stringer signed the acknowledgment that reflected that he understood where he was supposed to live, H/E 25: BSN's 987-988.

Phase Two

26. On February 5, 2008, Mr. Stringer's probation officer filed a petition to revoke Mr. Stringer's probation, alleging failure to comply with his terms of probation, which included numerous curfew violations which were incidences of Mr. Stringer being at Respondent's home, H/E 26.
27. Mr. Stringer was thereafter arrested and brought before Maricopa Superior Court Commissioner Jaime Holguin for a revocation arraignment on February 13, 2008. Respondent appeared at that revocation arraignment on behalf of Mr. Stringer. Respondent made an oral motion to modify the release conditions of the

defendant and, as the video of the proceedings reflects, verbally stated to the Commissioner that defendant would be residing at his approved address at 3122 East Campo Bello. Commissioner Holguin granted the motion and authorized Mr. Stringer to be released in one of his cause numbers on his own recognizance, and in the other cause number, on a \$1,800 bond, H/E 27, BSN 041-042.

28. The evidence was uncertain, but it appears that Mr. Stringer provided to the courtroom clerk his release address as Respondent's address at 3123 East Campo Bello, rather than his approved address of 3122 East Campo Bello. There is no evidence that Respondent participated in or knew that this false information was being provided to the courtroom clerk at the time. As a result of that false information, a release order was issued by the Court listing Mr. Stringer's address as 3123 Campo Bello, H/E 29.
29. Very soon thereafter, Respondent posted Mr. Stringer's \$1,800 bond, and Mr. Stringer was released, T/R 470:2-6. Respondent noticed the difference in the address and asked Mr. Stringer how her address got on the order. Mr. Stringer admitted that he gave the courtroom clerk Respondent's address, T/R 472:7-9.
30. Respondent testified that she figured "... if the court doesn't want him to live there [her home] or the probation department doesn't want him to live there, they will do something about it..." T/R 472:23-473:1.
31. A few days later, on February 15, 2008, when probation found Mr. Stringer at Respondent's home at 10:15 pm, the surveillance officer noticed that there was a different address on defendant's schedule. When questioned about this, **Respondent** informed the surveillance officer that the Judge had released Mr.

Stringer to her address so that was where the defendant needed to be, H/E 31, BSN 1085, February 15 entry.

32. Rather than make a big deal out of it on that Friday, the surveillance officer decided to wait until Monday to bring it up with the probation officer.
33. The next week, on Wednesday, February 20, 2008, at Mr. Stringer's regular weekly probation office visit, probation had confirmed that Mr. Stringer was not to be living at Respondent's home so Mr. Stringer was directed to not reside at Respondent's home and that he must move back to 3122 East Campo Bello, H/E 35. At this meeting, Respondent questioned the probation officer as to why he was interested in revoking Mr. Stringer's probation because he was at her home. The probation officer told her that it was because Judge Mroz had already addressed that issue and decided it. Respondent's attitude was hostile, upset and argumentative that the probation officer was taking Mr. Stringer back to court, T/R 272:4-14.
34. Eventually, probation conveyed the information about Mr. Stringer's new address to the Deputy County Attorney Stephen Garcia and he had a discussion with Respondent about his concerns that Respondent had not been candid with the Court. Mr. Garcia also told Respondent that he felt that she was in violation of Judge Mroz' prior Order, T/R 205:8-206:10. According to Mr. Garcia, when he confronted the Respondent about the release address for Mr. Stringer being contrary to the approved address, Respondent acted confused about Judge Mroz' Order, T/R 184:2-11 & H/E 34, BSN 48, February 20 entry.

35. Deputy County Attorney Stephen Garcia was concerned that the Respondent could become a necessary witness to Mr. Stringer's violations of probation (for curfew violations by him being at Respondent's home), so he filed a Motion to Determine Counsel on February 26, 2008, H/E 37.
36. In the interim, on February 20, 2008, Respondent filed a Motion for Clarification, wherein she claimed that there is "confusion" on the part of the probation department, herself and Mr. Garcia regarding where Mr. Stringer should be living, H/E 36. Contrary to Respondent's statements in this Motion for Clarification, there was no confusion by either probation or Mr. Garcia about where Mr. Stringer should be living. Were it not for Mr. Stringer playing games with the courtroom clerk and giving her the wrong address, Judge Mroz had clearly and succinctly denied Respondent's efforts to have Mr. Stringer move in with her.
37. Respondent testified that she was shocked and upset by Mr. Garcia's comments because she did not think anyone would interpret things the way that Mr. Garcia was interpreting them, T/R 474:1-5. Respondent testified that it did not even occur to her that there might be a problem with Mr. Stringer living with her until Mr. Garcia confronted her, T/R 491:18-19. Respondent claimed surprise because she did not interpret Judge Mroz' order as denying "everything else", T/R 475:9-16; 476: 10-477:15. Respondent also testified that she disagreed with probation's position on the change to her address, and felt that probation had no legitimate reason to oppose it, T/R 477: 23-478:2.
38. Subsequently, because Mr. Stringer decided to waive probation and admit to the curfew violations (where he was at Respondent's home) it was determined by

Judge Holguin that Respondent would not be a witness and so denied the Motion to Determine Counsel. Respondent's Motion for Clarification was never ruled on, T/R 362:5-11. Mr. Stringer then admitted to his probation violations and was sentenced to a term in prison, T/R 483:12-484:7.

CONCLUSIONS OF LAW

39. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz.R.Sup.Ct., specifically:
40. ER 1.7, Conflict of Interest. Respondent's personal relationship with Mr. Stringer negatively impacted her compliance with her ethical duties to the Court as well as her duty to her client. Respondent facilitated Mr. Stringer's violation of the terms of his probation by allowing him to be at her home when he should not have been; seeking to have the Court authorize him to move to her home without telling the Court the whole story; and took advantage of her client's misinformation to the Court by allowing him to stay with her after his release. There was no evidence that Respondent's legal efforts on behalf of Mr. Stringer fell short of an objective standard. In other words, Mr. Stringer did not suffer from any of the legal work done on his behalf by Respondent. However, Respondent's conflict of interest in doing everything she could to get the Court to allow Mr. Stringer to live with her clearly reinforced his notion that his probationary requirements to live in a specified address was something he could work around. The trumping of Respondent's common sense and duty of candor to the tribunal by her feelings for Mr. Stringer clearly, in the end, contributed to his failure to comply with the terms

and conditions of his probation. Weighed against this is the fact that certainly Mr. Stringer contributed to his own demise on probation, and because it is difficult to parse the exact amount of responsibility for that, this Hearing Officer does not consider the ER 1.7 violation as the most serious violation. There is clear and convincing evidence that Respondent violated ER 1.7.

41. ER 3.3, Candor to the Tribunal. In her Motion for Early Termination, Respondent had multiple warning signs that what she was telling the Court was not true, but chose to ignore them all. Respondent had numerous indicia that not only was her client not drug-free, but that some of the other representations in her Motion were not true. Her excuse that she just didn't believe the probation department about her client's use of drugs, or that his confession was coerced, is weak and disingenuous. Very troubling is Respondent's statement that she did not feel that she had an ethical obligation to disclose certain information to the Court because probation knew about it so the Court knew about it. These comments reflect that either Respondent's good judgment was clouded by her relationship with Mr. Stringer, or she fails to appreciate her fundamental obligation as an attorney to never mislead the Court. In light of all of the facts that were known to her, Respondent's Motion for Early Termination is representative of the kind of clever chicanery that eats at the heart of the integrity of our profession.
42. Similarly, once Respondent realized that her client had misinformed the courtroom clerk about his address at his release hearing, rather than recognize the conflict and tell her client to stay at his previously designated residence until the matter could be clarified, Respondent took advantage of the situation pretending

that her client's deviousness could somehow trump Judge Mroz' previous order. Respondent's only excuse is that she felt that Judge Mroz' prior order was somehow confusing when no one else felt it was. There is clear and convincing evidence that Respondent violated ER 3.3.

43. Finally, Respondent's Motion for Clarification is another disingenuous attempt to cover her tracks when she says that probation and Mr. Garcia are, like her, confused by Judge Mroz' Ruling. There was no confusion on anybody's part and to say otherwise is misleading the Court. Respondent just needed cover for her actions in allowing Mr. Stringer to live with her after he was released in defiance of Judge Mroz' Order and probation's direction.
44. ER 4.1, Truthfulness in Statements to Others. The State Bar contends that Respondent violated ER 4.1 by making false statements to probation officer Odetta Blomker and attorney Stephen Garcia. The facts surrounding what Respondent told Miss Blomker and Mr. Garcia are not strong enough to support a finding of violating ER 4.1 by clear and convincing evidence. This Hearing Officer finds that there is no violation of ER 4.1 proven by clear and convincing standard.
45. ER 8.4(c), Conduct Involving Dishonesty, or Misrepresentation. In the Motion for Early Termination and Motion for Clarification the Respondent misrepresented information and omitted important facts. There is clear and convincing evidence that Respondent violated ER 8.4(c).
46. ER 8.4(d), Conduct Prejudicial to the Administration of Justice. Respondent's interaction with the Court was on multiple levels dishonest and misleading. The

potential for harm to the integrity of the Court and its rulings is clear. There is clear and convincing evidence that Respondent violated ER 8.4(d).

ABA STANDARDS

47. 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; and (4) the existence of aggravating and mitigating factors. The ABA *Standards* indicate that the ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations.

The Duty Violated

48. Respondent violated not only her duty to her client to avoid a conflict of interest, she also violated her duty to the profession in misleading the Court by engaging in conduct that involved dishonesty and misrepresentation. Respondent's conduct was prejudicial to the administration of justice.

The Lawyer's State of Mind

49. Respondent argues in her Closing Memorandum that her conduct was negligent and that the State Bar has failed to show that she had a conscious awareness of the nature or attendant circumstances of her conduct. In other words, knowing that you're doing something is not the same as knowing that you're doing something wrong. While Respondent expressed shock and surprise that others could interpret her conduct as inappropriate, this Hearing Officer is not swayed. The cumulation of her misdeeds can lead one to no other conclusion than that she knew what she

was doing by engaging in an intimate relationship with her client, to his detriment, as well as misleading the Court on multiple occasions. This Hearing Officer found Respondent to be evasive and her explanations and excuses to be unbelievable and contrived trying to explain away her misrepresentations to the Court. Respondent not only knew what she was doing, she knew it was wrong, and her attempt to say everyone was confused by Judge Mroz' order denying her previous motion indicates a knowing state of mind.

The Injury Caused

50. Respondent's conduct caused actual harm to her client because it aided and abetted him in violating the terms of his probation, ultimately resulting in him being sent to prison. The probation department was put at considerable inconvenience in trying to deal with the collusion between Respondent and Mr. Stringer. The threat to the integrity of the Court's orders is, to this Hearing Officer, very serious. But for the fact that probation and Mr. Garcia brought to the attention of the Court the misstatements made by Respondent in her Motion for Early Termination, Mr. Stringer might easily have been inappropriately released early from his probationary responsibilities. Also, but for the intervention of Mr. Garcia and probation, Mr. Stringer's deception to the courtroom clerk might well have succeeded.

Aggravating and Mitigating Factors

Aggravating Factors:

51. *Standard 9.22(a), Prior Discipline.*

Exhibit 50 sets forth Respondent's prior discipline in some detail. Respondent received a Censure and probation in January of 2008 for violating ER's 4.1 and 8.4(c) in SB07-0198-D. This Hearing Officer recalls the facts of that case as I was the one that heard it and it is hard to draw any comparisons. While Respondent's comments in that manner were false, the context is entirely different and this Hearing Officer does not give this factor very much weight.

52. *Standard 9.22(b), Dishonest or Selfish Motive.*

Respondent seems to have been somewhat captivated by Mr. Stringer and seemed to be willing to go to almost any lengths to excuse his conduct and have him live with her. Respondent's conduct was not only selfish, but it resulted in dishonesty.

53. *Standard 9.22(c), Pattern of Misconduct.*

Respondent has been found to have violated multiple ERs.

54. *Standard 9.22(g), Refusal to Acknowledge Wrongful Nature of Conduct.*

While Respondent professes to have learned her lesson about representing someone with whom she is close, Respondent seemed to be taking every opportunity to excuse her conduct rather than admitting that what she did was improper.

55. *Standard 9.22(i), Substantial Experience in the Practice of Law.*

Respondent practiced law in Illinois, beginning in 1989, and then thereafter in Arizona from 1996 until today.

Mitigating Factors:

56. *Standard 9.32(e), Full and Free Disclosure.*

Respondent claims that she has fully cooperated with the State Bar and disclosed all information requested. There was no evidence submitted to either support or refute this claim, and so this Hearing Officer cannot give it very much weight.

57. *Standard 9.32(g), Character or Reputation.*

Respondent presented three witnesses, who all testified as to her good reputation: attorney James Rolle, attorney Joseph Stewart, and Diana Blasingim. All of these individuals stated that Respondent is a hard-working lawyer, who cares very much for her clients and works very hard for them.

PROPORTIONALITY REVIEW

58. The Supreme Court has held that one of the goals of attorney discipline should be to achieve consistency when imposing discipline. 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, 90P.3d 772 (2004). 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). 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*.
59. In this case, the State Bar is recommending a six-month suspension, to be followed by a two year period of probation.

60. The cases cited by the State Bar in proportionality recognize that this is somewhat of a unique case in that we not only have a conflict of interest, we have misrepresentations to the Court. However, these misrepresentations were not for pecuniary gain but rather because of personal interests of Respondent. The two cases cited wherein the only violation is having an affair with a client and the attendant conflict of interest, *In re Simon*, SB 09-0021 (2009), and *In re Valade-Prichard*, SB-09-0039 (2009), resulted in a 60 day suspension and 30 day suspension respectively.
61. In *In re Ariav*, SB-09-0056 (2009), Mr. Ariav received a six months and one day suspension for making misrepresentations to a mediator and the attorney general's office that appear to be related to his attorney's fees. Likewise, in *In re Coffee*, SB-01-0095 (2001), Mr. Coffee was suspended for 30 days for not disclosing to a tribunal that his client had undisclosed assets.
62. A brief review of other cases shows that the length of suspension seems to be affected by whether the Respondent made the misrepresentation for pecuniary gain and whether there was detriment to the client.
63. As stated, Respondent's misconduct seems to have been motivated by her affection for Mr. Stringer, being somewhat blinded by those emotions, and that her actions only indirectly caused him any harm.

RECOMMENDATION

64. 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).

65. 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, 782 P.2d 1235 (1994).
66. While Respondent comes across as a committed and caring individual who is dedicated to her clients, and this is supported by the character witnesses who testified on her behalf, this Hearing Officer is troubled by the fact that, while on probation for another case involving a question of her telling the truth, Respondent yet again engages in a series of misdeeds which again call into question her honesty and integrity. This Hearing Officer finds incredible Respondent's statement that one of the reasons that she did not include everything in her Motion for Early Termination was that because "probation knew it", she had no obligation to disclose it to the Court. Similarly, after finding out about Mr. Stringer's deception of the courtroom clerk about his approved address, not only did Respondent allow Mr. Stringer to stay at her residence in defiance of a previous court order, she defended him to probation and when probation corrected Mr. Stringer, Respondent became "hostile, upset and argumentative". Finally, in Respondent's Motion for Clarification, her statement to the Court that probation and Mr. Garcia were "confused" about Mr. Stringer's approved residence was an outright fabrication.

67. As mentioned previously, Respondent's penchant for telling the truth only by half and then twisting her perception of reality to fit her own purpose is the kind of conduct that clouds the integrity of our profession and the vast majority of lawyers who do not engage in this kind of conduct. Respondent testified that she has learned her lesson, will never represent a close friend again, and has taken steps in her practice to assure that she gets greater clarification from the Court in the future. However, missing from her comments was either a recognition of the potential harm that she could have caused, and also the self awareness to admit that she let her affection for her client overcome her professional obligation to the Court.
68. Suspension is the presumptive sanction in this matter, and it is only a question of how long the suspension should be for. The State Bar asks for a six-month suspension, and a review of the cases cited in proportionality would support that recommendation. Considering that Respondent was on probation for a previous incident where her honesty was brought into question, there were multiple incidences of her misrepresentations to the Court, and she has shown little self awareness of her violations and how they cut at the very integrity of our profession, a six month suspension is entirely appropriate. Respondent simply must be made aware of the seriousness of her misconduct, and that she must right her moral barometer such that she dispenses with all of her rationalizations and her many grey areas and realizes that there is a bright and certain line between honesty and dishonesty.

69. This Hearing Officer has considered the fact that Mr. Stringer was probably destined to fail on probation in any event and that Respondent's conduct may have contributed to it, but certainly was not the sole cause of. Additionally, thanks to the attention of the probation officers and the prosecutor, Respondent's conduct did not result in any erroneous court orders being issued.
70. Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer recommends the following:
1. Respondent shall be suspended for a period of six months;
 2. Respondent shall be placed on probation for a period of two years, will be required to view the Ten Deadly Sins, and attend the professionalism course,
 3. 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 7th day of June, 2010.

H. Jeffrey Coker / ja
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 7th day of June, 2010.

Copy of the foregoing mailed
this 8 day of June, 2010, to:

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/jsa