

BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

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

VICTORIA R. MIRANDA,
Bar No. 018511

RESPONDENT.

Nos. 08-1574, 09-0058, 09-2013

DISCIPLINARY COMMISSION
REPORT

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on March 13, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed February 22, 2010, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum ("Joint Memorandum") providing for a six month and one day suspension, two years of probation upon reinstatement with specific terms to be determined at the time of reinstatement, restitution, and costs.

Decision

Having found no facts clearly erroneous, the seven 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 and one day suspension, two years of probation upon reinstatement with specific terms to be determined at the time of reinstatement, restitution, and costs of these disciplinary

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

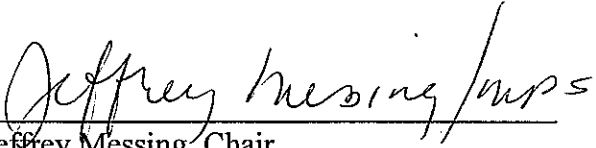
proceedings including any costs incurred by the Disciplinary Clerk's office.² The amount
of restitution is as follows:

Restitution

Augustina Aranda

\$2,000.00

RESPECTFULLY SUBMITTED this 23rd day of March, 2010.


Jeffrey Messing, Chair
Disciplinary Commission

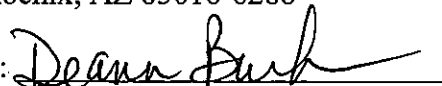
Original filed with the Disciplinary Clerk
this 23rd day of March, 2010.

Copy of the foregoing mailed
this 24 day of March, 2010, to:

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

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by: 

/mps

² The Hearing Officer's Report is attached as Exhibit A. The State Bar's costs total \$1,663.75.

EXHIBIT

A

BEFORE A HEARING OFFICER OF
THE SUPREME COURT OF ARIZONA

FILED

FEB 22 2010

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA

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

VICTORIA R. MIRANDA,
Bar No. 018511

Respondent.

Nos. 08-1574, 09-0058

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

1. Probable cause was found in case number 08-1574 on January 21, 2009, and in 09-0058 on May 20, 2009. Thereafter a Complaint was filed on August 31, 2009, and the matter was assigned to the undersigned Hearing Officer on September 21, 2009. The parties later advised that the case had been settled and there was a hearing held on the agreement on January 25, 2009. Present at the hearing was Respondent, her counsel, Ralph Adams, Bar Counsel Amy Rehm, and the undersigned.

FINDINGS OF FACTS

2. At all times relevant, except as noted below, Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on October 18, 1997.¹
3. In SB-09-0047-D, by Judgment and Order filed June 29, 2009, Respondent was suspended from the practice of law for 90 days, effective 30 days from the date of the Order. Respondent was reinstated to practice law on November 24, 2009.

¹ Unless otherwise cited, the facts found herein are taken from the Tender of Admissions submitted by the parties.

COUNT ONE (File No. 08-1574, Ledbetter)²

4. On or about December 1, 2007, Diana A. Ledbetter ("Ms. Ledbetter") consulted with Respondent about representing her in a divorce. At that time, Ms. Ledbetter informed Respondent that her husband resided in Arkansas. Respondent informed Ms. Ledbetter that she could file for divorce in Arizona at that time. Ms. Ledbetter did not immediately retain Respondent.
5. On or about January 17, 2008, Ms. Ledbetter phoned Respondent's office for an appointment after being served with a summons in connection with divorce proceedings initiated by her husband in Arkansas that indicated that she needed to respond within 30 days of the service of the summons. Service of the Summons and Complaint was accomplished by mail on January 17, 2008.
6. On or about January 18, 2008, Ms. Ledbetter met with Respondent about representing her in a divorce. Ms. Ledbetter paid Respondent a \$50 consultation fee on that date.
7. At the January 18, 2008, consultation, Ms. Ledbetter provided the Arkansas Summons and Complaint to Respondent. Respondent agreed to prepare documents contesting the Arkansas Court's jurisdiction for Ms. Ledbetter's signature.
8. Respondent also agreed to represent Ms. Ledbetter in her Arizona dissolution proceedings. Ms. Ledbetter, however, did not have a clear and/or complete understanding of the scope of representation.

² This is not a violation subsequent to Respondent's previous "Fee Agreement" problems. As indicated later herein, the facts of this Count occurred while Respondent was having the same "Fee Agreement" problems for which she received her suspension.

9. Ms. Ledbetter believed that Respondent would handle the issues in Arkansas, and attempt to have the matter transferred to Arizona for hearing. In fact, Respondent prepared a Special Appearance and Objection to Jurisdiction contesting the Arkansas Court's jurisdiction. Ms. Ledbetter signed the documents on February 14, 2008, and mailed the documents to the Arkansas Court. The 30 day deadline to file a response to the Summons and Complaint in Arkansas was February 18, 2008. The documents were in fact received by the Arkansas Court.
10. Ms. Ledbetter did not understand the limitations on the Respondent's participation in the Arkansas matter and the possible outcomes of the litigation, including the possible preclusion of jurisdiction in Arizona.
11. On or about January 28, 2008, Ms. Ledbetter paid Respondent fees in the amount of \$1,825 to begin the representation.
12. On January 30, 2008, Respondent provided Ms. Ledbetter with a written fee agreement. That fee agreement listed the scope of representation as "Dissolution of Marriage in Arizona".
13. The terms of the written fee agreement were not clear:
 - a. In paragraph 1, the fee agreement calls the fee an "advance fee."
 - b. In paragraph 4, the fee agreement calls the fee an "advance fee" and further characterizes it as a "minimum fee."
 - c. In paragraph 5, the fee agreement states that costs will be billed in addition to "hourly fees."
 - d. The fee agreement does not contain any language stating that the fee is a flat fee, nor does it provide an hourly rate.

- e. The fee agreement does not state that the fee is earned upon receipt or nonrefundable, and does not contain the required fee language set forth in ER 1.5(d) for those types of fees.
14. Ms. Ledbetter paid \$675, the remainder of the amount owed on the \$2,500 “advance fee”, in February of 2008.
 15. Thereafter, Ms. Ledbetter phoned Respondent's office on March 27 and April 11, 2008, to ascertain the status of her case. On both occasions Respondent's assistant informed Ms. Ledbetter that they were waiting for a ruling from the Court.
 16. On April 24, 2008, Ms. Ledbetter again contacted Respondent's office for the status of her matter. At that time, she spoke directly to Respondent. During that conversation, Respondent stated that Ms. Ledbetter could already be divorced. Respondent told her that she would look into it, and call her Monday, April 28, 2008.
 17. On April 28, 2008, Respondent did not contact Ms. Ledbetter. However, Ms. Ledbetter called her ex-husband, who informed her that they had been divorced since February of that year.
 18. On April 29, 2008, Ms. Ledbetter called the Arkansas Court and ascertained that a Divorce Decree had been entered in her matter on February 28, 2008.
 19. The Arkansas Court did not directly inform Ms. Ledbetter or Respondent of its February decision, nor did the Court rule on the jurisdictional motion prepared by Respondent and submitted by Ms. Ledbetter. However, for reasons unknown to

Respondent or Ms. Ledbetter, the Arkansas Court disregarded the objection to jurisdiction and entered default against Ms. Ledbetter.

20. On April 30, 2008, Ms. Ledbetter contacted Respondent's office and informed them that she had confirmed that a divorce had been entered in Arkansas. Ms. Ledbetter requested a full refund as Respondent had not performed any services of value on her behalf.
21. Based upon services provided to Ms. Ledbetter in office consultations and preparation of the Special Appearance and Objection to Jurisdiction, by check dated May 15, 2008, Respondent refunded \$1,116.90 to Ms. Ledbetter.
22. Ultimately, Ms. Ledbetter filed a request for fee arbitration through the State Bar's fee arbitration process. The fee arbitration was set for October 29, 2008.
23. Although Respondent indicated that she was not contesting the arbitration and would refund the entire fee, the arbitration proceeded and the Arbitrator awarded a refund to Ms. Ledbetter in the amount of \$1,383.10 (for a total of the \$2,500 initially paid).
24. Respondent made another check out to Ms. Ledbetter dated December 2, 2008, in the amount of \$1,383.10 for the refund.
25. The parties submit that the violations set forth in Count One concerning Respondent's fee agreement language occurred during the same time as the fee agreement violations in Respondent's prior discipline, in case SB-09-0047-D, and occurred prior to the sanction entered in that matter.

COUNT TWO (File No. 09-0058, Santos)

26. On or about November 6, 2008, Sergio Santos ("Mr. Santos") had an initial consultation with Respondent regarding representing him in a divorce matter. Mr. Santos paid Respondent a \$50 consultation fee in the matter.
27. Respondent agreed to represent Mr. Santos in his domestic relations matter for a flat fee of \$2,000. Respondent contends that representation was not to begin until full payment of the fee.
28. On or about November 7, 2008, Mr. Santos went to Respondent's office with a money order for \$1,000 towards payment of his legal fees.
29. Mr. Santos believed that Respondent would begin work on his case at that time.
30. Thereafter, Mr. Santos did not hear from Respondent.
31. After approximately 15 days, Mr. Santos phoned Respondent's office for a status update. At that time, he was told by office staff that everything was going well.
32. On or about December 15, 2008, Mr. Santos again phoned Respondent's office for status update and left a message for Respondent after learning that the opposing party had not received notice of any filings in the matter.
33. After Respondent failed to return Mr. Santos' call, Mr. Santos phoned Respondent's office again on December 16, 2008, and spoke directly to Respondent.
34. During the December 16, 2008, call Respondent accused Mr. Santos of stealing \$2,000 from her office more than a month prior to that date. Respondent told Mr. Santos that she had a videotape recording of him stealing the money, and that if

- he did not return the money she would call immigration to have him deported. Respondent gave Mr. Santos three days to return the money or face deportation.
35. Respondent contends that Mr. Santos returned to her office and met with her on November 8, 2008, to pay her the remaining \$1,000 of the flat fee. She believes that Mr. Santos, during that visit, took cash from her desk drawer while she was in another room. Part of her belief is based upon information she alleges to have received from a maintenance worker who told her he saw an identified person leaving her office with cash in a magazine. Mr. Santos asserts that he did not take money from Respondent's office and that he did not even go to Respondent's office on the date in question.
36. Bar Counsel, Respondent and Respondent's counsel interviewed the maintenance worker, Alonzo Gamez. Mr. Gamez stated that he did see a person outside Respondent's office on the day in question taking money from a magazine, place the money in his jacket and leave the premises.
37. Respondent's statement to Mr. Santos that she had a videotape of him stealing money from her office was false.
38. Respondent did not perform any work on Mr. Santos behalf.
39. The State Bar contends that Respondent did not adequately communicate with Mr. Santos regarding his case. Respondent contends that she would present evidence that the full amount of the fee had not been paid and that she did not believe that an attorney-client relationship had yet been established.
40. Mr. Santos submitted a bar charge on December 17, 2008.

41. The bar charge was sent to Respondent by letter dated January 23, 2009, and she was asked to respond to the charge as well as to submit the videotape referred to in her phone call with Mr. Santos.
42. In response, Respondent indicated that she believed that Mr. Santos had stolen money from her office on November 8, 2008.
43. Upon further questioning by Bar Counsel, Respondent admitted that she lied to Mr. Santos about the videotape, and that no such tape existed.
44. Respondent provided a refund to Mr. Santos only after the bar charge was filed in this matter.

COUNT THREE (File No. 09-2013, Aranda)

45. On or about July 24, 2009, Augustina Aranda, ("Augustina") met with Respondent to inquire as to whether Respondent could represent her daughter, Olivia Luna Aranda ("Olivia"), in regards to an immigration matter.
46. At the time of the initial meeting, Respondent was aware of the Order of Suspension suspending her from the practice of law for 90 days, effective July 29, 2009.
47. Pursuant to Rule 72, Respondent was not permitted to take any new clients or matters between the time of the entry of the suspension order (June 29, 2009) and the effective date of her suspension (July 29, 2009).
48. At the July 24, 2009, meeting with Augustina, Respondent agreed to meet with Olivia at the jail, and accepted a payment of \$500 for beginning work on the case. Respondent contends both in the Tender as well as her testimony that she agreed only to meet with Olivia to determine her status because Olivia's mother and other

relatives were in the U.S. illegally and could not go to jail themselves. Respondent testified that she felt she could go to the jail and meet with Olivia and not be “practicing law”, Transcript of Hearing (“T/R”) 9:22 – 11:22 .

49. Respondent did thereafter meet with Olivia at the jail.
50. On or about July 28, 2009, Augustina provided Respondent with an additional \$2,000 to work on Olivia's immigration case, which included detention issues and work permit issues. Respondent testified at the hearing in this matter that she refunded the \$2,000.00 to the Arandas although she admits that her paperwork does not support this. Respondent felt \$1,500 was to be used for bail money to get Olivia released from jail but was then not needed because Olivia was released from jail.³
51. On or about August 1, 2009, Olivia met with Respondent at her office. Olivia believed that Respondent would provide her with a fee agreement on that date. Instead, Respondent simply obtained more information from Olivia. Respondent also requested that Olivia provide her with additional monies.
52. On or about August 31, 2009, Olivia sent Respondent an additional \$500 at Respondent's request.
53. Olivia met with Respondent on or about September 12, 2009, at Respondent's office about her case. At that time, Respondent gave Olivia an I-140 form for immigration. Olivia provided a money order in the amount of \$475 to Respondent for costs. Respondent ultimately sent back the \$475 money order because Olivia made it out to Homeland Security, which was incorrect.

³ There is some confusion regarding this money that could not be cleared up at the hearing on this matter. Respondent agrees as part of this agreement to pay the Arandas \$2,000.00.

54. On or about September 21, 2009, Olivia spoke with Respondent about her matter. Respondent requested that Olivia bring the corrected money order back to her office, along with another payment of \$300. Respondent disputes this allegation.
55. During this time period, Olivia and Augustina became suspicious that Respondent repeatedly failed to provide a fee agreement despite numerous requests, and continued to ask for more money. Olivia researched Respondent on the Internet and discovered that she was suspended.
56. Prior to this time, neither Olivia nor Augustina knew that Respondent was suspended. Respondent did not, at any time, inform either of them of her suspension. Respondent contests this allegation and alleges that she informed Augustina on their first meeting that she would be suspended for a period of 90 days.
57. On or about October 3, 2009, Olivia met with Respondent. Olivia confronted Respondent about the suspension. It is the State Bar's position that at this meeting Respondent admitted to Olivia that she was suspended but indicated that it did not affect her practice of immigration law. Respondent contests this allegation and claims that she did not tell Olivia that her suspension would not affect her practice of immigration law.
58. At the October 3 meeting, Olivia and/or Augustina requested a refund. Respondent agreed to refund their monies.
59. As of the date of the filing of the Tender, Respondent has not provided a refund to either Olivia or Augustina. Respondent claims that she returned \$2,000 to Augustina and Olivia, however, Respondent acknowledges that her office receipts

do not support this contention. Respondent therefore accepts responsibility for this allegation.

60. Olivia submitted a bar charge regarding the matter dated October 12, 2009. Along with the bar charge, Olivia submitted copies of three receipts: receipt number 040091, dated July 24, 2009, for \$500 from A. Aranda to Respondent; receipt number 040097 dated July 28, 2009, for \$2,000 from A. Aranda to Respondent; and receipt number 038581 dated August 31, 2009, for \$500 from A. Aranda to Respondent.
61. Respondent was asked to submit a response to the charge. In the charging letter, Respondent was also asked to provide a list of other clients or potential client contact that she had during her suspension period, including all money she has received from clients as well as any actions taken on behalf of a client.
62. Respondent submitted a response to the bar charge, but did not address the request for information regarding other clients set forth above by the deadline. After a reminder letter was sent, Respondent subsequently sent in the additional requested information.
63. In her response, Respondent claims that she informed Olivia and Augustina that she was suspended at the outset of her contact with them. Respondent further contends that she did not do legal work for them, and that she refunded \$2,000 to them.
64. Attached to her response, Respondent submitted an additional receipt number 040096 dated July 29, 2009 in the amount of \$1,500 from Augustina Aranda to

Respondent. Respondent contends that this is actually the amount that Olivia and Augustina paid her and that the \$2,000 receipt was actually Respondent's refund.

65. After receiving Respondent's response dated November 16, 2009, the State Bar's investigator visited Respondent's office, unannounced, on November 19, 2009. The purpose of the visit was to view Respondent's receipt book to examine the copy of the purported \$1,500 receipt.

66. At Respondent's office, the State Bar investigator asked Respondent to view her receipt book. She indicated that she did not have one as she took the receipts out to "make copies for the bar". The investigator then asked to see those copies. Respondent went into her office and returned a few moments later indicating she could not locate the receipts. The investigator then saw three yellow receipts on Respondent's desk and asked to see them. Two receipts, numbered 040093 and 040094 were blank. The third receipt was an exact copy of 040091 for \$500 listed above that had been provided to the Bar by Olivia, except for its number of 040095. When questioned by the investigator, Respondent had no explanation for how the numbers on the two identical receipts could be different since the numbers are printed on the receipt. However, it appears after closer review that receipt 040095 was in the receipt book directly under 040091 and could have been written over without an intervening hard surface.

67. The investigator then asked for a copy of the 040095 receipt. Respondent refused. Respondent contends that the State Bar of Arizona had no legal right to appear at Respondent's office unannounced and demand inspection and possession of documents.

68. Respondent asked the investigator to come back to her office at 4:30 that afternoon. When he did so, Respondent was leaving the office and indicated that she had not located the other receipts and that she did not have time to deal with the matter.

CONCLUSIONS OF LAW

COUNT ONE (File No. 08-1574, Ledbetter)

69. Respondent admits, and this Hearing Officer finds, that in Respondent's dealings with Ms. Ledbetter, she failed to adequately communicate with Ms. Ledbetter regarding the issues presented by the Arkansas filing and the limitation on Respondent's representation regarding the Arkansas issues and the possible outcomes of that case. Respondent also failed to adequately communicate the basis of the fee to her client through the fee agreement, and failed to include the necessary language concerning a refund of any flat fee.
70. Respondent admits that her conduct violated Rule 42, Ariz.R.Sup.Ct., specifically ER 1.4 and ER 1.5. Respondent contends that the problem with her fee agreement occurred at roughly the same time as the violations set forth in her previous disciplinary action and that it is the same conduct for which she was previously suspended. This Hearing Officer finds that Respondent had the same issues previously, and but for a timing issue this would have been included in her previous disciplinary action.
71. There is clear and convincing evidence that Respondent violated ER 1.4 and ER 1.5.

COUNT TWO (File No. 09-0058, Santos)

72. Respondent admits, and this Hearing Officer finds, that Respondent failed to diligently represent Mr. Santos; failed to adequately communicate with Mr. Santos; failed to timely refund unearned fees at the conclusion of the representation; and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.
73. Respondent's conduct violated Rule 42, Ariz.R.Sup.Ct., specifically ER's 1.3, 1.4, 1.16(d), and ER 8.4(c).

COUNT THREE (File No 09-2013, Aranda)

74. Respondent admits, and the undersigned Hearing Officer finds, that Respondent accepted new clients and or new matters during the time period between the entry of the suspension order and its effective date; committed the unauthorized practice of law; misrepresented her status to practice law; failed to notify the client of her suspension; failed to refund unearned fees; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaged in conduct prejudicial to the administration of justice.
75. Respondent's conduct violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.15, 1.16(d) 5.5, 8.4(c) and (d), and Rules 31, 53(f), and 72(d).

ABA STANDARDS

76. *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 Duty Violated:

77. This Hearing Officer finds that the most serious instances of misconduct by Respondent in this matter are the violations are of ER 8.4(c), dishonesty and misrepresentation, and ER 5.5, unauthorized practice of law. Respondent therefore violated not only her duty to her clients, she also violated her duty to the profession.

The Lawyer's Mental State:

78. In their Tender of Admission, the parties submit that Respondent's frame of mind was negligent in failing to adequately communicate with her clients, failing to timely refund unearned fees, and engaging in the unauthorized practice of law. Regarding Respondent's misstatements to Mr. Santos in Count Two, the parties agree that Respondent's conduct was "knowing". While the parties state in the Tender of Admissions that Respondent's conduct regarding the unauthorized practice of law was "negligent", in the Joint Memorandum, on page 3, the *Standards* cited to address a "knowing" violation of a duty owed to the profession, which causes injury or potential injury to a client, the public, or the legal system. Similarly, in Count Three, Respondent's agreeing to perform work for Ms. Aranda was done when she was aware of her suspension, and so with a "knowing" frame of mind.

79. The *Standard* applicable to Respondent's misstatements to Mr. Santos in Count Two is *Standard* 4.62: "Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client." In this matter, Respondent's statement to Mr. Santos that she had caught him taking money from her office on videotape, when none existed, was a knowing deception.
80. The *Standard* applicable to Respondent's unauthorized practice of law in Count Three is *Standard* 7.2: "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system." In Count Three, Respondent was aware of her pending suspension order at a time when she agreed to perform work for Ms. Aranda. Although Respondent contends that she was just going to the jail to visit Olivia as a gesture of friendship, she charged \$500 for doing that, and both Augustina and her daughter Olivia were under the impression that Respondent was performing legal work for them. As more fully explored below, this Hearing Officer finds that Respondent "knowingly" engaged in the unauthorized practice of law.
81. The parties submit, and this Hearing Officer finds, that the presumptive sanction in this matter is a suspension.

Injury Caused:

82. This Hearing Officer finds that Respondent's actions caused both actual and potential injury to her clients and the legal system.

Aggravating Factors:

83. *Standard 9.22(a) Prior Disciplinary Offenses:*

Respondent has several prior disciplinary sanctions. Most recently, on June 29, 2009, Respondent was suspended for 90 days and placed on probation upon reinstatement in SB 09-0047-D for violations of ERs 1.5, 1.15, and 1.16(d).

84. Before that, by order dated August 22, 2008, Respondent was censured and placed on probation in SB 08-0114-D for violation of ERs 1.2, 1.4, 1.5, and 1.8.

85. In File No. 06-1721, Respondent was placed on probation for violation of ER 1.3.

86. In SB-05-0129-D, Respondent was censured and placed on probation by order dated September 1, 2005, for violation of ERs 1.5, 1.15, and Rules 43 and 44, Ariz.R.Sup.Ct.

87. In File No. 01-0276, Respondent was placed on probation for violation of ERs 1.16, 3.4, and 3.5.

88. In SB-02-0090-D. Respondent was censured and placed on probation by order dated June 10, 2002, for violation of ERs 3.3, 8.1, 8.4(c) and (d), and Rule 51(h) and (i).

89. *Standard 9.22(d) Multiple Offenses:*

The misconduct in this matter occurred in three separate client matters.

Mitigating Factors:

90. **Standard 9.32(c) Personal or Emotional Problems:**

During the relevant time period, Respondent experienced personal health related issues and was also involved in a dispute with family members regarding the

personal care of her brother who had suffered incapacitating health issues requiring the appointment of a conservator/guardian.

91. *Standard* 9.32(d) Timely Good Faith Efforts to Rectify Consequences of Misconduct:

In the Ledbetter matter, Respondent refunded a portion of the fee upon request by the client. When the client later sought fee arbitration, despite having earned a portion of the fees, Respondent refunded the entire amount.

PROPORTIONALITY REVIEW

92. To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar, *Peasley*, 208 Ariz. at 35, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 41 P.3d 600, (2002) and *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983)). At the same time, discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved, *In re Riley*, 142 Ariz. 604, 691 P.2d 695 (1984).
93. As the parties pointed out in their pleadings, it is difficult to locate cases in which a lawyer has lied to a client on a single occasion. Previous discipline cases involving lies to the clients have generally involved patterns of lies over a period of time in order to conceal an unfavorable outcome in a case. For instance, in *In re Gieszl*, SB-06-0013-D (2006), the lawyer failed to timely file her client's case and then deceived the client over a period of time as to the status of the client's matter. After a long period of deception, and fearing that the client would learn of

her misconduct, the lawyer created fictitious documents to support a fictitious settlement fabricated to prevent the client from learning the truth about her legal matter. Despite the substantial evidence in mitigation, including personal and emotional problems, the lawyer was suspended from the practice of law for one year. The misconduct in *Gieszl*, however, was more significant, and took place over a long period of time.

94. Lawyers who make a single misstatement usually are censured. In *In re Romero*, SB-07-09959-D (2007), Romero was given his Censure with one year of probation, and MAP/TAEPP/EEP for failing to properly safeguard client funds and then making a misstatement to the medical provider lien holder about the status of the case. Romero violated ER's 1.3, 1.15, 4.1, 8.4(c) and Rules 43 and 44.
95. In *In re Finander*, SB-05-0157-D (2006), Finander was given a Censure, two years of probation, and LOMAP/MAP/EEP for bringing a special action before the Court of Appeals without a good-faith basis. Respondent then made a false statement to the tribunal and/or failed to correct a false statement of fact. Finander violated ERs 3.1, 3.3, 4.1, 4.4, and 8.4(c) & (d).
96. In *In re Harrington*, SB-01-0058-D (2001), Harrington was given a Censure for procuring or offering for filing in a public office a document he knew to be false for lack of a genuine signature. Harrington violated ERs 3.4(b), 4.1, and 8.4(b), (c) & (d), as well as Rule 41.

97. Lawyers who knowingly engage in the unauthorized practice of law during a period of suspension have generally been suspended. In *In re Dunaway*, SB-07 – 0142-D (2007), Mr. Dunaway accepted a suspension for six months and one day. Mr. Dunaway had been summarily suspended for failing to comply with his Mandatory Continuing Legal Education (MCLE) requirements. During the time of his suspension, Mr. Dunaway continued to practice law. Mr. Dunaway was also found to be practicing under a trade name. Mr. Dunaway was found to have a knowing mental state.
98. In *In re Lynch*, SB-06-0042-D (2006), Mr. Lynch accepted a suspension for 90 days. Mr. Lynch was also placed on one year of probation. Mr. Lynch had been summarily suspended for failing to comply with his MCLE requirements. During the time of his suspension, Mr. Lynch continued to practice law. Mr. Lynch also violated the terms of his probation. Mr. Lynch was found to have a knowing mental state.
99. In *In re Hansen*, SB-05-0020-D, (2005), Mr. Hansen accepted an agreement for a six-month suspension. Mr. Hansen had been suspended for the unauthorized practice of law, but continued to practice law unauthorized during that suspension. The two aggravating factors that were considered were Mr. Hansen's prior disciplinary history and his substantial experience in the practice of law. The four mitigating factors considered were Mr. Hansen's lack of a selfish motive, his personal or emotional problems, his cooperative attitude toward the proceedings, and remorse. Mr. Hansen was found to have a negligent mental state.

RECOMMENDATION

100. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct, *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the administration of justice, *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in the Bar's integrity, *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).
101. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Associations *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).
102. Respondent Victoria Miranda is yet again involved in the disciplinary process for not being honest and not following the rules of the profession. While her "fee agreement" issues in Count One appear to be a leftover from her previous practices, the improper holding of monies due Ms. Ledbetter is not a fee agreement issue at all. Similarly, lying to Mr. Santos in Count Two is not a misunderstanding, it is dishonesty. In regard to Count Three, the Arandas, this Hearing Officer finds that Respondent's claim that she told them she was going to be suspended, all the while they expected a fee agreement from her and gave her money with the expectation that she would do legal work for them, is simply not believable. Additionally, Respondent's refusal to cooperate with the Bar's investigator shows a lack of responsibility and awareness of culpability.

103. Respondent, while having sympathetic circumstances and admirable achievements, has proven by her consistent and persistent involvement in these disciplinary proceedings that she lacks a basic grasp of her duties and responsibilities as a lawyer.
104. This Hearing Officer went back and read the Disciplinary Report from Respondent's last contact with the disciplinary process. Again, like last time, we are faced with Respondent getting into trouble because she looks at things through her own distorted perspective with no consideration of the needs and circumstances of her clients. Respondent was not honest to Mr. Santos, nor to the Arandas, to their detriment. Like in her previous cases, Respondent has harmed her clients and has no better explanation than that she saw things differently and thought it was OK.
105. Whereas previously this Hearing Officer was concerned that Respondent was just overwhelmed by the pressures of acting as a solo practitioner, it is now clear that Respondent has a fundamental misunderstanding of her responsibilities to her clients and the profession, as well as some significant competency issues. It is this Hearing Officer's distinct impression that the only reason that the State Bar did not seek disbarment is because of the fine line between *Standard* 4.62 (Suspension) and 4.61 (Disbarment) for deceit; *Standard* 7.2 (Suspension) and *Standard* 7.1 (Disbarment) for violating a duty to the profession; and out of sympathy for the Respondent.
106. Based on the factual admissions of the Respondent and the Bar's apparent concession that it could not meet a "clear and convincing" burden of proof for

disbarment in this case, this Hearing Officer does not feel that I can reach the point of recommending that Respondent be disbarred. Reluctantly this Hearing Officer recommends acceptance of the recommended sanction set forth in the Tender and Joint Memorandum of Suspension for six months and a day. However, one thing is clear, unless Respondent has a proven monumental and fundamental reorganization of her understanding of her responsibilities to not only her clients but this profession as well, as well as address her competency issues, in the future she should not be allowed the opportunity again to practice law and create more victims.

107. 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 from the practice of law for a period of six months and one day;
2. Upon reinstatement, Respondent shall be placed on probation for a period of two years, under the following terms and conditions:
 - a. The probation period will begin to run at the time of the Order of Reinstatement.
 - b. Respondent shall comply with any terms of probation deemed appropriate and ultimately included in the Order of Reinstatement.
 - c. 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 Hearing Officer a Notice of Noncompliance. The Hearing

Officer shall conduct a hearing at the earliest applicable date, but in no event later than 30 days after receipt of the 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 clear and convincing evidence.

3. Respondent shall pay restitution to Augustina Aranda in the amount of \$2,000.00
4. Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court and the Disciplinary Clerk's Office in this matter.

DATED this 22nd day of February, 2010.

H. Jeffrey Coker (IDA)
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 22nd day of February, 2010.

Original filed with the Disciplinary Clerk

this 22nd day of February, 2010.

Copy of the foregoing mailed

this 23 day of February, 2010, to:

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