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FILED
JUN 29 2007
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY C.oto

BEFORE A HEARING OFFICER

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

CHRISTOPHER J. PIEKARSKI,)
Bar No. 019251)

RESPONDENT)

No 06-1654

**HEARING OFFICER'S
REPORT**

PROCEDURAL HISTORY

The Respondent was an attorney licensed to practice law in the state of Arizona, having been admitted to practice in Arizona on 12/16/98. He was summarily suspended on 5/14/04, for failing to comply with the mandatory continuing legal educational requirement.

FINDINGS OF FACT

1. By letter dated 1/16/04, the State Bar advised the Respondent by certified mail that he would be summarily suspended from the practice of law on 2/20/04, by the Board of Governor's, for failing to meet the continuing legal educational requirement
2. The Respondent sent a letter to the State Bar requesting a 30-day extension in which to comply
3. The State Bar gave him an extension until 5/5/04 to complete his continuing legal

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2 educational requirement and file his affidavit

3 4 The Respondent did not comply with the 5/5/04 deadline

4 5 The Respondent was summarily suspended from the practice of law for failing to
5 comply with the mandatory continuing legal educational requirements effective
6 5/14/04. The Respondent was notified by mail dated 6/3/04 of his suspension

7 6 On or about 6/28/04, the Respondent faxed his Maricopa County Legal Education
8 Certificate of Compliance to the State Bar.

9 7 By letter dated 6/29/04, Respondent was reinstated from his suspension

10 8. During the Respondent's suspension, i e., 5/14/04 through 6/29/04, the Respondent
11 continued to practice law wherein he made numerous appearances in court, filed
12 pleadings and engaged new clients and performed services for existing clients

13 9 During the period of suspension, Respondent did not advise any of his clients, nor the
14 courts, that he had been suspended from the practice of law

15 10 The Parties agree that the Respondent was unaware of his suspension prior to his
16 reinstatement

17
18 **CONDITIONAL ADMISSIONS**

19 Respondent conditionally admits that his conduct as set forth above violated Rule
20 31(b), Ariz R Sup Ct , and Rule 42, Ariz R Sup Ct. Rules 5.5(a) and 8.4(d)

21
22 **ABA STANDARDS**

23 The Standards require consideration of 1) the duty violated, 2) the lawyer's mental
24 state, 3) the actual or potential injury caused by the lawyer's misconduct, and 4) the existence of
25 aggravating or mitigation circumstances. *In re Peasley*, 208 Ariz 27, 90 P 3d 764 (2004), *In re*
26 *Rivkind*, 164 Ariz 154, 791 P.2d 1037 (1990) The parties agree that Standard 7 0 is applicable in
27 that there were violations of the duties owed as a professional The relevant portion can be found

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2 wherein the Respondent violated this section by the unauthorized practice of law, the failure to
3 withdraw from representation, or failure to report professional misconduct during the time of his
4 suspension. The violation of this Standard is found under 7-3, which is a Reprimand, or Censure in
5 Arizona. "When a lawyer negligently engages in conduct that is a violation of a duty owed as a
6 professional and causes injury or potential injury to a client, the public, or the legal system."

7 Based upon the conditional admissions in this matter, the presumptive sanction with
8 regard to the admission of misconduct under Standard 7-0 is censure.

9 **(1) THE DUTY VIOLATED**

10 The Respondent admits that his conduct violated his duty to the legal system and legal
11 profession by failing to advise other parties of his suspension and unauthorized practice of law
12

13 **(2) THE LAWYER'S MENTAL STATE**

14 Both parties agree that the Respondent was negligent in that he did not timely review
15 the suspension notice that he presumably received.

16 **(3) THE ACTUAL OR POTENTIAL INJURY
17 CAUSED BY THE LAWYER'S MISCONDUCT**

18 The parties agree that the Respondent's conduct in this matter caused potential injury
19 to his clients, the legal system and the legal profession by his failure to notify his clients and any
20 judges involved.

21 **(4) AGGRAVATING AND MITIGATING FACTORS**

22 **Aggravating Factors:**

23 Standard 9.22(a)- prior disciplinary offenses. The Respondent has been suspended
24 from the practice of law for 30 days by Order dated 2/9/06. The violation was practicing law while
25 on a summary suspension. During the summary suspension, it was discovered that earlier the
26 Respondent had also been practicing law in the case at bar at a prior time while under suspension.

27 Standard 9.22(l)-substantial experience in the practice of law.
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Mitigating Factors:

Standard 9.32(e)- full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

This Hearing Officer agrees that the aggravating and mitigating factors do not warrant a departure from the presumptive sanction of censure in this case.

PROPORTIONALITY REVIEW

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, supra* Discipline in each case must be tailored to the individual case. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983). In considering cases involving the unauthorized practice of law by an attorney who is administratively suspended, the cases tend to call for suspensions if the lawyer acted knowingly, and censures if the lawyer acted negligently or there are other substantial mitigation factors. *In re Morrison*, SB-0209125-D (2002); *In re Bayless*, No. SB-04-0053-D (2004). These cases held that censure was appropriate in an unauthorized practice of law situation where it was a result of negligence, rather than acting with a mental intent.

Based upon the foregoing, this Hearing Officer believes that the case law supports the imposition of a censure in this matter as Respondent's misconduct was negligent rather than knowingly. The purpose of discipline is not to punish a 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 just. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985).

Accordingly, when taking into consideration the facts, the Standards, as well as the aggravating and mitigating factors, that this Hearing Officer recommends acceptance of The Tender of Admissions and Agreement for Discipline by Consent which provides for the following:

1. The Respondent shall be censured.

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2 The Respondent shall be placed on probation for a period of one year under the following terms and conditions

a Respondent shall contact the director of LOMAP to schedule an assessment as to the effectiveness of Respondent's mail and correspondence handling in his office The director of LOMAP, or her designee, shall develop a probation contract that Respondent shall sign, based upon the assessment The terms of the contract are incorporated herein as terms of probation Respondent shall be responsible for all costs associated with LOMAP

b The probation shall be effective the date of the Judgment and Order, and shall continue until one year from the signing of the of the probation contract

3. In the event the Respondent fails to comply with any of the foregoing terms, and the State Bar receives information about his failure, bar counsel will file a Notice of Non-Compliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz R Sup Ct The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practical date, but in no event later than 30 days following receipt of the notice, and will determine whether the terms have been breached, and if so, will recommend appropriate action in response to the breach The State Bar shall have the burden of proving non-compliance by clear and convincing evidence.

4 Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings, as well as all costs incurred by the Disciplinary Commission, the Supreme Court, and the Disciplinary Clerk's Office in this matter The costs to date are \$643.75.

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DATED this 29th day of June, 2007

Harlan J. Crossman/cs

Harlan J Crossman
Hearing Officer 8L
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ORIGINAL filed with the
Disciplinary Clerk and copies mailed
this 29th day of June, 2007, to

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By: Christina yds