

FILED
MAR 01 2011
DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY: [Signature]

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

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4 IN THE MATTER OF A SUSPENDED MEMBER) Nos. 09-0758, 10-0490, 10-0491,
OF THE STATE BAR OF ARIZONA) 10-0492
5)
6 **KATHARINE L. ROBERTS,**)
Bar No. 014673) **DISCIPLINARY COMMISSION**
7) **REPORT**
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RESPONDENT.

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 22, 2011, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed December 27, 2010, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum ("Joint Memorandum") providing for a one (1) year suspension retroactive to July 21, 2010,¹ two (2) years of probation upon reinstatement with the State Bar's Member Assistance Program ("MAP") and Law Office Management Assistance Program ("LOMAP"), restitution and costs.

Decision

The six members² of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law and recommendation for a one (1) year suspension retroactive to July 21, 2010, two (2) years of probation upon reinstatement (MAP and LOMAP) restitution, and costs of these

¹ The effective date of Respondent's interim suspension.
² Commissioner Belleau and Horsley did not participate in these proceedings. Commissioner Houle recused.

1 disciplinary proceedings including any costs incurred by the Disciplinary Clerk's office.³

2 The terms of probation and amounts of restitution are as follows:

3 **Terms of Probation**

4 1. The probation period will begin to run at the time of the order of
5 reinstatement. Respondent shall comply with any terms of probation deemed appropriate
6 and ultimately included in the order of reinstatement including both MAP and LOMAP.
7

8 2. The State Bar shall report material violations of the terms of probation
9 pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct., and a hearing may be held within thirty (30)
10 days to determine if the terms of probation have been violated and if an additional sanction
11 should be imposed. The burden of proof shall be on the State Bar to prove non-compliance
12 by a preponderance of the evidence.
13

14 **Restitution**

15 1. Respondent will pay the \$3838.70 judgment entered on April 27, 2009 in
16 Count One (Wing/Abrams), for attorney's fees and costs by July 21, 2011, or in
17 compliance with a schedule agreed to by Respondent and the Judgment Creditor

18 2. Respondent will pay the \$5210 judgment entered on November 2, 2009 in
19 Count One (Wing/Abrams), by July 21, 2011 or in compliance with a schedule agreed to
20 by Respondent and the Judgment Creditor, or there will be no obligation on this judgment
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27 ³ A copy of the Hearing Officer's Report is attached as Exhibit A. The State Bar's costs total
28 \$2,115.15.

1 if, before July 21, 2011, Respondent acquires the Court's order vacating the judgment.

2 RESPECTFULLY SUBMITTED this 1 day of March, 2011.

3
4
5 Pamela M. Katzenberg/mau
6 Pamela M. Katzenberg, Chair
7 Disciplinary Commission

8 Original filed with the Disciplinary Clerk
9 this 1 day of March, 2011.

10 Copy of the foregoing mailed
11 this 2 day of March, 2011, to:

12 Katharine L. Roberts
13 Respondent
14 284 W. Sycamore Lane
15 Snowflake, AZ 85937

16 Harriet Bernick
17 Bar Counsel
18 State Bar of Arizona
19 4201 North 24th Street, Suite 200
20 Phoenix, AZ 85016-6288

21 Copy of the foregoing hand delivered
22 this 2 day of March, 2011, to:

23 Hon. Jonathan H. Schwartz
24 Hearing Officer 6S
25 1501 W. Washington, Suite 104
26 Phoenix, AZ 85007

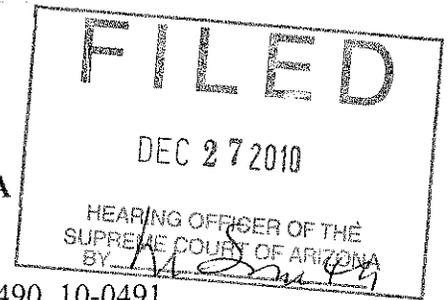
by: Deann Bahr

/mps

EXHIBIT

A

BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA



IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
KATHARINE L. ROBERTS,)
Bar No. 014673)
)
RESPONDENT.)
_____)

No. 09-0758, 10-0490, 10-0491
and 10-0492

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

A Complaint was filed in this matter on August 2, 2010. The Hearing Officer was assigned on August 6, 2010. On August 25, 2010 the Initial Case Management Conference was held with Bar Counsel and Respondent. On September 17, 2010 the Answer was filed. On October 6, 2010 the parties participated in a settlement conference and reached an agreement. The parties filed a Notice of Settlement on October 12, 2010. The Tender of Admissions and Agreement for Discipline by Consent and the Joint Memorandum in Support of the Agreement for Discipline by Consent were submitted on November 10, 2010. A hearing on the Agreement was held on November 15, 2010. The Supreme Court of Arizona had previously granted the Motion of the State Bar for an Interim Suspension for Respondent. Respondent was placed on Interim Suspension on July 21, 2010.

FINDINGS OF FACT¹

1. 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 24, 1992.

COUNT ONE (File no. 09-0758/Wing/Abrams)

2. Respondent was retained to represent the defendant-husband, Mr. Eric Hall, in a child custody and divorce matter in Navajo County Superior Court, *In Re The Marriage Of*

¹ The facts are found in the Tender of Admissions and Agreement for Discipline by Consent unless otherwise indicated.

Andrea Hall-Johnson V. Eric Hall Johnson, DO-2007-570. Ms. Abrams represented the plaintiff-wife.

3. Throughout the course of the lawsuit, Respondent failed to respond to correspondence sent by Ms. Abrams. Respondent denies that she failed to respond to correspondence sent by Ms. Abrams. If this matter were to proceed to a contested hearing, Respondent would testify that she provided reasonable responses to correspondence received from Ms. Abrams either by phone, e-mail, fax or regular mail. Respondent asserts that Ms. Abrams advised Respondent that a filter setting on her e-mail account had inexplicably redirected some of Respondent's correspondence. This claim will be dismissed as part of the parties' agreement.

4. On November 25, 2008, Respondent failed to appear for a pre-scheduled telephonic meeting with Ms. Abrams. For the purposes of this Tender of Admissions, Respondent contends that Ms. Abrams was provided an explanation regarding Respondent's absence and Ms. Abrams acknowledged the explanation for Respondent's absence in correspondence sent to Respondent on that same day.

5. In the above-referenced case, the parties stipulated that the custody of the minor child would be awarded as recommended by a mutually agreed upon evaluator. The parties agreed that the issues associated with division of community assets and debts, confirmation of any separate property, and calculation of child support arrears would be presented to Judge Wing at the bench trial on February 6, 2009, in Holbrook, Arizona. The trial court retained jurisdiction over the parties and issued orders pertaining to child custody, parenting time, and child support.

6. On Monday February 2, 2009, Respondent filed a Motion to Continue due to Respondent's need to have urgent surgery or risk losing the use of her right arm. The Court continued the trial to March 6, 2009, to allow Respondent to recover from the surgery. For the purposes of this Tender of Admissions, Respondent contends that the Motion to Continue was

timely filed and the motion was based upon newly discovered facts that could not have been reasonably known prior to January 30, 2009.

7. Ms. Abrams opposed the continuance because she felt Respondent should have advised the Court of her medical issues in January of 2009. Ms. Abrams requested attorney's fees and the Court awarded them. For the purpose of this Tender of Admissions, Respondent contends that Ms. Abram's Motion for Sanctions was made orally and Respondent was not given an opportunity to respond in writing. Further, Respondent contends that she has never been served with an Order reflecting the amount of sanctions awarded.

8. On March 6, 2009, Ms. Abrams learned that Respondent did not have the surgery. Respondent failed to notify Plaintiff's counsel or the Court.

9. On March 6, 2009, the bench trial in the above-referenced case began at 9:00 a.m. The Court took a lunch break at noon. The case was set to reconvene after the lunch break at approximately 1:15 p.m. At approximately 1:00 p.m., Respondent called Judge Wing's office and asked for a continuance of an hour or more because of a situation with her childcare provider. For the purpose of this Tender of Admissions, Respondent contends that she notified the Court and counsel at the start of the trial of the situation with her childcare provider and made every effort to minimize the delay due to her childcare provider's sudden illness.

10. Ms. Abrams objected to the continuance because she resided in Tucson and wanted to complete the trial that day. Ms. Abrams mentioned that if the trial did not finish that day then she would have to incur fees to come back to Holbrook since she was from Tucson and her client would have to take more time off of work. Ms. Abrams requested that the Court wait for Respondent to get back to Holbrook so they could finish the trial that day. The Court recessed and granted a continuance until 2:30 p.m. The Court told Respondent that if she was not going to be back there by 2:30 p.m., then she was required to call the Court. At approximately 2:25 p.m., Respondent called the Court and informed them that she would not make it back until approximately 3:10 p.m. The Court decided to wait for Respondent.

11. At approximately 3:35 p.m., the Court went back on the record and noted that Respondent was still absent. Respondent's client, Mr. Hall-Johnson, informed the Court that Respondent had gotten a flat tire and was having trouble making it back to Court to resume the trial.

12. For the purposes of this Tender of Admissions, Respondent contends that she called her client and called the Court and left a message for Ms. Beltran, one of the court's staff. Respondent further contends that Ms. Beltran is Judge Wing's judicial assistant and the only direct line of contact with the Court.

13. The Court then adjourned the trial for the day. For the purposes of the Tender of Admissions, Respondent contends that based upon the progress of the Petitioner's case-in-chief, the trial could not reasonably be expected to finish that day.

14. The trial in the above-referenced matter was reset for March 24, 2009 at 1:30 p.m. At this time, Ms. Abrams requested sanctions for Respondent's failure to disclose information and for her failure to return to Court on March 6, 2009. Ms. Abrams had just received 13 trial exhibits from Respondent that were not previously disclosed. For the purposes of the Tender of Admissions, Respondent contends Ms. Abrams never notified Respondent that Ms. Abrams did not receive the documents that were identified and attached to the correspondence as a PDF file and that some of the documents were provided by Respondent in response to recent requests made by Ms. Abrams. Respondent further contends that none of the documents were identified as exhibits or were attempted to be offered into evidence or used to impeach the witness.

15. The Court was considering the sanctions motion, when Respondent moved to withdraw because she alleged she had a conflict. The Court denied the oral Motion to Withdraw.

16. At some point later in the proceeding, Respondent then requested to go to her car to retrieve her files. The Court recessed for about 5 minutes for Respondent to obtain her file.

17. When the Court reconvened, Respondent failed to appear but her client was there with some file papers. The Court then sent the client to find Respondent. The client returned and

informed the Court that Respondent was gone. The client told the Court that he thought Respondent had been abducted because there was an unsavory guy lurking around her car, or the parking area.

18. The Court was concerned about Respondent's safety and sent court security to look for her, but they could not find her. The Court also placed a call to Respondent's office and a voice mail message was left for her to call the Court as soon as possible.

19. The Court then instructed court security to notify law enforcement to find Respondent.

20. The Court then noted on the record that Respondent's absence was unexplained and unexcused, and adjourned the trial. For the purposes of this Tender of Admissions, Respondent contends that she left the courthouse in a state of panic because she thought her family was in risk of imminent danger posed by her daughter's father. (TR 69:14 through 72:25)

21. The Court did not hear from Respondent for the rest of that day. For the purposes of this Tender of Admissions, Respondent contends that she was not in a position to contact the Court by the close of business that day. (TR 73:20-24)

22. The Court was notified that law enforcement found Respondent the next day at her home.

23. Respondent never contacted the Court or Ms. Abrams to provide an explanation of what happened, and why she failed to return to Court. For the purposes of this Tender of Admissions, Respondent contends that she did not contact opposing counsel and the Court to explain what happened because it was very personal and embarrassing to Respondent. (TR 75:6 through 78:16) Respondent did not want to let opposing counsel know that Respondent's family was possibly in danger from the father of Respondent's child. (TR 113:2 through 114:16) Yet Respondent could have called the Court. (TR 114:14 through 119:4)

24. On April 27, 2009, a Judgment for Attorney's fees and costs in the amount of \$3,838.70 was entered against Respondent. A subsequent Judgment for Attorney's fees and costs

in the amount of \$5,012 against Respondent was entered on November 2, 2009, and was required to be paid no later than May 15, 2010. For the purposes of this Tender of Admissions, Respondent contends that the April 27, 2009, Judgment of \$3,838.70 was conceded in pleadings by subsequent counsel, Attorney Ellsworth, without consulting Respondent. Respondent further contends that the Judgment for \$5,012 on November 2, 2009, was based upon pleadings in which Respondent was not identified as a party, was not provided a copy of the pleadings nor was Respondent advised of the hearing so she could make an appearance or contest the claims. (TR 40:2 through 43:4) Respondent knew of the November 2009 judgment and of the date by which she was required to pay it. Yet Respondent never filed a motion to vacate the judgment. (TR 41:7 through 43:4)

25. Respondent has failed to pay the above-referenced sanctions. (TR 41:1-3)

26. The Court reset the case for further hearings. For the purposes of this Tender of Admissions, Respondent contends that any further proceedings were to conclude the issues for which the Court maintained jurisdiction pursuant to the stipulation of the parties entered on December 22, 2008.

CONCLUSIONS OF LAW (COUNT ONE)

27. As described in this Count, Respondent violated one or more Rules of Professional Conduct as follows: Respondent failed to act diligently in representing her client; Respondent failed to expedite the litigation; Respondent knowingly disobeyed an obligation under the rules of the tribunal; Respondent engaged in conduct prejudicial to the administration of justice; Respondent knowingly violated any rule or order of the Court.

28. Respondent's conduct as described in this count violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 3.2, 3.4(c), 8.4 (d) and Rule 53 (c).

COUNT TWO (File no. 10-0490/Winthrop)

29. On August 28, 2009, Respondent filed a Notice of Appeal on behalf of the Defendant/Appellant in *State of Arizona v. Jace F. Eden*, Case no. CR 2007-1075/2009-0017.

30. Respondent's opening brief was due on or before December 7, 2009. Respondent failed to file the opening brief on this due date, and failed to request an extension of time to file the brief at a later date.

31. On December 29, 2009, Pro Tem Judge Anthony Mackey, *sue sponte*, granted an extension to file the opening brief. Judge Mackey ordered the opening brief to be filed by February 8, 2010. It was further ordered that if Respondent failed to file a timely brief by February 8, 2010 by 5 p.m., then she was required to appear before the Court on Wednesday February 17, 2010 at 1:30 p.m., to show cause why sanctions should not be imposed.

32. Respondent failed to file an opening brief by February 8, 2010, or to obtain an extension to file the brief later.

33. On February 17, 2010, Respondent appeared at the Order to Show Cause Hearing. At the hearing, Respondent identified extenuating circumstances which delayed her client's decision whether to proceed with the brief. Vice Chief Judge Winthrop found that good cause was shown and gave Respondent a second extension of time to file the opening brief until February 22, 2010. The Court also ordered Respondent to appear in Courtroom 1 for an Order to Show Cause Hearing on March 3, 2010 at 1:30 p.m. if the brief was not filed on or before February 22, 2010. (TR 80:16)

34. On February 22, 2010, an Amended Order was issued by Judge Winthrop changing the due date for the opening brief to February 23, 2010. The remaining information stayed the same.

35. Respondent again failed to file the opening brief by February 23, 2010, or to timely request and obtain an extension.

36. Respondent appeared at the Order to Show Cause Hearing on March 3, 2010, and the Vice Chief Judge Winthrop found good cause and granted a third extension for Respondent to file the opening brief. The Court's March 4, 2010, Order granting the third extension indicated that the opening brief shall be filed on or before March 10, 2010. (TR 81:1-3) It was further

ordered that if the opening brief was not filed by the above-specified date, Respondent was to appear in Courtroom 1 on March 17, 2010 at 1:30 p.m. to determine if she should be held in civil contempt and fined or otherwise sanctioned.

37. Respondent failed to file the brief or obtain an extension on March 10, 2010. (TR 81:6-13)

38. On March 16, 2010, court staff contacted Respondent telephonically and left a message reaffirming that the show cause hearing was scheduled for the next day at 1:30 p.m. Courtroom 1 as no brief or Motion for Extension of Time had been filed. This message was never returned.

39. On March 17, 2010, the Order to Show Cause Hearing was conducted. Respondent failed to appear at the Show Cause Hearing. As a result, Vice Chief Judge Winthrop found Roberts in civil contempt for failing to file the brief and ordered a sanction of \$25 per business day for the late filing of the brief, beginning March 17, 2010.

40. The civil contempt Order dated March 18, 2010, was sent to Respondent by certified mail and was signed for by Respondent on March 22, 2010.

41. On March 18, 2010, the Court of Appeals Clerk received an email from Robin Massey, Respondent's assistant, stating that "Ms. Roberts was out of the office not aware that you had called on the 16th shortly after 5 p.m. regarding her appearance on the 17th. I checked the phone messages just before 5 p.m. on Tuesday, and received your message yesterday when I checked them again, but that was not until after 5 p.m. She had not anticipated having to appear since she mailed her Brief before 5 p.m. on the 10th. She will be finished with court and back in (sic) office around 3:00 today. She will call as soon as she gets here. If you have information on what she will need to do regarding her non-appearance yesterday please let me know." For the purposes of this Tender of Admissions, Respondent contends that she informed Ms. Massey that she had filed the brief when she had not. Respondent further contends that she was unaware that Ms. Massey relayed this information to the Court of Appeals staff. Respondent was not made

aware that Ms. Massey made these statements to the Court of Appeals staff until after they were made.

42. On March 29, 2010 through April 1, 2010, court staff placed six phone calls to Respondent's cell phone and office phone with no return phone call. (TR 81:4 through 82:11)

43. On or about March 29, 2010, court staff attempted to locate the Opening Brief in *State v. Eden*. No brief was received by the Court of Appeals. Court staff also confirmed that the Attorney General's Office had not received a copy of the Opening Brief in *State v. Eden*.

44. On April 1, 2010, Vice Chief Judge Winthrop sent a letter to Respondent informing her that no brief was filed with the Court of Appeals or the Attorney General's Office and that court staff had left her several messages on her office and cell phone requesting proof of mailing. No response was received. Respondent was advised that the fine was \$300 and if no response was received the Court would have no recourse but to direct that substitute counsel be appointed. This letter was sent by certified mail on April 1, 2010. (TR 82:21)

45. On April 15, 2010, Respondent informed the Court that she was represented by counsel, Scott Rhodes, and was unable to get his approval of a letter to be sent by the end of the day so she would send it the next day.

46. On April 16, 2010, Respondent sent the Court a letter expressing her sincerest apology for not attending the Order to Show Cause hearing on March 17, 2010 and for her failure to file the brief. Respondent noted that the fine as of that date was \$700.00.

47. On April 20, 2010, an email was sent to Respondent indicating that the Court had received her letter dated April 15, 2010. The Court noted that "it strongly suggested that you immediately file the brief which will, at a minimum, stop the further accumulation of daily sanctions."

48. On or about May 13, 2009, Respondent filed the brief. For the purposes of this Tender of Admissions, Respondent contends that she did not file the brief timely due to extenuating circumstances. Respondent testified at the hearing that the extenuating circumstance

was that she had injured herself on March 5, 2009. (TR 83:20, 84:22 through 85:2, 101:25 through 103:5) Respondent also testified that she has paid a fine of \$1050 on this matter. (TR 38:21, 39:23, 50:16 through 52:4)

CONCLUSIONS OF LAW (COUNT TWO)

49. As described in this Count, Respondent violated one or more Rules of Professional Conduct, as follows: Respondent failed to act diligently in representing her client; Respondent failed to promptly comply with reasonable requests for information; Respondent failed to expedite the litigation; Respondent made a false statement of fact or failed to correct a false statement of material fact previously made to the tribunal; Respondent knowingly disobeyed an obligation of the tribunal; Respondent violated or attempted to violate the Rules of Professional Conduct through the acts of another; Respondent engaged in conduct prejudicial to the administration of justice; Respondent knowingly violated a rule or order of the Court.

50. Respondent's conduct as described above, violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.4, 3.2, 3.3, 3.4(c), 8.4(a) and (d), and Rule 53 (c).

COUNT THREE (File no. 10-0491/Antonini)

51. Respondent was the attorney for Richard Bush in *State of Arizona v. Richard D. Bush*, TR 2009-0197. The Justice of the Peace Pro Tempore assigned to handle the jury trial in this case was David Antonini.

52. On March 5, 2010, the above-referenced case was set for a jury trial.

53. On March 5, 2010, Respondent failed to appear for the trial setting. As a result, the Court was forced to vacate the proceedings and discharge the jury panel.

54. A review of the court file showed that the above-referenced matter was set for 8:00 a.m. and that counsel for Defendant, Respondent, was properly notified.

55. On March 5, 2010, the Court was notified at approximately 8:30 a.m. by Respondent's secretary, Ms. Massey, that Respondent became suddenly incapacitated and would not be able to appear for trial. The Court was informed that Respondent had fallen at home and

was at Snowflake Urgent Care and may not be available for trial. For the purposes of this Tender of Admissions, Respondent contends that she suffered permanent injuries to her back and right arm which were susceptible to being reinjured. Respondent contends that these permanent injuries are generally not amenable to medical treatment. If medical treatment was necessary, it was not available locally due to the nature of her injuries. Respondent also contends that she never made reference to any facility other than the Snowflake Medical Center.

56. The Court issued an Order to Show Cause for Contempt for Respondent, and set a hearing for April 2, 2010, at 9:00 a.m.

57. On April 2, 2010, the Court conducted a contempt hearing for Respondent's failure to attend the March 5, 2010, trial date.

58. At the hearing on the contempt issue, the Court advised Respondent that there were prior instances with this case where the proceedings were interrupted for various reasons, including one instance where Respondent motioned the court for a continuance, which motion was denied with instructions for her to call the court for a telephonic appearance. Respondent called on the telephone but could not be understood; was told to return the call on a land line; and then failed to comply with that instruction by the close of business that day. As a result, the proceedings had to be rescheduled. For the purposes of this Tender of Admissions, Respondent contends the phone connection was bad and she did not realize that she was supposed to call the court back.

59. On the date of the contempt hearing, April 2, 2010, the Court noted that Respondent was two minutes late for the hearing that day.

60. At the contempt hearing on April 2, 2010, the Court found that Respondent testified under oath that at approximately 7:10 a.m. on March 5, 2010, she was at home in Snowflake, when she stepped on a child's toy and started to fall. Respondent also testified that she caught her fall by her previously injured elbow and experienced back pain, also due to the previous injury. Respondent testified that she called her secretary and then went to bed.

Respondent testified also that she was unaware of the existence of a Snowflake Urgent Care facility and did not seek medical attention for the fall or near fall. Respondent testified that she returned to work the next business day. For the purposes of the Tender of Admissions, Respondent contends that she testified on April 2, 2010, that she fell after stepping on a child's toy. She then broke her fall with her right arm, injuring her previously injured elbow, and threw out her back. Respondent further contends that she made several calls to her secretary with instructions for her to notify her client and the Court of the circumstances of Respondent's inability to appear for the court appearance. Respondent stayed in contact with her secretary until she was assured that the Court and her client had been notified in person of Respondent's accident and her inability to appear for Court.

61. The Court found considerable discrepancies between the sworn testimony presented at the hearing and the untimely information conveyed to both the Court and Defendant late on the morning of the scheduled trial. The Court found that from the testimony presented, it was apparent that the alleged injury was not sufficient for Respondent to seek medical attention. Moreover, the Court found that Respondent failed to personally call the Court as a courtesy to provide an update of her availability for the scheduled trial, knowing that as many as 45 citizens (32 actually appeared) set aside their personal lives to timely attend court as prospective jurors.

62. Following a review of the Court record, the record of the proceeding and relevant case law, the Court found that Respondent willfully failed to properly notify the Court of her reported inability to proceed with the jury trial in the above-referenced case. As a result, the Court viewed Respondent's conduct as indirect criminal contempt and the Court assessed a fine of \$300. For the purposes of this Tender of Admissions, Respondent contends and the State Bar does not dispute that Respondent did not knowingly disobey an obligation under the rules of the tribunal and knowingly violate an Order of the Court by failing to appear for trial on March 5, 2010 because Respondent sent her assistant to inform the Court that she was ill. Respondent contends that she was too ill to attend the jury trial that day and went to bed and did not return to

work until the following Tuesday. This claim will be dismissed as part of the parties' agreement. However, Respondent did violate ER 3.4 (c) and Rule 53 (c) by failing to timely pay the fine imposed.

63. Respondent was required to pay the fine in full by May 1, 2010, and failed to do so. For the purposes of this Tender of Admissions, Respondent contends that she was without the funds to pay the fine on May 1, 2010. Respondent testified at the hearing that she has paid the fine. (TR 39:20)

CONCLUSIONS OF LAW (COUNT THREE)

64. As described in this Count, Respondent violated one or more Rules of Professional Conduct as follows: Respondent knowingly disobeyed an obligation under the rules of the tribunal; Respondent engaged in conduct prejudicial to the administration of justice; Respondent knowingly violated a rule or order of the Court.

65. Respondent's conduct as described above, violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 3.4(c), 8.4 (d), and Rule 53(c).

COUNT FOUR (File no. 10-0492)

66. Respondent was placed on administrative suspension from the practice of law on April 17, 2009, for nonpayment of dues. Respondent was notified by certified mail in a letter dated March 25, 2009, that her name was going to be presented to the Board of Governors for suspension for nonpayment of dues. Respondent signed for this letter on March 26, 2009.

67. On or about May 11, 2009, while Respondent was attempting to complete her MCLE compliance, she discussed with State Bar staff that she had been suspended for nonpayment of dues.

68. Respondent engaged in the unauthorized practice of law on April 21, 2009, by filing a Notice of Appearance and Request for Disclosure on behalf of Jace Frank Eden in *State of Arizona v. Jace Frank Eden* in Show Low Justice Court. For the purposes of this Tender of

Admissions, Respondent contends that she did not know that she had been summarily suspended until May 11, 2009.

69. Respondent engaged in the unauthorized practice of law on April 29, 2009, when she participated in a change of plea on behalf of Vance Perpignani in *State of Arizona v. Vance Dean Perpignani* in Show Low Justice Court. For the purposes of this Tender of Admissions, Respondent contends that she did not know that she had been summarily suspended until May 11, 2009.

70. Respondent engaged in the unauthorized practice of law on May 11, 2009, by filing a Motion to Continue on behalf of Karen Lewis in *State of Arizona v. Karen Lewis* in Show Low Justice Court. For the purposes of this Tender of Admissions, Respondent contends that she was not aware that if she was summarily suspended that she could not practice law.

71. Respondent was reinstated as a member of the State Bar of Arizona on May 19, 2009.

CONCLUSIONS OF LAW (COUNT FOUR)

72. As described in this Count, Respondent violated one or more Rules of Professional Conduct, as follows: Respondent negligently engaged in the unauthorized practice of law and Respondent engaged in conduct prejudicial to the administration of justice.

73. Respondent's conduct as described in this count violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 5.5 and 8.4(d).

CONDITIONAL ADMISSIONS/CONCLUSIONS OF LAW

As set forth in the Tender of Admissions and Agreement for Discipline by Consent, Respondent conditionally admits that she engaged in professional misconduct in the following ways: Respondent failed to act diligently in representing her client in violation of ER 1.3; Respondent failed to expedite litigation in representing her client in violation of ER 3.2; Respondent made a false statement of material fact or failed to correct a false statement of material fact previously made to a tribunal in violation of ER 3.3; Respondent disobeyed an

obligation of the tribunal in violation of ER 3.4 (c); Respondent negligently engaged in the unauthorized practice of law in violation of ER 5.5; Respondent violated or attempted to violate the Rules of Professional Conduct through the acts of another in violation of 8.4 (a); Respondent engaged in conduct prejudicial to the administration of justice in violation of ER8.4(d); Respondent knowingly violated a rule or order of the Court in violation of Rule 53 (c).

CONDITIONAL DISMISSALS

74. The State Bar conditionally dismisses all allegations of the Complaint not specifically referenced herein.

75. In exchange for this agreement, the State Bar will agree to dismiss ER 1.4 in Count I of the Complaint.

In exchange for this agreement and due to evidentiary concerns, the State Bar will agree to dismiss ER 3.4 (c) and Rule 53 (c) regarding Judge Antonini's findings that Respondent knowingly violated a court order when Respondent failed to show up for the jury trial on March 5, 2010.

RESTITUTION

The parties did not include any order of restitution, however, Respondent recognizes that she will be responsible for paying all outstanding judgments relating to State Bar File 09-0758 (Wing/ Abrams) or the outstanding judgment will be resolved in some other fashion including a payment plan or dismissal of the judgment before the State Bar will consider making a recommendation supporting Respondent's reinstatement. The Hearing Officer stated at the hearing that the parties' lack of agreement to an order of restitution in Count One (Wing/Abrams) was probably unacceptable. (TR 45:2, 67:20) The parties then agreed at the hearing to modify the Tender of Admissions and Joint Memorandum to accept the following terms for a Restitution Order: Respondent will pay the \$3838.70 judgment by July 21, 2011 or in compliance with a schedule agreed to by Respondent and the Judgment Creditor. Respondent will pay the \$5210 judgment by July 21, 2011 or in compliance with a schedule agreed to by

Respondent and the Judgment Creditor, or there will be no obligation on this judgment if, before July 21, 2011, Respondent acquires the Court's order vacating the judgment. (TR 151:14-22, 152:18 through 153:10)

ABA STANDARDS²

The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying these factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. The Supreme Court and Disciplinary Commission consider the *Standards* a suitable guideline. *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990); *In re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274, 276 (1994).

In determining an appropriate sanction, both the Court and the Commission consider the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *In Re Tarletz*, 163 Ariz. 548, 789, P.2d 1049 (1990); *Standard* 3.0.

Given the conduct in this matter, the most applicable Standards are 4.42 "Lack of Diligence" and 6.2 "Abuse of the Legal Process." Specifically, *Standard* 4.42 provides: "Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standard* 6.2 provides: "Suspension is appropriate when a lawyer knowingly violates a court order or rule and there is injury or potential injury to a client or party, or interference with legal proceedings."

Duty

Respondent violated her duties to her clients and to the legal system. (TR 140:6-14)

² This material comes from the Joint Memorandum in Support of the Tender of Admissions unless otherwise noted

Mental State

Respondent was negligent in Count Four when she practiced law while on suspension. (TR 140:15 through 142:12). In Counts Two and Three Respondent knowingly did not file her appeal brief on time and knowingly did not pay the sanction ordered by Judge Antonini in a timely manner. (TR 143:18 through 144:4) In Count One Respondent knowingly did not call Judge Wing's court to explain why she did not return to the hearing on March 24, 2009. (TR 144:11)

Injury

The Hearing Officer thinks the injury in Count One is to the client of Ms. Abrams who opposed Respondent in the family court case. Judge Wing determined that this client had incurred legal expenses that she would not otherwise have incurred due to the conduct of Respondent. (TR 54:15) The injury to the legal system and to the litigants is that proceedings were delayed before Judge Winthrop, Judge Wing and Judge Antonini, in Counts One, Two and Three.

Having determined the presumptive sanction is suspension, the Hearing Officer and the parties next considered the applicable aggravating and mitigating circumstances, as set forth in the *Standards* and agree that the following apply in this matter.

Aggravating Factors:

Standard 9.22(c) Pattern of Misconduct: Respondent abandoned her clients on multiple occasions when she failed to return to court and failed to show up for a jury trial.

Standard 9.22(d) Multiple Offenses: See 9.22 (c)

Standard 9.22(i) Substantial Experience in the Practice of Law: Respondent was admitted to practice law in Arizona on October 24, 1992.

Mitigating Factors:

Standard 9.33(a) Absence of Discipline History: Respondent has no discipline history.

Standard 9.33(b) Absence of Dishonest or Selfish Motive: None of the conduct engaged in by Respondent was designed to attain a personal benefit or professional advantage or avoid personal inconvenience or to purposely mislead or disadvantage another. Respondent contends that her conduct was not intended to create a false image or otherwise avoid the detection or discovery of other information or conduct. Respondent contends that she acted with good intentions in each instance.

Standard 9.33(c) Personal or Emotional Problems: Respondent has recently endured numerous traumatic events over a short period of time. Individually devastating, the impact of each event was exacerbated by the next. The series of events has drastically changed every aspect of Respondent's life and taken a toll on her ability to effectively maintain her law practice. (See Hal Nevitt's letter dated November 9, 2010 and the sealed portions of the transcript of the hearing, TR 88:16 through 130:25)

Standard 9.33(e) Full and Free Disclosure to Disciplinary Board

Respondent was cooperative throughout the lengthy investigation by the State Bar in this matter. The State Bar requested Respondent provide information on several occasions and she voluntarily came to Phoenix for an interview with Bar Counsel regarding the discipline cases.

Standard 9.33(g) Character and Reputation: Mr. Alan Lobue, Navajo County Legal Defender has known Respondent for 15 years and always found her to be very professional, concerned about the outcome of cases (whether as a prosecutor or defense attorney), very knowledgeable and thorough and got along well with opposing counsel and always found her to be forthright with any court practiced in. Sam Roser has stated that he appreciated the fact that Respondent was an administrator of justice. Respondent did not act to bolster her ego, rather Respondent was conscientious and always acted with sound moral ethics and good judgment. Respondent presented a positive impression on the profession as a role model and civic-minded member of our community. Mr. Roser and Respondent were founding executive members of the local Rotary. (See also attached letters of Marque French, Benjamin Brewer, and Dale Nielson.)

Standard 9.33(k) Imposition of other Penalties and Sanctions: In Count 1, Respondent was sanctioned in excess of \$9,000.00, \$8,850.70 of which was awarded as a judgment in favor of the Petitioner. The Hearing Officer determines that the mitigating effect of this sanction is lessened by the fact that Respondent has not paid this sanction. In Count 2, the Respondent was fined \$1,050.00. In Count 3, Respondent was fined \$300.00. In Count 4, Respondent was assessed \$150.00 late fee and \$100.00 reinstatement fee.

Standard 9.33(l) Remorse: Respondent contends that she has personally apologized to each of her clients in Counts 1-3 for any inconvenience or potentially negative impression her conduct created or stress caused by her actions. Respondent contends that her clients were not billed for any time involving conduct that is now the subject of this Complaint or any other time in reference to responding or otherwise addressing any matter undertaken afterward. Respondent truly meant no disrespect to any of the judges hearing these matters as Judge Wing and Judge Winthrop extended every courtesy and ruled with a sense of compassion and for that Respondent is truly grateful.

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. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994)(quoting *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)). However, the 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, 615, 691 P.2d 695 (1984).

Although the below cases are not exactly like the present case, they demonstrate that a one year suspension retroactive to the date of Respondent's interim suspension, July 21, 2010, with two years of probation with MAP and LOMAP in the event that Respondent is reinstated is an appropriate sanction. Further, Respondent's demonstrated mitigation was considered an important factor in determining the appropriate sanction in this case.

PROPORTIONALITY ANALYSIS³

In re Inserra, SB-08-0166 (2009), Respondent received a one-year suspension with one year of probation (LOMAP and MAP) for violations of ERs 1.1, 1.2, 1.2(a), 1.3, 1.4, 1.16(d), 3.2, 3.3, 3.4(c), 4.4(a), 8.4(c), 8.4(d) and Rule 53(c). Respondent failed to communicate and diligently represent clients, failed to serve a copy of a Petition for Order to Show Cause, lied to a client about the status of her case, misled the court, and failed to comply with court orders. The court found several factors in aggravation: prior disciplinary offenses; dishonest or selfish motive; pattern of misconduct; multiple offenses; refusal to acknowledge the wrongful nature of his conduct; vulnerability of the victim; substantial experience in the practice of law. The court considered the personal or emotional problems of the Respondent in mitigation.

In Re Bjorgard, SB 05-0735 et. al. (2007), Respondent received a two-year suspension with two years of probation with LOMAP and MAP for violations of ERs 1.2, 1.3, 1.4, 1.16(d), 3.2, 3.4, 8.1(b), 8.4 (c), Rule 53 (c) and (f). Respondent failed to pursue his client's cases diligently and failed to keep in contact with his clients in eight separate cases. This caused several cases to be dismissed causing harm to his clients. He failed to appear at a court ordered hearing regarding his failure to pay a sanction. Respondent also failed to cooperate with the State Bar. The court found several factors in aggravation: pattern of misconduct; multiple offenses; and bad faith obstruction of the disciplinary proceeding. The court considered the following factors in mitigation: absence of a prior disciplinary record; personal or emotional problems; and imposition of other penalties or sanctions.

In Re Weich, SB-07-0156 (2007), Respondent received a two-year suspension with two years of probation (LOMAP) and restitution for violations of ERs 1.1, 1.2, 1.3, 1.4, 1.5, and Rule 53(d), (e), and (f). Respondent failed to diligently represent clients, failed to adequately communicate with multiple clients, failed to return phone calls from clients, and failed to abide by client's requests. Respondent further failed to cooperate and respond to the State Bar's

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investigation. The court found in aggravation the following factors: a pattern of misconduct; multiple offense; bad faith obstruction of the disciplinary proceeding; substantial experience in the practice of law; and indifference to making restitution. In mitigation the court considered that Respondent did not have a prior disciplinary record.

CONCLUSION/RECOMMENDATION

The facts of this case lead the Hearing Officer to recommend the sanction agreed to by the parties (with the addition of the Restitution Order). Respondent is obviously not currently capable of practicing law as is evidenced by the Order of Interim Suspension. In addition Respondent arrived more than two hours late for the hearing in this matter. The hearing was scheduled to begin at 10:30 am on November 15, 2010. At 10:30 am Respondent left a phone message for an assistant in the Disciplinary Clerk's Office that she was about an hour away from the place of the hearing. Instead Respondent arrived at the Supreme Court of Arizona at about 12:40 pm. The Hearing Officer left several messages on Respondent's cell phone asking about her progress when she did not arrive by 11:30 am. When she arrived (the hearing was reset to begin at 1:15 pm) Respondent said that she did not get any messages on her cell phone because the phone had been broken the day before the hearing. (TR 4:13 through 31:6)

The circumstances of her late arrival sound very familiar to the other court appearances and deadlines she failed to meet in this case. She fails to meet deadlines and then has explanations for her conduct. She explained that she was late for the hearing in this matter because she asked a friend to accompany her from Snowflake and on the trip her friend was having flu symptoms that caused Respondent to make many stops on the way to the hearing. (TR 28:23 through 30:15) Respondent also explained that she was delayed because she was unfamiliar with the address of the Supreme Court and she thought that the Court was on the east side of the Jefferson/Washington area. (TR 30:16-24) Yet Respondent had been to the building before when she appeared before the Court of Appeals. She explained that she did not know that the Supreme Court's Certification and Licensing Division and the Court of Appeals were in the

same building. (TR 30:25 through 31:6) Respondent had received a Notice from the Office of the Disciplinary Clerk that gave the address of the hearing as 1501 West Washington. (See Case Management Order, August 25, 2010)

Respondent has complained about the alleged unfairness of the judgment for \$5210 in Count One, but she has done nothing in a year to ask the court to vacate the judgment. It is clear that she is not capable of meeting her professional obligations and following through with tasks. A suspension for one year from the time of her Interim Suspension will allow her time to work on her issues and also protect the public by separating her from the practice of law. The MAP and LOMAP terms of probation (if she is reinstated) will further assist her in again becoming an effective lawyer.

The objective of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Recognizing it is the prerogative of the Disciplinary Commission and the Supreme Court to determine the appropriate sanction, the Hearing Officer agrees with the State Bar and Respondent that the objectives of discipline will be met by the discipline as set forth in the Tender of Admissions, the terms of which are incorporated herein by reference including a one year suspension retroactive to Respondent's interim suspension effective July 21, 2010, and upon reinstatement a two year term of probation as well as the payment of the costs and expenses of these proceedings and payment of restitution.

SANCTION

The Hearing Officer recommends the following disciplinary sanctions:

1. Respondent shall be suspended from the practice of law for a period of one (1) year retroactive to the date of her interim suspension on July 21, 2010;
2. Upon reinstatement, Respondent shall be placed on probation for a period of two (2) 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 including both MAP and LOMAP.
- c. In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5).⁴ The Presiding Disciplinary Judge may conduct a hearing within 30 days after receipt of notice, to determine if the terms of probation have been violated and if an additional sanction should be imposed. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by preponderance of the evidence.

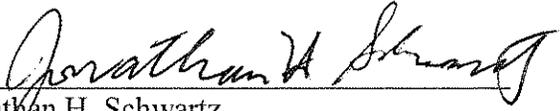
3. Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings. An Itemized Statement of Costs and Expenses is attached as Exhibit "A," and incorporated herein. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court and the Disciplinary Clerk's Office in this matter.

4. Respondent shall pay restitution in Count One as follows: Respondent will pay the \$3838.70 judgment by July 21, 2011, or in compliance with a schedule agreed to by Respondent and the Judgment Creditor. Respondent will pay the \$5210 judgment by July 21, 2011 or in compliance with a schedule agreed to by Respondent and the Judgment Creditor, or there will be

⁴ Rule 60 (a) (5), as revised, effective January 1, 2011

no obligation on this judgment if, before July 21, 2011, Respondent acquires the Court's order vacating the judgment.

Dated this 27 day of December, 2010


Jonathan H. Schwartz
Hearing Officer 6S

Original filed with the Disciplinary Clerk
this 27 day of December, 2010.

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

Katharine L. Roberts
Respondent
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Harriet M. Bernick
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by: 

/jsa