

FILED
MAR 04 2010
DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

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

IN THE MATTER OF A SUSPENDED MEMBER) No. 09-0219, 09-0445, 09-0923,
OF THE STATE BAR OF ARIZONA) 09-1006
)
MARY V. SCHAFFER,)
Bar No. 017474) **DISCIPLINARY COMMISSION**
) **REPORT**
)
RESPONDENT.)
_____)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on February 13, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed December 8, 2009, recommending a four year suspension, two years of probation upon reinstatement with terms and conditions to be determined upon reinstatement, restitution and costs.

Decision

Having found no facts clearly erroneous, the eight members¹ of the Disciplinary Commission by a majority of seven,² recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for a four year suspension, two years of probation upon reinstatement with terms and conditions to be determined upon reinstatement, restitution, and costs of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk's office.³ The amount of restitution

¹ Commissioner Belleau did not participate in this proceeding.
² Commissioner Todd was opposed. See dissenting opinion below.
³ The Hearing Officer's Report (without exhibits) is attached as Exhibit A.

1 is as follows:

2 Restitution

3 Pima County \$164.00 as Ordered in Case No. J-16122800 by Judge Suzanna Cuneo.

4 RESPECTFULLY SUBMITTED this 4th day of March, 2010.

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7
8 Jeffrey Messing, Chair
9 Disciplinary Commission

10 *Commissioner Todd respectfully dissenting:*

11 I respectfully dissent. In my view, disbarment is the appropriate sanction. Nothing
12 in the record suggests that Respondent Mary V. Schaffer was unable to pay her bar dues
13 following her June 2008 suspension for non-payment or that she was unaware of this
14 obligation. Rather, the record reflects that she was paid \$55,000 in public monies to
15 practice law while suspended. Then during the disciplinary proceedings she failed to
16 cooperate, to appear, or to explain. Granted as a practical matter under the circumstances,
17 a 4 year suspension is essentially the same as disbarment without the label of disbarment.

18 Here, I believe the label matters and it would be appropriate.

19
20 Original filed with the Disciplinary Clerk
21 this 4 day of March, 2010.

22 Copy of the foregoing mailed
23 this 5 day of March, 2010, to:

24 Mary V. Schaffer
25 Respondent
26 P.O. Box 30335
Tucson, AZ 85751

and

1 Mary V. Schaffer
Respondent
2 6305 E. Tanuri Circle
3 Tucson, AZ 85750

4 Copy of the foregoing hand delivered
this 5 day of March, 2010, to:

5
6 Hon. Jonathan H. Schwartz
Hearing Officer 6S
7 1501 W. Washington, Suite 104
Phoenix, AZ 85007

8
9 Stephen P. Little
Bar Counsel
10 State Bar of Arizona
4201 North 24th Street, Suite 200
11 Phoenix, AZ 85016-6288

12 by: Deann Barker

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EXHIBIT

A

FILED

DEC 08 2009

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: *[Signature]*

Nos. 09-0219, 09-0455, 09-0923, 09-1006

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2 IN THE MATTER OF A
3 SUSPENDED MEMBER OF THE STATE
4 BAR OF ARIZONA,

5 **MARY V. SCHAFFER**
6 **Bar No. 017474**

7
8 Respondent.

HEARING OFFICER'S REPORT

9
10 **PROCEDURAL HISTORY**

11 A Complaint was filed on August 26, 2009. The Hearing Officer was assigned on
12 September 1, 2009. The Notice that assigned the Hearing Officer informed both Bar Counsel
13 and Respondent that a telephonic Initial Case Management Conference (ICMC) was scheduled
14 for September 22, 2009 at 10:00 am. The Notice of Assignment was mailed to Respondent at
15 two addresses known to the Bar, P.O. Box 30335, Tucson, AZ 85751 and 6305 E. Tanuri
16 Circle, Tucson, AZ 85750. Respondent did not appear at the ICMC. Respondent's Answer was
17 due on September 22, 2009. Respondent did not file the Answer. The Telephonic ICMC was
18 continued to October 15, 2009. A Notice of Default was filed on September 23, 2009
19 informing Respondent that she had 10 days from the service of the Notice by mail to file an
20 Answer or a default would be entered. Respondent did not file an Answer within the
21 prescribed time. Entry of Default was filed on October 14, 2009. On October 15, 2009 a
22 Notice of Hearing was sent to Respondent at the same addresses as set forth above, informing
23 her that an Aggravation/Mitigation Hearing would be held on November 2, 2009. Respondent
24 did not attend the Aggravation/Mitigation Hearing held on November 2, 2009.
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FINDINGS OF FACT¹

General Allegations

1. Respondent was first admitted to practice law in the state of Arizona on October 19, 1996.

2. On April 17, 2008, the State Bar sent a letter to Respondent's address of record advising her that she had failed to pay her 2008 dues and was facing possible suspension if she did not pay.

3. On May 22, 2008, the State Bar sent a letter to Respondent's address of record advising her that she still had not paid her 2008 dues and that her name would be presented to the Board of Governors for suspension on June 17, 2008 if she did not pay her back dues.

4. On June 17, 2008, Respondent was summarily suspended from the practice of law in Arizona for non-payment of dues.

5. On July 31, 2008, the State Bar sent a letter to Respondent's address of record advising her that she had been suspended for non-payment of dues effective June 17, 2008.

6. At all times relevant to this Complaint, Respondent was suspended from the practice of law in Arizona.

7. Respondent remains, to date, suspended from the practice of law in Arizona.

COUNT ONE (File Nos. 09-0219, 09-0455)

8. At all times relevant to this Count, Respondent had a contract with the Pima County Office of Court Appointed Counsel for appointments in dependency cases.

9. As indicated above in the General Allegations, Respondent was suspended from the practice of law effective June 17, 2008.

¹ Pursuant to Rule 57 (d) of the Rules of the Supreme Court the entry of default means that the allegations of the Complaint are admitted. The facts are from the Complaint.

1 10. Upon being suspended, Respondent failed to notify her clients, co-counsel,
2 opposing counsel or the courts and divisions in which she had pending matters, as required by
3 Rule 72 Ariz. R. Sup. Ct.

4 11. Respondent continued to accept case appointments from the Office of Court
5 Appointed Counsel subsequent to her suspension from the practice of law, accepting at least
6 54 cases between June 17, 2008 and January 7, 2009, as listed in 'Exhibit A' to the Complaint.

7 12. On information and belief, Respondent was paid in excess of \$55,000 for the
8 appointments listed in 'Exhibit A'.

9 13. Respondent also continued to appear before the court and/or file pleadings with
10 the court in at least 72 cases subsequent to her suspension from the practice of law, as listed in
11 'Exhibit B' to the Complaint.

12 14. In addition to the cases listed in 'Exhibit A' and 'Exhibit B', Respondent
13 engaged in the unauthorized practice of law in the following cases:

- 14 a. In appellate case # CA-JV 2008-0109, Respondent filed a Rule 106(G) affidavit
15 on or about December 8, 2008, avowing that she could find no non-frivolous
16 issues to appeal.
17 b. In appellate case # CA-JV 2008-0035, Respondent filed a number of pleadings
18 with the court, including a "Motion for Extension" on or about July 21, 2008,
19 an "Answer to Motion" on or about August 4, 2008, and a "Reply of Minor to
20 Monter's Answering Brief" on September 4, 2008.
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22 15. On or about January 27, 2009, Respondent called Patricia Escher, Presiding
23 Judge of the Pima County Juvenile Court ("Presiding Judge Escher"), and informed her that
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1 Respondent would be immediately withdrawing from all of her cases because she had been
2 suspended by the State Bar for non-payment of dues.

3 16. This was the first time Respondent notified Presiding Judge Escher of her
4 suspension, and Respondent failed to inform Presiding Judge Escher that she had in fact been
5 suspended since June 17, 2008.

6 17. Shortly thereafter, Respondent filed a series of Motions to Withdraw in the
7 cases she was involved in, and listed in 'Exhibits A & B'.

8 18. In those Motions to Withdraw, Respondent cited as the basis for her motions
9 that she had voluntarily terminated her contract as Court Appointed Counsel, and failed to
10 mention her suspension from the practice of law.

11 19. On information and belief, Respondent never voluntarily terminated her
12 contract as Court Appointed Counsel.

13 20. Subsequent to those Motions to Withdraw, Respondent filed Proposed Orders
14 for Substitution of Counsel in her cases, and included terms in her proposed orders that she
15 would refund \$0 to Pima County and that replacement counsel would be paid \$0 for their
16 finishing of the cases.

17 21. On or about February 9, 2009, the Office of the Attorney General submitted a
18 charge to the State Bar regarding Respondent's conduct.

19 22. On or about February 17, 2009, the State Bar sent a letter to Respondent's
20 address of record along with a copy of the Attorney General's charge, requesting Respondent
21 provide a response within 20 days.

22 23. On or about February 18, 2009, Presiding Judge Escher submitted a charge to
23 the State Bar regarding Respondent's conduct.
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1 24. On or about February 23, 2009, Judge Suzanna Cuneo ("Judge Cuneo") entered
2 an order in case # J-16122800 ordering Respondent to provide an accounting to OCAC for all
3 compensation she received in the matter and to refund \$164 to Pima County.

4 25. Respondent never provided the ordered accounting or refunded the \$164 to
5 Pima County.

6 26. On or about March 9, 2009, the State Bar sent a letter to Respondent's address
7 of record along with a copy of Presiding Judge Escher's charge.

8 27. Respondent did not respond to the State Bar's investigation or letters.

9 28. On or about March 16, 2009, the State Bar sent a follow-up letter to
10 Respondent's address of record, noting her failure to respond to the investigation, reminding
11 her of her obligations under Rule 53 Ariz. R. Sup. Ct., and requesting a response within 10
12 days.

13 29. On or about April 2, 2009, Respondent left a phone message for Staff Bar
14 Counsel Harriet Bernick ("Bar Counsel Bernick") in which she indicated she was aware the
15 State Bar had been trying to contact her, that she had no intention of ever practicing law again,
16 and that she didn't care if the State Bar disbarred her.

17 30. On or about April 16, 2009, Respondent left a second phone message for Bar
18 Counsel Bernick in which she provided a new alternate address and reiterated that she did not
19 ever want to practice law again.

20 31. On or about April 16, 2009, the State Bar sent a follow-up letter to the alternate
21 address provided by Respondent, noting her failure to respond to the investigation, reminding
22 her of her obligations under Rule 53 Ariz. R. Sup. Ct., and requesting a response within 10
23 days.
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1 to the public or otherwise represented that she was admitted to practice
2 law in this jurisdiction.

3 vii. ER 8.1(b) – Respondent, in connection with a disciplinary matter,
4 knowingly failed to respond to a lawful demand for information from a
5 disciplinary authority.

6 viii. ER 8.4(c) – Respondent engaged in conduct involving dishonesty, fraud,
7 deceit or misrepresentation.

8 ix. ER 8.4(d) – Respondent engaged in conduct prejudicial to the
9 administration of justice.

10 x. Rule 53(f) – Respondent failed to furnish information or respond
11 promptly to an inquiry or request from bar counsel.

12 xi. Rule 72 – Respondent failed to notify all clients being represented in
13 pending matters, any opposing counsel in pending matters, and each
14 court in which Respondent had pending matters, of her suspension
15 within ten days of the date of her suspension.

16 **FINDINGS OF FACT**

17 **COUNT TWO (File No. 09-0923)**

18
19 34. On or about July 24, 2007, Respondent was appointed to represent juvenile
20 Brianna (“Brianna”) in case # J-161848, a dependency action.

21 35. On information and belief, Brianna was immediately sent into foster care upon
22 filing of the dependency action.

23 36. On information and belief, Respondent did not visit with, or communicate with,
24 Brianna while she was in foster care.

1 37. On information and belief, Respondent's only contact with Brianna was a single
2 visit that took place in late summer or early Fall of 2007, when Brianna left foster care.

3 38. In or about August of 2007, Brianna's brother, Brandon ("Brandon"), was
4 added to the dependency action.

5 39. Respondent was immediately appointed to represent Brandon in the
6 dependency action, in addition to Brianna.

7 40. As the case progressed, Brandon and Brianna's positions became adverse, with
8 Respondent pursuing the case strategy that Brianna had mental health problems, that the
9 mother did the best she could with a problem child, and that Brandon was better off with
10 Brianna out of the home.

11 41. Respondent did not withdraw from representation of either Brandon or Brianna.

12 42. On information and belief, Respondent communicated regularly with Brandon,
13 but continued to fail to communicate with Brianna.

14 43. As indicated above, Respondent was suspended from the practice of law
15 effective June 17, 2008.

16 44. On information and belief, Respondent continued to represent both Brandon
17 and Brianna, make court appearances, and file pleadings in case # J-161848 subsequent to her
18 suspension from the practice of law.

19 45. Upon being suspended, Respondent did not notify her clients, co-counsel,
20 opposing counsel or the courts and divisions in which she had pending matters, as required by
21 Rule 72 Ariz. R. Sup. Ct.

22 46. On information and belief, Respondent withdrew from representation in case #
23 J-161848 in or about February of 2009.
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1 47. On or about May 20, 2009, Kathryn Reeder ("Ms. Reeder") submitted a charge
2 to the State Bar regarding Respondent's conduct.

3 48. On or about May 27, 2009, the State Bar sent a letter to Respondent's address
4 of record along with a copy of Ms. Reeder's charge, requesting Respondent provide a response
5 within 20 days.

6 49. On or about June 13, 2009, Attorney Jacquie Rohr ("Attorney Rohr") sent
7 additional information to the State Bar regarding Respondent's conduct.

8 50. On or about June 17, 2009, the State Bar sent a letter to Respondent's address
9 of record along with a copy of Attorney Rohr's additional information, requesting a response
10 within ten days.

11 51. On or about July 10, 2009, the State Bar sent a follow-up letter to Respondent's
12 address of record, noting her failure to respond to the investigation, reminding her of her
13 obligations under Rule 53 Ariz. R. Sup. Ct., and requesting a response within ten days.

14 52. Respondent did not respond to the State Bar's letters or investigation.
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16 **CONCLUSIONS OF LAW – COUNT TWO**

17 Respondent's conduct as described in this count violated:

- 18 i. Rule 31(c) – Respondent, a member suspended, practiced law in this
19 state or represented in any way that she could practice law in this state.
- 20 ii. ER 1.4(a) – Respondent failed to (2) reasonably consult with the client
21 about the means by which the client's objectives were to be
22 accomplished and/or (3) keep the client reasonably informed about the
23 status of the matter.

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- iii. ER 1.7(a) – Respondent represented a client when the representation involved a concurrent conflict of interest. Specifically, (1) the representation of one client was directly adverse to another client, and/or (2) there was a significant risk that the representation of one or more clients would be materially limited by the lawyer’s responsibilities to another client, a former client, a third person, or by a personal interest of the lawyer.
 - iv. ER 5.5(a) – Respondent practiced law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.
 - v. ER 5.5(b) – Respondent, while not admitted to practice in this jurisdiction, (1) established an office or other systematic and continuous presence in this jurisdiction for the practice of law; and/or (2) held out to the public or otherwise represented that she was admitted to practice law in this jurisdiction.
 - vi. ER 8.1(b) – Respondent, in connection with a disciplinary matter, knowingly failed to respond to a lawful demand for information from a disciplinary authority.
 - vii. ER 8.4(d) – Respondent engaged in conduct prejudicial to the administration of justice.
 - viii. Rule 53(f) – Respondent failed to furnish information or respond promptly to an inquiry or request from bar counsel.
 - ix. Rule 72(a) – Respondent failed to notify all clients being represented in pending matters, any opposing counsel in pending matters, and each

1 court in which Respondent had pending matters, of her suspension
2 within ten days of the date of her suspension.

3 **FINDINGS OF FACT**

4 **COUNT THREE (File No. 09-1006)**

5 53. As indicated above, Respondent was suspended from the practice of law
6 effective June 17, 2008.

7 54. On or about November 14, 2008, Respondent filed a Complaint (entitled
8 "Petition for Relief") in the Pima County Superior Court initiating case # C20087992.

9 55. Respondent filed this Complaint as attorney for her daughter, the Plaintiff in the
10 action.

11 56. Subsequent to commencement of the action, Respondent proceeded to negotiate
12 a settlement with the defendant's insurance company and to negotiate procedural issues in the
13 case with opposing counsel.

14 57. On information and belief, Respondent failed to inform her client, opposing
15 counsel, defendant's insurance company or the court that she was suspended from the practice
16 of law.

17 58. On or about May 26, 2009, Judge Virginia Kelly ("Judge Kelly") submitted a
18 charge to the State Bar regarding Respondent's conduct.

19 59. On or about June 3, 2009, the State Bar sent a letter to Respondent's address of
20 record along with a copy of Judge Kelly's charge, requesting Respondent provide a response
21 within 20 days.
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1 60. On or about July 10, 2009, the State Bar sent a follow-up letter to Respondent's
2 address of record, noting her failure to respond to the investigation, reminding her of her
3 obligations under Rule 53 Ariz. R. Sup. Ct., and requesting a response within ten days.

4 61. Respondent did not respond to the State Bar's letters or investigation.

5 **CONCLUSIONS OF LAW – COUNT THREE**

6 Respondent's conduct as described in this count violated:

- 7 i. Rule 31(c) – Respondent, a member suspended, practiced law in this
8 state or represented in any way that she could practice law in this state.
- 9 ii. ER 5.5(a) – Respondent practiced law in a jurisdiction in violation of
10 the regulation of the legal profession in that jurisdiction.
- 11 iii. ER 5.5(b) – Respondent, while not admitted to practice in this
12 jurisdiction, (1) established an office or other systematic and continuous
13 presence in this jurisdiction for the practice of law; and/or (2) held out
14 to the public or otherwise represented that she was admitted to practice
15 law in this jurisdiction.
- 16 iv. ER 8.1(b) – Respondent, in connection with a disciplinary matter,
17 knowingly failed to respond to a lawful demand for information from a
18 disciplinary authority.
- 19 v. Rule 53(f) – Respondent failed to furnish information or respond
20 promptly to an inquiry or request from bar counsel.
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RESTITUTION

The Hearing Officer recommends that Respondent pay Pima County \$164 in restitution as ordered by Judge Cuneo on February 23, 2009. (See Count One, paragraph 24) The restitution should be paid within 60 days from the Judgment and Order in this matter.

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ABA STANDARDS

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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 court and commission consider the *Standards* a suitable guideline. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770, 772 (2004); *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); ABA *Standard* 3.0.

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In this case there are multiple charges of misconduct. "The standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct. Either a pattern of misconduct or multiple instances of misconduct should be considered as aggravating factors." (*Standards*, p.7; *In re Redekar*, 177 Ariz. 305, 868 P.2d 319 (1994)).

1 **Duty Violated**

2 Respondent violated duties owed to the public and to the legal system in Count One
3 when she practiced law while suspended, made a false statement to Judge Escher by not
4 informing the court in January 2009 that she had been suspended since June, 2008, by refusing
5 to comply with Judge Cuneo's Order to refund Pima County \$164 and to provide an
6 accounting to the Office of Court Appointed Counsel for all her compensation and by failing
7 to notify all clients, opposing counsel and each court in a timely fashion of her suspension.

8 In Count Two, Respondent violated duties to her client when she represented Brianna,
9 a juvenile, in the dependency matter after there was a conflict with Respondent's
10 representation of Brianna's brother in the same matter and when she failed to communicate
11 with her client. Respondent violated duties to the public and the system when she engaged in
12 the unauthorized practice of law and failed to respond to the Bar's requests for information.

13 In Count Three, Respondent violated duties to her client, the public, and the legal
14 system when she engaged in the unauthorized practice of law, failed to inform her client of her
15 suspension and failed to respond to the Bar's requests for information.
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17 **Mental State**

18 In Count One, Respondent knowingly practiced law while suspended, failed to tell Jude
19 Escher that she had been suspended since June, 2008, failed to comply with Judge Cuneo's
20 Order for refund and accounting to Pima County, failed to notify all her clients, opposing
21 counsel and each court of her suspension in a timely manner and failed to respond to the Bar's
22 requests for information.

23 In Count Two, Respondent knowingly practiced law while suspended and knowingly
24 failed to respond to the Bar's requests for information, and knowingly did not communicate
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1 with her client Brianna, and negligently failed to realize and act on the conflict of interest
2 between Brianna and her sibling.

3 In Count Three, Respondent knowingly practiced law while suspended and failed to
4 respond to the Bar's requests for information.

5 **Injury**

6 Respondent caused injury to the legal system and the profession when in all three
7 counts she continued to represent clients in court while she was suspended from the practice of
8 law. Confidence in the legal system is affected when a suspended lawyer continues to practice
9 law during the suspension. She was able to do this by deliberately ignoring her obligation
10 under Rule 72(a) to inform clients, opposing counsel, and each court within 10 days of her
11 suspension. She purposely did not tell the Office of Court Appointed counsel of the
12 suspension. Respondent caused actual injury to Pima County when she failed to refund \$164 in
13 case # J-16122800 as ordered by the court. (Transcript of the Aggravation/Mitigation Hearing,
14 TR 14:16)

15 In Count Two Respondent's representation of Brianna in the dependency matter
16 conflicted with her representation of Brandon, when Brandon's position became that he would
17 do better if Brianna (a problem child) were not in the home. Respondent's inability to
18 recognize this conflict caused a potential for severe harm to Brianna, if Brianna who had been
19 placed in foster care wanted to return to her mother's home. Bar Counsel was not aware of the
20 outcome of the dependency case. (TR 15:13-23) Respondent's consistent failure to respond to
21 the Bar prevented the Bar from acquiring additional information from Respondent that might
22 have been relevant to the matters under investigation.
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1 **Applicable Standards**

2 Respondent was placed on administrative suspension on March 1, 2004 for failure to
3 comply with the Mandatory Continuing Legal Education (MCLE) requirement. (See Hearing
4 Officer's Report No. 04-1881, page 3, paragraph 2, "HO Report") During the time she was
5 suspended March 1, 2004 through October 25, 2004, Respondent knowingly continued to
6 practice law. (HO Report, page 3, paragraph 7) As a consequence for practicing law while
7 suspended the Supreme Court on January 9, 2007 suspended Respondent for 120 days and
8 placed her on probation for two years. See the Judgment and Order January 9, 2007 in SB-06-
9 0158-D, file no. 04-1881. Respondent was reinstated as a member of the Bar on July 3, 2007.
10 In the instant case Respondent was once again informed by the Bar (on July 31, 2008) that she
11 was suspended (because of her failure to pay 2008 Bar dues) effective June 17, 2008. Yet
12 again she continued to practice law while suspended.

13 *Standard 8.1* (Prior Discipline) is applicable. **"Disbarment is generally appropriate**
14 **when a lawyer: a) intentionally or knowingly violates the terms of a prior disciplinary**
15 **order and such violation causes injury or potential injury to a client, the public, the legal**
16 **system or the profession; or b) has been suspended for the same or similar misconduct,**
17 **and intentionally or knowingly engages in further acts of misconduct that caused injury**
18 **or potential injury to a client, the public, the legal system, or the profession."**

19 Respondent's conduct fits *Standard 8.1(b)*. She was previously suspended for 120 days
20 for practicing law while under administrative suspension. In the instant case she has knowingly
21 practiced law while under another suspension. (TR 17:3 through 19:7)

22 *Standard 6.11* (Candor toward Tribunal) is also applicable. **"Disbarment is generally**
23 **appropriate when a lawyer, with the intent to deceive the court, makes a false statement,**
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1 submits a false document, or improperly withholds information, and causes serious or
2 potentially serious injury to a party, or causes a significant or potentially significant
3 adverse effect on the legal proceeding."

4 Respondent filed a series of Motions to Withdraw in numerous cases. The motions
5 were deceptive in that Respondent gave as the reason for withdrawing that she had terminated
6 her contract as a Court Appointed Counsel. Respondent deliberately failed to mention in these
7 motions that she had been suspended from the practice of law. Respondent called Judge Escher
8 on January 27, 2009 and deceived the court by only informing the judge that she was
9 withdrawing from her cases because she had been suspended for nonpayment of dues.
10 Respondent deliberately omitted from this conversation the fact that she had been suspended
11 since June 17, 2008. Respondent was trying to cover up the fact that she had been paid funds
12 from the Office of Court Appointed Counsel for six months while she was suspended.

13 Bar Counsel recognized that *Standard* 6.12 might also apply. "Suspension is generally
14 appropriate when a lawyer knows that false statements or documents are being
15 submitted to the court or that material information is improperly being withheld, and
16 takes no remedial action, and causes injury or potential injury to a party to the legal
17 proceeding, or causes an adverse or potentially adverse effect on the legal proceeding."

18 (TR 19:12 through 20:5) The difference between 6.11 and 6.12 is that disbarment appears to
19 apply when the false statement causes a significant or potentially significant adverse effect on
20 the legal proceeding. Suspension would be more appropriate if the falsehood caused only an
21 adverse or potentially adverse effect on the proceeding. The Hearing Officer notes that the
22 Complaint in this case does not specify an adverse effect to a specific client.
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1 The Bar asserts that since Respondent accepted at least 54 cases while she was
2 suspended and apparently did some work on the cases, her eventual removal from the cases
3 would have to cause some delay as new counsel was appointed. (TR 20:1-5) If Respondent
4 had notified the courts, clients and opposing counsel of her suspension within 10 days,
5 Respondent would not have received the 54 cases. Therefore, these 54 clients in dependency
6 matters in juvenile court would not have had their cases delayed by a substitution of counsel.
7 The Hearing Officer cannot know whether that delay would have significantly affected each
8 case. The potential for significant effect on a dependency proceeding is that if a parent is
9 taking steps to correct problems in parenting (that may have led to removal of the child from
10 the home), a delay caused by the replacement of counsel might delay a reunification of the
11 family.

12 *Standard 7.1 (Unauthorized Practice of Law/Non-response to Bar)* is applicable.

13 **“Disbarment is generally appropriate when a lawyer knowingly engages in conduct that**
14 **is a violation of the duty owed as a professional with the intent to obtain a benefit for the**
15 **lawyer or another, and causes serious or potentially serious injury to a client, the public,**
16 **or the legal system.**

17
18 Respondent had a duty not to practice law while suspended. The instant case is the
19 second time that she has violated this duty. Respondent violated this duty so that she could
20 continue to be paid by the Office of Court Appointed Counsel approximately \$55,000 for at
21 least 54 cases during a six month period from June 17, 2008 until January, 7, 2008, while she
22 was suspended and before she notified the Presiding Judge of the Pima County Juvenile Court
23 of her suspension. Her conduct caused harm to the legal system and the profession because a
24 suspended lawyer is not permitted to practice law. When a suspended lawyer can by deceit
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1 continue to practice law during the suspension, confidence in the legal system and in the
2 system's ability to regulate attorneys is lessened.

3 *Standard 7.2* may also be applicable. **"Suspension is generally appropriate when a
4 lawyer knowingly engages in conduct that is a violation of a duty owed as a professional,
5 and causes injury or potential injury to a client, the public, or the legal system."**

6 The differences between these two *Standards* is that disbarment is appropriate when
7 the knowing violation of the duty owed as a professional is with the intent to obtain a benefit
8 for the lawyer and when the misconduct causes serious or potentially serious injury to either
9 the client, the public, or the legal system. Since Respondent was paid approximately \$55,000
10 for representing 54 separate clients in dependency matters while suspended, it is reasonable to
11 infer that her intention was to benefit herself from these funds. However, it is less certain that
12 Respondent caused serious injury to a client. The Complaint alleges that the Office of the
13 Attorney General submitted a charge to the Bar on February 9, 2009. Presiding Judge Escher
14 submitted a charge to the Bar on February 18, 2009. The Complaint does not indicate that
15 either charge alleged that Respondent was less than competent in her representation of the 54
16 clients, or that she caused injury to a client. The public should have confidence that a
17 suspended lawyer is not representing clients. Judges, opposing counsel and clients must rely
18 on the obligation of a suspended lawyer to notify them in a timely manner of the suspension.
19 The Hearing Officer concludes that representing so many clients over such a long period of
20 time is a serious matter. To get away with this type of behavior is to cause serious or
21 potentially serious injury to the legal system.
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1 **Aggravating Factors**

2 *Standard 9.22(a)* (prior disciplinary offenses) Respondent was suspended in SB-06-
3 0158 (described above) for 120 days and placed on probation for two years on January 9,
4 2007. The violations included the unauthorized practice of law, Rule 31(b) and ER 5.5, failing
5 to respond to the Bar, Rule 53(c) and (f) and ER 8.1(b), communication, ER 1.4, conduct
6 prejudicial to the administration of justice, ER 8.4(d), and willful violation of a rule or any
7 order of the court, Rule 53(c). Respondent received an Informal Reprimand on August 3, 2009
8 for failing to comply with her probation by not paying all of her fees for the Member
9 Assistance Program.

10 *Standard 9.22(b)* (dishonest or selfish motive) Respondent continued to practice law
11 while she was suspended between June 2008 in January 2009 in order to make money from the
12 Office of Court Appointed Counsel on her Pima County Juvenile Court appointments.

13 *Standard 9.22(c)* (pattern of misconduct) Respondent's prior suspension was for the
14 same conduct, the unauthorized practice of law and failing to respond to the Bar.

15 *Standard 9.22(d)* (multiple offenses) Respondent committed her misconduct in three
16 separate counts of this complaint.

17 *Standard 9.22(e)* (bad faith of obstruction of the disciplinary process) Respondent
18 failed to respond or answer in this matter. Respondent failed to attend the Initial Case
19 Management Conference and failed to attend the Aggravation/Mitigation Hearing.

20 *Standard 9.22(h)* (vulnerability of victim) Respondent in the Count Two was
21 representing a juvenile in a dependency action.
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1 *Standard 9.22(i)* (substantial experience in the practice of law) Respondent was
2 admitted to the Bar on October 19, 1996. Therefore, by the last six months of 2008 when she
3 was practicing law while suspended, Respondent had been a lawyer for 12 years.

4 *Standard 9.22(j)* (indifference to making restitution) Respondent was ordered by Judge
5 Cuneo on February 23, 2009 in case number J-16122800 to refund \$164 to Pima County.
6 Respondent has failed to comply with this order.

7 **Mitigating Factors**

8 *Standard 9.32(c)* (personal or emotional problems) Respondent is experiencing
9 depression and other mental problems as set forth in her prior discipline cases. (Hearing
10 Officer's Report, August 3, 2009 in violation of probation file # 04-1881, page 7) She was
11 seeing a psychiatrist and a counselor for depression pursuant to the terms of her probation
12 contract. (TR 26:1-22)

13 **PROPORTIONALITY REVIEW**

14 In *In re May* (SB-09-0036-D) (2009) the attorney was disbarred for engaging in the
15 unauthorized practice of law after being suspended for noncompliance with MCLE. The
16 attorney failed to properly represent clients and failed to earn fees paid to him by the clients.
17 The attorney further failed to respond to the Bar.

18 In *In re Mikal* (SB-09-0020-D) (2009) the attorney was disbarred for engaging in the
19 unauthorized practice of law after being suspended. The attorney failed to properly represent
20 his clients and converted client funds to his own benefit. He also failed to respond to the Bar.

21 In *In re Morrison* (SB-08-0096-D) (2008) the attorney was disbarred for engaging in
22 the unauthorized practice of law after being suspended. The attorney failed to properly
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1 represent his clients, abandoned them and failed to disperse their settlements. He also failed to
2 respond to the Bar.

3 The foregoing three cases cited by the Bar are distinguishable from the instant case. In
4 *May* the attorney convinced numerous clients over the course of several months to pay him for
5 representing them and then he abandoned them. He left the clients with no representation and
6 no accounting for the fees they paid. In four separate cases he missed court appearances after
7 taking the clients' money. He was ordered to pay total restitution to four clients of \$8400. In
8 one case his client was arrested as a result of the attorney's misconduct.

9 In *Mikal* the attorney converted client funds of \$5000 from an estate, committed
10 numerous trust account violations and abandoned the client.

11 In *Morrison* the attorney failed to disburse settlement funds in six separate cases. In at
12 least three of the cases the attorney also failed to resolve medical liens after the attorney
13 received the settlement funds. In one case the attorney negotiated a settlement without the
14 client's consent, signed the client's name to the back of the settlement check (without
15 authorization) and failed to disburse any of the settlement proceeds to the client. The Hearing
16 Officer concluded that the attorney stole approximately \$43,000 of clients' money. (Hearing
17 Officer Report, March 13, 2008, page 25, paragraph 151)

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19 In contrast to the misconduct in the three cases cited by the Bar, Respondent in the
20 instant case owes Pima County \$164. Respondent may have damaged Brianna's position with
21 the juvenile court in the dependency action described in Count Two, but the Bar cannot be
22 certain because the Bar was not aware of the outcome of the case. (TR 15:10-23) The Bar
23 cannot claim that Respondent should be ordered to refund \$55,000 (she was paid by the Office
24 of Court Appointed Counsel for the 54 cases she represented while she was suspended). At the
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1 hearing, the Hearing Officer confirmed with Bar Counsel that the Bar was not asking for a
2 recommendation that Respondent repay the \$55,000. In response Bar Counsel said, "That's
3 correct. I mean, I'm sure there's a portion of that that was probably unearned, but there's been
4 no judicial determination of that or independent analysis." (TR 15:5-9) The record is silent on
5 whether Respondent effectively represented the clients in the 54 cases in Pima County
6 Juvenile Court.

7 The Hearing Officer is not minimizing the seriousness of Respondent's repeated
8 flaunting of the maxim that an attorney must not practice law while suspended. It is most
9 egregious that Respondent represented numerous clients for such a long period of time (six
10 months) while suspended.

11 It is important to note that Respondent was suspended in 2004 for failure to complete
12 MCLE requirements. When she practiced law while under that suspension, she was disciplined
13 with a four month suspension and two years of probation. After she served the four month
14 suspension, Respondent was reinstated on July 3, 2007. She was in compliance with most of
15 the requirements of her MAP Contract except for owing \$225 in MAP monthly fees. Of course
16 another condition of probation required that Respondent comply with the Rules of Professional
17 Conduct. It is now apparent that Respondent was violating numerous ERs and Rules by
18 practicing law while under the suspension (for failing to pay 2008 bar dues) that became
19 effective on June 17, 2008. The Director of MAP, Hal Nevitt, testified in the Hearing on
20 Probation Violation on June 29, 2009, that Respondent obtained the required CLE, engaged
21 with her counselors and was seeing her practice monitors. Respondent's issues were
22 depression, stress and response and reaction to situations outside her law practice. (Hearing
23 Officer's Report on probation violation, August 3, 2009, page 8)
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1 In *In re Wahl* SB-08-0017-D (2008) the attorney was given a suspension of six months
2 and one day, and 15 hours of CLE. The attorney practiced law during a 14 month period when
3 he was administratively suspended for failing to fulfill his MCLE requirement. The
4 aggravating factors included 9.22(d) multiple offenses, 9.22(e) bad-faith obstruction of the
5 process and 9.22(i) substantial experience in the practice of law since December 1999. The
6 mitigating factor was 9.32(a) absence of a prior disciplinary record. The mental state was
7 knowing. The Commission found that the attorney's misconduct caused potential injury.

8 In *In re Rhees* SB-01-0161-D (2001), the attorney was still counsel of record for 18
9 clients while he was suspended for not filing his MCLE affidavit. He filed motions in
10 pleadings, attended a hearing and made representations to both the court and his clients about
11 the MCLE affidavit. The aggravating factors were multiple offenses and substantial experience
12 in the practice of law. Four mitigating factors included the absence of a prior disciplinary
13 record, cooperation with the Bar, mental disability, and remorse. The attorney received a four-
14 month suspension.

15 In *In re Allred* SB-98-0049-D (1998), the attorney continued to communicate orally
16 and in writing with opposing counsel and to file pleadings while suspended for failure to
17 comply with MCLE requirements. The attorney told the judge almost a year after she had been
18 suspended that she had taken care of the suspension with the Bar. She had not completed her
19 MCLE requirements. The aggravating factor was her substantial experience in the practice of
20 law. And mitigating factors included present personal or emotional problems, mental
21 disability, no dishonest motive, and cooperation with the Bar. The attorney was suspended for
22 six months and one day.
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1 In reviewing other cases it is unlikely any one matter will be the same as the instant
2 case. Respondent's conduct is more egregious than *Allred, Rhees, and Wahl*. Those cases did
3 not involve an attorney who had already been sanctioned for practicing law while suspended
4 and then repeated the same conduct. However, as stated above, the disbarment cases contain
5 the additional elements of taking client's money and abandoning the cases of the clients that
6 are not present in either the instant case or in the prior disciplinary matters for Respondent.

7 RECOMMENDATION

8 For this Hearing Officer the challenge is to decide whether the Respondent can salvage
9 her legal career. To recommend disbarment on this record is to conclude that the Respondent is
10 beyond the point of rehabilitation. Certainly the length of time in which Respondent
11 knowingly represented so many clients in court while on suspension leads to the conclusion
12 that Respondent will not follow the rules for professional conduct. It seems ludicrous that a
13 person who is being paid \$55,000 over a six-month period between June 2008 and January
14 2009 cannot pay annual bar dues. The Hearing Officer suspects that something else is involved
15 in Respondent's conduct that relates to her mental health issues.

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17 Therefore, the Hearing Officer recommends a suspension of four years. This will be
18 sufficient time for Respondent to be separated from the client public and for Respondent to
19 address any mental health issues. In addition it is recommended that upon reinstatement
20 Respondent will be on probation for two years with terms to be established at the time of
21 reinstatement. Respondent should also be required to pay the costs of these proceedings.

SANCTIONS

1. Respondent will be suspended for four years from the date of the Judgment and Order herein;
2. Respondent will be on probation for two years commencing from the time of reinstatement, with terms and conditions of probation to be established at the time of reinstatement;
3. Respondent shall pay all the costs of these proceedings;
4. In the event Respondent fails to comply with any of the foregoing terms, and the State Bar receives information about her failure, Bar Counsel will file a Notice of Non-Compliance with the Disciplinary Clerk. A hearing officer will 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 a preponderance of the evidence.

DATED this 8th day of December, 2009.

Hon. Jonathan Schwartz
Honorable Jonathan H. Schwartz
Hearing Officer 6S

Original filed with the Disciplinary Clerk
this 8th day of December, 2009.

1 Copy of the foregoing mailed
this 8 day of December, 2009, to:

2 Mary V. Schaffer
3 Respondent
4 PO Box 30335
Tucson, AZ 85751

5 Alternate Address:
6 Mary V. Schaffer
7 6305 E. Tanuri Circle
Tucson, AZ 85750

8 Stephen Little
9 Bar Counsel
10 State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

11 by: Deann Baker

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