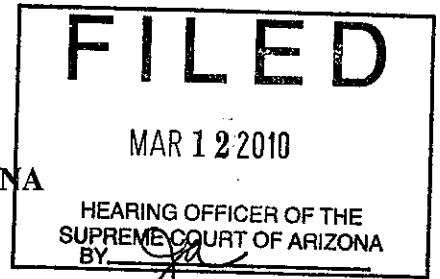


**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**



IN THE MATTER OF A MEMBER) No. 08-1333
OF THE STATE BAR OF ARIZONA,)
)
YVONNE YRAGUI,) **HEARING OFFICER'S REPORT**
Bar No. 014109)
)
RESPONDENT.)
_____)

PROCEDURAL HISTORY

1. Probable cause was found on June 23, 2009, and a Complaint was thereafter filed on October 29, 2009. The matter was assigned to the undersigned Hearing Officer on November 17, 2009, and a Case Management Conference was held on November 30, 2009. A Notice of Settlement was thereafter filed on January 25, 2010, and the matter proceeded to hearing on the Agreement on February 16, 2010, the Final Hearing date. Present at the hearing were State Bar Counsel Roberta Tepper, Respondent Yvonne Yragui and her counsel J. Scott Rhodes, and the undersigned.

FINDINGS OF FACT

2. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on October 26, 1991.¹

¹ Unless otherwise cited, all facts referred to herein are taken from the Tender of Admissions.

COUNT ONE (File no. 08-1333)

3. In or about January 2005, Respondent began representing Ola Salaam (“Ms. Sallam”) in a post divorce proceeding. Ms. Salaam had previously been represented by another Arizona attorney (the “First Attorney”) during 1998 and 1999.
4. At the time Respondent began her representation, Ms. Salaam's divorce was final. The First Attorney had filed a civil lawsuit against Ms. Salaam seeking to collect attorney's fees. That matter resulted in a default judgment against Ms. Salaam on October 12, 2001, before her divorce became final.
5. A hearing on the collection proceeding was scheduled to be held on December 12, 2006, in Maricopa County Superior Court. Respondent was to represent Ms. Salaam at that hearing.
6. On or about December 7, 2006, Respondent filed a pleading with the Court entitled Notice of Conflict and Expedited Motion to Continue Garnishment Hearing (“motion”). There was no objection to the continuance.
7. In her motion, Respondent informed the Court that she had reservations to fly to Portland on December 12, 2006, for a funeral service for an uncle, and requested that the hearing be continued. This statement was false and known by Respondent to be false. Respondent requested the continuance because Respondent had actually scheduled an emergency appointment with a healthcare provider to discuss whether the provider could or would help a gravely ill third-party family member. Respondent in fact did attend such meeting.

8. The false statement was material. Respondent contends, and testified, that she did not make the statement with the intent to materially deceive the Court but, rather, to protect the privacy interests of a seriously ill third-party family member, Transcript of Hearing "T/R" 6:19-7:18 & 13:20-14:19. Respondent regrets her actions and understands that she could have accomplished her objective of protecting the third-party's privacy interests without making a false statement to the Court. Respondent further contends that the false statement did not prejudice the parties to the underlying action, and this was confirmed by the Bar.
9. Based at least in part on the recitation in Respondent's motion, the Court, through the Honorable Lindsay Ellis, Superior Court Commissioner, continued the hearing until January 9, 2007.
10. In or about July 2008, the First Attorney filed with the State Bar of Arizona a charge against Respondent relating to Respondent's representation of Ms. Salaam.
11. The First Attorney's charge included allegations relating to Respondent's motion to continue the December 12, 2006, hearing. The First Attorney disagreed with Respondent's assertion to the Court in her motion to continue that no party would be prejudiced by the delay.
12. Respondent was provided with a copy of the First Attorney's charge, and asked to respond by letter from the State Bar dated August 15, 2008.
13. Although Respondent initially provided a response to the State Bar denying any violation of the ethical rules, by letter to the State Bar dated November 23, 2008, Respondent voluntarily admitted that she had not disclosed to the Court in her

motion the true reasons for the requested continuance of the December 12, 2006, hearing.

14. Respondent admitted that she had not made flight arrangements to Portland as stated in her motion to continue the December 12, 2006, hearing, but desired a continuance of the hearing due to a crisis relating to the health of a family member.
15. At the hearing in this matter the Hearing Officer was advised that none of the allegations of the First Attorney were found to be viable, there was no prejudice and, but for Respondent's self reporting, none of this would have come to light, T/R 13:12-15:24.

CONCLUSIONS OF LAW

16. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz.R.Sup.Ct., specifically ER 3.3(a)(1).

ABA STANDARDS

17. *ABA Standard 3.0* provides that four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; (4) the existence of aggravating and mitigating factors.

The Duty Violated

18. The parties submit that, given the conduct in this case, the most applicable *Standard* is *Standard 7.2* which provides that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to the legal system. The

Commentary states that this *Standard* is appropriate even when a lawyer does not intentionally abuse the professional relationship by engaging in deceptive conduct.

The Lawyer’s Mental State

19. The parties agree that Respondent's mental state in this matter was knowing.

The Injury Caused

20. The parties submit, and the undersigned Hearing Officer could not find otherwise, that there was no actual injury caused as a result of the Respondent's conduct. The harm caused was to the profession, and it was potential. There is no restitution in this matter.

Aggravating and Mitigating Factors

Aggravating Factors:

21. *Standard* 9.22(i) Substantial Experience in the Practice of Law. Respondent was admitted to the practice of law in 1991.

Mitigating Factors:

22. *Standard* 9.32(a) Absence of a Prior Disciplinary Record.
23. *Standard* 9.32(c) Personal or Emotional Problems.

At the time of the misconduct, Respondent was under acute personal stress relating to the health of a third-party. Respondent provided, under seal, evidence to substantiate this factor, attached as sealed Exhibit “B” to the Joint Memorandum. The parties agree that this situation required immediate action by Respondent and that this colored her judgment in framing her motion.

24. *Standard 9.3(e) Full and Free Disclosure to Disciplinary Board or Cooperative Attitude Toward Proceedings.*

Although in her initial response Respondent denied all misconduct, she voluntarily disclosed to Bar Counsel that she had made the false statement at issue. The parties submit that, absent Respondent's confession, this issue would not likely have come to light. This factor was, therefore, given significant weight in determining the agreed-upon sanction as was the factor of personal or emotional problems.

25. *Standard 9.32(l) Remorse.*

Respondent's remorse was demonstrated by her self-report to the State Bar of her misconduct as well as her revelation of the false statement to the First Attorney at a mediation. This Hearing Officer also noted a visibly shaken and remorseful Respondent during the hearing of this matter.

PROPORTIONALITY ANALYSIS

26. The Supreme Court has held that one of the goals of Attorney discipline should be to achieve consistency when imposing discipline. It is also recognized that the concept of proportionality is “an imperfect process” because no two cases are ever alike, *In re Struthers*, 179 Ariz. 216, 887 P.2d 789 (1994), *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983). In order to achieve internal consistency, it is appropriate to examine sanctions imposed in cases that are factually similar, *In re Peasley*, 208 Ariz. 90, 90 P.3d 772 (2004). It is also the goal of Attorney discipline that the discipline imposed be tailored to the individual case and that neither perfection nor absolute uniformity can be achieved, *Peasley*, supra.

27. In this case, the State Bar is recommending, and the Respondent has accepted, a Censure, with Respondent being placed on probation for a period of one year.
28. The parties submit that although recent cases have resulted in short-term suspensions when lawyers have made false statements to the Court, the situation in the instant matter may be distinguished on its facts.
29. In *In re McPherson*, SB-08-0079-D (2008), the lawyer, in moving to continue the appearance at a murder trial of his client, who was to testify, knowingly falsely stated to the Court that he could not be present because of a medical appointment. This caused the witness' testimony to be rescheduled. In truth, the lawyer's appointment was a reservation to play golf. The lawyer was found to have violated ER's 3.3, 8.4(c) and (d) and was suspended for 30 days, with probation upon reinstatement. Multiple aggravating factors were found, including prior disciplinary history, dishonest or selfish motive, and refusal to acknowledge the wrongful nature of the conduct. In the instant matter, the parties submit that Respondent lacked a selfish or dishonest motive. Respondent testified that she made the false statement only to protect the privacy interests of the third person and did so under the conditions of extreme personal stress. Further, unlike *McPherson*, who continued to minimize or deny the wrongfulness of misconduct resulting in finding of a relevant aggravating factor, Respondent reported her misconduct even though it was questionable whether the State Bar would have discovered it, and she took responsibility for her actions.
30. In *re Bracamonte*, SB-09-0087-D (2009) the lawyer was suspended for 30 days for violations of ERs 3.3(a)(1), 4.1(a), 8.4(a), (c) and (d), and Rules 41(c), (e) and

(g). In that matter, the lawyer was unprepared to proceed with a trial and falsely informed the Court that he was scheduled to be in another courtroom and therefore could not be present. Multiple aggravating factors were present, including the fact that the lawyer had prior disciplinary history. Multiple mitigating factors were present as well including personal and emotional problems, timely good-faith effort to rectify the consequences of his misconduct, imposition of other sanctions, and remorse. In *Bracamonte*, unlike the instant matter, there was actual injury in the underlying proceeding. In this case, Commissioner Ellis informed the parties in a pre-hearing interview that she would likely have continued the hearing at issue had Respondent offered a more accurate, if less precise reason for the request. Therefore, although there is injury to the legal profession when a lawyer is not honest with the Court, there was little or no actual or potential injury to the underlying proceedings.

31. Censures were imposed in *In re Shorr*, SB-08-0174-D (2008), when the lawyer made misrepresentations by omission, and she failed to inform the Court that her withdrawal of a petition in Juvenile Court was not for settlement purposes, and of her intent to file a petition in Family Court after the action was dismissed; in *In re Berry*, SB-09-0023-D (2009) when the lawyer made a false statement of material fact not justified by the evidence in closing argument and failed to correct the misstatement; and in *In Re Olcott*, SB-09-0011-D (2009), when the lawyer made a false statement to the Court when he submitted affidavits in support of applications for attorney's fees without reading the affidavits.

RECOMMENDATION

32. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, the administration of justice and deter future misconduct, *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993), *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). It is also the purpose of Attorney discipline to instill public confidence in the Bar's integrity, *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).
33. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's *Standards for Imposing Lawyer Sanctions* and the proportionality of discipline imposed in analogous cases, *Matter of Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994).
34. While this Hearing Officer is particularly sensitive to the requirement that lawyers be honest with the Court in all matters, there are times when lawyers are not honest with the Court for what they feel to be good and legitimate reasons. While Respondent's conduct cannot be condoned, her explanation is certainly understandable. More significantly, it is important to encourage the kind of integrity exhibited by the Respondent when she self-reported her misstatement to the Court. The evidence was that had Respondent not brought up her misstatement, it would have never been discovered. Granted, an intentional misstatement to the Court generally warrants a suspension, but it is often stated that the discipline imposed must be tailored to fit the particular facts of each case.

35. This Hearing Officer found the Respondent to be extremely remorseful, having the self-awareness to understand that what she did was wrong and also the commitment to make sure it never happens again. This Hearing Officer has read the sealed exhibit, and understands why Respondent did what she did. It was very evident that Respondent understands that her desire to maintain the confidentiality of a close family member does not trump her responsibility to this profession. Therefore, this Hearing Officer believes that the goals of attorney discipline have been met with the following recommended sanction:

1. Respondent shall be Censured;
2. Respondent shall be placed on probation for a period of one year. The terms and conditions of probation shall include the following:
 - a. Probation will commence upon the filing of the Final Judgment and Order of the Supreme Court of Arizona;
 - b. Respondent shall contact the director of the State Bar's Member Assistance Program (MAP) within 30 days of the date of the filing of the Final Judgment and Order of the Supreme Court;
 - c. Respondent shall submit to a MAP assessment. The purpose of such assessment shall be to determine whether Respondent currently can respond appropriately to any stress that she may experience as a result of a family member's condition and whether MAP may provide support or assistance in this ongoing situation.
 - d. The Director of MAP shall develop "Terms and Conditions of Probation" based on the assessment and the terms shall be incorporated herein by

reference. If the MAP Director finds no need for further terms and conditions, Respondent's probation will end, T/R 15:2-24.

- e. Respondent shall comply with any other terms and conditions deemed appropriate by the Director of MAP, which shall be incorporated herein by reference;
- f. Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other rules of the Supreme Court of Arizona;
- g. If Respondent fails to comply with any of the foregoing conditions and the State Bar receives information about noncompliance, Bar Counsel shall file with the imposing entity a Notice of Noncompliance. The matter may be referred to a Hearing Officer to conduct a hearing at the earliest applicable date, but in no event later than 30 days after receipt of notice, to determine whether a term of probation has been breached, and if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing conditions, the burden of proof shall be on the State Bar to prove noncompliance by a 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 the Expenses is attached as Exhibit "A" to the Tender of Admissions, and incorporated herein. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court and the Disciplinary Clerks Office in this matter.

DATED this 12th day of March, 2010.

H. Jeffrey Coker / ja
H. Jeffrey Coker
Hearing Officer 6R

Original filed with the Disciplinary Clerk
this 12th day of March, 2010.

Copy of the foregoing mailed
this 15 day of March, 2010, to:

J. Scott Rhodes
Respondent's Counsel
Jennings Strouss & Salmon PLC
201 E Washington Street, 11th Floor
Phoenix, AZ 85004-2385

Copy of the foregoing hand-delivered
this 15 day of March, 2010, to:

Roberta Tepper
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: Deann Baker