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JUN 23 2009

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY [Signature]

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

IN THE MATTER OF A SUSPENDED MEMBER) No. 07-0645
OF THE STATE BAR OF ARIZONA,)
)
MICHAEL J. TRULL,)
Bar No. 015571,) **DISCIPLINARY COMMISSION**
) **REPORT**
)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on June 13, 2009, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed April 17, 2009, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent ("Joint Memorandum") providing for a six-month suspension retroactive to March 5, 2009, and costs.

Decision

Having found no facts clearly erroneous, the seven¹ members of the Disciplinary Commission by a unanimous vote, recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for a six-month suspension retroactive to March 5, 2009,² and costs of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk's office.³

¹ Commissioners Todd, Gooding and Horsley did not participate in these proceedings. Mary Carlton, a public member from Phoenix, participated as an ad hoc member.

² As stipulated in the Tender pp. 6-7 and accepted in the Hearing Officer's Report p. 9.

³ The Hearing Officer's Report is attached as Exhibit A.

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RESPECTFULLY SUBMITTED this 23rd day of June, 2009.

Jeffrey Messing/cs
Jeffrey Messing, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 23rd day of June, 2009.

Copy of the foregoing mailed
this 23rd day of June, 2009, to:

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Phoenix, AZ 85016-6288

by: Evelyn Jiza

/cs

EXHIBIT

A

1 Bruce G. Macdonald
2 State Bar No. 010355
3 1670 E. River Road #200
4 Tucson, AZ 85718
5 Hearing Officer 6M

FILED

APR 17 2009

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

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

6 **IN THE MATTER OF A SUSPENDED**
7 **MEMBER OF THE STATE BAR OF**
8 **ARIZONA,**

No. 07-0645

8 **MICHAEL J. TRULL,**
9 **Bar No. 015571**

HEARING OFFICER'S REPORT

(Bruce G. Macdonald, Hearing Officer
6M)

10 Respondent.

11 **PROCEDURAL HISTORY**

12 A Probable Cause Order was filed by Probable Cause Panelist, Alan P. Bayham, Jr., on
13 August 1, 2008. A Complaint was filed by the State Bar of Arizona (hereinafter "State Bar") on
14 September 24, 2008. The Complaint was served by mail on September 25, 2008. The case was
15 assigned to this Hearing Officer on October 1, 2008. Respondent filed a Motion to Dismiss on
16 October 27, 2008. The State Bar filed a Response to the Motion to Dismiss on November 17,
17 2008. Respondent filed a Reply to the Response to Motion to Dismiss on November 19, 2008.
18 A telephonic hearing on the Motion to Dismiss and a telephonic Initial Case Management
19 Conference took place on December 11, 2008. A hearing on the merits was scheduled for
20 February 6, 2009. By Order dated December 11, 2008, the Motion to Dismiss was denied.
21 Respondent filed an Answer on December 26, 2008. On January 7, 2009, the case was assigned
22 to Settlement Officer 7I, Richard N. Goldsmith, for the sole purpose of facilitating a settlement
23 of the case. On January 20, 2009, a Motion For Extension of Time Within Which To Conduct
24 Hearing was filed by this Hearing Officer. The Disciplinary Commission granted this motion
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1 and extended the time within which to hold the hearing to March 23, 2009. A hearing on the
2 merits was scheduled for March 23, 2009. A Settlement Conference took place on March 5,
3 2009. The State Bar filed a Notice of Settlement on March 9, 2009. On March 19, 2009, a
4 Tender of Admissions and Agreement for Discipline by Consent and Joint Memorandum in
5 Support of Agreement for Discipline by Consent were filed. On March 23, 2009, a hearing on
6 the agreement took place.

7 **FINDINGS OF FACT**

8
9 1. At all times relevant, Respondent was an attorney licensed to practice law in the
10 State of Arizona, having been admitted to practice in Arizona on May 21, 1994.

11 2. At all relevant times, Respondent was a suspended member of the State Bar of
12 Arizona, having been administratively suspended on June 18, 1998 for failure to comply with
13 Rule 45, Ariz.R.Sup.Ct., regarding mandatory continuing legal education ("MCLE")
14 requirements and non-payment of dues.

15 3. Respondent holds inactive licenses in Washington and Idaho.

16 4. At all relevant times, Respondent was not legally permitted to practice law in
17 any jurisdiction in the United States of America, and did not inform his company (employer) of
18 this fact.

19 5. On or between June 1, 2004 and May 7, 2007, Respondent served as the director
20 of legal services for Casey Tool and Machine (CTM), a corporation with offices in Tucson, AZ.

21 6. On or between June 1, 2004 and May 7, 2007, Respondent served as the director
22 of legal services for Stingray Energy Systems (SES), an affiliate of CTM. He was not an
23 employee of SES.
24
25

1 7. During the period of Respondent's suspension, in his capacity as director of
2 legal services for CTM, he continued to practice law, including, but not limited to:

- 3 a. Protecting CTM's and SES's legal rights by preparing contracts, patent
4 agreements, and settlement agreements on their behalf;
5 b. Preparing responses to subpoenas;
6 c. Giving advice to employees on business matters, such as patent agreements and
7 contracts;
8 d. Negotiating a settlement between Mr. Gary Don Lupo and SES in an
9 employment dispute; and
10 e. Engaging in any other activities consistent with being an in-house counsel for a
11 company.
12

13 8. On or about April 23, 2007, Mr. Lupo filed a complaint with the State Bar of
14 Arizona alleging Respondent engaged in the unauthorized practice of law and professional
15 misconduct.

16 9. The State Bar sent a letter, dated September 12, 2007, to Respondent, advising
17 him of the allegations concerning his professional misconduct. In this letter, respondent was
18 advised that he needed to provide a response to the allegations within twenty (20) days, and
19 was reminded that pursuant to Arizona Supreme Court Rule 53(d) and (f), he has an ethical
20 duty to cooperate with disciplinary investigations. This letter was sent to an address that the
21 State Bar had on file for Respondent, and it was not returned to the State Bar as undeliverable.
22

23 10. Respondent did not provide a response.

24 11. The State Bar sent a second letter, dated October 3, 2007, to Respondent asking
25 for his response within ten (10) days, to the allegations. The letter cautioned him that failure to

1 cooperate with a disciplinary investigation is a violation of Arizona Supreme Court Rules, and
2 is, itself, grounds for discipline. The letter was sent to two different addresses, one of which
3 was his address of record with membership records. The letter to his address of record was not
4 returned to the State Bar as undeliverable.

5 12. After receiving a phone call from Respondent's wife on or about October 15,
6 2007, the State Bar sent a letter, dated October 17, 2007, to Respondent, granting him a 30-day
7 extension of time to November 15, 2007, in which to respond to the allegations. This letter was
8 sent to an address that the State Bar had on file for Respondent, but was not his address of
9 record with membership records, and it was not returned to the State Bar as undeliverable.
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11 13. Respondent sent a letter, dated November 19, 2007, to the State Bar asking for
12 an additional two weeks from November 19, 2007, to respond to the allegations. The State Bar
13 allowed for another extension of time to respond.

14 14. The State Bar sent a third letter dated January 17, 2008, to Respondent asking
15 for a response to the allegations within ten days. The letter stated that the State Bar had added
16 Rule 42 and Ariz.R.Sup.Ct. Rules, 8.1(b) and Rule 53(d) and (f), to its investigation, and
17 cautioned Respondent that if he failed to respond to the allegations within the allotted ten days,
18 the State Bar would likely recommend that the Probable Cause Panelist issue an order of
19 probable cause. This letter was sent to an address that the State Bar had on file for Respondent,
20 but was not his address on record with membership records, and it was not returned to the State
21 Bar as undeliverable.
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23 15. Respondent failed to provide any response to the allegations prior to the filing of
24 the Complaint.
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1 system.” The Hearing Officer acknowledges that there is no proof that Respondent’s
2 conduct caused any actual injury. The Hearing Officer does find that by knowingly
3 engaging in the unauthorized practice of law, Respondent caused potential injury to the
4 public.

5 In deciding what sanction to impose, the following aggravating and mitigating
6 circumstances have been considered:

7 **Aggravating Factors:**

- 8
- 9 • *Standard 9.22(e)* (bad faith obstruction of the disciplinary proceeding):
10 Respondent never responded to the Bar’s investigation in this matter, despite
11 repeated reminders of his obligation to do so from the Bar.
 - 12 • *Standard 9.22(i)* (substantial experience in the practice of law): Respondent has
13 been an Arizona attorney for nearly 15 years.

14 **Mitigating Factors:**

- 15
- 16 • *Standard 9.32(a)* (absence of a prior disciplinary record): Respondent has not
17 been disciplined prior to this matter.
 - 18 • *Standard 9.32(b)* (absence of a dishonest or selfish motive): Respondent has
19 alleged, and the State Bar does not dispute, that he genuinely wanted to protect the
20 legal interests of CTM and SES, and always worked toward that goal.
 - 21 • *Standard 9.32(g)* (character and reputation): Respondent provided letters of
22 support demonstrating his good character and reputation.
 - 23 • *Standard 9.32(i)* (remorse): Respondent has alleged, and the State Bar does not
24 dispute, that he is truly remorseful for his conduct. He has demonstrated this by his
25

1 willingness to waive his right to challenge jurisdiction and accept full responsibility
2 for his conduct.

3 In evaluating the aggravating and mitigating factors, the Hearing Officer finds that
4 there is no justification for varying from the presumptive sanction of a suspension.

5 **Proportionality Review**

6 To have an effective system of professional sanctions, there must be internal
7 consistency, and it is appropriate to examine sanctions imposed in cases that are factually
8 similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994) (quoting *In re Wines*, 135
9 Ariz. 203, 207, 660 P.2d 454, 458 (1983). However, the discipline in each case must be
10 tailored to the individual case, as neither perfection nor absolute uniformity can be achieved.
11 *In re Riley*, 142 Ariz. 604, 615, 691 P.2d 695 (1984).

13 In *In re Rhees*, SB-01-0161-D (2001), Rhees entered into an agreement for
14 discipline by consent and was suspended for four months (retroactive) and placed on 24
15 months probation for violations of ERs 3.3(a)(1), 3.4(c), 5.5, 8.4(c), and SCR's 51(e) and
16 51(k). Rhees, while suspended, remained attorney of record for eighteen clients, for whom
17 he filed motions/pleadings and attended one hearing. Respondent further made
18 misrepresentations to the Court, clients, and others concerning his ability to practice law.
19 The Disciplinary Commission found a knowing mental state. Factors found in aggravation
20 were: multiple offenses, *Standard* 9.22(d); and substantial experience in the practice of
21 law, *Standard* 9.22(i). Factors found in mitigation were: absence of a prior disciplinary
22 record, *Standard* 9.32(a); personal or emotional problems *Standard* 9.32(c); mental
23 disability or chemical dependency including alcoholism or drug abuse, *Standard* 9.32(i);
24 and remorse, *Standard* 9.32(l).
25

1 In *In re Allred*, SB-98-0049-D (1998), Allred entered into an agreement for
2 discipline by consent and was suspended for six months and one day, retroactive to
3 February 1, 1996, for violations of ERs 3.3(a)(1), 5.5(a), and 8.4(a). Allred, while
4 suspended for non-compliance with MCLE requirements and non-payment of dues,
5 continued to represent the plaintiff in a superior court case. She had oral and written
6 communications with opposing counsel on the matter, and filed pleadings on her client's
7 behalf.

8
9 In *In re Larriva*, SB-96-0020-D (1997) Larriva was suspended for six months and
10 one day and placed on one-year probation, with practice monitor and MAP terms, for
11 violations of ERs 5.5, 8.1, and Rule 51(e), (f), (h), and (i). Larriva was suspended from
12 practice for non-compliance with MCLE obligations on April 26, 1991. Despite knowledge
13 of his suspension, Larriva filed a petition for an order to show cause and other related
14 papers on behalf of a client on May 7, 1991, and appeared in court at an order to show
15 cause hearing on behalf of that same client on July 11, 1991. Larriva then failed to respond
16 to either of two letters sent to him by the State Bar in its 1992 investigation into pending
17 charges filed against him by his client. The Disciplinary Commission found a knowing
18 mental state regarding the UPL issue, and decided a suspension was the appropriate
19 sanction. Factors found in aggravation included substantial experience in the practice of
20 law (over 30 years.) *Standard* 9.22(i); prior disciplinary offenses, *Standard* 9.22(a); and
21 bad faith obstruction of disciplinary proceeding, *Standard* 9.22(e). Factors considered in
22 mitigation included absence of a dishonest or selfish motive, *Standard* 9.32(b); and full and
23 free disclosure to a disciplinary board or cooperative attitude toward proceedings, *Standard*
24 9.32(e).
25

These listed cases all relate to violations of the Duties Owed to the Profession. Like Respondent, Rhees, Allred, and Larriva all knowingly engaged in the unauthorized practice of law. Larriva, like Respondent, did not comply with his obligations to participate in the Bar's investigation. Rhees, like Respondent, misled others about his ability to practice law. Larriva and Rhees had substantial experience in the practice of law considered as an aggravating factor and had absence of a dishonest or selfish motive considered as a mitigating factor.

Based on the *Standards* and case law, the Hearing Officer finds that a six-month suspension, retroactive to March 5, 2009, is within the range of appropriate sanction in this case and will serve the purposes of lawyer discipline. A retroactive suspension is proper in this matter, because the Respondent avows that he has been unemployed since October 16, 2007. Further, Respondent accepted full responsibility for his conduct at the settlement conference on March 5, 2009 and at the hearing on the agreement on March 23, 2009. Additionally, the Respondent has been suspended since 1998 and, pursuant to Rules 64 and 65, will have to go through a full reinstatement procedure to reactivate his license. Any issues concerning probation for either the summary suspension or this disciplinary suspension may be addressed if the Respondent does reinstate his license. This sanction will serve to protect the public, instill confidence in the public, deter other lawyers from similar misconduct, and maintain the integrity of the bar.

SANCTIONS

This Hearing Officer finds, that the appropriate disciplinary sanctions are as follows:

1. Respondent shall receive a six-month suspension, retroactive to March 5, 2009.

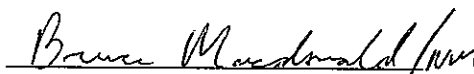
2. Respondent shall pay costs and expenses incurred by the State Bar. In addition, Respondent shall pay costs incurred by the Disciplinary Commission, the Supreme Court of Arizona, and the Disciplinary Clerk's Office in this matter.

CONCLUSION

The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, and the administration of justice. *In Re Peasley*, 208 Ariz. at 41, 90 P.3d at 778; *In Re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985).

This Hearing Officer finds that the objectives of discipline will be met by the imposition of the proposed sanction.

DATED this 17th day of April, 2009.

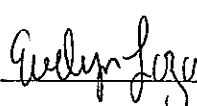

Bruce G. Macdonald
Hearing Officer 6M

Original filed this 17th day of April, 2009,
with the Disciplinary Clerk of the Supreme Court of Arizona

Copies of the foregoing mailed this 20th day of April, 2009, to:

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