

1 Robert A. Clancy, Jr., Bar No. 016424
2 Staff Bar Counsel
3 State Bar of Arizona
4 111 West Monroe, Suite 1800
5 Phoenix, Arizona 85003-1742
6 Telephone (602) 340-7250

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

9 IN THE MATTER OF A NON-MEMBER) No. 02-0052
10 OF THE STATE BAR OF ARIZONA,)
11 MORTON GOLLIN,) **TENDER OF ADMISSIONS**
12 California Bar No. 132835) **AND AGREEMENT FOR**
13 Respondent.) **DISCIPLINE BY CONSENT**
(Assigned to Hearing Officer
9Y, Ann H. Phillips)

14 This Agreement is entered into between the State Bar of Arizona and
15 Respondent Morton Gollin, who is not represented by counsel. It is submitted
16 pursuant to Rule 56(a), Ariz.R.S.Ct. and the guidelines for discipline by consent
17 issued by the Disciplinary Commission of the Supreme Court of Arizona.

18 Respondent agrees to be censured for representing a client in an Arizona
19 personal injury action when he was not admitted to practice in Arizona, for
20 making false and misleading representations to the opposing party (USAA
21 Insurance) regarding the legal guardian of his minor client, and for failing to turn
22 over the personal injury settlement proceeds to the true legal guardian of the
23 minor. Respondent also agrees to pay all costs and expenses incurred by the State
24 Bar in bringing these disciplinary proceedings against him, including all costs and
25

1 expenses incurred by the Disciplinary Commission, the Supreme Court, and the
2 Disciplinary Clerk's Office in this matter. Respondent understands that this
3 agreement is subject to review and acceptance by the Disciplinary Commission,
4 and the Supreme Court of Arizona. There is no issue of restitution in this matter.
5

6 FACTS

7 The parties conditionally admit the following facts:

8
9 1. At all times relevant hereto, Respondent was an attorney licensed to
10 practice law in the State of California.

11 2. On or about May 19, 1998, Respondent filed in Maricopa County
12 Superior Court, an Application to Appear Pro Hoc Vice, on behalf of his stepson,
13 Christopher Cooper ("Mr. Cooper"), in a paternity action involving Sheri Clark
14 ("Ms. Clark").
15

16 3. Michael Cooper ("Michael"), the son of Mr. Cooper and Ms. Clark,
17 was the subject of the paternity action.
18

19 4. The paternity action was ultimately transferred to Pima County
20 Superior Court. On July 21, 1999, the court entered an Order, awarding sole
21 custody of Michael to Ms. Clark.
22

23 5. Although Respondent was no longer representing Mr. Cooper, he was
24 present in the courtroom when Ms. Clark was awarded sole custody.
25

1 6. On November 27, 1997, previous to the paternity action, Michael was
2 injured in a traffic accident that occurred in Phoenix. Larry Little was the
3 insurance policy holder of the other vehicle involved in the accident.
4

5 7. Sometime thereafter, Respondent began representing Michael in the
6 personal injury matter arising out of the November 23, 1997 traffic accident.
7 Respondent was not admitted to practice law in Arizona.
8

9 8. Respondent thereafter negotiated with Little's insurance company,
10 United Services Automobile Association ("USAA").

11 9. Respondent settled Michael's personal injury action without the
12 knowledge or consent of Ms. Clark, Michael's sole custodial parent.
13

14 10. In negotiating a settlement, Respondent represented to USAA that
15 Mr. Cooper was Michael's legal guardian and that he had sole custody.
16 Respondent knew that this statement was false.
17

18 11. The personal injury case settled on or about February 1, 2001 for
19 \$6,500.00.

20 12. On March 5, 2001, Respondent served as a witness for Mr. Cooper's
21 signature on USAA's Parent/Guardian Release and Indemnity Agreement. On
22 this form, Mr. Cooper indicated that he was Michael's legal guardian. This was a
23 false statement.
24
25

1 13. Respondent also had Mr. Cooper sign an Affidavit indicating that Mr.
2 Cooper had sole custody of Michael and that he was his legal guardian.

3 14. The entire settlement (\$6,500) was turned over to Mr. Cooper, who
4 was instructed to, and did, place the funds in a restricted account for the benefit of
5 the minor.
6

7 15. Currently, the funds are in a Bank of America account in Tucson,
8 Arizona, in a custodial account, with both parents named on the account. A court
9 order is necessary to transfer funds from this account.
10

11 16. Respondent represented a client in an Arizona personal injury action
12 when he was not admitted to practice in Arizona. In addition, Respondent falsely
13 represented to USAA that Mr. Cooper was Michael's legal guardian.
14

15 **CONDITIONAL ADMISSION OF ETHICAL VIOLATIONS**

16 ER 1.2:	1 violation
17 ER 1.15:	1 violation
18 ER 4.1:	1 violation
19 ER 5.5:	1 violation
20 ER 8.4(c):	1 violation

21 **SANCTIONS**

22 Respondent's admissions are being tendered in exchange for the form of
23 discipline stated below:
24
25

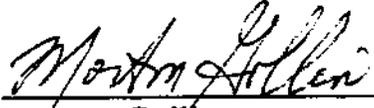
- 1 a. Respondent shall be censured for violating ER 1.2, ER 1.15, ER 4.1,
2 ER 5.5, and ER 8.4(c).
3
4 b. Respondent shall pay the costs and expenses incurred by the State Bar
5 in bringing these disciplinary proceedings within thirty (30) days of
6 the Order approving the settlement.
7
8 c. Respondent shall pay the administrative costs imposed by the
9 Disciplinary Commission, the Supreme Court of Arizona, and the
10 Disciplinary Clerk's Office in this matter, if any.
11
12 d. Respondent shall refrain from any conduct that would violate the
13 Rules of Professional Conduct or other rules of the Supreme Court.

14 By entering into this Agreement, Respondent waives his right to a formal
15 disciplinary hearing, pursuant to Rule 53(c)(6), Ariz.R.S.Ct., and the right to
16 testify or present witnesses on his behalf at a hearing. Respondent further waives
17 all motions, defenses, objections, or requests which he has made or raised, or
18 could assert hereinafter if the conditional admissions and stated form of discipline
19 are approved. Respondent is represented by counsel in these proceedings and
20 acknowledges that he has discussed the instant matter with that counsel and
21 understands and is in agreement with the resolution proposed. Respondent
22 acknowledges that he has read this Agreement, that he has received a copy of it,
23 that, with conditional admissions, this Agreement is submitted freely and
24
25

1 voluntarily and not under coercion or intimidation. Last, Respondent
2 acknowledges that he is aware of the Rules of the Supreme Court with respect to
3 discipline.
4

5 This Tender of Admissions and Agreement for Discipline by Consent is
6 respectfully submitted to the Disciplinary Commission for approval. Respondent
7 realizes that the Commission may request his presence at a hearing for
8 presentation of evidence and/or argument in support of this Agreement. He
9 further recognizes that the Commission may recommend rejection of this
10 Agreement. He further understands that the Disciplinary Commission must
11 approve this Agreement, and that this matter shall be final upon judgment and
12 order of the Supreme Court of Arizona. If the Agreement is rejected, all
13 conditional admissions stated herein are withdrawn.
14
15

16 DATED this 6 day of April, 2003.

17 
18 _____
19 Morton Gollin,
20 Respondent

21 DATED this 11 day of April, 2003.

22 STATE BAR OF ARIZONA
23 
24 _____
25 Robert A. Clancy, Jr.
Staff Bar Counsel

1 Approved as to form and content:

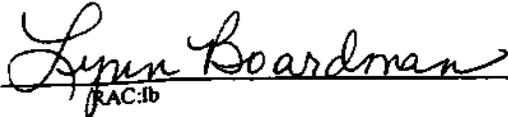
2 
3 Robert B. Van Wyck
4 Chief Bar Counsel

5 Copy of the forgoing was mailed via first
6 class mail this 11th day of April,
2003, to:

7 Morton Gollin
8 Attorney at Law
9 3001 Tahquitz Canyon Way, Suite 105
10 Palm Springs, California 92262
Respondent

11 Copy of the foregoing was hand delivered
12 this 11th day of April, 2003, to:

13 Dee Steadman
14 Lawyer Regulation Records Manager
15 State Bar of Arizona
16 111 West Monroe, Suite 1800
Phoenix, Arizona 85003-1742

17 by: 
RAC:lb

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FILED
APR 11 2003
DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *Mary Ann Decker*

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9 IN THE MATTER OF A NON-MEMBER) No. 02-0052
10 OF THE STATE BAR OF ARIZONA,)
11) **JOINT MEMORANDUM**
12 **MORTON GOLLIN,**) **IN SUPPORT OF**
13 **California Bar No. 132835**) **AGREEMENT FOR**
14) **DISCIPLINE BY CONSENT**
15) (Assigned to Hearing Officer
16 **Respondent.**) **9Y, Ann H. Phillips**

17 The State Bar of Arizona and Respondent hereby submit their Joint
18 Memorandum in Support of the Agreement for Discipline by Consent, filed
19 contemporaneously herewith.

20 **RECOMMENDED SANCTION**

21 Respondent agrees to be censured for violating ERs 1.2, 1.15, 4.1, 5.5, and
22 8.4(c). He further agrees to pay all costs and expenses incurred by the State Bar in
23 bringing these disciplinary proceedings against him, including all costs and
24 expenses incurred by the Disciplinary Commission, the Supreme Court, and the
25 Disciplinary Clerk's Office in this matter. Respondent understands that this

1 Agreement is subject to review and acceptance by the Disciplinary Commission,
2 and the Supreme Court of Arizona.

3
4 In considering the appropriate sanction with respect to Respondent's ethical
5 violations, it is useful to review the standards set by the Arizona Supreme Court.
6 First, the purpose of lawyer discipline is not to punish the lawyer, but to protect
7 the public, deter future misconduct, and instill public confidence in the Bar's
8 integrity. In re Horwitz, 180 Ariz. 20, 28-29, 818 P.2d 352 (1994); In re
9 Fioramonti, 176 Ariz. 182, 187, 859 P.2d 1315 (1993); In re Murray, 159 Ariz.
10 280, 282, 767 P.2d 1 (1989). Second, in imposing discipline, it is appropriate to
11 consider the facts of the case, the ABA Standards for Imposing Lawyer Sanctions
12 (1991, with 1992 amendments) ("ABA Standards"), and the proportionality of
13 discipline imposed in analogous cases. In re Bowen, 178 Ariz. 283, 286, 872 P.2d
14 1235 (1994); In re Fioramonti, 176 Ariz. at 187, 859 P.2d 1315 (1993); In re
15 Murray, 159 Ariz. 280, 767 P.2d 1 (1989); In re Rivkind, 164 Ariz. 154 (1990); In
16 re Tarletz, 163 Ariz. 548, 554, 798 P.2d 381 (1990); In re Ockrassa, 165 Ariz.
17 576, 579-580, 799 P.2d 1350 (1990).
18
19
20

21 ABA STANDARDS

22
23 The ABA Standards list the following factors to consider in imposing the
24 appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the
25

1 actual or potential injury caused by the lawyer's misconduct, and (4) the existence
2 of aggravating or mitigating circumstances. ABA Standard 3.0.

3
4 Additionally, according to ABA Standards and In re Cassalia, 173 Ariz.
5 372, 843 P.2d 654 (1992), where there are multiple acts of misconduct, the
6 Respondent should receive one sanction consistent with the most serious instance
7 of misconduct, and the other acts should be considered as aggravating factors.

8
9 In this case, Respondent's most serious conduct was that he knowingly made
10 a false representation to USAA Insurance regarding the legal guardian of his minor
11 client, in violation of ER 4.1. Standard 6.1, which addresses false statements,
12 fraud, and misrepresentations, is generally applicable to violations of this rule.
13 Standard 6.12 states that (s)uspension is generally appropriate when a lawyer
14 knows that false statements or documents are being submitted to the court or that
15 material information is improperly being withheld, and takes no remedial action,
16 and causes injury or potential injury to a party to the legal proceeding, or causes
17 an adverse or potentially adverse effect on the legal proceeding.
18
19

20 Suspension, therefore, is the presumptive sanction.

21 MITIGATING AND AGGRAVATING CIRCUMSTANCES

22
23 After a determination of the presumptive sanction, the next step under the
24 ABA Standards is consideration of the aggravating and mitigating circumstances.
25

1 **Aggravating Factors:**

2 9.22(i) substantial experience in the practice of law; Respondent has been
3 practicing law in California since 1988.
4

5 **Mitigating Factors:**

6 9.32(a) absence of a prior disciplinary record: Respondent has been
7 practicing law for 54 years with an unblemished record.

8 9.32(b) absence of a dishonest or selfish motive: Respondent took no fee
9 from the settlement negotiated for his grandson. No individual sustained any
10 injury as a result of Respondent's misconduct.
11

12 9.32(e) full and free disclosure to disciplinary board or cooperative attitude
13 toward proceedings: Respondent has been fully cooperative with the State Bar of
14 Arizona and Bar counsel in these proceedings.
15

16 **PROPORTIONALITY ANALYSIS**

17 To have an effective system of professional sanctions, there must be internal
18 consistency, and it is appropriate to examine sanctions imposed in cases that are
19 factually similar. In re Shannon, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994),
20 (quoting In re Wines, 135, Ariz. 203, 207 (1983)). However, the discipline in
21 each case must be tailored to the individual case, as neither perfection nor absolute
22 uniformity can be achieved. Matter of Riley, 142 Ariz. 604, 615 (1984).
23
24
25

1 Two Arizona cases, Matter of Olsen, 180 Ariz. 5, 881 P.2d 337 (1994), and
2 In re Mothershed, SB 01-0076-D, 2001 Lexis 63 (April 17, 2001) deal specifically
3 with the discipline of non-Arizona attorneys, and are therefore instructive in the
4 instant matter.
5

6 In Matter of Olsen, 180 Ariz. 5, 881 P.2d 337 (1994), Olsen, who was a
7 non-member of the State Bar of Arizona, was censured by the Arizona Supreme
8 Court for submitting false affidavits for the purpose of appearing *pro hac vice*.
9 Olsen submitted an affidavit that he was an active member of the Utah and
10 California bar associations at a time he was suspended from both of those
11 organizations. Olsen also failed to cooperate with the State Bar of Arizona's
12 investigation. The court stated that Olsen's conduct warranted disbarment.
13 However, Olsen was not a member of the State Bar of Arizona and thus he could
14 not be suspended or disbarred from the association. The Court stated that the only
15 sanction they were able to impose was a censure. Olsen was ordered to pay costs
16 in addition to the censure.
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19

20 In re Mothershed, SB 01-0076-D, 2001 Lexis 63 (April 17, 2001).
21 Mothershed was an Oklahoma attorney who was a non-member of the State Bar of
22 Arizona. Mothershed corresponded with others using letterhead that failed to
23 indicate he was not admitted to practice in Arizona. Mothershed filed pleadings in
24 Maricopa County Superior Court identifying himself as the attorney for one of the
25

1 parties without having sought permission by the court to appear *pro hac vice*.
2 Although the conduct would have warranted at least a suspension, the
3 Commission imposed a censure, because Mothershed was not a member of the
4 State Bar of Arizona.
5

6 The case law is clear; although Respondent's conduct warrants a sanction of
7 suspension, because he is a non-Arizona attorney, the most serious sanction which
8 may be imposed is a censure.
9

10 **CONCLUSION**

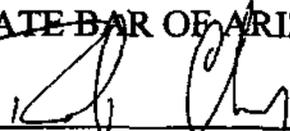
11 Consideration of the facts in this case, the ABA Standards, and the prior
12 decisions of the Arizona Supreme Court, the suggested sanction is appropriate,
13 and supports the purpose of attorney discipline. Respondent and the State Bar
14 respectfully request that the Disciplinary Commission accept this Agreement for
15 Discipline by Consent.
16

17 DATED this 6 day of April, 2003.

18 
19 _____
20 Morton Gollin,
21 Respondent

22 DATED this 11 day of April, 2003.

23 STATE BAR OF ARIZONA

24 
25 _____
Robert A. Clancy, Jr.
Staff Bar Counsel

1 Approved as to form and content:

2 
3 Robert B. Van Wyck

4
5 Original filed with the Disciplinary Clerk
6 this 11th day of April, 2003.

7 by: 
8

9 Copy of the forgoing was mailed via first
10 class mail this 11th day of April,
2003, to:

11 Morton Gollin
12 Attorney at Law
13 3001 Tahquitz Canyon Way, Suite 105
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21 
22 by: Lynn Boardman
23 RAC:ib