

**FILED**

JUN 15 2006

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

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

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IN THE MATTER OF A MEMBER	)	No.	04-0735, 04-1048, 04-1217,
OF THE STATE BAR OF ARIZONA,	)		05-0653
	)		
<b>STEFANI J. GABROY,</b>	)		
<b>Bar No. 004503</b>	)	<b>DISCIPLINARY COMMISSION</b>	
	)	<b>REPORT</b>	
	)		
RESPONDENT.	)		
_____	)		

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on May 13, 2006, pursuant to Rule 58, Ariz.RS.Ct., for consideration of the Hearing Officer's Report filed March 10, 2006, recommending disbarment, restitution, and costs of these disciplinary proceedings. No objections were filed.

**Decision**

The eight members<sup>1</sup> of the Disciplinary Commission unanimously adopts the majority of the Hearing Officer's findings of fact and conclusions of law with some exceptions, and modifies *de novo* the recommended sanction based upon the Commission's proportionality review, to reflect a two year suspension, two years of probation upon reinstatement with length and terms to be decided upon reinstatement, restitution, and costs of these disciplinary proceedings. Restitution is as follows:

**Restitution**

\$500.00 to Mr. Ziv Baker

**Discussion**

The Disciplinary Commission's standard of review is set forth in Rule 58(b), which states that it applies a clearly erroneous standard to findings and reviews questions of law *de*

<sup>1</sup> Commissioner Atwood did not participate in these proceedings.

1 *novo*. The Commission historically gives great deference to the Hearing Officer's Report  
2 and recommendation. *Matter of Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1989).

3 The Disciplinary Commission, as well as the Hearing Officer, found clear and  
4 convincing evidence that Respondent violated Rule 42, Ariz.R.S.Ct., specifically ERs 1.15(a),  
5 1.15(b) and 1.15(c), 3.4(c), and SCRs 43(a), 43(b), 43(d), 44(a), 44(b), and 53(c), 53(d) and  
6 53(f).

7 The Disciplinary Commission determined that the Hearing Officer erroneously  
8 concluded that Respondent violated ER 8.4(b) and (c). See Hearing Officer's Report, p.26,  
9 finding of fact 101, pp. 32-33, conclusion of law 10-12, and applicable *Standards* pp. 35-36.

10 Although the Commission agrees with the Hearing Officer that the conduct Respondent  
11 testified to is probably criminal and would warrant disbarment, the Commission is reminded  
12 that when the underlying facts are not charged in the pleadings before the disciplinary hearing,  
13 additional violations cannot be found. See *Matter of Tocco*, 194 Ariz. 453, 984 P.2d 539  
14 (1999), which held that an attorney's assertions before hearing committee could not serve as  
15 basis for additional disciplinary charges. At the disciplinary hearing, the State Bar argued for a  
16 two year suspension and probation. Initially, an agreement for a six month suspension was  
17 reached, however, Respondent subsequently refused to sign the agreement.

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19 In determining the appropriate sanction, our Supreme Court considers the ABA  
20 *Standards for Imposing Lawyer Sanctions* ("*Standards*") a suitable guideline. *In re Kaplan*,  
21 179 Ariz. 175, 877 P.2d 274 (1994). The Supreme Court and the Disciplinary Commission  
22 are consistent in utilizing the *Standards* to determine appropriate sanctions for attorney  
23 discipline. In imposing a sanction after a finding of misconduct, consideration is given to  
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1 the duty violated, the lawyer's mental state, the actual or potential injury caused by the  
2 misconduct, and the existence of aggravating and mitigating factors. *See Standard 3.0.*

3 Based on the uncharged allegations of Respondent using her trust account to avoid  
4 an Internal Revenue Service tax lien, the Hearing Officer erroneously determined that  
5 disbarment was the presumptive sanction. *See Hearing Officer's Report, p. 36.* The  
6 Disciplinary Commission reviewed *Standards 4.0, 6.0 and 7.0.*

7 *Standard 4.12 Lack of Candor* provides that:

8 Suspension is generally appropriate when a lawyer knowingly  
9 deceives a client, and causes injury or potential injury to the  
10 client.

11 *Standard 6.22 Abuse of the Legal Process* provides that:

12 Suspension is appropriate when a lawyer knowingly violates a  
13 court order or rule, and there is injury or potential injury to a  
14 client or a party, or interference or potential interference with  
15 a legal proceeding.

16 *Standard 7.2* provides that:

17 Suspension is generally appropriate when a lawyer knowingly  
18 engages in conduct that is a violation of a duty owed as a  
19 professional, and causes injury or potential injury to a client,  
20 the public, or the legal system.

21 The record supports that Respondent knowingly misused her client trust account,  
22 knowingly failed to comply with the order of Pima County Superior Court, and knowingly  
23 failed to respond and cooperate with the State Bar's investigation of these matters.  
24 Respondent's misconduct caused actual injury to clients and actual and potential injury to  
25 the legal system.  
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1 Having determined that the presumptive sanction for Respondent's misconduct is  
2 suspension, the Commission reviewed aggravating and mitigating factors, respectively, to  
3 determine the appropriate length of suspension to be imposed.

4 The Disciplinary Commission agrees with the Hearing Officer that aggravating  
5 factors 9.22(b) dishonest or selfish motive, (c) pattern of misconduct, 9.22(d) multiple  
6 offenses, 9.22(e) bad faith obstruction of the disciplinary proceedings by intentionally  
7 failing to comply with rules or orders of the disciplinary agency, 9.22(i) substantial  
8 experience in the practice of law, 9.22(j) indifference to making restitution are present. *See*  
9 *Hearing Officer's Report*, pp. 38-40.

10 The Commission also agrees with the Hearing Officer that mitigating factors 9.32(a)  
11 absence of a prior disciplinary record and 9.32(c) personal or emotional problems<sup>2</sup> are  
12 present, but little weight is given to Respondent's personal and emotional problems as no  
13 evidence other than Respondent's self serving testimony was offered in support of this  
14 factor. Case law has established that self-serving testimony is not enough to prove personal  
15 or emotional problems. *Matter of Augenstein*, 178 Ariz. 133, 137, 871 P.2d 254 (1994).

17 Sanctions against lawyers must have internal consistency to maintain an effective  
18 and enforceable system; therefore, the court and the commission look to cases that are  
19 factually similar to cases before them. *Matter of Pappas*, 159 Ariz. 516, 526, 768 P. 2d  
20 1161, 1171 (1988).

22 The Disciplinary Commission considered the proportionality analysis offered by the  
23 Hearing Officer and found that a two year suspension and two years of probation is within  
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26 <sup>2</sup> Respondent asserts she suffers from chronic pain and migraines and cares for a chronically ill adult child.

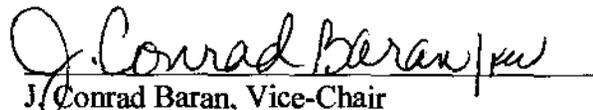
1 the range of appropriate sanctions for cases involving the misuse of client trust accounts,  
2 failure to obey court orders, and failure to respond and cooperate with the State Bar.

3 Conclusion

4 One purpose of lawyer discipline is to deter the respondent and other attorneys from  
5 engaging in similar unethical conduct. *In re Kleindienst*, 132 Ariz. 95, 644 P.2d 249 (1982).  
6 Another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180  
7 Ariz. 20, 29, 881 P.2d, 352, 362 (1994). In addition, the sanction that we imposed must help  
8 maintain the integrity of the legal system. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d  
9 1315, 1320 (1993).

10 Based on the findings and conclusions, application of the *Standards* and a  
11 proportionality analysis, the Disciplinary Commission recommends a two year suspension,  
12 two years of probation upon reinstatement, with the length and terms to be decided in  
13 reinstatement proceedings, restitution, and costs of these disciplinary proceedings.

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15 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of June, 2006.

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19 J. Conrad Baran, Vice-Chair  
20 Disciplinary Commission

21 Original filed with the Disciplinary Clerk  
22 this 15<sup>th</sup> day of June, 2006.

23 Copy of the foregoing mailed  
24 this 15<sup>th</sup> day of June, 2006, to:

25 Kraig J. Marton  
26 Hearing Officer 8A  
*Jaburg and Wilk, P.C.*  
3200 N. Central Avenue, Suite 2000  
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/mps