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FEB 24 2006

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA

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

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3 IN THE MATTER OF A MEMBER ) Nos. 04-0392, 04-1462  
4 OF THE STATE BAR OF ARIZONA, )  
5 **JOHN G. MORRISON,** )  
6 **Bar No. 006192** ) **DISCIPLINARY COMMISSION**  
7 ) **REPORT**  
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RESPONDENT.

8 This matter originally came before the Disciplinary Commission of the Supreme  
9 Court of Arizona on October 15, 2005, pursuant to Rule 58, Ariz. R. S. Ct., for consideration  
10 of the Hearing Officer's Report filed June 29, 2005 recommending a 60-day suspension, one  
11 year of probation upon reinstatement including six additional hours of continuing legal  
12 education (CLE) related to ethics, restitution and costs of these disciplinary proceedings.  
13 The State Bar filed an objection and requested oral argument. Respondent, Respondent's  
14 Counsel and Counsel for the State Bar were present.  
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16 The State Bar agrees with the Hearing Officer's findings of fact and conclusions of  
17 law, but argues that the recommended sanction is inadequate under the facts, *ABA Standards*  
18 and proportionality. Respondent knowingly and intentionally lied to his client about the  
19 status of his case. Respondent issued a check to the client and fabricated a personal injury  
20 settlement. The State Bar contends the presumptive sanction is suspension, and a  
21 suspension greater than six months with probation, restitution and costs is appropriate. The  
22 State Bar further contends that the Hearing Officer failed to give sufficient weight to the  
23 aggravating effect of Respondent's lesser violations and erred in not finding aggravating  
24 factor 9.22(b) dishonest or selfish motive.  
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1 Respondent stated that he does not dispute the facts or the aggravating and mitigating  
2 factors found by the Hearing Officer, and concurred that suspension is the presumptive  
3 sanction. Respondent argued that a 60-day suspension is within the range of sanctions and  
4 consistent with the ABA *Standards* and *Matter of Bihn*, SB-05-0084-D (2005) is the most  
5 comparable. In *Bihn*, an Agreement for 60-day suspension and two years of probation  
6 (LOMAP/MAP) was accepted for violating ERs 1.2, 1.3, 1.4, 3.2, 8.4(c) and (d).  
7 Respondent also maintains that *Matter of Feely*, 168 Ariz. 436, 814 P.2d 777 (1991) and  
8 *Matter of Giles*, 178 Ariz. 146, 871 P.2d 693 (1994) are also instructive. In *Feely*, a six-  
9 month suspension and restitution, with reinstatement conditional upon payment of restitution  
10 was imposed for violating ERs 1.1, 1.3, 1.4(a) and 8.4(c). In *Giles*, a 90-day suspension and  
11 restitution was imposed for violating DR 6-1-1(A)(3), DR 7-101(A)(1) and (3), DR 9-  
12 102(B)(1), ERs 1.2(a), 1.3, 1.4, 1.15(b) and (d).

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14 Upon hearing oral argument, the Disciplinary Commission ordered the parties to file  
15 simultaneous briefs distinguishing the instant conduct from *Matter of Gieszl*, SB-06-0013-D  
16 (2006). See Disciplinary Commission Report filed November 14, 2005, recommending a  
17 one-year suspension and two years of probation for knowing misconduct involving lying to  
18 a client about the status of their case and fabricating settlement documents in violation of  
19 ERs 1.3, 1.4(a), 1.7(b) and 8.4(c). The parties filed their briefs on December 14, 2005.

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21 The State Bar argued that *Gieszl* and the instant matter are comparable, although  
22 there are minor factual differences. *Gieszl* involved one case and one client and  
23 Respondent's misconduct involved two separate lawsuits and three separate clients. These  
24 factual distinctions however, are insufficient to warrant different sanctions. In both matters,  
25 according to the State Bar, there is a knowing mental state with actual and potential injury,  
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1 and the presumptive sanction is disbarment. There are also two aggravating factors present  
2 and there is substantial mitigation for both respondents.

3 Respondent argued that this matter is distinguished from *Gieszl* because aggravating  
4 factor 9.22(b) selfish or dishonest motive is not supported by the record. Respondent in the  
5 instant matter intended to make his client whole and did not attempt to release himself from  
6 malpractice liability, as in *Gieszl*. According to Respondent, the presumptive sanction in the  
7 instant matter is suspension, *Standard* 4.62, as there was no intent to benefit the lawyer or  
8 another as provided in *Standard* 4.61, disbarment. Additionally, the aggravating and  
9 mitigating factors found should reduce the length of suspension imposed.

10 The matter again came before the Disciplinary Commission on January 26, 2006.

#### 11 Decision

12 The eight members<sup>1</sup> of the Disciplinary Commission unanimously adopt the majority  
13 of the Hearing Officer's findings of fact and conclusions of law with some exceptions, and  
14 modifies *de novo* the recommended sanction based upon the Commission's proportionality  
15 review.<sup>2</sup>

16  
17 The Disciplinary Commission finds that *Standard* 4.61, disbarment is the  
18 presumptive sanction. The Disciplinary Commission further applies a clearly erroneous  
19 standard to the Hearing Officer's findings and conclusions regarding mitigating factor  
20 9.32(b) absence of selfish or dishonest motive, in Count One, and finds in aggravation,  
21 factor 9.22(b) dishonest or selfish motive, in Counts One and Two.  
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25 <sup>1</sup> Commissioner Nelson recused. Commissioners Atwood and Baran believed a shorter suspension  
26 would have fulfilled the purposes of discipline but joined in the majority because of the  
Commission's recommended sanction in *Gieszl*.

<sup>2</sup> The Hearing Officer's Report is attached as Exhibit A.

1 Based on a proportionality review of analogous cases, the Disciplinary Commission  
2 recommends *de novo* a one year suspension, probation upon reinstatement with length and  
3 terms to be decided upon reinstatement, and costs of these disciplinary proceedings.

### 4 Discussion

5 The Disciplinary Commission's standard of review is set forth in Rule 58(b), which  
6 states that it applies a clearly erroneous standard to findings and reviews questions of law *de*  
7 *novo*. The Commission historically gives great deference to the Hearing Officer's Report  
8 and recommendation. *Matter of Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1989).

9 The Commission, as well as the Hearing Officer, found clear and convincing evidence  
10 that Respondent violated Rule 42, Ariz. R. S. Ct., specifically ERs 1.3, 1.4, 1.7, 3.2, 3.3, 3.4,  
11 8.4(c) and (d). The Hearing Officer's findings are briefly summarized as follows:

12 In Count One, Respondent simultaneously represented two clients who were friends in  
13 unrelated matters. During litigation proceedings, one client agreed to testify unfavorably as a  
14 witness against the other client. Defense counsel was unaware that Respondent represented  
15 both clients. Respondent knowingly engaged in a conflict of interest while representing both  
16 clients and knowingly failed to disclose the witness client's whereabouts to defense counsel in  
17 violation of the discovery rules.

18 In Count Two, Respondent missed a deadline to remove a personal injury matter  
19 against the City of Scottsdale from the inactive calendar and the case was dismissed for lack of  
20 prosecution. Respondent failed to advise the client of the dismissal and instead manufactured a  
21 settlement, of which he paid from his private funds. Respondent prepared a false accounting  
22 and release for his client to sign. Respondent repeatedly lied to the client for over two years  
23 about the status of the case. The deception came to light when the client contacted the city to  
24 ascertain why he was not required to endorse the settlement check.  
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1 In determining the appropriate sanction, our Supreme Court considers the ABA  
2 *Standards for Imposing Lawyer Sanctions* (“Standards”) a suitable guideline. *In re Kaplan*,  
3 179 Ariz. 175, 877 P.2d 274 (1994). The Supreme Court and the Disciplinary Commission  
4 are consistent in utilizing the *Standards* to determine appropriate sanctions for attorney  
5 discipline. In imposing a sanction after a finding of misconduct, consideration is given to  
6 the duty violated, the lawyer’s mental state, the actual or potential injury caused by the  
7 misconduct, and the existence of aggravating and mitigating factors. *See Standard 3.0*.

8 Absent aggravating or mitigating circumstances, upon application of the factors set  
9 forth in *Standard 3.0*, the following is generally appropriate in cases where the lawyer has  
10 engaged in fraud, deceit, or misrepresentation directed toward a client, a violation of ER  
11 8.4(c):

12 *Standard 4.62* Lack of Candor provides that:

13  
14 Suspension is generally appropriate when a lawyer knowingly  
15 deceives a client, and causes injury or potential injury to the  
16 client.

16 The Hearing Officer found that Respondent’s most serious misconduct was the  
17 knowing and intentional deception about the status of the case and the preparing of a  
18 fraudulent release for his client to sign. Hearing Officer’s Report, pp. 9-10. *Standard 4.61*  
19 Lack of Candor applied. provides that:

20  
21 Disbarment is generally appropriate when a lawyer knowingly  
22 deceives a client with the intent to benefit the lawyer or  
23 another, and causes serious or potentially serious injury to a  
24 client.

24 The Disciplinary Commission finds *de novo* that *Standard 4.61*, disbarment is more  
25 applicable to the facts as stated. The record supports that for over two years, Respondent  
26 intentionally and knowingly deceived his client about the status of his case. Respondent

1 compounded his misconduct by perpetrating a fraud on the client by preparing and  
2 presenting a fraudulent release for the client to sign. Respondent attempted to “cover-up” his  
3 missing the deadline, and clearly stood to benefit from concealing his mistake. He avoided a  
4 possible malpractice claim and the reporting of his misconduct to the State Bar. Dishonest  
5 or selfish motive speaks in terms of motive and not conduct. *Matter of Shannon*, 179 Ariz.  
6 at 69, 876 P.2d at 565 and *Matter of Peasley*, 208 Ariz. 27, 37, 90 P.3d 764, 774 (2004). In  
7 Count Two, Respondent made misrepresentations to the client to cover his negligence and  
8 then engaged in a fraudulent scheme.

9 The Hearing Officer found actual injury to the client and defense counsel in Count  
10 One. The Attorney General’s Office also incurred \$1,017.60 in expenses in trying to locate  
11 the witness because of Respondent’s failure to disclose her whereabouts. In Count Two  
12 however, the Hearing Officer could not determine the actual injury to the client because it is  
13 unknown as to what the client may have recovered had the case not been dismissed.  
14 Hearing Officer’s Report, p. 10-11.

15 The Disciplinary Commission, having concluded that disbarment is the presumptive  
16 sanction, reviewed *Standards* 9.22 and 9.32, aggravating and mitigating factors respectively,  
17 to determine if a reduction of the presumptive sanction is justified.

18 The Commission agrees with the Hearing Officer that aggravating factors 9.22(d)  
19 multiple offenses, and 9.22(i) substantial experience in the practice of law are present. The  
20 Hearing Officer however, erroneously concluded that aggravating factor 9.22(b) dishonest  
21 or selfish motive did not apply. *See* Hearing Officer’s Report, p.12. The Commission finds  
22 *de novo* that aggravating factor 9.22(b) dishonest or selfish motive, is supported by the  
23 record in Count Two. The evidence shows that Respondent repeatedly lied to his client and  
24 engaged in a fraudulent scheme to conceal his misconduct.  
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1 The Commission agrees with the Hearing Officer that mitigating factors 9.32(a)  
2 absence of a prior disciplinary record, 9.32(b) absence of selfish or dishonest motive, in  
3 Count One, 9.32(c) personal or emotional problems, 9.32 (d) timely good faith effort to  
4 make restitution or to rectify consequences of misconduct, 9.32(e) full and free disclosure to  
5 disciplinary board or cooperative attitude toward proceedings, 9.32(g) character or  
6 reputation, and 9.32(l) remorse, are supported by the record. The Hearing Officer  
7 determined that mitigating factor 9.32(k) imposition of other penalties and sanctions is  
8 present in the record based on Respondent's disqualification from representing the client in  
9 Count One. Hearing Officer's Report, p. 12. The Disciplinary Commission finds no  
10 evidence in the record to establish that Respondent suffered an adverse impact or would  
11 have gained anything from the civil suit from which he was disqualified. The Commission  
12 determined that the absence of this mitigating factor does not change the overall outcome.

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14 Based on the numerous and significant mitigating factors present in the record, the  
15 Disciplinary Commission determined that a reduction in the presumptive sanction of  
16 disbarment to suspension is clearly justified. The Commission finds their recent  
17 recommendation in *Gieszl, supra*, most analogous and instructive in determining the  
18 appropriate length of suspension to be imposed. Although the recommendation in *Gieszl* is  
19 not final, a one year suspension and two years of probation upon reinstatement was  
20 recommended.

### 21 Conclusion

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23 One purpose of lawyer discipline is to deter the respondent and other attorneys from  
24 engaging in similar unethical conduct. *In re Kleindienst*, 132 Ariz. 95, 644 P.2d 249 (1982).  
25 Another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180  
26 Ariz. 20, 29, 881 P.2d, 352, 362 (1994). In addition, the sanction that we impose must help

maintain the integrity of the legal system. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d  
1 1315, 1320 (1993).

2 Therefore, based on the findings and conclusions, application of the *Standards* and a  
3 proportionality analysis, the Disciplinary Commission recommends a one year suspension,  
4 probation upon reinstatement, with the length and terms to be decided at the time of  
5 reinstatement, and costs.

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7 RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of February, 2006.

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11 Barbara A. Atwood, Chair  
Disciplinary Commission

12 Original filed with the Disciplinary Clerk  
13 this 24<sup>th</sup> day of February, 2006.

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

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