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DEC 12 2007

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

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

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3 IN THE MATTER OF A MEMBER) No. 06-0215
4 OF THE STATE BAR OF ARIZONA,)
5)
6 **RONALD S. MATHENY,**)
7 **Bar No. 013951**) **DISCIPLINARY COMMISSION**
8) **REPORT**
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RESPONDENT.)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on November 17, 2007, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed September 4, 2007, recommending a 90-day suspension, probation upon reinstatement with length and terms to be determined upon reinstatement, 15 hours of continuing legal education in probate law for each year of probation and costs. The State Bar filed an objection and requested oral argument. Respondent, Respondent's Counsel and counsel for the State Bar were present.

The State Bar asserts that the Hearing Officer erred in recommending a 90-day suspension and a one-year suspension is the appropriate sanction.

In rebuttal, Respondent asserts that the Hearing Officer's findings are not clearly erroneous and the recommended sanction fulfills the purposes of discipline.

Decision

Having found no facts clearly erroneous, eight members¹ of the Disciplinary Commission by a majority of six,² recommend accepting and incorporating the Hearing

¹ Commissioner Katzenberg did not participate in these proceedings.

² Commissioners Osborne and Todd were opposed. See dissenting opinion below.

1 Officer's findings of fact and conclusions of law but modify *de novo* the recommended
2 sanction to reflect a one-year suspension, probation upon reinstatement with length and
3 terms to be determined upon reinstatement, 15 hours of continuing legal education in
4 probate law for each year of probation, and costs of these disciplinary proceedings.³

5 Discussion of Decision

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

10 The Commission determined that *In re Charles*, 174 Ariz. 91, 847 P.2d 592 (1993),
11 which the Respondent relies on to support the 90-day suspension is distinguishable from
12 this case. Although the Respondent in *Charles* forged two powers of attorney, he did so
13 only because he did not want to relinquish custody of the original, valid power of attorney
14 which the client had actually signed. The Respondent in *Charles* used the second power of
15 attorney after the client had died, but did so in order to fulfill his client's wishes.
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17 Here, Respondent never met the deceased and had no personal knowledge of his
18 actual intentions. He nonetheless counseled his client to and assisted her in forging the
19 names of two fictitious/nonexistent witnesses on a will the Court had already rejected for
20 informal probate because it was not witnessed and then resubmitted it to the Court.
21 Respondent then lied to opposing counsel about the circumstances of the witnesses'
22 execution of the will for approximately six months before finally admitting, when pushed
23 by that opposing counsel, that there were no witnesses and the signatures were forged.
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26 ³ A copy of the Hearing Officer's Report is attached as Exhibit A.

1 Although Respondent did then self report to the bar, that self report misrepresented the
2 nature and extent of his misconduct as well as the level of his involvement in the fraud.

3 Given these facts, the Commission concludes that this case is more analogous to *In*
4 *re Gieszl*, SB-06-06-0013-D (2006). The Respondent in *Gieszl* allowed the statute of
5 limitations to run in a personal injury matter and then lied repeatedly to her client over a
6 prolonged period to cover up her malpractice. *Gieszl* manufactured a nonexistent
7 settlement agreement in hopes that her client would accept the payment and never discover
8 that she had allowed the statute to run. *Giesel* did not involve an attempt to defraud the
9 Court, or damages to a third party in addition to the Respondent's client. Here
10 Respondent's conduct forced the decedent's heirs to hire an attorney, incur substantial fees
11 and go through months of litigation. Respondent ultimately repaid those fees after he was
12 caught, but that repayment only mitigated the harm he caused, it could not erase his
13 misconduct. In *Giesel* the Commission concluded that the lawyer's forgery in and of itself
14 warranted a one-year suspension. Here, Respondent compounded his misconduct by
15 involving his client, injuring third parties, committing a fraud on the Court and, at least
16 initially, misleading the State Bar during the disciplinary process.

18 Conclusion

19 Lawyer discipline is intended to deter the respondent and other attorneys from
20 engaging in similar unethical conduct in the future. *In re Kleindienst*, 132 Ariz. 95, 644
21 P.2d 249 (1982). It is also intended to help maintain the integrity of the legal system and
22 instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881
23 P.2d, 352, 362 (1994); *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993).
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1 Given the facts of this case, the Commission recommends Respondent receive a
2 one-year suspension, probation upon reinstatement, and be required to pay the costs of
3 these proceedings.

4 RESPECTFULLY SUBMITTED this 12th day of December, 2007.

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7 J. Conrad Baran, Chair
8 Disciplinary Commission

9 **Commissioners Osborne and Todd respectfully dissenting:**

10 The central core value of the legal profession is candor. Attorneys are expected to
11 be truthful in all their dealings. Here, Respondent Mathney watched his client commit
12 forgery twice and then intentionally filed the false document with the Court. The majority
13 explains how his conduct seriously injured all concerned. Under the *ABA Standards*,
14 disbarment is generally the appropriate sanction when a lawyer submits a false document
15 to a court causing a significant adverse effect on the legal system. *Standard 6.11*. The
16 majority felt, based primarily on its proportionality review, that suspension was the
17 appropriate sanction. While proportionality is an appropriate consideration when imposing
18 punishment, in our view, is not very relevant when the goal is deterrence and the integrity
19 legal system in the eyes of the public. Moreover, unlike the case the majority relies upon,
20 here Mathney intentionally lied to the Court by submitting a will that he knew contained
21 two forged witness signatures. In our view, the appropriate sanction is disbarment for this
22 perfidious misconduct.
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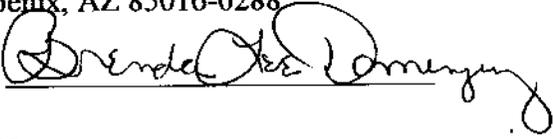
24 Original filed with the Disciplinary Clerk
25 this 12th day of December, 2007.

Copy of the foregoing mailed
this 12th day of December, 2007, to:

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