

JUL 30 2008

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

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

IN THE MATTER OF A MEMBER)	No	07-1069
OF THE STATE BAR OF ARIZONA,)		
)		
GIL SHAW,)		
Bar No. 009290)	DISCIPLINARY COMMISSION	
)	REPORT	
)		
RESPONDENT)		
_____)		

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on July 12, 2008, pursuant to Rule 58, Ariz R Sup Ct, for consideration of the Hearing Officer's Report filed June 5, 2008, recommending acceptance of the Tender of Admissions and the Agreement for Discipline by Consent ("Tender") and the Joint Memorandum ("Joint Memorandum") in Support of Agreement for Discipline by Consent providing for censure, one year of probation with the State Bar Law Office Management Assistance Program ("LOMAP"), and costs within 30-days of the date of the final Judgment and Order

Decision

Having found no facts clearly erroneous, the seven members¹ of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for censure, one year of probation (LOMAP), and costs of these disciplinary proceedings within 30-days of the date

¹ One lawyer member seat remains vacant Commissioner Horsley did not participate in these proceedings

of the final Judgment and Order, including any costs incurred by the Disciplinary Clerk's office² The specific terms of probation as set forth in the Tender are as follows

Terms of Probation

1 Probation will begin on the date of the final Judgment and Order and continue for one year from the date Respondent signs the terms and conditions of probation

2 Respondent shall contact the Lawyer Assistance program at (602) 340-7332 within 20-days after the date of the final Judgment and Order in this matter, and undergo and cooperate with a full assessment by LOMAP, and shall pay all costs applicable to the program, in addition to the costs addressed elsewhere herein Respondent agrees to accept all services deemed appropriate in the discretion of the LOMAP Program Manager as specified in the Terms and Conditions of Probation to be developed These terms shall include the development of office and personal procedures to maintain complete and accurate records, to improve verbal and written communication with clients, to keep clients reasonably informed about the status of their cases, to abide by clients' decisions concerning the objectives of representation, to act with reasonable diligence and promptness in representing clients, and to insure that litigation is expedited

3 During the probationary period, Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other rules of the Supreme Court of Arizona

4 In the event that Respondent fails to comply with any of the foregoing conditions, and the State Bar receives information, bar counsel shall file with the imposing entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz R Sup Ct The

² A copy of the Hearing Officer's Report is attached as Exhibit A The State Bar's costs total \$617 00

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Hearing Officer shall conduct a hearing within 30-days after receipt of said notice, to determine whether the terms of probation have been violated and if an additional sanction should be imposed. In the event there is an allegation that any of these terms have been violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence.

RESPECTFULLY SUBMITTED this 30th day of July, 2008

Daisy Flores

Daisy Flores, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 30th day of July, 2008

Copy of the foregoing mailed
this 30th day of July, 2008, to

Honorable H Jeffrey Coker
Hearing Officer 6R
P O Box 23578
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by *[Signature]*

/mps

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JUN 05 2008

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

IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,

GIL SHAW,
Bar No. 009290

RESPONDENT.

) File No 07-1069
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) **HEARING OFFICER'S REPORT**
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PROCEDURAL HISTORY

1 Probable cause was found in this matter (07-1069) on January 25, 2008. A one count Complaint was filed on January 28, 2008, and thereafter served on Respondent by way of mail to his address of record on January 31, 2008. The matter was assigned to the undersigned Hearing Officer on February 7, 2008, an ICMC was held on March 10, 2008, and a final hearing was set on April 29, 2008, in the Yavapai County Courthouse. Subsequently, the parties reached a settlement on April 8, 2008, and thereafter notified the Disciplinary Clerk. The April 29, 2008, hearing date was used as a hearing on the Joint Memorandum and Tender

FINDINGS OF FACT

2. At all times relevant hereto, Respondent Gil Shaw was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on October 15, 1983

- 3 On April 11, 2006, Mary Beth Anglin ("Ms. Anglin") retained Respondent to represent her in a dissolution matter
4. Over the course of the next few months, Ms. Anglin paid Respondent a fee of \$625 plus a filing fee of \$131 in connection with her case
- 5 Respondent filed a Petition for a Dissolution of Marriage on April 24, 2006, and an Acceptance of Service on or about May 9, 2006.
- 6 Thereafter, Ms Anglin began contacting Respondent in September 2006, asking for the status of her case On numerous occasions, she received no reply On other occasions, Respondent told Ms Anglin that he had sent documents to her husband for his signature However, her husband repeatedly told Ms Anglin that he had not received any such papers
- 7 On March 19, 2007, Ms Anglin learned from the Clerk of the Court that it had sent Respondent a Notice of Dismissal on September 13, 2006. On March 19, 2007, Ms. Anglin confronted Respondent in his office, but he deferred meeting with her until March 23 On March 23, 2007, Respondent caused Ms. Anglin to wait 45 minutes in his office, and then sent her away, ostensibly to allow time for him to prepare some documents for her When she returned, no documents had been prepared, but Respondent typed the Consent Decree while she waited
8. Later, on March 23, 2007, Respondent reportedly gave the Consent Decree to Ms. Anglin and advised her that she could file it directly with the Clerk of the Court Respondent contests that this happened

- 9 On March 26, 2007, the Clerk of the Court rejected Ms. Anglin's attempted filing, "because I was not the original filer" according to the complaint filed by Ms. Anglin. Between March 26 and April 2, 2007, Ms. Anglin called Respondent at least 10 times, with one exception, Respondent failed to return any of her calls.
10. On April 5, 2007, Ms. Anglin returned the unfiled documents to Respondent, who told her he would file them by April 9. As of April 25, 2007, Respondent still had not sent Ms. Anglin a copy of her decree, although she later learned from her husband that it had been granted on April 27, 2007. Ms. Anglin had to obtain a certified copy directly from the Clerk of the Court.
11. By letter dated July 10, 2007, Bar Counsel notified Respondent of Ms. Anglin's inquiry and requested a response within 20 days. The letter further informed Respondent that he has a duty pursuant to Ariz R Sup.Ct., Rule 53(d) and (f) to cooperate with disciplinary investigations. Respondent failed to respond to the letter from the Bar.
12. By letter to Respondent dated August 13, 2007, Bar Counsel again notified Respondent of Ms. Anglin's inquiry and requested a response within 10 days. The letter again informed Respondent of his duty pursuant to Rules 53(d) and (f) to cooperate with disciplinary investigations. Respondent continued to fail to respond to the Bar's request for information.
13. By letter to Respondent dated September 12, 2007, Bar Counsel for the third time notified Respondent of Ms. Anglin's inquiry and requested a response within five days. The letter yet again reminded Respondent of his duty pursuant to Rules

53(d) and (f) to cooperate with disciplinary investigations Respondent again failed to respond to the Bar's request for information.

14. It is Respondent's position that he had asked the Clerk of the Court why the default had been entered, and then discovered that the Acceptance of Service had been misplaced The Court then reinstated the Petition for Dissolution (Tr 10:6-13) Respondent also contends that he thought he had informed Ms Anglin that the Decree had been granted within a week or so of April 27, 2007 Respondent contends that he did mail Ms Anglin a copy of her Decree, but concedes it was not a certified copy (Tr 10.12-16)

15 During this time frame, Respondent was attending to his mother's final illness, until her passing on April 13, 2007 (Tr 9 14-10 3)

16 Respondent contends that the reason that he did not respond to the State Bar's inquiries was because he was under the mistaken impression that this matter was somehow covered by a previous diversion to the Bar's LOMAP program, in which he was participating for three other disciplinary matters (Tr 10:21-11:7). Then, on September 16, 2007, he was thrown from a horse, breaking multiple bones in his spine and several ribs Respondent was essentially incapacitated and on heavy narcotic pain medication for approximately 30 days (Tr 11:8-12)

CONCLUSIONS OF LAW

17. The parties stipulate that Respondent's conduct violated duties owed to his client, the legal system and the profession by failing to abide by his client's decision concerning the objectives of representation and failing to adequately consult with

his client regarding the means by which the objectives were to be pursued; failing to act with reasonable diligence and promptness in representing his client, failing to adequately communicate with his client; failing to keep his client reasonably informed about the status of her case, failing to expedite litigation; engaging in conduct that was prejudicial to the administration of justice, and failing to respond properly to the Bar's inquiries. Respondent admits that his conduct violated Rule 42, Ariz.R Sup.Ct. ER's 1 2, 1 3, 1 4, 3.2, 8.4(d) and Rules 52(d) and (f).

ABA STANDARDS

- 18 ABA *Standard* 3.0 provides that four criteria should be considered (1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct; (4) the existence of aggravating and mitigating factors.

The Duty Violated

- 19 Respondent violated his duty to his client and the profession as set forth above.

The Lawyer's Mental State

20. Respondent was negligent in his failure to adequately communicate and consult with his client and abide by her decisions concerning the objectives of representation. Respondent was also negligent in failing to prevent the dismissal of a client's case, in failing to inform the client of this development, and in failing to reinstate the case until being notified by the client of the need to do so. Respondent was also negligent in his failure to properly respond to the three letters from the Bar inquiring about his conduct, erroneously assuming that they were part of a previous Diversion Order.

Actual or Potential Injury

- 21 The parties submit that there was little or no actual damage to the client as the Decree was subsequently filed on April 27, 2007, although the client complains that she was not informed of the filing until June 2007.

Aggravating and Mitigating Factors

Aggravating Factors

22. *Standard 9 22(1)* Substantial experience in the practice of law. Respondent has been an attorney since 1983.

Mitigating Factors

23. *Standard 9.32* While Respondent has been in diversion, he has no prior disciplinary record
- 24 *Standard 9 32(c)* Personal or Emotional Problems Respondent testified that he had a convergence of three things about the time of these problems The severe illness and death of his mother (Tr 9 14-10:3), Reducing his practice to take on a new position as a teacher at Yavapai Community College and being thrown from his horse resulting in serious injury to his back (Tr. 13 17-25) Respondent testified that the combination of these factors caused him to have depression for which he has seen a psychotherapist (Tr. 16:25-17:13)
- 25 *Standard 9 32(e)* Full and free disclosure and cooperative attitude toward the proceedings. Respondent has fully cooperated in the formal proceedings, even making some admissions (Tr 17:23-18:1).

Disciplinary Standards

- 26 The following *Standards* are deemed most applicable
27. *Standard* 4.43 provides that "Reprimand [Censure in Arizona] is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client "
28. *Standard* 4.63 provides that "Reprimand [Censure in Arizona] is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client."
- 29 *Standard* 6.13 provides that Reprimand [Censure in Arizona] is generally appropriate when a lawyer's negligent conduct causes an adverse or potentially adverse effect on the legal proceedings
- 30 *Standard* 7.3 provides that "Reprimand [Censure in Arizona] is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."
31. The presumptive sanction in this matter then is a Censure.

PROPORTIONALITY REVIEW

32. The Supreme Court has held that, while the discipline in each case must be tailored to the individual facts of the case, one of the goals of attorney discipline is to have internal consistency with other cases having similar facts *In Re Wines* 135 Ariz. 203, 660 P 2d 454 (1983), and *In re Peasley* 208 Ariz 27, 90 P 2d 764 (2004)

33. In *In re Robinson*, DC Nos 01-2144, et al , SB-05-0014-D, (02/01/05) Robinson received a censure and two years of probation for violations of ER's 1.1, 1.3, and 1.4. In Count One, Robinson was not diligent in representing his client and failed to adequately communicate with a client about significant matters. In Count Two, Robinson failed to act competently and diligently and failed to communicate with his client regarding child custody and support issues, resulting in adverse court orders, which Robinson then failed to communicate to his client. There were three aggravating factors and one mitigating factor. Respondent's mental state was negligent.
34. In *In re Hatfield*, DC No. 01-0328, et al , SB-04-0010-D (03/18/04), Hatfield accepted a 30 day suspension plus two years probation for violation of ER's 1.3, 1.4, 8.1(b) and 8.4(d) and Rules 51(h) & (i). Hatfield failed to adequately communicate with her clients, failed to diligently represent her client's interests, engaged in conduct prejudicial to the administration of justice and failed to cooperate with the State Bar's investigation of the matters. Four factors were found in aggravation, and five factors were found in mitigation. Hatfield's mental state was knowing, with potential injury found.
35. In *In re MacDonald*, DC Nos 01-1161, 011428, SB-03-0082-D (08/13/03), MacDonald agreed to a 30 day suspension plus two years probation for violation of ER's 1.2, 1.3, 1.4, 3.2, 8.1(b), 8.4(d) and Rule 51(h) and (i). In one matter, MacDonald failed to perform services requested by his client, failed to return his client's telephone calls and update her on the status of her case, and falsely

advised his client that he would commence work on her case in the near future. In another matter, MacDonald failed to diligently pursue a client's case, resulting in its dismissal for lack of prosecution. In both matters, MacDonald failed to respond and cooperate with the State Bar's investigation. Four factors were found in aggravation and six were found in mitigation. MacDonald's mental state was knowing, with no actual harm to the client and minimal harm to the legal system for failure to respond.

RECOMMENDATION

36. The parties submit that a Censure and one year probation with a LOMAP assessment is the appropriate sanction in this case. During the hearing on the Tender and Joint Memorandum this Hearing Officer noted that Respondent has seemed to gain some insight into not only his limitations but also how to avoid this kind of situation in the future. While Respondent did have a different perspective on some of the facts, he agrees that he did not do his best work and dropped the ball on Ms. Anglin's case (Tr. 9.20-25 & 11.13-16). Respondent appears to have garnered the lessons that he needed to learn and does not appear to need a more serious sanction. There are three mitigating factors and one aggravating factor in this case.
37. While two of the cited proportional cases resulted in suspension and probation, they are cases of knowing misconduct and slightly different facts.

- 38 Weighing the facts of this case as well as the aggravating and mitigating factors, it is the recommendation of this Hearing Officer that the proposed sanction be adopted
39. Respondent receive a public Censure for his misconduct
- 40 Respondent be placed on probation for a period of one year with the terms and conditions to be determined by full assessment by the State Bar's Law Office Management Assistance Program (LOMAP), be responsible for all costs of that program and the other terms specifically set forth in the Tender of Admissions
- 41 Respondent pay the costs of these proceedings within 30 days of the Supreme Court's Final Judgment and Order
42. In the event that Respondent fails to comply with the terms of probation and information thereof is received by the State Bar, Bar Counsel shall file a Notice of Non-compliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practicable time, but in no event later than thirty days after receipt of notice, to determine whether a term of probation had been breached and, if so, to recommend an appropriate action and response. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove non-compliance by clear and convincing evidence.

DATED this 5th day of June, 2008.

Hon. H Jeffrey Coker /N/M
H Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 5th day of June, 2008

Copy of the foregoing mailed
this 6th day of June, 2008, to:

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by Neeta Manelkar