

FILED

AUG 19 2009

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
STEPHEN J. RENARD,)
Bar No. 021991)
)
RESPONDENT.)
_____)

No. 07-1867

**DISCIPLINARY COMMISSION
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on August 8, 2009, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed June 23, 2009, recommending censure, one year of probation with the State Bar's Law Office Management Assistance Program ("LOMAP") and costs.

Decision

Having found no facts clearly erroneous, the nine members of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for a censure, one year of probation (LOMAP) and costs of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk's Office.¹ The terms of probation are as follows:

¹ The Hearing Officer Report is attached as Exhibit A.

Terms of Probation

1
2 1. Within thirty days Respondent shall contact the Director of LOMAP and schedule a
3 LOMAP audit. The LOMAP director or designee shall conduct the audit within 60 days
4 thereafter. Respondent shall enter into a LOMAP contract based on the recommendations
5 made by the LOMAP director or designee.²

6 2. Respondent shall comply with all the terms of the LOMAP contact. The contract
7 may include the use of a practice monitor.

8 3. Respondent shall be responsible for any costs associated with LOMAP.

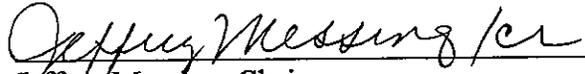
9 4. Respondent shall refrain from engaging in any conduct that would violate the
10 Rules of Professional Conduct or other Rules of the Supreme Court of Arizona.

11 5. In the event that Respondent fails to comply with probation, and information
12 thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of
13 Noncompliance with the imposing entity, pursuant to Ariz.R.Sup.Ct. 60(a)(5). The
14 imposing entity may refer the matter to a hearing officer to conduct a hearing at the
15 earliest practicable date, but in no event later than 30 days after receipt of notice, to
16 determine whether a term of probation has been breached and, if so, to recommend
17 an appropriate sanction. If there is an allegation that Respondent failed to comply
18 with any of the foregoing terms, the burden of proof shall be on the State Bar of
19
20
21
22
23
24
25

26 ² Standard language has been added to the terms of probation so they are specific, clear and enforceable. See Rule 60 (3)(B).

Arizona to prove noncompliance by a preponderance of the evidence.

1
2 RESPECTFULLY SUBMITTED this 19th day of August, 2009.

3
4 
5 Jeffrey Messing, Chair
6 Disciplinary Commission

7 Original filed with the Disciplinary Clerk
8 this 19th day of August, 2009.

9 Copy of the foregoing mailed
10 this 20th day of AUGUST, 2009, to:

11 Thomas M. Quigley
12 Hearing Officer 8W
13 *Mohr, Hackett, Pederson, Blakley & Randolph, P.C.*
14 2800 North Central, Suite 1100
15 Phoenix, AZ 85004-1043

16 Stephen J. Renard
17 Respondent
18 *Law Office of Stephen Renard*
19 868 Cove Parkway, Suite 4
20 Cottonwood, AZ 86326

21 Jason B. Easterday
22 Bar Counsel
23 State Bar of Arizona
24 4201 North 24th Street, Suite 200
25 Phoenix, AZ 85016-6288

26 by: 

/cs

EXHIBIT

A

JUN 23 2009

BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

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

File No. 07-1867

STEPHEN J. RENARD,
Bar No. 021991

HEARING OFFICER'S REPORT

(Assigned to Hearing Officer 8W,
Thomas M. Quigley)

Respondent.

Pursuant to Ariz. R. Sup. Ct. 56(e), the undersigned hearing officer recommends
censure and a one year probation.

I. PROCEDURAL HISTORY

The State Bar of Arizona ("State Bar") filed its complaint in this matter on
March 27, 2008. Respondent Stephen J. Renard ("Respondent") filed an answer on
April 21, 2008.

On June 19, 2008, the parties filed a notice of settlement and a Tender of
Admissions and Agreement for Discipline by Consent and a Joint Memorandum in
Support of Agreement by Consent were jointly filed on July 22, 2008.

On September 4, 2008, the hearing officer issued a report recommending
acceptance of the agreement for discipline by consent.

On November 20, 2008, the Disciplinary Commission of the Supreme Court of
Arizona, having reviewed the matter, issued its report and ordered the case remanded
for an evidentiary hearing.

As a result of the remand, a status conference was held, and a Case Management
Order was issued on December 17, 2008, setting a hearing for January 27, 2009. On
January 8, 2009, the parties filed a Notice of Settlement. A Tender of Admissions and
Agreement for Discipline by Consent and a Joint Memorandum were jointly filed on
January 23, 2009.

At the January 27, 2009 hearing, the undersigned hearing officer rejected the
second Tender of Admissions and Joint Memorandum and allowed the parties the
option to either submit a new Tender of Admissions and Joint Memorandum or request

1 a hearing on the merits. On February 3, 2009, the State Bar filed a Notice for Request
2 for a Hearing on the Merits.

3 On February 19, 2009, a new Case Management Order was issued, which set a
4 Hearing on the Merits for April 28, 2009. On April 28, 2009, the Respondent
5 telephonically requested a continuance. The case was continued and a hearing on the
6 merits was conducted on May 8, 2009.

7 **II. FINDINGS OF FACTS**

8 1. Respondent was a lawyer licensed to practice law in the State of Arizona
9 at all times relevant hereto, having been first admitted to practice in Arizona on
10 December 16, 2002. Joint Pre-Hearing Statement (“JPS”) at p. 2 ¶1.

11 2. On November 22, 2004, Jennifer Fortsch (“Fortsch”) was injured in an
12 automobile accident in Arizona. Transcript of hearing dated May 8, 2009 (“TR”) 15:8-
13 14.

14 3. Fortsch lived out of state. TR 15:15-20.

15 4. Fortsch attempted to resolve her claim for personal injury with the
16 assistance of a California lawyer, but was unable to do so. TR 15:21 – 16:5.

17 5. In November 2006, just before the applicable statute of limitations
18 expired, Fortsch retained Respondent to represent her in Arizona. JPS 2:2; *see also* TR
19 16:6-7.

20 6. Respondent and Fortsch agreed to a contingency fee arrangement in which
21 Respondent would retain one-third of any recovery obtained in the case. JPS 2:2; *see*
22 *also* TR 16:21-22.

23 7. Respondent sent Fortsch a written fee agreement, which she never
24 received, signed or returned. JPS 2:2; *see also* TR 16:11-20; TR 71: 11-20; TR 78: 2-7.

25 8. On November 22, 2006, Respondent filed a complaint on behalf of
26 Fortsch. JPS 2:3; *see also* TR 60:12-14; SB Ex. 10:SBA000031.

27 9. Respondent failed to serve the complaint on the defendant. JPS 2:4; *see*
28 *also* TR 62:5-7; SB Ex. 10:SBA000031

1 10. In December 2006, Respondent mistakenly told that the defendant had
2 moved to Utah. TR 18:3-8; TR 67:13-68:9; *see also* SB Ex. 1:SBA000007; SB. Ex.
3 5:SBA000021.

4 11. Fortsch testified that she did have several telephone conversations with
5 Respondent about the status of her case. TR 17:13-17; TR 19:16-21; Ex 1:SBA
6 000006-10.

7 12. Fortsch expected Respondent to settle her case with a minimum of
8 negotiation. Ex. 1:SBA SBA000006 ¶ 3. Respondent attempted to explain to Fortsch
9 that her expectations for a quick settlement in the amounts she expected could not be
10 met. Ex. 1:SBA00005; TR 75:22-76:1.

11 13. Respondent attempted to reach an agreement with the insurance carrier for
12 the defendant to mediate the dispute. TR 60:23-61:3; TR70:4-71:1.

13 14. Respondent was not successful obtaining an agreement to mediate, at least
14 in part because the insurance carrier would not agree to mediate until the defendant had
15 been served. TR 52:14-22.

16 15. On April 18, 2007, the Yavapai County Clerk's Office issued a dismissal
17 notice concerning the complaint filed on November 22, 2007. JPS 2:5; *see also* SB Ex.
18 10:SBA000031.

19 16. On June 13, 2007, the Yavapai County Superior Court entered an order
20 dismissing the complaint filed on November 22, 2006 due to lack of service. JPS 2:6;
21 *see also* TR 62:5-12; SB Ex. 10:SBA000031.

22 17. On July 2, 2007 Respondent refiled the complaint in Fortsch's matter. TR
23 62:15-16; *see also* SB Ex. 11:SBA000032.

24 18. Respondent failed to serve the July 2, 2007 complaint upon the defendant.
25 JPS 3:8; *see also* SB Ex. 11:SBA000032; TR 64:22-24.

26 19. Respondent hoped, based on his prior relationship with the insurance
27 carrier (Respondent had previously worked for a firm representing insureds of the
28 carrier) the defendant's attorney would accept service of the complaint(s) and he would

1 be able to resolve the case through mediation. TR 75:22-76:9.

2 20. In September 2007, Respondent and Fortsch were still communicating
3 regarding the case. Ex. 1: SBA000005.

4 21. Respondent failed to serve the second complaint, resulting in a second
5 dismissal. Ex. 11.

6 22. Fortsch's claim against the defendant is now barred by the statute of
7 limitations. TR 66:11-14.

8 23. Fortsch knew that she was not receiving mail from Respondent but failed
9 to ever inform Respondent that she was not receiving mail from him. TR 40:8-41:4.

10 **III. CONCLUSIONS OF LAW**

11 Based on the foregoing findings of fact, this hearing officer concludes by clear
12 and convincing evidence that that Respondent violated the following ethical rules:

13 1. Respondent violated ER 1.1 (competence).

14 Respondent, during the course of his representation, failed to serve two
15 complaints he had filed for his client.

16 2. Respondent violated ER 1.3 (diligence).

17 Respondent failed to timely serve the complaints.

18 3. Respondent violated ER 1.5(c).

19 Respondent and Fortsch agreed to a one-third contingency fee. However,
20 Respondent failed to insure that he had received a signed agreement.

21 Although the State Bar requested findings that Respondent also violated ER 1.2,
22 ER 1.4, ER 3.2, ER 8.4(c) and ER 8.4(d), I decline to find such violations by clear and
23 convincing evidence.

24 As to ER 1.2, I specifically find that Respondent did attempt to comply with
25 Fortsch's communicated expectations. When Respondent was not able to negotiate a
26 satisfactory settlement (a failure shared with Fortsch's California counsel), Respondent
27 filed a complaint and attempted to resolve the case through an agreed upon mediation in
28 compliance with Fortsch's expectation of a quick settlement.

1 As to ER 1.4, I find Respondent's testimony of multiple written,
2 communications, e.g., TR 71:11-24, more persuasive than Fortsch's complaints of lack
3 of communication. Fortsch conceded multiple oral communications and did not advise
4 Respondent that she was not receiving any written communications.

5 As to ER 3.2, I find that Fortsch expected a quick resolution of the litigation,
6 which Respondent attempted to secure through mediation.¹

7 As to ER 8.4(c), I find that Respondent did not lie to or attempt to mislead
8 Fortsch.

9 As to ER 8.4(d) I find that Respondent did not engage in conduct prejudicial to
10 the administration of justice—other than the aforementioned failure to serve the
11 complaints.²

12 **IV. RECOMMENDED SANCTION**

13 The purpose of lawyer discipline is not to punish the lawyer, but to protect the
14 public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d
15 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the
16 profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297
17 (1985). Yet another purpose is to instill public confidence in the bar's integrity. *Matter*
18 *of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

19 In imposing discipline, it is appropriate to consider the facts of the case, the
20 American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards")
21 and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178
22 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994). The *Standards* do not account for multiple
23 charges of misconduct. The ultimate sanction imposed should be at least consistent with
24

25
26 ¹ Respondent's failure to serve the complaints is the chief failure in this case. Had I found an
27 additional violation based on the failure to expedite litigation, it would not have affected the
analysis of recommended sanction for his failure to timely serve either complaint.

28 ² Again, a violation of ER 8.4(d) based on the failure to serve the complaint would not change
the analysis of the recommended sanction.

1 the sanction for the most serious instance of misconduct among a number of violations.
2 *Standards*, p. 6; *In re Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994).

3 **A. ABA STANDARDS**

4 The *Standards* provide guidance with respect to an appropriate sanction in this
5 matter. The Supreme Court and Disciplinary Commission consider the *Standards* a
6 suitable guideline. *In re Peasley*, 208 Ariz. 27, ¶ 23, ¶ 33, 90 P.3d 764, 770, 772 (2004);
7 *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

8 The Supreme Court and the Disciplinary Commission consistently use the
9 *Standards* to determine appropriate sanctions for attorney discipline. *See In re Clark*, 207
10 Ariz. 414, 87 P.3d 827 (2004). The *Standards* are designed to promote consistency in
11 sanctions by identifying relevant factors the court should consider and then applying
12 these factors to situations in which lawyers have engaged in various types of
13 misconduct. *Standard 1.3, Commentary*.

14 In determining an appropriate sanction, the Court and the Disciplinary
15 Commission consider the duty violated, the lawyer's mental state, the presence or
16 absence of actual or potential injury, and the existence of aggravating and mitigating
17 factors. *Peasley*, 208 Ariz. at ¶ 33, 90 P.3d at 772; ABA *Standard 3.0*. "The *Standards*
18 do not account for multiple charges of misconduct. The ultimate sanction imposed
19 should at least be consistent with the sanction for the most serious instance of
20 misconduct among a number of violations; it might well be and generally should be
21 greater than the sanction for the most serious conduct." *Standards*, p. 7; *In re Redeker*,
22 177 Ariz. 305, 868 P.2d 318 (1994).

23 **1. The Duty Violated**

24 The *Standards* identify four distinct categories in which a lawyer has specific
25 duties, to his client, to the general public, to the legal system and to the profession.
26 Here, Respondent violated his duty to his client by failing to serve the complaints.
27 Respondent violated his duty to his client and to the legal profession by failing to insure
28 that Fortsch signed the contingent fee agreement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The Lawyer's Mental State

Standard 4.4 is implicated by Respondent's lack of diligence. This hearing officer concludes that *Standard* 4.43 is most applicable to Respondent's actions. Respondent failed to serve two complaints; however, Respondent was attempting to process the case in a manner consistent with her expectations for a quick resolution while, naively, expecting that his prior relationship with the insurer would facilitate a mediation wherein the very divergent views of his client and the insurer could be efficiently reconciled. *Standard* 4.43 states that reprimand is generally appropriate for negligent lack of diligence in representing a client.³

3. The Extent of the Actual or Potential Injury

Respondent caused actual injury because Fortsch's claim is now barred.

4. The Aggravating and Mitigating Circumstances

Based on the facts found by clear and convincing evidence, I find the following aggravating factors:

Standard 9.22(c), pattern of misconduct. Respondent failed to serve the second complaint after the first was dismissed for lack of prosecution.

Standard 9.22(d), multiple offenses. Respondent's failure to obtain a signed fee agreement was a separate offense, although connected with his overall lack of diligence.

I also find the following mitigating factors:

Standard 9.32(b), absence of a selfish or dishonest motive. Respondent was attempting, however ineffectually, to assist his client.

Standard 9.32(e), cooperative attitude toward proceedings. Respondent does freely acknowledge his errors in this case and did cooperate extensively with the State Bar in attempting to reach a proper resolution.

³ Standard 7.3, along with Standard 4.43, would be most applicable to Respondent's failure to obtain the signed fee agreement.

1 Even though I have found two mitigating and two aggravating factors, I give
2 little weight to any of these factors in recommending the sanction. Respondent was
3 negligent in his handling of Fortsch's case—no more, and no less.

4 **B. PROPORTIONALITY**

5 To have an effective system of professional sanctions, there must be internal
6 consistency, and it is appropriate to examine sanctions imposed in cases that are
7 factually similar. *See Peasley*, 208 Ariz. at 35, 90 P.3d at 778 (citing *In re Alcorn*, 202
8 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454,
9 458 (1983)). Respondent did not submit any other cases for consideration, and the cases
10 submitted by the State Bar demonstrate why suspension is *not* appropriate in this case.

11 In *In re Gieszl*, SB-06-0013-D (2006), the attorney affirmatively misrepresented
12 the status of the matter to the client, including representing that the matter had been
13 successfully settled. In *In re Morrison*, SB-06-0068-D (2006), the attorney again
14 affirmatively misrepresented the status of the matter to the client, including that a
15 settlement had been reached. And, in *In re Pulito*, SB-04-0134-D (2005), the attorney
16 used fake billings to mislead the client as to the true status of the case.

17 I find *In re Bradley*, SB 06-1762 (2007), to a substantially similar matter. As
18 here, the lawyer was retained to handle a personal injury matter, and through negligence
19 allowed the statute of limitations to expire. As here, the lawyer did take some steps to
20 resolve the case, but the lawyer's negligence resulted in the client's claim being barred
21 by the statute of limitations. Violations of ERs 1.1, 1.2, 1.3, 1.4, 3.2 and 8.4(d) were
22 found. The respondent in *Bradley* was censured and placed on probation for one year.

23 **V. RECOMMENDED SANCTION**

24 In considering the sanction appropriate in this matter, the purpose of discipline
25 must be considered. The purpose of discipline is "to protect the public from further acts
26 by Respondent, to deter others from similar conduct, and to provide the public with a
27 basis for continued confidence in the Bar and the judicial system." *In re Hoover*, 155
28 Ariz. 192, 197, 745 P.2d 939, 944 (1987).

1 Original filed this 23^d day of June, 2009
2 with the Disciplinary Clerk of the Supreme Court

3 Copy of the foregoing mailed this 24th
4 day of June, 2009, to:

5 Stephen J. Renard
6 Respondent
7 Law Offices of Stephen Renard
8 868 Cove Parkway, Suite 4
9 Cottonwood, AZ 86326
10 Jason Easterday
11 Bar Counsel
12 State Bar of Arizona
13 4201 North 24th Street, Suite 200
14 Phoenix, AZ 85016-6288

15
16
17
18
19
20
21
22
23
24
25
26
27
28
By: *Evelyn J. ...*