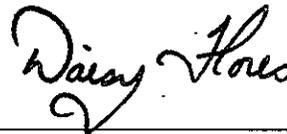


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- a) Respondent shall contact the Director of LOMAP within 30 days of the date of the final Judgment and Order. Respondent shall submit to a LOMAP examination of his office procedures, including, but not limited to, compliance with ERs 1.15, 1.16, and Rule 53(c), Ariz.R.Sup.Ct. The Director of LOMAP shall develop "Terms and Conditions of Probation," and those terms shall be incorporated herein by reference. The probation period will begin to run at the time of the Judgment and Order and will continue two years from the date on which Respondent signs the "Terms and Conditions of Probation." Respondent shall be responsible for any costs associated with LOMAP.
 - b) Respondent shall attend a one day EEP. Respondent must contact the State Bar's EEP Program Coordinator within 20 days from the date of the Judgment and Order. Respondent shall be responsible for the cost of attending the program.
 - c) 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.
 - d) In the event that the Director of LOMAP recommends early termination from probation, and Respondent has successfully completed EEP, Bar Counsel shall review the recommendation to ascertain whether early termination of probation is appropriate. If Bar Counsel determines that early termination of probation is appropriate, Bar Counsel shall file a Notice of Successful Completion of Probation.

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4. In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance 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 date, but in no event later than 30 days after receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. 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 of Arizona to prove noncompliance by clear and convincing evidence.

RESPECTFULLY SUBMITTED this 13th day of March, 2009.



Daisy Flores, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 13th day of March, 2009.

Copy of the foregoing mailed
this 16th day of March, 2009, to:

Hon. H. Jeffrey Coker
Hearing Officer 6R
P.O. Box 23578
Flagstaff, AZ 86002-0001

Stephen J. Renard
Respondent
The Law Offices of Stephen J. Renard
868 Cove Parkway, Suite 4
Cottonwood, AZ 86326-0001

Jason B. Easterday
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by: Evelyn Loza

/njs

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EXHIBIT

A

BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

FILED

DEC 29 2008

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *R. DeArma*

1
2
3 IN THE MATTER OF A MEMBER)
4 OF THE STATE BAR OF ARIZONA,)

No. 08-0822

5 **STEPHAN RENARD,**)
6 **BAR No. 021991**)

HEARING OFFICER'S REPORT

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RESPONDENT.

PROCEDURAL HISTORY

1. Probable Cause was found in this matter on July 30, 2008, and a Complaint thereafter was filed on August 14, 2008. Service was accomplished on August 18, 2008, and the undersigned was assigned to this case on August 19, 2008. Respondent filed his Answer on September 2, 2008. An Initial Case Management Conference was held on September 9, 2008, and the Final Hearing was set on November 17, 2008. Thereafter the parties advised that they had settled the case and the matter went to a hearing on the Tender and Joint Memorandum on November 28, 2008.

FINDINGS OF FACT

2. At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted to practice in this state on December 16, 2002.

COUNT ONE (File No. 08-0822 McEwan)

- B. In or about October 2007, John McEwan ("Mr. McEwan") retained Respondent to represent him in a medical malpractice case. Mr. McEwan and Respondent agreed to a contingency fee arrangement for the representation.

4. As part of the representation and to evaluate the claim, Respondent requested
1 certain medical records from Mr. McEwan. Beginning in or about January 2008
2 and continuing through March 28, 2008, Mr. McEwan delivered his medical
3 records to Respondent.

4
5 5. Subsequently, Mr. McEwan became dissatisfied with Respondent's
6 representation. Beginning in the first week of April and continuing through April
7 25, 2008, Mr. McEwan requested from Respondent on numerous occasions that
8 their relationship terminate and that Respondent return Mr. McEwan's medical
9 records. Respondent assured Mr. McEwan that the records would be returned.

10 6. On April 26, 2008, Respondent even assured Mr. McEwan he had sent the
11 records to him in the mail. Mr. McEwan, however, did not receive the records.
12 By this time, Mr. McEwan had notified the State Bar of the issue. On or about
13 April 29, 2008, Respondent advised Staff Bar Counsel that he had mailed the
14 records the previous week to Mr. McEwan. On or about May 5, 2008, when Bar
15 Counsel inquired of the records, Respondent said that the records had been sent
16 back to him, but that he would personally deliver the records to Mr. McEwan the
17 following day. Respondent still did not deliver the records.

18
19 7. On or about July 18, 2008, another staff bar attorney reviewed the Bar Complaint
20 and requested that Respondent provide information regarding Respondent's
21 representation, including a copy of the fee agreement in the case. Bar Counsel
22 requested that Respondent respond within five business days from July 18, 2008.
23 Respondent did respond to this request, by fax, on August 13, 2008.
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8. Respondent contends, and the State Bar does not contest, that Respondent has returned all of the documents Mr. McEwan provided to the Respondent. There was no evidence to the contrary so the Hearing Officer must conclude that Mr. McEwan has received all of his documents.

CONCLUSIONS OF LAW

9. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated:

Rule 42 Ariz.R.Sup.Ct.

ER 1.15(d), Safekeeping Property: Respondent did not promptly deliver to the client the client's property (medical records) when requested.

ER 1.16(d), Terminating Representation: Respondent did not surrender the client's medical records when demanded.

Rule 53(f) Ariz.R.Sup.Ct., Failure to furnish information: Respondent failed to furnish information to Bar Counsel when requested.¹

ABA STANDARDS

10. 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

1. The parties submit, and the undersigned Hearing Officer concurs, that *Standard* 4.1, "Failure to Preserve the Clients Property" is most applicable to Respondent's violation of his duty to return his client's property when requested, and *Standard*

¹In the Tender and Joint Memorandum this violation was erroneously listed as a Rule 53(c) violation. The undersigned confirmed with Counsel post hearing that the correct Rule citation is 53(f).

7.0, "Violation of Other Duties Owed as a Professional" is most applicable to Respondent's failure in his duty to respond to the Bar.

2. Specifically, *Standard* 4.13 provides: "Reprimand [censure in Arizona] is generally appropriate when a lawyer is negligent in dealing with client's property, and causes injury or potential injury to a client." *Standard* 7.3 provides: "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."

3. Considering these *Standards*, the presumptive sanction in this matter is censure.

The Lawyer's Mental State

4. The parties submit, and the Hearing Officer concurs, that Respondent acted negligently when violating his duty to his client and the profession.

Injury

5. The parties submit that there was no actual injury to Respondent's client, but the potential for injury existed. No evidence was submitted to the undersigned Hearing Officer which would contradict this submission. Respondent's client did ultimately receive all of his medical records, although not as timely as he should have. No injury to the client was shown as a result of this delay.

Aggravating and Mitigating Factors

Aggravating Factors:

6. *Standard* 9.22(d), Multiple Offenses: Respondent violated several ethical rules and duties in this matter.

Mitigating Factors:

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17. *Standard 9.32(a)*, Absence of a Prior Disciplinary Record: Respondent has no prior formal discipline. The parties submit that this factor should not be given great weight due to Respondent's agreement to accept a censure in a previous State Bar Case, File Number 07-1867, which was considered in executive session by the Disciplinary Commission on October 17, 2008.

PROPORTIONALITY REVIEW

18. The Supreme Court has held that while discipline in each case should be tailored to the individual facts of the case, neither perfection nor absolute uniformity can be achieved, and one of the goals of the Disciplinary system is proportionality of cases having similar factual circumstances, *In re Peasley* 208 Ariz. 33, 90 P.3d 772 (2004).

19. The tendered sanction in this matter is a censure, probation for a period of two years with specific requirements, and Respondent to pay all costs incurred in these proceedings.

20. In *In re Lallis*, SB 07-0072-D (2007), Lallis was censured. Lallis accepted client funds for the specific purpose of funding the settlement debt. After failing to settle any debts, the client terminated Lallis and requested a refund. Lallis refused to return the client funds and asserted a retaining lien for attorney's fees on another matter. There was one aggravating factor: 9.22(b), Dishonest or Selfish Motive. There was one mitigating factor: 9.32(a), Absence of a Prior Disciplinary Record. Lallis acted with a negligent state of mind, and caused potential injury.

21. Lallis was sanctioned for violation of Rule 42 Ariz.R.Sup.Ct., specifically ERs 1.15(d), 1.16(d) and Rule 44(b)(4).

22. In *In re Frisbee*, SB-07-0196-D (2007), Frisbee was censured, placed on probation and ordered to pay restitution. Frisbee failed to refund an advance payment of a fee that was not earned upon termination of the representation. Frisbee further failed to deposit unearned fees into his trust account. There was one aggravating factor: 9.22(i), Substantial Experience in the Practice of Law. There was one mitigating factor: 9.32(a), Absence of a Prior Disciplinary Record. Frisbee acted with a negligent state of mind, and caused actual injury to the client. Frisbee was sanctioned for violation of Rule 42 Ariz.R.Sup.Ct., ERs 1.5(b)(3), 1.15(a), 1.15(c) and 1.16(d).

23. In *In re McVay*, SB-03-0018-D (2003), McVay was censured and placed on two years of probation. McVay represented three separate clients in different criminal matters, and in his representation, failed to act with reasonable diligence, failed to properly communicate with the clients, failed to render an accounting of his fees when requested, and failed to provide documents to a client. There were three aggravating factors: 9.22(a), Prior Disciplinary Offenses; 9.22(d), Multiple Offenses; and 9.22(i), Substantial Experience in the Practice of Law. There were two mitigating factors: 9.32(b), Absence of a Dishonest or Selfish Motive; and 9.32(e), Full and Free Disclosure to a Disciplinary Board or Cooperative Attitude Toward the Proceedings. McVay acted with a negligent state of mind. McVay caused actual injury. McVay was sanctioned for violation of Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4, 1.15(b), 1.16(d) and 8.4(d).

RECOMMENDATION

1 24. It has been held in the State of Arizona, that the purpose of lawyer discipline is
2 not to punish the lawyer, but to achieve the following goals: protect the public, the
3 profession and the administration of justice; deter future misconduct; and instill
4 public confidence in the Bar's integrity. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d
5 1315 (1993), *In re Neville* 147 Ariz. 106, 708 P.2d 1297 (1985), *Matter of*
6 *Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

8 25. In imposing discipline, it is appropriate to consider the facts of the case, the
9 American Bar Association's *Standards for Imposing Lawyer Sanctions* and the
10 proportionality of discipline imposed in analogous cases, *Matter of Bowen* 178
11 Ariz. 283, 872 P.2d 1235 (1994).

12 26. Upon consideration of the facts, application of the *Standards*, including
13 aggravating and mitigating factors, and the proportionality analysis, this Hearing
14 Officer concurs with the recommendations set forth in the Tender of Admissions:

16 1. Respondent shall be censured.

17 2. Respondent shall pay all costs incurred by the State Bar in bringing these
18 disciplinary proceedings. In addition, Respondent shall pay all costs incurred by
19 the Disciplinary Commission, the Supreme Court of Arizona, and the Disciplinary
20 Clerk's Office in this matter.

22 3. Respondent shall be placed on probation for a period of two years, under the
23 following terms and conditions:

24 a) Respondent shall contact the Director of LOMAP within 30 days of the
25 date of the final judgment and order. Respondent shall submit to a
26

LOMAP examination of his office procedures, including, but not limited to, compliance with ERs 1.15, 1.16, and Rule 53(c), Ariz.R.Sup.Ct. The Director of LOMAP shall develop "Terms and Conditions of Probation," and those terms shall be incorporated herein by reference. The probation period will begin to run at the time of the Judgment and Order and will continue two years from the date on which Respondent signs the "Terms and Conditions of Probation." Respondent shall be responsible for any costs associated with LOMAP.

- b) Respondent shall attend a one day Ethics Enhancement Program ("EEP"). Respondent must contact the State Bar's EEP Program Coordinator within 20 days from the date of the Judgment and Order. Respondent shall be responsible for the cost of attending the program.
- c) 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.
- d) In the event that the Director of LOMAP recommends early termination from probation, and Respondent has successfully completed EEP, Bar Counsel shall review the recommendation to ascertain whether early termination of probation is appropriate. If Bar Counsel determines that early termination of probation is appropriate, Bar Counsel shall file a Notice of Successful Completion of Probation.

4. In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of

1 Arizona, Bar Counsel shall file a Notice of Noncompliance with the imposing
2 entity, pursuant to Rule 60(a)(5) Ariz.R.Sup.Ct. The imposing entity may refer the
3 matter to a Hearing Officer to conduct a hearing at the earliest practicable date,
4 but in no event later than 30 days after receipt of notice, to determine whether a
5 term of probation has been breached and, if so, to recommend an appropriate
6 sanction. If there is an allegation that Respondent failed to comply with any of
7 the foregoing terms, the burden of proof shall be on the State Bar of Arizona to
8 prove noncompliance by clear and convincing evidence.
9

10
11 DATED this 29th day of December, 2008.

12
13 H. Jeffrey Coker, LMA
14 H. Jeffrey Coker, Hearing Officer
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16

17 Original filed with the Disciplinary Clerk
18 this 29th day of December, 2008.
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Copy of the foregoing mailed
this 30th day of December, 2008, to:

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Stephen Renard
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Respondent

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by: Evelyn Loza