

**FILED**

JUN 23 2009

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

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY ANA

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

File No. 07-1867

4 **STEPHEN J. RENARD,**  
5 **Bar No. 021991**

**HEARING OFFICER'S REPORT**

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

6 Respondent.

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

9 **I. PROCEDURAL HISTORY**

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

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

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

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

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

26 At the January 27, 2009 hearing, the undersigned hearing officer rejected the  
27 second Tender of Admissions and Joint Memorandum and allowed the parties the  
28 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.<sup>1</sup>

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.<sup>2</sup>

#### 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 <sup>1</sup> 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 <sup>2</sup> 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.

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**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.<sup>3</sup>

**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.

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<sup>3</sup> *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<sup>d</sup> day of June, 2009  
2 with the Disciplinary Clerk of the Supreme Court

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

5 Stephen J. Renard  
6 Respondent  
7 Law Offices of Stephen Renard  
8 868 Cove Parkway, Suite 4  
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11 Jason Easterday  
12 Bar Counsel  
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12  
13 By: Evelyn J. J. J. J.  
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