

FILED

**BEFORE THE DISCIPLINARY COMMISSION APR 11 2005
OF THE SUPREME COURT OF ARIZONA**

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

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IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
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JASON J. BRYN,)
Bar No. 018750)
)
RESPONDENT.)
_____)

Nos. 03-2228, 04-0313, 04-1141

**DISCIPLINARY COMMISSION
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on March 12, 2005, pursuant to Rule 58, Ariz. R. S. Ct., for consideration of the Hearing Officer's Report filed January 13, 2005 recommending a 90-day suspension, two years of probation upon reinstatement with the State Bar's Law Office Management Assistance Program (LOMAP) including a practice monitor (PM) and the Member Assistance Program (MAP), and costs of these disciplinary proceedings. Both parties filed a Notice of Appeal objecting to the Hearing Officer's Report. Respondent requested oral argument but did not file an Opening Brief. On March 11, 2005, Respondent filed a Notice of Filing Supporting Documents for Consideration on Appeal. Respondent and counsel for the State Bar were present at oral argument.

Respondent argued for consideration of the supplemental information that was not presented to the Hearing Officer in support of mitigating factors and rehabilitation. Respondent asserts that he was in contact with LOMAP during his training and competition for the Paralympics and that he made alternative arrangements for other attorneys and staff to handle client matters during his absence, which unfortunately did not work out. Respondent did not argue in favor of any particular sanction.

1 The State Bar argued that the Hearing Officer erred by concluding that mitigating
2 factors 9.32(c) personal and emotional problems and 9.32(h) physical disability applied, and
3 that a 90-day suspension is insufficient given the facts of this case and the need to protect
4 the public.

5 Discussion

6 The Disciplinary Commission's standard of review is set forth in Rule 58(b), Ariz.
7 R. S. Ct., which states that the commission reviews questions of law *de novo*. In reviewing
8 findings of fact made by a hearing officer, the commission applies a clearly erroneous
9 standard. *Id.* Mixed findings of fact and law are also reviewed *de novo*. *State v. Blackmore*,
10 186 Ariz. 630, 925 P.2d 1347 (1996) citing *State v. Winegar*, 147 Ariz. 440, 711 P.2d 579
11 (1985).

12 Pursuant to Rule 57(d), Ariz. R. S. Ct., the conduct in this matter is deemed admitted
13 by default.¹ Respondent's conduct is briefly summarized as follows: In Count One, the
14 State Bar received notice that Respondent's trust account was overdrawn. Respondent wrote
15 a check to himself in the amount of \$2,970.00 when the balance at the time was \$714.68. In
16 Counts Two and Three, Respondent failed to adequately and diligently represent clients.
17 Respondent missed deadlines, failed to file and respond to motions, failed to perform
18 services for his clients, and to keep his clients adequately informed. In addition, Respondent
19 failed to respond or cooperate with the State Bar's investigation of these matters.
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22 The Disciplinary Commission, as well as the Hearing Officer, determined that the
23 presumptive sanction for Respondent's particular misconduct is suspension; however, the
24 Disciplinary Commission disagrees with the Hearing Officer that a 90-day suspension is
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¹ An Entry of Default was filed on November 16, 2004.

sufficient to protect the public. *Standard 4.0* addresses Violations of Duties Owed to Clients, with *Standard 4.42* Lack of Diligence, specifically providing that:

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Respondent knowingly abandoned his clients and engaged in a pattern of neglect, thereby causing injury to a client. *See* Hearing Officer Report, pp. 14-15.

Standard 7.2 Violations of Duties Owed as a Professional, provides that:

Suspension is generally appropriate when a lawyer knowingly 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.

Respondent knowingly failed to respond or cooperate with the State Bar's investigation of these matters, thereby, causing injury to the legal system.

Upon consideration of the aggravating and mitigating factors found by the Hearing Officer, the Disciplinary Commission determined that the Hearing Officer erroneously concluded that mitigating factor 9.32(h) physical disability, is present. In *Matter of Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004), the Court held that physical disability is a mitigating factor if there is a direct causal connection between the physical disability and the misconduct. The evidence in the record is insufficient to establish a nexus between Respondent's physical disability and his failure to adequately and diligently represent his clients, his failure to respond and cooperate with the State Bar, and to comply with the orders of the Hearing Officer and the Disciplinary Commission.

While the record supports that Respondent has had Retinitis Pigmentosa, a hereditary and degenerative visual impairment, since birth, Respondent admitted that his misconduct,

1 including his failure to respond to and cooperate with the State Bar, was not caused by his
2 disability. *See* Hearing Officer Report, p. 18:7. Respondent also stated that although his
3 impaired vision presented challenges, he is able to perform tasks and meet his personal
4 needs by adapting his practice with the assistance of technical aids such as magnifiers, voice
5 synthesis and closed circuit television. *See* Hearing transcript, p. 53.

6 The record supports that while Respondent chose to have a balanced life to include
7 his work, family and participation in the Paralympics, he did not refuse cases he was not
8 capable of handling after making this lifestyle decision. Respondent's impaired vision did
9 not cause him to not file an inappropriate Answer without consulting the client or cause his
10 failure to respond to the State Bar's inquiries. Respondent, by his own admissions, put his
11 personal goals above his duties owed to clients, the profession and the State Bar.

12 In addition to abandoning clients, Respondent repeatedly failed to respond to the
13 State Bar's requests for information and failed to produce his trust account records despite
14 being served with a subpoena *duces tecum*. Furthermore, Respondent did not file the post-
15 hearing pleading as ordered by the Hearing Officer and did not file an Opening Brief with
16 the Disciplinary Commission in support of his appeal, even after receiving extensions to do
17 so.
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19 The Supreme Court has stated that a lawyer's failure to respond to State Bar
20 inquiries borders on contempt for the legal system. *In re Galusha*, 164 Ariz. 503, 794 P.2d
21 136 (1990). Additionally, when lawyers fail to cooperate with the Bar, it delays the process,
22 increases the costs to the State Bar and undermines the public's confidence in the process. *In*
23 *re Miles*, 324 Or. 218, 923 P.2d 1219, 1221 (1996).
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25 The Disciplinary Commission found it troubling that even though Respondent is no
26 longer in training or competition for the Paralympics, he is still not complying with his

responsibilities to the State Bar. Respondent's supplemental evidence filed March 11, 2004, in support of his testimony at the aggravation and mitigation hearing was untimely and was not submitted to the Hearing Officer. Therefore, it was not considered by the Commission. Pursuant to Rule 58(d), Ariz. R. S. Ct., evidence not presented to the hearing officer *shall not* be presented to the Disciplinary Commission. The Disciplinary Commission's Orders filed February 11, 2005 and February 23, 2005, put Respondent on notice that nothing further was to be filed without leave of the Disciplinary Commission or its Chair. Respondent stated at Oral Argument that he did not file the post hearing pleading and appeal brief because he was unable to meet the deadlines. *See* Disciplinary Commission transcript, pp. 11-12.

The Respondent's inability to meet deadlines during the entire disciplinary process is the same type of conduct that led to the underlying complaints, and there is no evidence in the record that Respondent has sought professional mental health treatment to assist him with his personal and emotional problems. Respondent has acknowledged his duty to respond to the State Bar, and although he initially claimed not to have received a copy of the Complaint,² when he appeared for the December 10, 2004 aggravation and mitigation hearing, Respondent had received a copy the Complaint. *See* Hearing Officer Report, p. 12:15.

The Disciplinary Commission determined that the medical evidence contained in the record is sufficient to support the Hearing Officer's findings and conclusion regarding the presence of mitigating factor 9.32(c) personal and emotional problems. *See* Respondent's Hearing Exhibit #1.

1 In consideration of the appropriate length of suspension to impose, the Disciplinary
2 Commission notes that the cases cited by the Hearing Officer in his proportionality analysis
3 support suspensions of six months and one day or greater. See Hearing Officer Report, pp.
4 19-23. Consequently, the Disciplinary Commission determined that, based on the
5 misconduct in this matter, the Hearing Officer's recommended sanction is not proportional
6 to previous matters with similar misconduct. In order to protect the public from further
7 harm, Respondent should be required to demonstrate rehabilitation and fitness to practice,
8 pursuant to Rules 64 and 65.

9 Upon *de novo* review, the Disciplinary Commission determined that a more
10 appropriate sanction is a suspension of six months and one day and two years of probation
11 with terms and conditions to be determined upon reinstatement.

12 Decision

13 Having considered Respondent's Notice of Filing Supporting Documents for
14 Consideration on Appeal, the State Bar's Motion to Strike, our Orders filed February 11,
15 2005 and February 23, 2005. The State Bar's Motion to Strike is granted.

16 Further, the nine members of the Disciplinary Commission unanimously recommend
17 rejecting the Hearing Officer's finding of the presence of mitigating factor 9.32(h),
18 accepting and adopting by reference the remaining Hearing Officer's findings of fact and
19 conclusions of law,³ and recommend a six month and one day suspension and two years of
20 probation upon reinstatement, with terms and conditions to be determined at that time, and
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24 ² Pursuant to Rule 47(c), the Complaint was served on Respondent by certified mail/delivery
25 restricted to addressee and regular first class mail to Respondent at his address of record as provided
26 by Respondent to the Membership Department of the State Bar of Arizona.

³ The Hearing Officer inadvertently omitted violations of SCR 43 and 44 in Count Three, which
were deemed admitted by default, from his Conclusions of Law. See Complaint, p. 10, item #78 and
Hearing Officer Report, p. 10:7.

