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**BEFORE THE DISCIPLINARY COMMISSION
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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EDMUND D. KAHN,)
Bar No. 002152)
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)
)
RESPONDENT.)
_____)

Nos. 02-0743, 02-0888,
02-0909, 02-2300

**DISCIPLINARY COMMISSION
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on October 16, 2004, pursuant to Rule 58(e), Ariz. R. S. Ct., for consideration of the Hearing Officer's Report filed July 13, 2004, recommending a thirty day suspension, compliance with Rule 72, and costs of these disciplinary proceedings. Respondent appealed and requested oral argument. Respondent and counsel for the State Bar were present.

Respondent argued that he did not pay bar dues in order to challenge the validity and scope of the regulation of the practice of law as a matter of conscience and civil rights. Respondent further stated that due process of law was denied because no hearing was held on the summary suspension. Respondent maintained that his challenge to Rule 62(a)(2)¹ was in good faith and his actions were not willful. He believed the requirement to pay bar dues to be unconscionable, immoral and unconstitutional. Respondent argued that his right to practice can only be taken away by the Supreme Court of Arizona and not by an arbitrary decision of the State Bar of Arizona.

¹ Formerly Rule 52(d), Ariz. R. S. Ct.

1 In conclusion, Respondent argued for a reversal of the Hearing Officer's
2 recommendations and that all charges be dismissed, or in the alternative, that an informal
3 reprimand be imposed because he does not present a danger to the public.

4 The State Bar argued that Respondent's decision to practice law while summarily
5 suspended was not justified and that Respondent advanced the same argument on several
6 occasions. Respondent presented oral argument before the Board of Governors on
7 September 21, 2001, but failed to demonstrate good cause why his license should not be
8 suspended, and he filed a Petition for Stay of Suspension with the Supreme Court of
9 Arizona which was denied on March 21, 2002. On March 28, 2002, Respondent also filed
10 a Complaint against the State Bar of Arizona in the United States District Court for the
11 District of Arizona, CIV-02-164-TUC, in which the court granted the State Bar's motion
12 for summary judgment and dismissed Respondent's case. The federal court held that the
13 State Bar is in compliance with *Keller v. State Bar of California*, 496 U.S. 1, 110 S.Ct.
14 2228 (1990). In particular, the court found that the State Bar had in place constitutionally
15 appropriate procedures for members to challenge expenditures of mandatory dues. Lastly,
16 an evidentiary hearing was held on April 30, 2004 before Hearing Officer 8J regarding the
17 alleged violations of ER 5.5(a), 8.4(c) and (d) and SCR 51(e).

18 In closing, the State Bar argued that the Hearing Officer's conclusions of law are
19 fully supported by the findings of fact and the recommended sanction is appropriate. At
20 oral argument before the Commission, the State Bar argued that aggravating factor 9.22(d)
21 multiple offenses is also present in the record. See Commission transcript, p. 18:20.

22 Decision

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

3 Therefore, having found no findings of fact clearly erroneous, the eight² members
4 of the Commission unanimously recommend adopting and incorporating by reference the
5 Hearing Officer's findings of fact, conclusions of law, and recommendation for a thirty day
6 suspension, compliance with Rule 72, and costs.

7 Discussion

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9 There is no issue of fact in this instant matter. The Hearing Officer's findings of
10 fact are briefly summarized as follows: Respondent was notified by the State Bar on April
11 2, 2001, that his license to practice law would be suspended for failure to pay mandatory
12 membership dues unless Respondent paid his dues on or before April 16, 2001.
13 Respondent requested and was granted a hearing before the Board of Governors to show
14 good cause why his license should not be suspended. After consideration of Respondent's
15 written submission and oral argument, the Board of Governors determined that Respondent
16 failed to show good cause and his license to practice law was suspended on October 19,
17 2001. Respondent thereafter, repeatedly engaged in the unauthorized practiced law from
18 October 19, 2001 to June 25, 2002, while summarily suspended for non-payment of bar
19 dues. During this eight month period, Respondent filed a petition for review of his
20 suspension and petitioned for a stay of the suspension with the Supreme Court of Arizona,
21 which was denied on March 21, 2002. Respondent also filed a Complaint against the State
22 Bar in the United States District Court for the District of Arizona (CIV-02-164-TUC),
23 which was ultimately dismissed on the merits by summary judgment.
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² Commissioner Funkhouser recused.

1 The Supreme Court of Arizona has stated it has jurisdiction over the practice of law
2 and the conduct of lawyers pursuant to Article III and Article VI of the Arizona
3 Constitution and has held that the courts have the power to license attorneys as an adjunct
4 to their inherent powers. See *State Bar v. Arizona Land Title and Trust Company*, 90 Ariz.
5 76, 366 P.2d 1 (1961). The Court has also adopted several rules that give it the authority to
6 regulate the practice of law, including the authority to impose discipline on lawyers.

7 Rule 62(a)(2), Ariz. R. S. Ct., Summary Suspension by the Board of Governors of
8 the State Bar for Failure to Pay Annual Membership Fees is one such rule and provides
9 that:

10 A member who fails to pay a fee within 2 months after
11 written notice of delinquency, pursuant to Rule 31, or fails to
12 sign the annual dues statement as required Rule 43(b) may
13 be summarily suspended.

14 The Supreme Court has given the State Bar the power to summarily suspend a
15 member from the practice of law and lawyers must follow the law. At the settlement
16 conference, the State Bar offered a censure with the understanding that if there was a
17 recurrence of the misconduct, disbarment would be appropriate. The State Bar also argued
18 for the imposition of a censure in its Post Hearing Memorandum filed May 21, 2004.
19 Respondent, however, rejected the offer and stated that he was owed an apology.
20 Respondent continued to refuse to accept the wrongful nature of his conduct. Volunteer
21 Bar Counsel stated that based on Respondent's attitude, censure was no longer an
22 appropriate sanction. See Commission transcript, pp. 13-14.

23 Respondent's unauthorized practice of law caused potential harm to his clients.
24 Respondent did not tell clients that he was suspended. He instead told clients he was
25 "testing the authority of the State Bar of Arizona" and continued to represent existing
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clients. Respondent now admits that he should have told his clients about his suspension.
See Commission transcript, p. 10:3.

Respondent argued that he is engaging in civil disobedience in the grand tradition of Martin Luther King, but in reality he performed a disservice to his clients by misrepresenting his membership status and jeopardizing their cases. Respondent cannot claim the privilege of civil disobedience while victimizing third parties. Respondent has had a forum on at least three separate occasions to voice his constitutional objections and his arguments have failed. That he has had ample opportunity to voice his objections clearly undercuts Respondent's due process argument. Respondent should have ceased practicing law while challenging the rules or, in the alternative, paid his dues and filed a declaration and challenged the rules. Instead, he chose a different route.

The Commission concluded that even if Rule 62, Ariz. R. S. Ct. did not afford Respondent due process, and if the State Bar's summary suspension for non-payment of dues was not appropriate, the Disciplinary Commission is not the proper forum for challenging the validity of the rule and furthermore, it does not have the authority to determine if a Supreme Court rule is unconstitutional. At oral argument, Respondent acknowledged that the Disciplinary Commission does not have the authority to declare that Rule 62(a)(2) is unconstitutional but maintained that because of his lack of moral turpitude, a thirty day suspension is inappropriate. See Commission transcript, pp. 7-8. For the reasons as stated, the Commission agreed with the Hearing Officer that the suspension is warranted under the circumstances of this case.

Conclusion

The purposes of attorney discipline are to protect the public and deter similar conduct by other lawyers, *Matter of Kersting*, 151 Ariz. 171, 726 P.2d 587 (1986); instill

1 public confidence in the bar's integrity, *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352,
2 362 (1994); and maintain the integrity of the legal system, *In re Fioramonti, supra*.

3 Therefore, having considered Respondent's misconduct, application of the ABA
4 *Standards*, factors present in aggravation and mitigation, and a proportionality analysis, the
5 Commission unanimously accepts the Hearing Officer's recommendation for a thirty day
6 suspension, compliance with Rule 72, and costs.

7 RESPECTFULLY SUBMITTED this 15th day of November, 2004.

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10 Craig B. Mehrens, Chair
Disciplinary Commission

11 Original filed with the Disciplinary Clerk
12 this 15th day of November, 2004.

13 Copy of the foregoing mailed
14 this 15th day of November, 2004, to:

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