

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**MARCY ELISSA GOLOMB,
Bar No. 023658**

Respondent.

PDJ-2018-9093

**FINAL JUDGMENT AND ORDER
FOR COSTS**

[State Bar Nos. 18-0425, 18-1285]

FILED FEBRUARY 4, 2019

On January 9, 2019, the Hearing Panel issued its decision and order disbarring effective February 8, 2019. Time for appeal passed. The Judgment and Order issued on February 1, 2019. The State Bar filed its Statement of Costs and Expenses for \$2,042.88. No objection has been filed.

“An assessment of costs and expenses related to a disciplinary proceeding shall be imposed upon a respondent....” Rule 60(b), Ariz. R. Sup. Ct. Having considered the matter, the PDJ finds the costs are reasonable and they are approved.

Accordingly:

IT IS ORDERED pursuant to Rule 60(b), Marcy Elissa Golomb, Bar No. 023658, shall pay the costs and expenses of the State Bar in the amount of **\$2,042.88** together with interest at the legal rate from the date of this order.

DATED this 4th day of February 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed
this 4th day of February 2019, and
mailed February 5, 2019, to:

Kelly J. Flood
Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Marcy Elissa Golomb
Marcy Elissa Golomb Attorney at Law, PLLC
14300 N. Northsight Blvd., Ste 228
Scottsdale, AZ 85260-8842
Email: marcy1840@msn.com
Respondent

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**MARCY ELISSA GOLOMB,
Bar No. 023658**

Respondent.

PDJ 2018-9093

JUDGMENT OF DISBARMENT

[State Bar File Nos. 18-0452 &
18-1285]

FILED FEBRUARY 1, 2019

This matter came for hearing before the hearing panel which rendered its Decision and Order Imposing Sanctions (Decision) on January 9, 2019, ordering disbarment, restitution, and costs. The Decision of the hearing panel is final under Rule 58(k), Ariz. R. Sup. Ct. No appeal has been filed pursuant to Rule 59(a), Ariz. R. Sup. Ct., and the time to appeal having expired,

IT IS ORDERED Respondent, **MARCY ELISSA GOLOMB, Bar No. 023658**, is disbarred from the State Bar of Arizona and her name is stricken from the roll of lawyers, effective February 8, 2019, as set forth in the Decision. Ms. Golomb is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court.

IT IS FURTHER ORDERED Ms. Golomb shall immediately comply with the requirements relating to notification of clients and others and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED Ms. Golomb shall pay restitution to Robert Netzel in the amount of \$750.00.

IT IS FURTHER ORDERED Ms. Golomb shall pay all costs and expenses of the State Bar of Arizona in the amount of pursuant to Rule 60(b), Ariz. R. Sup. Ct. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 1st day of February 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed this 1st day of February 2019, and mailed February 4, 2019, to:

Kelly J. Flood
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Marcy Elissa Golomb
Marcy E. Golomb at Law PLLC
14300 N. Northsight Blvd., Ste. 228
Scottsdale, Arizona 85260-8842
Email: marcy1840@msn.com
Respondent

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

MARCY ELISSA GOLOMB,
Bar No. 023658

Respondent.

PDJ 2018-9093

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar Nos. 18-0452 & 18-1285]

FILED JANUARY 9, 2019

On January 8, 2019, the Hearing Panel, composed of volunteer attorney member, George A. Riemer, volunteer public member, Mel O'Donnell and the Presiding Disciplinary Judge ("PDJ") William J. O'Neil considered the evidence and heard argument. Ms. Golomb abandoned her practice and clients and knowingly failed to perform services for clients for which she was paid. Ms. Golomb further engaged in a pattern of neglect of client matters. Exhibits 1-15 were admitted.

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on November 1, 2018. On November 5, 2018, the complaint was served on Ms. Golomb by certified, delivery restricted mail, as well as by regular first-class mail, pursuant to Rules 47(c)

and 58(a) (2), Ariz. R. Sup. Ct.¹ A notice of default properly issued on December 3, 2018, and default was properly effective on December 26, 2018, at which time a notice of aggravation and mitigation hearing was sent to all parties notifying them the scheduled aggravation mitigating hearing. On January 8, 2019, the matter proceeded to hearing.

FINDINGS OF FACT

By the effective default of Ms. Golomb, the allegations in the complaint are deemed admitted and adopted by the Hearing Panel. The exhibits support those allegations and the State Bar made an offer of proof and had witnesses available to testify telephonically. A respondent against whom a default has been entered no longer has the right to litigate the merits of the factual allegations but retains the right to appear and participate in the hearing that will determine the sanctions. Included with that right to appear is the right to testify and the right to cross-examine witnesses, in each instance only to establish facts related to aggravation and mitigation. Ms. Golomb did not appear.

1. Ms. Golomb was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 12, 2005 and this court has jurisdiction.

¹ Copies of the Notice of Service and Complaint were also emailed to Ms. Golomb on November 5, 2018.

COUNT ONE (File no. 18-0452/Netzel)

2. In early November of 2017, Robert Netzel and his business were sued in a commercial dispute², and Netzel hired Ms. Golomb to defend the suit. (Exhibit 4, SBA000035-37.) Netzel alleged that Ms. Golomb asked him to pay a flat fee of \$1,000, of which she needed \$750 immediately for the filing fee and drafting the answer. Netzel paid Ms. Golomb \$750 in cash. (Exhibit 4, SBA000035-37.)

3. Ms. Golomb did not provide Netzel with a fee agreement or written explanation of the scope of services to be provided or the rates to be charged.

4. Ms. Golomb assured him that she filed an answer to the complaint, but a review of the docket for the case reveals that she had not. Netzel tried to communicate with Ms. Golomb via phone, text, and email. (Exhibit 5, SBA000038-46.) Netzel alleges that she told him that his payment hadn't gone through yet on her PayPal account, which is why she had not filed anything on his behalf. Netzel did not understand this explanation because he had paid Ms. Golomb \$750 in cash.

5. Netzel finally communicated with Ms. Golomb about Ms. her failure to file an answer to the lawsuit in early December of 2017, and she promised a refund.

² *Philadelphia Indemnity Insurance Company v. Patriot Bonding, LLC, and Robert and Colleen Netzel*, Maricopa County Superior Court Cause No. CV2017-014263. (Exhibit 1, SBA000001-29.)

(Exhibit 5, SBA000038-46.) Every time Netzel went to meet her and pick up a refund, however, she would fail to show.

6. Netzel hired new counsel, who filed an answer on behalf of him and his business. Netzel ultimately declared personal bankruptcy, his counsel withdrew in the commercial litigation, and a default judgment was entered against the business. (Exhibit 4, SBA000035-37.)

7. On February 20, 2018, Netzel called the State Bar's Attorney Consumer Assistance Program ("ACAP") to make a complaint against Ms. Golomb. Netzel spoke with ACAP counsel Stacey Shuman, to whom he explained the facts set forth above.

8. On February 20, 2018, ACAP counsel Shuman reached out to Ms. Golomb on her office phone as listed in the State Bar directory, but it was not accepting voicemails. Shuman also emailed her at marcy1840@msn.com the same date to alert her to the voicemail issue and to ask for a response.

9. Ms. Golomb responded via email from marcy1840@msn.com on February 21, 2018 and stated that the voicemail problem was a glitch that happened when she was on the other line. She provided her cell number (480-707-2281), and stated she would provide a response shortly.

10. Shuman called Ms. Golomb twice again on March 2, 2018, and the office voicemail was not accepting messages, and the cell phone voicemail was full. Shuman emailed Ms. Golomb again, requesting a call or other response.

11. On March 2, 2018, Ms. Golomb called Shuman. Ms. Golomb alleged that Netzel had owed Ms. Golomb \$150 for prior work that she had completed on a contract for his business, and that she offered to review the lawsuit against Netzel for an additional \$150.

12. Shuman asked Ms. Golomb to memorialize her explanation of her relationship with Netzel in writing via email, and to provide any documents that supported Ms. Golomb's explanation.

13. Ms. Golomb stated that she did not have Shuman's email, but Shuman reminded her that she had already emailed Shuman, and she should use the same email address at which she had already communicated with her. Shuman also informed her that both phone numbers Ms. Golomb had provided were unable to accept voice mails.

14. Shuman followed-up the call with an email to Ms. Golomb to request that she provide documents that supported her explanation.

15. On March 16, 2018, Ms. Golomb emailed Shuman two items. One was a handwritten receipt dated November 14, 2017, from a generic receipt booklet, that purported to memorialize the receipt of \$300 in cash from Netzel. The memo line

reads, “legal services.” The second document was a short draft amended purchase agreement purported to relate to Netzel’s business. (Exhibit 3, SBA000031-34.)

16. Shuman tried to reach Ms. Golomb again, but was unsuccessful.

17. On April 4, 2018, Bar Counsel sent an initial screening letter to Ms. Golomb at the address in the State Bar directory. She did not respond. (Exhibit 6, SBA000047-48.)

18. On May 8, 2018, Bar Counsel sent her a ten-day reminder letter at the address in the State Bar directory. She did not respond. (Exhibit 7, SBA000049.)

19. Because there were multiple charges³ pending to which she had not responded, a State Bar Investigator, Marlene Cartusciello, was asked to try to locate her and obtain a response.

20. July 24, 2018, the Investigator tried to call Ms. Golomb on her office phone twice, and the recorded greeting indicated that no voicemail was set up. She tried Ms. Golomb’s cell phone as well, and left a voicemail. The recorded greeting said it was “Marcy.”

21. The Investigator emailed her at the address in the State Bar directory, marking the message “urgent.”

³ Miranda (18-1285)(addressed herein in Count Two) and Jones (18-1932) (In the Jones matter the client has not submitted a written charge.)

22. The Investigator performed an online search for Ms. Golomb and learned that the mother of Ms. Golomb died on February 2, 2016. The obituary identified the father and sister of Ms. Golomb and their occupations. Her sister, Hilary Cooper, is a lawyer.

23. On July 30, 2018, the Investigator emailed Cooper.

24. On July 30, 2018, the Investigator spoke with Cooper, who verified office address, phone number, and cell number of Ms. Golomb.

25. As of the date of this proceeding, Bar Counsel has not received any response from her.

26. By engaging in the misconduct described above, Ms. Golomb violated several ethical rules including, but not limited to: ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 8.4(c), 8.4(d) and Rule 54(d).

COUNT TWO (File no. 18-1285/Miranda)

27. Gloria Miranda claims she retained Ms. Golomb in March of 2017 to handle a personal injury case for her. Miranda alleges that she and Ms. Golomb had a contingency agreement for Ms. Golomb to receive 1/3 of any recovery obtained, but Miranda never received a copy of the agreement from Ms. Golomb. (Exhibit 10, SBA000054-57.)

28. Miranda gave Ms. Golomb all relevant documents regarding the car accident that occurred in March of 2016, about which Miranda wanted to file a lawsuit for damages and personal injuries.

29. After providing Ms. Golomb with all the relevant documents for her case, Miranda tried repeatedly to reach Ms. Golomb, and left multiple messages and text messages, to which Ms. Golomb never responded. (Exhibit 10, SBA000054-57.) When Miranda finally heard back from her late in 2017, Ms. Golomb assured her that “everything settles after the holidays,” and not to worry.

30. Miranda did not hear anything further from her, so she reached out again on January 28, 2018, and Ms. Golomb texted her that she was in a meeting and would call her back. She never did.

31. Miranda was finally able to speak with Ms. Golomb’s father, who is an accountant who shares office space with her. Her father told Miranda that she was no longer practicing law.

32. Maricopa County court records do not reflect that any suit was filed by Ms. Golomb on Miranda’s behalf.

33. Miranda asserts that she learned too late that the statute of limitations ran on her case in March of 2018. She says because she lost the opportunity to bring this claim, she recovered nothing and Ms. Golomb has really harmed her. (Exhibit 10, SBA000054-57.)

34. On May 31, 2018, Bar Counsel sent an initial screening letter to Ms. Golomb at the address in the State Bar directory. Ms. Golomb did not respond. (Exhibit 11, SBA000058-59.)

35. On June 27, 2018, Bar Counsel sent a ten day letter. No response was received. (Exhibit 12, SBA000060.)

36. The State Bar reasserts and re-alleges the facts set forth in paragraphs 19-24 above, and incorporates them in Count Two as if fully set forth herein.

37. By engaging in the misconduct described above, Ms. Golomb violated several ethical rules including, but not limited to: ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 8.4(d) and Rule 54(d).

CONCLUSIONS OF LAW

Default was effective and the allegations are therefore deemed admitted pursuant to Rule 58(d). Although the allegations are deemed admitted by default, there has also been an independent determination by the Hearing Panel that the State Bar has proven by clear and convincing evidence that Ms. Golomb violated the ethical rules.

The Hearing Panel finds by clear and convincing evidence that Ms. Golomb violated: Rule 42, Ariz. R. Sup. Ct., specifically E.R.s 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 8.4(c), 8.4(d) and Rule 54(d).

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should consider: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0*.

Duties violated:

Ms. Golomb violated her duty to her clients by violating E.R.s 1.2, 1.3, 1.4, 1.5, 1.15, and 1.16. Ms. Golomb also violated her duty owed as a professional by violating E.R. 8.4(c) and (d), as well as Rule 54(d).

Mental State and Injury:

Ms. Golomb knowingly violated her duty to clients, thereby implicating *Standards 4.1 and 4.4*.

Standard 4.11 provides that disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury to the client. Regarding the Netzel matter, in receiving \$750.00 from the client that was to be used to prepare and file an answer and pay the filing fee, and in failing to prepare and file an answer, Ms. Golomb converted those funds for her own use.

Standard 4.41 states:

Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client;
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Standard 4.42 states:

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.

In this matter, Ms. Golomb abandoned her practice, knowingly failed to perform services for clients and engaged in a pattern of neglect of client matters, all of which caused serious or potentially serious injury to clients. Therefore, *Standard 4.41* is applicable.

Ms. Golomb also violated her duty to maintain personal integrity, implicating *Standard 5.11*. Her violation of ER 8.4(c) involves dishonesty in converting client funds. *Standard 5.11* provides that disbarment is generally appropriate when (a) a lawyer engages in, e.g., misappropriation or theft, or (b) conduct involving, e.g., dishonesty, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. In receiving funds to prepare and file an answer, but then failing to prepare and file an answer, Ms. Golomb misappropriated client funds, was dishonest, and the conduct seriously adversely reflects on her fitness to practice.

Ms. Golomb also violated her duty owed as a professional, which implicates *Standard 7.0*. *Standard 7.1* states, “Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.” *Standard 7.2* states, “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.”

In this matter, Ms. Golomb failed to substantively respond to the SBA’s investigation. Her actions in accepting and keeping money when no services were performed were taken with the intent to obtain a personal benefit. *Standard 7.1*, therefore, is applicable.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors are present in this matter:

- *Standard 9.22(b)*: selfish or dishonest motive: Ms. Golomb converted client funds for her own use;
- *Standard 9.22(c)*: pattern of misconduct: Ms. Golomb abandoned multiple clients;
- *Standard 9.22(d)*: Ms. Golomb violated multiple ERs;

- *Standard 9.22(g)*: refusal to acknowledge wrongful nature of conduct;
- *Standard 9.22(i)*; substantial experience in the practice of law: Ms.

Golomb was admitted in 2005;

- *Standard 9.22(j)*: indifference to making restitution: Ms. Golomb converted client funds for personal use and has failed to respond on this issue; and

- *Standard 9.22(k)* illegal conduct: Ms. Golomb converted client money for her own use.

We decline to find *Standard 9.22(e)*: bad faith obstruction of the disciplinary proceeding as the proof is inadequate to establish she intentionally failed to comply with the rules.

The Hearing Panel finds the following mitigating factor applies:

- *Standard 9.32(a)*: absence of prior disciplinary record.

The Hearing Panel finds the sole mitigating factor does not outweigh the aggravating factors. Disbarment is appropriate.

PROPORTIONALITY

In the past, the Supreme Court has consulted similar cases in an attempt to assess the proportionality of the sanction recommended. *See In re Struthers*, 179 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept or proportionality review is “an imperfect process.” *In re Owens*, 182

Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases “are ever alike.” *Id.*

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *See In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In *In Re Steimel*, (SB16-2038, 16-2311), Steimel consented to disbarment based on a complaint filed by the State Bar that alleged Steimel neglected clients and their cases, and did not provide refunds for unearned fees, thereby converting client funds for his own use, among other misconduct. Steimel violated ERs 1.2, 1.3, 1.4, 1.15 and 8.4.

In *In Re Anderson*, (SB15-2866, et al), Anderson was disbarred for conduct that included abandoning clients without notice, failure to communicate, failure to have fee agreements, and other misconduct. Anderson violated ERs 1.2, 1.3, 1.4, 1.5, 1.8, 1.15, 1.16, 3.2, 3.4, 8.1, 8.4, and Rule 54(c) and (d), Ariz. R. Sup. Ct. Aggravating factors included prior discipline, dishonest of selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of discipline proceedings,

refusal to acknowledge the wrongful nature of his conduct, and substantial experience in the practice of law. There were no mitigating factors.

In *In Re Drake*, (SB16-2232, 16-2682, 16-2683, 16-2726), Drake was disbarred for conduct including taking money from clients and failing to provide agreed-upon services. Drake also failed and refused to participate in the discipline proceedings. Drake violated ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.3, 8.1, 8.4, and Rule 54, Ariz. R. Sup. Ct. Aggravating factors included prior discipline, dishonest of selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of discipline proceedings, refusal to acknowledge the wrongful nature of his conduct, and substantial experience in the practice of law. One mitigating factor of personal or emotional problems was given little weight.

In *In Re Rush*, (SB15-2534, et al), Rush was disbarred for conduct that included accepting fees and failing to perform work, refusing to refund unearned fees, and abandoning clients, among other misconduct. Rush also failed to participate in the State Bar's investigation and discipline proceedings. Rush violated ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.4, 8.1, 8.4, and Rule 54, Ariz. R. Sup. Ct. Aggravating factors included: dishonest of selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of discipline proceedings, refusal to acknowledge the wrongful nature of his conduct, vulnerability of victims, and

substantial experience in the practice of law. The sole mitigating factor was the absence of prior discipline.

This case is similar to the above in that they all involve, among other things, abandonment of clients, accepting money and performing no services, and failure to cooperate with the State Bar investigation and discipline proceedings.

CONCLUSION

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.’” *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the appropriate sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. Based upon the above, the Hearing Panel orders as follows:

1. Marcy Elissa Golomb is disbarred from the practice of law effective thirty (30) days from the date of this order.
2. Ms. Golomb shall immediately comply with the requirements relating to notification of clients and others and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.
3. Ms. Golomb shall pay all costs and expenses incurred by the SBA and the Office of the Presiding Disciplinary Judge in this proceeding.
4. Ms. Golomb shall pay the following in restitution: \$750.00 to Robert Netzel.

A final judgment and order will follow.

DATED this 9th day of January 2019.

Signature on File

William J. O’Neil, Presiding Disciplinary Judge

Signature on File

George A. Riemer, Volunteer Attorney Member

Signature on File

Mel O’Donnell, Volunteer Public Member

Copy of the foregoing emailed/mailed
this 9th day of January, 2019, to:

Kelly J. Flood
Bar Counsel
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266
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Marcy Elissa Golomb
Marcy E. Golomb Attorney at Law PLLC
14300 N. Northsight Blvd., Ste. 228
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Email: marcy1840@msn.com
Respondent

by: AMcQueen

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

NOV 1 2018

FILED
BY 

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**MARCY ELISSA GOLOMB
Bar No. 023658,**

Respondent.

PDJ 2018-9093

COMPLAINT

[State Bar No. 18-0452, 18-1285]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 12, 2005.

COUNT ONE (File no. 18-0452/Netzel)

2. In early November of 2017, Robert Netzel and his business were sued in a commercial dispute¹, and Netzel hired Respondent to defend the suit. Netzel alleged that Respondent asked him to pay a flat fee of \$1,000, of which she needed \$750 immediately for the filing fee and drafting the answer. Netzel paid Respondent \$750 in cash.

3. Respondent did not provide Netzel with a fee agreement or written explanation of the scope of services to be provided and the rates to be charged.

4. Netzel alleges that Respondent assured him that she filed an answer to the complaint, but a review of the docket for the case reveals that she had not. Netzel tried to communicate with Respondent via phone, text, and email. Netzel alleges that Respondent told him that his payment had not gone through yet on her PayPal account, which is why she had not filed anything on his behalf. Netzel did not understand this explanation because he had paid Respondent \$750 in cash.

5. Netzel finally communicated with Respondent about Respondent's failure to file an answer to the lawsuit in early December of 2017, and Respondent

¹ *Philadelphia Indemnity Insurance Company v. Patriot Bonding, LLC, and Robert and Colleen Netzel*, Maricopa County Superior Court Cause No. CV2017-014263.

promised a refund. Every time Netzel went to meet Respondent and pick up a refund, however, Respondent would fail to show.

6. Netzel hired new counsel, who filed an answer on behalf of him and his business. Netzel ultimately declared personal bankruptcy, his counsel withdrew in the commercial litigation, and a default judgment was entered against the business.

7. On February 20, 2018, Netzel called the State Bar to make a complaint against Respondent. Netzel spoke with Bar Counsel Stacey Shuman, to whom he explained the facts set forth above.

8. On February 20, 2018, Shuman reached out to Respondent on her office phone as listed in the State Bar directory, but it was not accepting voicemails. Shuman also emailed Respondent at marcy1840@msn.com the same date to alert her to the voicemail issue and to ask for a response.

9. Respondent responded via email from marcy1840@msn.com on February 21, 2018 and stated that the voicemail problem was a glitch that happened when she was on the other line. She provided her cell number (480-707-2281), and stated she would provide a response shortly.

10. Shuman called Respondent twice again on March 2, 2018, and the office voicemail was not accepting messages, and the cell phone voicemail was full. Shuman emailed Respondent again, requesting a call or other response.

11. On March 2, 2018, Respondent called Shuman. Respondent alleged that Netzel had owed Respondent \$150 for prior work that she had completed on a contract for his business, and that she offered to review the lawsuit against Netzel for an additional \$150.

12. Shuman asked Respondent to memorialize her explanation of her relationship with Netzel in writing via email, and to provide any documents that supported Respondent's explanation.

13. Respondent stated that she did not have Shuman's email, but Shuman reminded Respondent that she had already emailed Shuman, and she should use the same email address at which she had already communicated with her. Shuman also informed Respondent that both phone numbers Respondent had provided were unable to accept voice mails.

14. Shuman followed-up the call with an email to Respondent to request that she provide documents that supported her explanation.

15. On March 16, 2018, Respondent emailed Shuman two items. One was a handwritten receipt dated November 14, 2017, from a generic receipt booklet, that purported to memorialize the receipt of \$300 in cash from Netzel. The memo line reads, "legal services." The second document was a short draft amended purchase agreement that purported to relate to Netzel's business.

16. Shuman tried to reach Respondent again, but was unsuccessful.

17. On April 4, 2018, undersigned Bar Counsel sent an initial screening letter to Respondent at her address of record. Respondent did not respond.

18. On May 8, 2018, undersigned Bar Counsel sent Respondent a ten day reminder letter at her address of record. Respondent did not respond.

19. Because there were multiple charges² pending to which Respondent had not responded, a State Bar Investigator, Marlene Cartusciello, was asked to try to locate Respondent and obtain a response.

20. July 24, 2018, the Investigator tried to call Respondent on her office phone twice, and the recorded greeting indicated that no voicemail was set up. She

² Miranda (18-1285)(addressed herein in Count Two) and Jones (18-1932) (in the Jones matter the client has not submitted a written charge.)

tried Respondent's cell phone as well, and left a voicemail. The recorded greeting said it was "Marcy."

21. The Investigator emailed Respondent marking the message "urgent."

22. The Investigator performed an online search for Respondent, and learned that Respondent's mother died on February 2, 2016. The obituary identified Respondent's father and sister and their occupations. Respondent's sister, Hilary Cooper, is a lawyer.

23. On July 30, 2018, the Investigator emailed Cooper.

24. On July 30, 2018, the Investigator spoke with Cooper, who verified Respondent's office address, phone number, and cell number.

25. As of the date of this Complaint, Bar Counsel has not received any response from Respondent.

26. Respondent's conduct violated Rule 42, Ariz. R. Sup. Ct. ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 8.4(d), and Rule 54(d).

COUNT TWO (File no. 18-1285/Miranda)

27. Gloria Miranda claims she retained Respondent in March of 2017 to handle a personal injury case for her. Miranda alleges that she and Respondent had

a contingency agreement for Respondent to receive 1/3 of any recovery obtained, but Miranda never received a copy of the agreement from Respondent.

28. Miranda gave Respondent all relevant documents regarding the car accident that occurred in March of 2016, about which Miranda wanted to file a lawsuit for damages and personal injuries.

29. After providing Respondent with all the relevant documents for her case, Miranda tried repeatedly to reach Respondent, and left multiple messages and text messages, to which Respondent never responded. When Miranda finally heard back from Respondent late in 2017, Respondent assured her that “everything settles after the holidays,” and not to worry.

30. Miranda did not hear anything further from Respondent, so she reached out again on January 28, 2018, and Respondent texted her that she was in a meeting and would call her back. She never did.

31. Miranda was finally able to speak with Respondent’s father, who is an accountant who shares office space with Respondent. Respondent’s father told Miranda that Respondent was no longer practicing law.

32. Maricopa County court records do not reflect that any suit was filed by Respondent on Miranda’s behalf.

33. Miranda asserts that she learned too late that the statute of limitations ran on her case in March of 2018. She says because she lost the opportunity to bring this claim, she recovered nothing and Respondent has really harmed her.

34. On May 31, 2018, Bar Counsel sent an initial screening letter to Respondent's address of record. Respondent did not respond.

35. On June 27, 2018, Bar Counsel sent a ten day letter. No response was received.

36. The State Bar reasserts and re-alleges the facts set forth in paragraphs 19-25 above, and incorporates them in Count Two as if fully set forth herein.

37. Respondent's conduct violated Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 8.4(d), and Rule 54(d).

DATED this 1st day of November, 2018.

STATE BAR OF ARIZONA



Kelly J. Flood
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 1st day of November, 2018.

by: Marquita Good
KJF:mg

FILED

OCT 12 2018

BY 

**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

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

**MARCY ELISSA GOLOMB
Bar No. 023658**

Respondent.

No. 18-0452

PROBABLE CAUSE ORDER

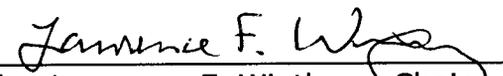
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 12, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 6-0-3¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-0452.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 12 day of October, 2018.



Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee members Ben Harrison, Charles Muchmore and Walt Davis did not participate in this matter.

Original filed this 12th day
of October, 2018 with:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 15th day
of October, 2018, to:

Marcy Elissa Golomb
Marcy E. Golomb Attorney at Law PLLC
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Respondent

Copy emailed this 15th day
of October, 2018, to:

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by: Margita Doode
KJF/mg

FILED

OCT 12 2018

BY



**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

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

**MARCY ELISSA GOLOMB
Bar No. 023658**

Respondent.

No. 18-1285

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 12, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 6-0-3¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-1285.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 12 day of October, 2018.



Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee members Ben Harrison, Charles Muchmore and Walt Davis did not participate in this matter.

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by: Marguerite Dade
KJF/mg