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JAN 21 2010

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY M. Smith

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

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5 IN THE MATTER OF A MEMBER) Nos. 08-1038, 08-1277, 08-1646,
6 OF THE STATE BAR OF ARIZONA) 08-2121, 09-0072, 09-0149
7)
8 **STEPHEN J. RENARD,**)
9 **Bar No. 021991**) **DISCIPLINARY COMMISSION**
10) **REPORT**
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RESPONDENT.)
_____)

10 This matter came before the Disciplinary Commission of the Supreme Court of
11 Arizona on January 9, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the
12 Hearing Officer's Report filed November 23, 2009, recommending an 18 month
13 suspension, two years of probation upon reinstatement with the State Bar's Law Office
14 Management Program ("LOMAP") including the use of a practice monitor, and costs.

Decision

16 Having found no facts clearly erroneous, the eight members¹ of the Disciplinary
17 Commission unanimously recommend accepting and incorporating the Hearing Officer's
18 findings of fact, conclusions of law, and recommendation for an 18 month suspension, two
19 years of probation (LOMAP including the use of a practice monitor) upon reinstatement,
20 and costs of these disciplinary proceedings including any costs incurred by the
21 Disciplinary Clerk's office.² The specific terms of probation shall be determined at the
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_____ ¹ Commissioner Belleau did not participate in this proceeding.

² The Hearing Officer's Report is attached as Exhibit A.

EXHIBIT

A

FILED

NOV 23 2009

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY A. D. Payne

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

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

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

Respondent.

No. 08-1038, 08-1277, 08-1646,
08-2121, 09-0072, 09-0149

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

The State Bar filed its complaint in this matter on July 31, 2009. The complaint was served on Respondent by certified restricted mail/delivery and regular first class mail pursuant to Rules 47(c) and 57(e), Ariz. R. Sup. Ct. The Hearing Officer was assigned on August 4, 2009. An Initial Case Management Conference was held telephonically on August 24, 2009. Respondent appeared and participated at the conference. An Answer was to be filed by August 28, 2009. Respondent did not file the Answer. A Notice of Default was issued on September 1, 2009, pursuant to Rule 57(d), Ariz. R. Sup. Ct. Respondent failed to file an Answer or otherwise defend against the allegations contained in the State Bar's complaint within the additional time (ten days) provided. A default was entered against Respondent in this matter on September 22, 2009. Pursuant to a Notice of Hearing issued on September 22, 2009, a hearing on mitigation and aggravation was held on October 15, 2009. Respondent did not appear at the hearing.

FINDINGS OF FACT

The facts listed below are those set forth in the State Bar's complaint, and were deemed admitted by Respondent's default.

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 December 16, 2002. (Complaint¹ ¶ 1.)

COUNT ONE (File no. 08-1038 (Barrett))

2. On or about July 11, 2005, Veronika Barrett (“Mrs. Barrett”) had a colonoscopy. (Compl. ¶ 2.)

3. On or about May 14, 2007, Mrs. Barrett retained Respondent to pursue a potential medical malpractice case in regards to the perforated bowl that was believed to have been caused by the colonoscopy. (Compl. ¶ 3.)

4. On or about July 13, 2007, Respondent filed a medical malpractice complaint on Mrs. Barrett’s behalf in the Yavapai County Superior Court against Doctor Joan Mitrius and the Verde Valley Medical Center. The complaint was served upon the defendants. (Compl. ¶ 4.)

5. On or about April 18, 2008, the Yavapai County Superior Court issued an order dismissing the complaint based upon a violation of the statute of limitations. (Compl. ¶ 5.)

6. On or about May 19, 2008, Respondent filed a notice of appeal in the Yavapai County Superior Court. (Compl. ¶ 6.)

7. By letter dated, June 18, 2008, Mr. Lawrence Barrett (“Mr. Barrett”) submitted a bar charge in connection with Respondent’s representation of Mr. Barrett in a criminal case. The charge also referenced Respondent’s misconduct during Respondent’s representation of Mrs. Barrett’s medical malpractice case. (Compl. ¶ 7.)

¹ References to the Complaint in this matter will be hereinafter noted as “Compl.” followed by reference to the appropriate paragraph(s) number(s). References to State Bar exhibits will be noted as “SB Ex.” followed by the exhibit number and Bates Stamp numbers, “SB Ex. #:SBA ##.”

8. On or about October 31, 2008, Respondent filed his opening brief in the Court of Appeals in Mrs. Barrett's matter. (Compl. ¶ 8.)

9. On or about December 2, 2008, counsel for the Verde Valley Medical Center filed a motion in the Court of Appeals requesting their answering brief deadline be vacated because they had not received a copy of Respondent's October 31, 2008, opening brief. (Compl. ¶ 9.)

10. On or about December 5, 2008, counsel for Doctor Joan Mitrius filed a motion joining in Verde Valley Medical Center's December 2, 2008, motion. (Compl. ¶ 10.)

11. On or about December 16, 2008, the Court of Appeals issued an order directing Respondent to serve his October 31 opening brief on defendant/appellees and file written notice of his compliance on or before December 29, 2008. (Compl. ¶ 11.)

12. Respondent failed to serve his October 31 opening brief on defendant/appellees and/or failed to file written notification of his compliance as required by the Court of Appeals December 16, 2008 order. (Compl. ¶ 12.)

13. On or about January 7, 2009, counsel for Verde Valley Medical Center filed a motion to dismiss the appeal on the basis Respondent failed to comply with the Court's December 16, 2008, order. (Compl. ¶ 13.)

14. Also on or about January 7, 2009, counsel for Doctor Joan Mitrius joined Verde Valley Medical Center's motion to dismiss the appeal. (Compl. ¶ 14.)

15. On or about January 27, 2009, Respondent filed a response to the motion to dismiss. (Compl. ¶ 15.)

16. On or about February 23, 2009, the Court of Appeals issued an order granting the defendant/appellees' motion to dismiss. The Court found Respondent violated its December 16, 2008, order. (Compl. ¶ 16.)

17. By letter dated February 26, 2009, the State Bar informed Respondent that the State Bar dismissed Mr. Barrett's bar charge. Respondent was, however, directed to provide an update on, or ruling from, the Court of Appeals action pertaining to Mrs. Barrett's medical malpractice case. Further, the State Bar's letter warned Respondent that Mr. Barrett's matter might be reopened if new information came to light showing Respondent violated an ethical rule. (Compl. ¶ 17.)

18. By letter dated March 3, 2009, Mr. Barrett appealed the dismissal of the bar charge, asking that the State Bar reconsider its decision to dismiss. (Compl. ¶ 18.)

19. On or about March 17, 2009, the Probable Cause Panelist of the State Bar issued an order affirming the dismissal. (Compl. ¶ 19.)

20. By letter dated March 18, 2009, sent to Respondent's address of record, the State Bar requested Respondent provide an update of Mrs. Barrett's appeal on or before March 27, 2009. (Compl. ¶ 20.)

21. Respondent failed to respond or otherwise provide the requested update on or before March 27, 2009. (Compl. ¶ 21.)

22. By letter dated March 31, 2009, sent to Respondent's address of record, bar counsel reminded Respondent of his duty to respond and cooperate with the State Bar, and advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to provide an update on the Barrett appeal on or before April 10, 2009. (Compl. ¶ 22.)

23. Respondent failed to provide the requested update. (Compl. ¶ 23.)

COUNT TWO (File no. 08-1277 (Whitley *ex rel.* Talbot))

24. Anne Talbot ("Ms. Talbot") received worker's compensation benefits pursuant to a claim of an industrial injury. (Compl. ¶ 26.)

25. In or around October 2007, the benefits were terminated pursuant to a notice of claim. (Compl. ¶ 27.)

26. Ms. Talbot subsequently retained Respondent to proceed on her behalf before the Industrial Commission. (Compl. ¶ 28.)

27. On or about January 16, 2008, Respondent filed a Request for Hearing in Ms. Talbot's Industrial Claim matter pertaining to the termination of benefits. A hearing was scheduled for May 7, 2008. (Compl. ¶ 29.)

28. As part of the discovery process, opposing counsel propounded interrogatories and served them on Respondent. (Compl. ¶ 30.)

29. Respondent failed to timely answer the interrogatories pursuant to Rule R20-5-821 of the Arizona Industrial Commission. (Compl. ¶ 31.)

30. On or about April 11, 2008, the opposing counsel filed a motion to compel the answers to the interrogatories. (Compl. ¶ 32.)

31. Respondent failed to respond to the motion to compel. (Compl. ¶ 33.)

32. On or about April 14, 2008, Administrative Law Judge Nye issued an order directing Respondent to answer the previously propounded interrogatories by April 25, 2008. (Compl. ¶ 34.)

33. Respondent did not comply with the April 14, 2008 order. (Compl. ¶ 35.)

34. On or about April 14, 2008, Respondent filed a motion to continue the May 7, 2008 hearing. (Compl. ¶ 36.)

35. The hearing was reset to July 1, 2008. Administrative Law Judge Nye issued a Notice of Hearing on or about April 28, 2008, and a Change of Time of Hearing notifying the parties involved of the new July 1, 2008, hearing. (Compl. ¶ 37.)

36. No further Motions to Continue were filed in the matter. (Compl. ¶ 38.)
37. Respondent and Ms. Talbot failed to appear at the July 1, 2008, hearing. (Compl. ¶ 39.)
38. As a result of Respondent and Ms. Talbot's failure to appear at the scheduled July 1, 2008, hearing, the matter was dismissed. (Compl. ¶ 40.)
39. In or around July 2008, Ms. Talbot retained Thomas Whitley ("Mr. Whitley") for representation. (Compl. ¶ 41.)
40. By letter dated July 23, 2008, Mr. Whitley submitted a bar charge on behalf of Ms. Talbot to the State Bar of Arizona in regards to Respondent's actions. By letter dated August 18, 2008, Mr. Whitley supplemented the bar charge. A bar investigation subsequently began and Respondent was instructed to provide information. (Compl. ¶ 42.)
41. By letter dated February 13, 2009, sent to Respondent's address of record, bar counsel requested additional, specific information relating to the pending disciplinary investigation, to be provided no later than February 27, 2009. (Compl. ¶ 43.)
42. Respondent failed to provide the requested information. (Compl. ¶ 44.)
43. By letter dated March 4, 2009, sent to Respondent's address of record, bar counsel reminded Respondent of his duty to respond and cooperate with the State Bar's investigation, and advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to provide the information previously requested in bar counsel's February 13th letter no later than March 18, 2009. (Compl. ¶ 45.)
44. Respondent failed to provide the requested information. (Compl. ¶ 46.)
45. By letter dated March 24, 2009, sent to Respondent's address of record, bar counsel again reminded Respondent of his duty to respond and cooperate with the State Bar, and

advised him that his failure to respond was, in itself, grounds for discipline. Respondent was instructed to provide the requested information on or before April 7, 2009. (Compl. ¶ 47.)

46. Respondent failed to timely provide the requested information. (Compl. ¶ 48.)

COUNT THREE (File no. 08-1646 (Billingsley))

47. On or about February 26, 2008, Respondent was appointed by the Yavapai County Superior Court to represent Daniel Billingsley (“Mr. Billingsley”) in a juvenile dependency matter. (Compl. ¶ 52.)

48. During the dependency matter, Child Protective Services (“CPS”) filed a motion to sever Mr. Billingsley’s rights as a parent to the child subject to the dependency matter. (Compl. ¶ 53.)

49. At all times relevant, Mr. Billingsley was housed at the Federal Corrections Institution in Terre Haute, Indiana. (Compl. ¶ 54.)

50. On or about March 4, 2008, Respondent spoke to Mr. Billingsley by telephone. (Compl. ¶ 55.)

51. Although Respondent may have made attempts to contact Mr. Billingsley by telephone during the intervening months, he did not speak to Mr. Billingsley between March 4, 2008 and September 22, 2008. (Compl. ¶ 56.)

52. On or about September 22, 2008, Mr. Billingsley called Respondent and the two spoke for approximately seventeen (17) minutes. (Compl. ¶ 57.)

53. September 22, 2008 is the last time Respondent spoke to Mr. Billingsley. (Compl. ¶ 58.)

54. On or about November 5, 2008, Respondent, acting for Mr. Billingsley, and other parties in the dependency matter reached an agreement in the dependency matter. (Compl. ¶ 59.)

COUNT FOUR (File no. 08-2121 (Shoup))

55. On or about August 18, 2005, Sandra Shoup ("Ms. Shoup") had surgery for a medical condition regarding her spine. (Compl. ¶ 62.)

56. On or about August 7, 2007, Ms. Shoup retained Respondent for a medical malpractice case in regards to the procedure(s) Ms. Shoup had on or about August 18, 2005. (Compl. ¶ 63.)

57. On or about September 4, 2007, Respondent filed a complaint ("complaint") in the Maricopa County Superior Court in Ms. Shoup's medical malpractice case and named Doctor Jay Standerfer ("Dr. Standerfer"), Doctor Curtis Dickman ("Dr. Dickman"), and Saint Joseph's Hospital and Medical Center ("St. Joseph") as defendants in the case. (Compl. ¶ 64.)

58. Also on or about September 4, 2007, Respondent filed a Certification of Expert Opinion pursuant to Arizona Revised Statute ("A.R.S.") §12-2603 and claimed an expert opinion was not necessary in Ms. Shoup's matter. (Compl. ¶ 65.)

59. On or about October 25, 2007, Respondent, or those acting on his behalf and/or under his supervision or control, served St. Joseph's Hospital and Dr. Dickman with a copy of the complaint. (Compl. ¶ 66.)

60. On or about November 1, 2007, Respondent, or those acting on his behalf and/or under his supervision or control, served Dr. Standerfer with a copy of the complaint. (Compl. ¶ 67.)

61. On or about November 21, 2007, counsel for Dr. Standerfer filed an answer to the complaint. Dr. Standerfer's counsel also filed a pleading pursuant to A.R.S. §12-2603 and asserted expert testimony would be necessary to prove a *prima facie* case of medical malpractice. (Compl. ¶ 68.)

62. On or about December 12, 2007, counsel for Dr. Dickman filed an answer to the complaint. (Compl. ¶ 69.)

63. Pursuant to Rules 16(c) and 26.2, Ariz.R.Civ.P., Respondent was to provide Ms. Shoup's medical records relevant to Ms. Shoup's claim to the opposing parties. (Compl. ¶ 70.)

64. Respondent failed to provide Ms. Shoup's pertinent medical records to defendants' counsel as required. (Compl. ¶ 71.)

65. By letter dated January 9, 2008, counsel for Dr. Standerfer requested Respondent provide Ms. Shoup's pertinent medical records. (Compl. ¶ 72.)

66. By letter dated January 17, 2008, counsel for Dr. Standerfer requested Respondent provide a copy of his expert witness affidavit. (Compl. ¶ 73.)

67. On or about February 11, 2008, Respondent provided Ms. Shoup's initial disclosure statement to defendants' counsel. In the initial disclosure statement, Respondent recited that no expert witness had been retained. Respondent failed to include a copy of Ms. Shoup's medical records with the initial disclosure statement. (Compl. ¶ 74.)

68. By letter dated February 27, 2008, sent to Respondent's address of record, counsel for Dr. Dickman requested Respondent provide an expert opinion affidavit, contending that Respondent must have obtained an expert opinion in the matter before bringing the claim. (Compl. ¶ 75.)

69. By letter dated March 4, 2008, sent to Respondent's address of record, counsel for Dr. Standerfer requested Respondent provide a copy of Ms. Shoup's medical records and further requested Respondent's expert witness affidavit. (Compl. ¶ 76.)

70. On or about March 26, 2008, counsel for Dr. Standerfer filed a motion to dismiss with prejudice all claims against Dr. Standerfer based on Respondent's failure to provide Ms.

Shoup's medical records pursuant to the rules of civil procedure and Respondent's failure to provide an expert opinion affidavit pursuant to A.R.S. § 12-2603(B). (Compl. ¶ 77.)

71. On or about March 31, 2008, counsel for Dr. Dickman filed a motion joining in the Dr. Standerfer's March 25, 2008 motion to dismiss. (Compl. ¶ 78.)

72. In or around April 2008, Ms. Shoup requested Respondent provide a copy of her medical records to her. (Compl. ¶ 79.)

73. On or about April 22, 2008, Respondent, on Ms. Shoup's behalf, filed a response to the motion to dismiss. In his response, Respondent argued he inadvertently failed to enclose the pertinent medical records referenced in his initial disclosure statement when he provided them to defense counsel. Also, Respondent argued he complied with A.R.S. §12-2603. (Compl. ¶ 80.)

74. On or about April 28, 2008, counsel for Dr. Standerfer filed his reply to Respondent's response to the motion to dismiss. In the reply, counsel argued that the medical records were not timely provided and that an expert opinion was necessary in the matter. (Compl. ¶ 81.)

75. On or about May 2, 2008, counsel for Dr. Dickman filed a motion joining in Dr. Standerfer's April 28, 2008 reply. (Compl. ¶ 82.)

76. By minute entry dated May 29, 2008, the Honorable Glenn Davis ("Judge Davis") scheduled oral argument on July 11, 2008, on the motion to dismiss. (Compl. ¶ 83.)

77. In or around June 2008, Ms. Shoup and Respondent met. Respondent still had not provided a copy of Ms. Shoup's medical records to Ms. Shoup. (Compl. ¶ 84.)

78. Ms. Shoup never received a copy of her medical records that she requested from Respondent. (Compl. ¶ 85.)

79. On or about July 11, 2008, Judge Davis presided over oral argument concerning the motion to dismiss. Judge Davis denied the motion to dismiss and further ordered counsel for the defendants to file a motion on the issue of the expert opinion. (Compl. ¶ 86.)

80. On or about July 28, 2008, counsel for Dr. Standerfer filed a motion pursuant to Judge Davis's July 11th order. The motion argued that an expert opinion affidavit is required in the matter pursuant to A.R.S. §12-2603. (Compl. ¶ 87.)

81. On or about July 31, 2008, counsel for Dr. Dickman filed a motion joining in Dr. Standerfer's July 28, 2008 motion. (Compl. ¶ 88.)

82. Respondent failed to file a response to the July 28, 2008 motion. (Compl. ¶ 89.)

83. By minute entry dated September 17, 2008, Judge Davis ordered Respondent to file a preliminary expert opinion affidavit no later than September 30, 2008. (Compl. ¶ 90.)

84. Respondent failed to file a preliminary expert opinion affidavit pursuant to Judge Davis's September 17, 2008, order. (Compl. ¶ 91.)

85. On or about October 17, 2008, counsel for Dr. Standerfer lodged an order of dismissal with prejudice due to Respondent's failure to file the court ordered preliminary expert opinion affidavit. (Compl. ¶ 92.)

86. On or about October 22, 2008, Ms. Shoup's entire matter was dismissed without prejudice due to lack of prosecution. (Compl. ¶ 93.)

87. Respondent did not communicate with Ms. Shoup between September to November 2008. (Compl. ¶ 94.)

88. In or around November 2008, Ms. Shoup learned, by computer research and not by Respondent, her case had been dismissed. (Compl. ¶ 95.)