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the State Bar's Chief Disciplinary Counsel by a preponderance of the evidence.

If Glasheen is found guilty of misconduct, Judge Darr can impose as punishment a sanction ranging from admonishment to disbarment. Glasheen can appeal a guilty finding or the sanction to the Texas Court of Appeals, and if necessary to the Texas Supreme Court.

What Glasheen did do during the period of time he represented Phillips and Waller was lobby the Texas Legislature to increase the lump sum payment to a person declared innocent by a court from \$50,000 to \$80,000 per year of incarceration, and to add the lifetime annuity. In May 2009 the Texas Legislature approved the additional compensation and lifetime annuity.

Glasheen's lobbying of the legislature is not mentioned in the Disciplinary Petition because neither Phillips nor Waller hired Glasheen as a lobbyist, and payment to him for his lobbying activities is not included in their respective contracts.

Glasheen had contracts with a number of exonerees similar to Waller's contract. Phillips contract was the only one that didn't

include a provision that a significant percentage of the state compensation money would be paid to other attorneys as an apparent "referral fee." Glasheen didn't file a lawsuit on behalf of those exonerees, but it is estimated their contracts obligated them to pay him between \$5 and \$8 million of the total money they were paid under Texas' compensation law. After Phillips and Waller filed their lawsuits, Glasheen told the Dallas Morning News, "There is no doubt that we made a lot of money, and we earned it."

The State Bar's complaint against Glasheen has helped fuel the public debate about questionable practices by lawyers involved in seeking compensation for a person exonerated of their convicted crimes. The Innocence Project of Texas provided pro bono assistance in the exoneration of the people who subsequently signed contracts with Glasheen that contained a provision that a significant percentage of the money paid to him would be paid to attorneys not involved in obtaining compensation – namely the chief counsel for the Innocence Project of Texas. Another situation is that the non-profit Innocence Project in New York has assisted in the exoneration of a number of people who subsequently retained Barry Scheck and Peter Neufeld's private New York law firm – Neufeld, Scheck & Brustin,

LLP [Endnote 2] – to pursue obtaining compensation. On June 4, 2010, attorney Scott H. Greenfield wrote on his Simple Justice blog about Scheck after his private law firm settled Barry Gibbs' civil rights lawsuit against New York City for \$9.9 million: "First, his innocence project obtained Gibbs' freedom. Then, in his private lawyer capacity, he obtained compensation. Yes, he took his third, but nobody hands Scheck those sweet suits he wears for free, you know."

Maureen Ray, Special Administrative Staff Attorney for the Office of the Chief Disciplinary Counsel, told Justice Denied that even when it involves a trial, the disciplinary process isn't necessarily protracted. So it is possible the misconduct allegations against Glasheen could be resolved sometime in 2011.

Endnotes:

- 1 The Texas Legislature increased in May 2009 the payment to \$80,000 per year of wrongful incarceration or part thereof from \$50,000, plus they added lifetime annuity.
- 2 The name was changed to Neufeld, Scheck & Brustin, LLP on June 12, 2009 from Cochran, Neufeld & Scheck, LLP

Additional Sources:

Innocence Project counsel criticized for profiting on exonerees, *The Dallas Morning News*, December 11, 2009

Man Uses Google Earth To Overturn Conviction

Wrongly convicted persons are increasingly able to use technology to establish their innocence. In what is believed to be a first, a man in Australia has used the Google Earth software program to overturn a conviction.

Mastaa Al Shakarji is a 24-year-old 4th year pharmacy student at James Cook University in Townsville, Queensland, Australia. His family emigrated to Australia from Iraq in 2002.

In April 2009 Al Shakarji was issued a speeding ticket for going 36 mph in a 25 mph school zone in Bowen, about 125 miles east of Townsville. He told the officer that he wasn't speeding and the officer's radar must have picked up another car.

Al Shakarji contested the ticket. Prior to his June 2010 trial in the Bowen Magistrates Court he conducted research with Google Earth that enabled him to use satellite imagery to navigate the road where he was given the ticket. He found that he would have been at the top of a hill and not even visible to the

police car at the time the officer claimed on the ticket that he was speeding. Based on Al Shakarji's research the officer clocked a different vehicle speeding down the hill.

The judge refused to consider Al Shakarji's Google Earth evidence that his car had been misidentified as the speeding vehicle. The judge found him guilty and fined him \$200 and court costs of \$71.50.

Al Shakarji appealed to the Brisbane District Court, arguing that "Based on the timing guidelines to view the vehicle speeding and then administer the radar, his vehicle would have been at the top of the hill and thus "not visible to the officer."

The appeals court overturned Al Shakarji's conviction, ruling there is "reasonable doubt as to whether the appellant was exceeding the speed limit." The court also ruled the Magistrate unduly restricted Al Shakarji's cross-examination of the officer.

When interviewed by the Townsville Bulletin on January 3, 2011, Al Shakarji described why he went to such length's and expense to fight a \$200 traffic ticket (the appeals court in Brisbane is 845 miles from Townsville):

"I am from a country rife with corruption in the police and the government, but Australia is so different. In Iraq I couldn't stand up to speak out but here you can when you don't think it's right so why wouldn't you? The justice system is great in this country everyone is the same under the law. You don't realise how lucky you are in Australia because you can go to court and ask the police questions."



Mastaa Al Shakarji holding the ticket that he used Google Earth to prove misidentified his car as speeding near a school.

Al Shakarji ingeniously used Google Earth to establish his car had been misidentified as the speeding vehicle, but it is just a matter of time before Google Earth and similar technology tools will be used to assist in proving a person accused or convicted of a serious felony is innocent.

Sources:

Google used to appeal ticket, *Townsville Bulletin*, January 4, 2011.