BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,	)	No. 08-1267
THOMAS M. COREA, Bar No. 016431	)	**HEARING OFFICER'S REPORT**
RESPONDENT.	)	

PROCEDURAL HISTORY

1. This matter originated as a direct file of a Tender of Admissions and Agreement for Discipline which were filed on August 11, 2009. The matter was assigned to the undersigned on August 13, 2009, and a hearing was held on the agreement on September 17, 2009. In attendance at the Hearing were Bar Counsel, Respondent and his counsel, and the undersigned.

FINDINGS OF FACT

2. At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted on October 21, 1995. Respondent is also admitted in the State of Texas which is where his office is located.[1]

3. Respondent represented Wells Fargo Financial Acceptance Corporation, which was the Plaintiff in a repossession case filed in the Crownpoint Judicial District in the District Court of the Navajo Nation ("Crownpoint"), Case No. CP-CV-07-191.

[1] The facts cited herein are taken from the Tender of Admissions unless otherwise noted.

4. The Defendants in the repossession case failed to answer the complaint, and the Judge, Honorable Irene Toledo, set a default hearing for September 19, 2007, at 9:00 a.m.

5. Respondent filed a request to appear telephonically at the default hearing in Crownpoint. Respondent based his request on a claimed scheduling conflict in another case as the reason he could not appear that same day in Crownpoint.

6. Respondent attached to his request to appear telephonically a copy of a Notice of Hearing on Motion for Summary Judgment in a case scheduled for a court in Dallas, Texas (the "Texas case").

7. Neither Judge Toledo nor the Crownpoint Court staff had ever seen the form of Notice of Hearing that Respondent attached to his request to appear telephonically, inasmuch as it was signed by the attorney and not by a court.

8. The Crownpoint Court staff communicated directly with the Texas Court in which the Texas case was filed and learned that Respondent did follow the appropriate Notice of Hearing procedure required by local rules.

9. In the same communication, however, the Crownpoint Court staff learned that the Texas case had been dismissed in 2006.

10. Judge Toledo believed that Respondent had deceived the Court by claiming he had a scheduling conflict with a case that had long been dismissed. Judge Toledo, therefore, denied Respondent's request to appear telephonically at the September 19, 2007 hearing but continued the hearing to October 17, 2007.

11. Judge Toledo also issued an Order to Show Cause ("OSC") why Respondent should not be held in Contempt of Court for asserting a false scheduling conflict

with the Texas case as the basis for requesting permission to appear telephonically in the Crownpoint case.

12. Respondent determined that he had two scheduling conflicts with the October 17, 2007 date, a mediation in a case in a different Texas case ("Second Texas Case") and a hearing on a case on the Tohono O'odham Tribal Court in Southern Arizona.

13. Respondent filed a motion in the Crownpoint Court requesting that the Judge reset the October 17, 2007, hearing. Attached to his motion was a copy of a mediation notice in the Second Texas case.

14. Judge Toledo reset the OSC to December 12, 2007.

15. Respondent appeared at the Order to Show Cause hearing on December 12, 2007.

16. Judge Toledo was concerned with Respondent's apparently false explanation for a scheduling conflict on the September 19, 2007 hearing.

17. Respondent explained to Judge Toledo that he did not need to appear personally in the mediation in the Second Texas case, and that he should have attached as an exhibit to his request to appear telephonically a Notice of Hearing for the Tohono O'odham case.

18. The hearing on the Tohono O'odham case, however, was set for October 17, not September 19.

19. Judge Toledo determined that Respondent fraudulently attached as an exhibit the Notice of Hearing of the Motion for Summary Judgment in the dismissed Texas case to avoid having to appear in person at the default hearing in the Crownpoint case, and held Respondent in Contempt of Court.

20. Judge Toledo rejected Respondent's explanation that he erroneously, but not fraudulently, claimed the wrong scheduling conflict as the reason he could not appear in Crownpoint on September 19 because the ostensibly "correct" matter that posed a scheduling conflict was scheduled for an entirely different date.

21. Respondent explains that he and Judge Toledo miscommunicated about the scheduling conflicts and dates. Respondent believed that Judge Toledo was interested in Respondent's explanation for his alleged scheduling conflict on October 17, not September 19, Transcript of Hearing ("T/H") 17:18 – 19:18.

22. Respondent explains further that he actually had two events calendared for September 19 that would prevent him from traveling to Crownpoint. One matter was the Notice of Hearing on a Motion for Summary Judgment in the Texas case, and the other was a deposition in Longview, Texas ("Longview case").

23. When Respondent received the notice of the September 19 hearing date in the Crownpoint Court, he asked his staff to determine if both matters were still scheduled and determined that the hearing on the Motion for Summary Judgment in the Texas case was not. Respondent determined further that when he changed his case management and docketing system in 2006, the Notice of Hearing in the Texas case was issued in error. In the process of transferring case data from the former system to the new one, the dismissed case was not removed from the Respondent's system and the Notice of Hearing was issued automatically to comply with deadlines programmed into the system.

24. Respondent explains further that he mistakenly asserted the wrong September 19 conflict as the basis for his request to appear telephonically in the Crownpoint

matter in that his paralegal erroneously attached as an exhibit to his request the Notice of Hearing in the dismissed Texas case, rather than evidence of the deposition in the separate Longview case, T/H 9:2 - 17.

25. Respondent explains that when he received notice of the new hearing date (October 17, 2007) in the Crownpoint matter, he determined that he had two schedule conflicts, a mediation in the Second Texas case and a hearing on the case in the Tohono O'odham Tribal Court in southern Arizona. Respondent instructed his staff to prepare a motion to reset the hearing in the Crownpoint case. Although he intended to attach as an exhibit the notice of the hearing in the Tohono O'odham case, his staff attached the mediation notice in the second Texas case as the reason for the motion to reset the hearing (this is the second "wrong" exhibit attachment).

26. Judge Toledo then ordered that Respondent be permanently barred from the practice in the Crownpoint Court except for the purpose of transferring any cases pending in the Crownpoint Court to successor counsel. Judge Toledo allowed Respondent 30 days to complete this transfer.

27. Respondent took steps to notify his clients who had matters pending in the Crownpoint Court of the Court's orders and arranged for an Arizona attorney, Charles Martinez, to become a successor counsel of record in many of the cases.

28. Some of Respondent's clients told Respondent that they would permit another attorney to appear as counsel of record only if Respondent remained involved and served as contact and conduit for that counsel of record, T/R 11:3 - 14. Respondent was trying to accede to the request of some of his clients that wanted

him to remain as an intermediary between them and Mr. Martinez, and other clients who wished to have their cases dismissed, T/H 11:23 – 12:6 & 12:14 – 13:6.

29. Issues arose between Respondent and Mr. Martinez with regard to responsibility for the cases. The Crownpoint Court noted that letters in some of the cases were being written on Mr. Martinez' letterhead, but were mailed from Respondent's Law office.

30. On May 28, 2008, Judge Toledo issued an order to supplement and clarify her earlier contempt order. Judge Toledo ordered Respondent to transfer all cases completely to Mr. Martinez and remove himself completely from the cases. She ordered Respondent and Mr. Martinez to notify all clients of the Court's order.

31. There were continued disagreements between Respondent's firm and Mr. Martinez over the transfer of cases as Respondent contended many of the clients wanted to dismiss their cases rather than transfer them to Mr. Martinez.

32. Without talking to Respondent, Mr. Martinez filed Motions to Compel Compliance with the Court Order, for Contempt and for Attorneys Fees, T/H 14:3 - 14.

33. Mr. Martinez alleged that Respondent ordered him to withdraw from some cases and dismiss others even though Mr. Martinez had been substituted as attorney of record.

34. Pursuant to Mr. Martinez' motions, Judge Toledo set an Order to Show Cause re: Contempt hearing for August 20, 2008.

35. Respondent filed a Response to Mr. Martinez' motions and moved the Court for permission to appear telephonically at the hearing. The Court denied this motion because she believed that personal attendance was required due to the serious nature of the action.

36. The Court's Order of August 7, 2008, stated: "There is one alternative. Should the Court's Order of May 28, 2008, be complied with in full and an affidavit of compliance filed with the Court, the Order to Show Cause hearing will be vacated."

37. Respondent filed an "Affidavit of Compliance" on August 18, 2008. In that affidavit, Respondent claimed his office transferred all relevant files to Charles Martinez on or about July 8, 2008; that Mr. Martinez had all files on matters that were to continue for prosecution and that matters that had been dismissed or that Mr. Martinez had been instructed to dismiss were moot. Respondent further contended that he complied with the Court's Order to transfer the files to Mr. Martinez, thereby eliminating the need for hearing. Respondent testified in the hearing of this matter that he had called the clerk of the Crownpoint Court to confirm that the hearing was vacated because he had filed his Affidavit of Compliance, and was told that " ... it was her understanding that the Judge would be vacating the hearing," T/H 16:20 – 17:16.

38. Unbeknownst to Respondent, Mr. Martinez filed a Reply to Respondent's affidavit and appeared at the hearing on August 20, 2008, T/H15:1 – 16:6. Respondent did not appear as he believed the hearing would be vacated after he filed his Affidavit of Compliance.

39. Judge Toledo issued a second contempt order against Respondent, this time for failing to comply with the Court's May 28, 2008, Order. She directed Respondent to "forward to the Court the name, title, address and phone number of the contact person for each and every plaintiff for which Martinez is currently attorney of record due to the result of Mr. Martinez's relationship with Corea and the Corea firm" within two business days. Judge Toledo established a $2,500.00 per day fine as a form of civil contempt for every day Respondent did not comply with the Order.

40. Respondent testified that "within days" he complied with the Judge's Order, T/H 13:23 – 14:2.

41. Respondent has been suspended from practicing before other Navajo Tribal Courts because of his failure to appear at hearings, even though in some cases he had associated local counsel to appear in his stead. On several occasions, local counsel failed to appear on Respondent's behalf. Respondent believes that other Navajo Tribal Court Judicial Districts have suspended him from practicing in their courts because of Judge Toledo's orders in the Crownpoint Court. In fact, Respondent has been suspended for 2 years from the Navajo Nation Bar, T/H, T/H 23:5 – 15. Respondent has now withdrawn from representing clients before the Navajo Nation Courts.

42. Respondent testified that he has implemented changes to his data system to fix the problem of inaccurate information being issued by his office, T/H 21:24 – 22:23.

CONCLUSIONS OF LAW

43. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.16(d), lawyer's duties upon termination by the client, and ER 8.4(d), conduct prejudicial to the administration of justice. The State Bar conditionally dismisses the following Rule violations: Rule 42, Ariz.R.Sup.Ct., ERs 3.3, 3.4(c), 8.4(c) and Rule 53(c) in exchange for the settlement agreement in this matter, and based upon the State Bar's inability to prove these alleged ethical violations by clear and convincing evidence.

ABA STANDARDS

44. ABA *Standard* 3.0 provides that four criteria should be considered: (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 and mitigating factors.

The Duty Violated

45. The undersigned Hearing Officer finds that Respondent violated duties he owed to the legal system and as a professional.

6.0 Violations of Duties Owed to the Legal System

46. *Standard* 6.13 provides: "Reprimand [Censure in Arizona] is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal

proceeding, or causes an adverse or potentially adverse effect on the legal proceeding."

7.0 Violations of Duties Owed to the Profession

47. *Standard* 7.3 provides: "Reprimand [Censure in Arizona] is generally appropriate when a lawyer negligently 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."

48. The presumptive sanction, then, for the admitted conduct under the *Standards* is censure.

The Lawyer's Mental State

49. The undersigned Hearing Officer finds that Respondent was negligent in attaching the wrong exhibit to his motion alleging that he had a scheduling conflict. Respondent truly did have a conflict on that date, but due to the delay in transferring information from his case management and docketing system, the wrong substantiating exhibit was attached to the motion. As a result of this negligence, the Crownpoint Judge's suspicion was aroused and the subsequent actions caused delay in the proceedings.

50. The undersigned Hearing Officer further finds that Respondent negligently failed to immediately transfer all client matters to successor counsel and to withdraw from the cases. Respondent negligently thought that as long as Mr. Martinez acted as counsel of record and he withdrew, the Court would be satisfied. The subsequent actions by the Court and Mr. Martinez, resulting from this negligent

conduct, resulted in delay in the proceedings and the Judge holding Respondent in Contempt of Court again.

51. Respondent contends that, due to the long-standing relationship with his clients, many asked him to remain as a conduit between them and successor counsel. Some of the clients also asked him to dismiss several of the cases. Respondent contends that he attempted to comply with the Judge's orders to the best of his ability while also following the instructions of his clients.

Actual or Potential Injury

52. The undersigned Hearing Officer finds that the delays occasioned by Respondent's negligent conduct caused actual injury to the clients and the court system.

Aggravating and Mitigating Factors

Aggravating Factors:

53. *Standard* 9.22(b): dishonest or selfish motive. Respondent wanted to avoid the travel time to Crownpoint and instead conduct a telephonic hearing. Further, he acted out of a desire to keep the clients when he was ordered to transfer their cases and withdraw;

54. *Standard* 9.22(d): multiple offenses. Respondent committed more than one offense before the Crownpoint Court, and twice was held in Contempt of Court;

55. *Standard* 9.22(i): substantial experience in the practice of law. Respondent has been a lawyer licensed to practice law in the State of Arizona and Texas, having been first admitted to practice in Arizona on October 21, 1995.

Mitigating Factors:

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

57. *Standard* 9.32(e): full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

58. *Standard* 9.32(k): imposition of other penalties or sanctions. Respondent has been disqualified from practicing law in several Navajo Nation District Courts and faces possible disbarment by the Navajo Nation Court. Respondent has withdrawn from practicing in the Navajo Courts.

PROPORTIONALITY REVIEW

59. The Supreme Court has held that one of the goals of attorney discipline should be to achieve consistency when imposing discipline. It is also recognized that the concept of proportionality is "an imperfect process" because no two cases are ever alike. It is also the goal of attorney discipline that the discipline imposed be tailored to the individual case and that neither perfection or absolute uniformity can be achieved, *In re Struthers*, 179 Ariz. 216, 887 P.2d 789 (1994), *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983), *In re Peasley*, 208 Ariz. 90, 90 P.3d 772 (2004). In order to achieve internal consistency, it is appropriate to examine sanctions imposed in cases that are factually similar, *Peasley* supra.

60. In this case the State Bar is recommending, and the Respondent has accepted, a Censure and payment of all costs and expenses incurred by the State Bar, the Disciplinary Commission and the Supreme Court in these disciplinary proceedings.

61. In *In re Berri*, SB 09-0023 D, the Respondent made a false statement of material fact during the closing argument in a criminal case that she did not correct. The Court accepted an agreement for a censure and one year of probation. There was one aggravating factor, substantial experience in the practice of law, and several mitigating factors including absence of a prior disciplinary record, several good character references and remorse on the part of the Respondent.

62. In *In re Olcott*, SB-09-0011 D, the Respondent made a false statement of fact to the tribunal. Specifically, Respondent filed false affidavits with the court in support of applications for attorney's fees without reviewing the documents. Respondent was censured for violating ER 3.1 and 8.4(d). There were two aggravating factors, 9.22(a) and (i), and three factors in mitigation, 9.32(b), (e) and (l). The mental state in that case was "knowing" and there was no actual injury.

63. In *In re Renard*, No. 08-0822, Respondent failed to promptly deliver a copy of the client's medical records upon request and failed to surrender the records upon demand. Respondent further failed to respond to the State Bar's request for information. Respondent received a censure and two years of probation for violating ER's 1.15(d), 1.16(d) and Rule 53(f). There was one factor each in aggravation, 9.22(d) and 9.32(a). The mental state was "negligent".

RECOMMENDATION

64. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, the administration of justice and deter future misconduct, *In re Fioramomti*, 176 Ariz., 182, 859 P.2d 1315 (1993), *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1994).

65. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's *Standards for Imposing Lawyer Sanctions* and the proportionality of discipline imposed in analogous cases, *Matter of Bowen,* 178 Ariz. 283, 872 P.2d 1235 (1994).

66. During the hearing on this matter, this Hearing Officer found Respondent to be candid, open about his shortcomings and mistakes, and genuinely remorseful. Clearly there was a miscommunication with the Judge in this matter, caused in no small part by the Respondent's mistake in a attaching the wrong exhibits to his pleadings. Thereafter, the miscommunication spiraled out of control, due in part to Respondent's reluctance to actually travel to the Court, and that there were two different instances of wrong attachments to pleadings. Given the volume of cases handled by the Respondent in these courts (63 pending at the time these facts arose, T/H 13:21), it certainly seems in hindsight that it would have been worth his effort to have appeared personally and make sure there was no miscommunication between himself and the Court (although there was miscommunication when he appeared as well).

67. This Hearing Officer has given great weight to both the *Standards* as well as the proportionality cases, and also considered the fact that the Respondent has

received a severe sanction by the Navajo Tribal Courts. Considering all of these factors, this Hearing Officer concludes that the proposed sanction of censure and payment of all costs in these proceedings achieve the goals of attorney discipline. The question might arise why Respondent should not be placed on some form of probation. Given the unique circumstances of this case and the fact that the attachment of the wrong exhibits was the result of a combination of wrong information being contained in the Respondent's data system (which has been corrected) and oversight on his and his staff's part, which resulted in a serious but understandable miscommunication with the Judge, probation does not seem to be warranted.

68. Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, as well as a proportionality analysis, this Hearing Officer recommends the following:

1. Respondent be censured;
2. Respondent pay all costs of this proceeding.

DATED this 13th day of October,2009.

Hon. H. Jeffrey Coker /NM
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 13th day of October, 2009.

Copy of the foregoing mailed
this 13 day of October, 2009, to:

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