FILED
MAR 12 2003
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY

BEFORE A HEARING OFFICER

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA,	)	Nos. 01-2001, 01-2475, 02-1621
HUGH W. HULL, **Bar No. *004486***	)	
RESPONDENT.	)	**HEARING OFFICER'S REPORT AND RECOMMENDATION**

PROCEDURAL HISTORY

Probable Cause Orders were filed on June 10, 2002 and October 15, 2002. A four-count Complaint was filed on October 16, 2002 and personally served on Respondent on October 17, 2002. Respondent did not file an answer; therefore, the Disciplinary Clerk entered a Default on December 2, 2002. An aggravation and mitigation hearing was held on January 24, 2003. Maret Vessella appeared on behalf of the State Bar. Respondent did not appear.

FINDINGS OF FACT

1. At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted on June 15, 1976.

2. On June 2, 1987, Respondent was summarily suspended for failing to pay dues. He was reinstated on June 22, 1987.

3. On June 18, 1998, Respondent was summarily suspended for non-payment of dues and failing to comply with mandatory continuing legal education requirements. He cured the

former violation on September 25, 1998 and the latter violation on October 21, 1998 and was reinstated.

4. On April 28, 2000, Respondent was once again summarily suspended for non-payment of dues. He was reinstated on May 2, 2000.

5. On April 21, 2001, Respondent was summarily suspended for failing to pay dues.

6. On April 23, 2001, Respondent was summarily suspended for failing to comply with mandatory continuing legal education requirements.

7. Respondent remains suspended.

COUNT ONE (01-2001)

8. In December 1999, Cathy Rogers met with Respondent to discuss a bankruptcy matter.

9. By check dated December 15, 1999, Ms. Rogers paid Respondent a $250.00 retainer fee for his services.

10. Following receipt of the retainer fee, Respondent did not contact Ms. Rogers to advise her of the filing of any documents on her behalf or to update her on the status of her case.

11. After six months, Ms. Rogers contacted Respondent regarding her case. At that time, Respondent advised that she should be patient, stating that these matters take some time.

12. Several more months passed without Respondent contacting Ms. Rogers. In October 2000, Ms. Rogers faxed Respondent some additional information concerning her case and requesting that he provide her with a report on the status of her case.

13. Respondent did not respond to Ms. Rogers' request for information.

14. Thereafter, Ms. Rogers attempted to contact Respondent several more times and learned that Respondent had moved from his address. Respondent had not advised Ms. Rogers of the move or where she could reach him.

15. Ms. Rogers then called Respondent's cell phone number and left a message on his cell phone.

16. Again, Respondent did not respond to Ms. Rogers' message.

17. As noted above, Respondent was summarily suspended from the practice of law in April 2001 and has not been reinstated.

18. Respondent never told Ms. Rogers that his license to practice law had been summarily suspended.

19. In August 2001, Ms. Rogers filed a complaint with the State Bar of Arizona regarding Respondent's conduct.

20. By letter dated October 19, 2001, the State Bar advised Respondent of the allegations concerning his professional conduct. Respondent was advised that he should respond in writing within twenty days of the date of the letter.

21. The State Bar's letter was sent to Respondent's address as maintained by Membership Records.

22. Respondent did not respond to that letter.

23. By letter dated February 13, 2002, the State Bar again advised Respondent that he should respond to the allegations in writing and that he should do so within ten days from the date of the letter. Respondent was also advised that failure to cooperate with a disciplinary investigation was separate grounds for discipline.

24. The State Bar's letter was sent to Respondent's address as maintained in Membership Records.

25. Respondent did not respond to that letter.

26. At the aggravation and mitigation hearing Ms. Rogers testified that, because of Respondent's conduct, she was unable to recover approximately $3,000 that she was owed. No documentary evidence, however, was introduced to substantiate that claim.

COUNT TWO (01-2475)

27. As noted above, Respondent was summarily suspended from the practice of law in April 2001 and has not been reinstated.

28. Respondent sent Allen Reber a letter dated December 6, 2001. Respondent's letter was written on letterhead captioned, "Hugh W. Hull, Attorney at Law".

29. Respondent's letter advised Mr. Reber that he was writing to him in an effort to resolve differences regarding the purchase of real estate with Devon Short. The letter suggested that instead of each party spending time and legal costs, Mr. Short could return the property voiding the contract. Otherwise, he would pursue litigation. Respondent requested that Mr. Reber advise him of how he wanted to proceed.

30. On or about December 24, 2001, Mr. Reber filed a complaint with the State Bar of Arizona, which alleged that Respondent was engaging in the unauthorized practice of law.

31. By letter dated January 18, 2002, the State Bar advised Respondent of the allegations concerning his professional conduct. Respondent was advised that he should respond in writing to the letter within twenty days.

32. The State Bar's letter was sent to Respondent's address of record as maintained by Membership Records.

33. Respondent did not respond to that letter.

34. By letter dated February 13, 2002, the State Bar again advised Respondent that he should respond to the allegations in writing and that he should do so within ten days from the date of the letter. Respondent was also advised that failure to cooperate with a disciplinary investigation was separate grounds for discipline.

35. The State Bar's letter was sent to Respondent's address as maintained in Membership Records.

36. Respondent did not respond to that letter.

COUNT THREE (02-1621)

37. In February 2000, John Schultz retained Respondent in to attempt to negotiate and resolve claims with certain of Mr. Schultz' creditors and to seek bankruptcy protection if necessary.

38. Respondent agreed to perform these services for a fee of $2,000.00.

39. Mr. Schultz had a real estate agreement with Larry Anderson. Pursuant to that agreement, Mr. Anderson owed Mr. Schultz $33,000.00. Mr. Schultz directed Mr. Anderson to issue a check in the amount of $33,000.00 payable to Respondent.

40. Mr. Anderson issued check number 2165 in the amount of $33,000.00 payable to Respondent. Check number 2165 was dated February 11, 2000 and was drawn on a Bank One Arizona account.

41. Respondent received check number 2165 and negotiated the instrument.

42. Respondent was to hold the $33,000.00 while negotiating with Mr. Schultz' various creditors to settle outstanding claims.

43. On or about March 7, 2000, Respondent made an offer of settlement to Providian National Bank in the amount of $11,000.00 on behalf of Mr. Schultz.

44. Providian accepted the settlement offer and Respondent paid Providian $11,000.00. On March 16, 2000, Providian filed a satisfaction of judgment on the claim.

45. Thereafter, Respondent sent some letters to other creditors.

46. In August 2000, Mr. Schultz discovered that Respondent had moved from his office without notifying him of the change in address. Mr. Schultz was given Respondent's cell phone number.

47. Mr. Schultz made numerous calls to Respondent's cell phone without successfully reaching Respondent. Moreover, although Mr. Schultz forwarded to Respondent letters he received from his creditors, Respondent took no action, as the creditors continued to make demands upon Mr. Schultz.

48. In October 2000, Mr. Schultz made contact with Respondent and was told that the matters he was handling for him would take some time to resolve.

49. Additional time passed and Mr. Schultz heard nothing further from Respondent.

50. As noted above, Respondent was summarily suspended from the practice of law in April 2001 and has not been reinstated.

51. Respondent did not tell Mr. Schultz that he was summarily suspended from the practice of law in Arizona.

52. On September 20, 2001, Mr. Schultz made contact with Respondent and told him that he wanted to terminated the representation and demanded to be given the balance of funds being held on his behalf, which should have amounted to $20,000.00.

53. Respondent told Mr. Schultz that he only had $4,100.00 and that the money had been "misappropriated" and Respondent did not know where it had gone.

54. Respondent paid Mr. Schultz $4,100.00 and gave him a promissory note for $15,900.00.

55. Some time later, Mr. Schultz called Respondent, asking when he would be paid. Respondent told him he expected to receive money in February 2002 that would allow him to repay the note. Mr. Schultz asked if Respondent could make partial payments, but Respondent declined.

56. Mr. Schultz called Respondent during the first week of March 2002, again asking to be paid. Respondent told him that he was expecting to receive funds in April 2002.

57. Mr. Schultz attempted to reach Respondent in April 2002 but was unable to reach him. He has not had any further contact with Respondent.

58. On August 2, 2002, Mr. Schultz filed a complaint with the State Bar of Arizona concerning Respondent's professional conduct.

59. By letter dated August 30, 2002, the State Bar advised Respondent of the allegations concerning his professional conduct. Respondent was advised to respond to the allegations within ten days of the date of the letter.

60. The State Bar's letter was sent to Respondent's address as maintained in membership records.

61. Respondent did not respond to that letter.

62. At the aggravation and mitigation hearing Mr. Schultz testified that, in addition to the $15,900.00 misappropriated by Respondent, he has suffered other damages, including accrued interest on his unresolved debts and emotional distress.

63. In light of Mr. Schultz' testimony, it is apparent that Respondent did not render any services of value to warrant the $2,000.00 fee Respondent was paid.

PRIOR DISCIPLINE

64. On March 8, 1995, Respondent received an Informal Reprimand for conduct in violation of Rule 42, Ariz. R. S. Ct., specifically ERs 1.4 and 1.16(d).

65. On August 28, 2000, Respondent received a Censure, One year of Probation and Costs for conduct in violation of Rule 42, Ariz. R. S. Ct., specifically: ERs 1.2, 1.3, 1.4, 8.1(b), 8.4(c), and Rule 51(h) and (i). In that proceeding, Respondent committed some of the same violations at issue in this proceeding. Moreover, the conduct described above occurred, at least in part, while Respondent was on probation.

CONCLUSIONS OF LAW

66. With respect to Count One, this Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz. R. S. Ct., in that Respondent failed to: take action consistent with the goals of representation, a violation of ER 1.2; take diligent action on behalf of his client, a violation of ER 1.3; keep his client reasonably informed about the status of her case and comply with requests for information, a violation of ER 1.4; perform services to earn the retainer fee paid by his client and then did not refund that unearned fee to his client, a violation of ER 1.15; and respond to a lawful demand for information from a disciplinary authority in connection with their investigation, a violation of ER 8.1. Further, Respondent engaged in conduct involving dishonesty fraud or deceit, a violation of ER 8.4.

67. With respect to Count Two, this Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42 Ariz. R. S. Ct., in that Respondent: engaged in the unauthorized practice of law, a violation of ER 5.5; failed to respond to a lawful demand for

information from a disciplinary authority in connection with their investigation, a violation of ER 8.1; and engaged in conduct involving dishonesty fraud or deceit, a violation of ER 8.4.

68. With respect to Count Three, this Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz. R. S. Ct., in that Respondent failed to: take action consistent with the goals of representation, a violation of ER 1.2; take diligent action on behalf of his client, a violation of ER 1.3; keep his client reasonably informed about the status of his case and comply with requests for information, a violation of ER 1.4; perform services to earn the flat fee paid by his client and then did not refund that unearned fee to his client, a violation of ER 1.15; and respond to a lawful demand for information from a disciplinary authority in connection with their investigation, a violation of ER 8.1. Further, Respondent engaged in conduct involving dishonesty fraud or deceit, a violation of ER 8.4.

ABA STANDARDS

ABA *Standard* 3.0 provides that four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state and (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors.

This Hearing Officer considered *Standards* 4.11 and 4.41 in determining the appropriate sanction warranted by Respondent's conduct. *Standard* 4.11 provides that, absent aggravating or mitigating circumstances, "[d]isbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." This Hearing Officer concludes that Respondent acted knowingly in converting Mr. Schultz' funds, causing injury to Mr. Schultz. *Standard 4.41* provides for disbarment when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client. This Hearing Offer concludes that the $15,900 loss to Mr. Schultz and the other damages he suffered as a result of

Respondent's conduct are sufficiently serious to warrant disbarment.

This Hearing Officer then considered aggravating and mitigating factors in this case, pursuant to *Standards* 9.22 and 9.32, respectively. Nine factors are present in aggravation: 9.22(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim, (i) substantial experience in the practice of law; and (j) indifference to making restitution. There are no mitigating factors. No other aggravating or mitigating factors are found.

PROPORTIONALITY REVIEW

The Supreme Court has held in order to achieve proportionality when imposing discipline, the discipline in each situation must be tailored to the individual facts of the case in order to achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983) and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993). On very similar facts, a sanction of disbarment was deemed appropriate in *In re Kobashi*, 181 Ariz. 253, 889 P.2d 611 (1995) (conversion of client funds, failure to pursue client's case with reasonable diligence, failure to maintain adequate communication with client, failure to respond to client's requests for information, and failure to cooperate with investigation by state bar, in light of prior suspension, warrants disbarment).

RECOMMENDATION

The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill

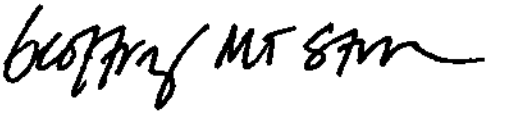
public confidence in the bar's integrity. *Matter of Horwitz,* 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's *Standards for Imposing Lawyer Sanctions ("Standards")* and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

Upon consideration of the facts, application of the *Standards,* including aggravating and mitigating factors, and a proportionally analysis, this Hearing Officer recommends the following:

1. Respondent shall be disbarred
2. Respondent shall be ordered to pay restitution to Mr. Schultz in the amount of $17,900.00 (comprising the $15,900.00 Respondent misappropriated and the $2,000.00 fee he was paid), plus legal interest at the legal rate from September 20, 2001, the date Mr. Schultz demanded the return of his funds.
3. Respondent shall be ordered to pay restitution to Ms. Rogers in the amount of $250.00.
4. Respondent shall pay the costs and expenses incurred in these disciplinary proceedings.

DATED this 12th day of March, 2003.



Geoffrey M. T. Sturr
Hearing Officer 8X

Original filed with the Disciplinary Clerk
this 12th day of March, 2003.

Copy of the foregoing mailed
this 13th day of March, 2003, to:

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