

**FILED**

AUG 12 2004

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

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA

BY *[Signature]*

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IN THE MATTER OF A MEMBER	)	No. 03-1606
OF THE STATE BAR OF ARIZONA,	)	
	)	
<b>DAVID B. MEDANSKY,</b>	)	
<b>Bar No. 013963</b>	)	<b>DISCIPLINARY COMMISSION</b>
	)	<b>REPORT</b>
	)	
RESPONDENT.	)	
_____	)	

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on July 10, 2004, pursuant to Rule 58(e), Ariz. R. S. Ct., for consideration of the Hearing Officer's Report, filed May 14, 2004, recommending a 30 day suspension, completion of the State Bar's Professionalism Course prior to reinstatement, and costs.<sup>1</sup>

The State Bar appealed and the matter was set for oral argument. The State Bar was present; however, neither Respondent nor Respondent's Counsel were present. The Disciplinary Clerk stated that Respondent was noticed for this session.<sup>2</sup> The State Bar argued for a suspension of six months and one day based on the egregious nature of the misconduct and Respondent's prior disciplinary history involving similar misconduct. In the alternative, the State Bar stated that if a short term suspension was recommended, that a term of probation with the State Bar's Member Assistance Program (MAP) was appropriate.

On June 17, 2004 Respondent through his counsel filed Notice that on July 31, 2004

<sup>1</sup> The Hearing Officer inadvertently did not recommend costs in his Report.  
<sup>2</sup> The Disciplinary Clerk's office inadvertently sent the Notice to the Respondent instead of Respondent's Counsel. When contacted by the Clerk's office, Respondent's counsel stated there was no objection to having not received notice.



1 32(c)(10)(A), a resignation from membership in the state bar shall not be accepted if there is  
2 a disciplinary charge or complaint pending against the member.

3 **Decision**

4 The Commission's standard of review is set forth in Rule 58(b), which states that the  
5 Commission reviews questions of law *de novo*. In reviewing findings of fact made by a  
6 hearing officer, the Commission applies a clearly erroneous standard. Mixed findings of  
7 fact and law are also reviewed *de novo*. *State v Blackmore*, 186 Ariz. 630, 925 P.2d 1347  
8 (1996) citing *State v. Winegar*, 147 Ariz. 440, 711 P.2d 579 (1985).  
9

10 The Commission determined that the Hearing Officer's finding that Mrs. Nevares  
11 and, inadvertently, the State Bar are using this disciplinary process to punish her ex-husband  
12 by going after his attorney is clearly erroneous. *See* Hearing Officer's Report, p. 3:2. A  
13 review of the record indicates that no evidence exists to support this finding.  
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15 Therefore, having found no other findings of fact clearly erroneous, the nine  
16 members of the Commission by a majority of seven<sup>3</sup> recommend adopting and incorporating  
17 by reference the Hearing Officer's findings of fact, conclusions of law, and recommendation  
18 for a 30 day suspension, completion of the State Bar's Professionalism Course prior to  
19 reinstatement, and costs.  
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21 In addition, because of the threat of physical violence towards a litigant in this matter  
22 and moreover, in order to ensure protection of the public, the Commission also recommends  
23 upon reinstatement, that one year of probation (MAP) be imposed with the following terms  
24 and conditions:  
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26 <sup>3</sup> Commissioners Atwood and Osborne dissented. *See* dissenting opinion below.

**Terms of Probation:**

- 1           1.       Respondent shall contact the director of MAP within 30 days of entry of the final  
2                    Judgment and Order and submit to a MAP assessment.
- 3           2.       Respondent thereafter will enter into a one year MAP contract based upon  
4                    recommendations made by the MAP Director or designee.
- 5           3.       In the event that Respondent fails to comply with any of the foregoing  
6                    conditions, and the State Bar receives information, bar counsel shall file with the  
7                    Hearing Officer a Notice of Non-Compliance, pursuant to Rule 60(a)5, Ariz. R.  
8                    S. Ct. The Hearing Officer shall conduct a hearing within thirty days after receipt  
9                    of said notice, to determine whether the terms of probation have been violated  
10                   and if an additional sanction should be imposed. In the event there is an allegation  
11                   that any of these terms have been violated, the burden of proof shall be on the State  
12                   Bar of Arizona to prove non-compliance by clear and convincing evidence.

**Discussion of Decision**

16           Careful consideration was given to this matter, as the Commission is genuinely concerned  
17           with lawyers who engage in inappropriate behavior involving an offensive personality. Such  
18           conduct will not be tolerated in our profession. Lawyers have a duty to act honorably and to  
19           maintain a professional, courteous and civil attitude toward all persons involved in the legal  
20           system, and to adhere to the basic principles underlying the Rules of Professional Conduct. See  
21           *Preamble, A Lawyer's Responsibilities*, Rule 42, Ariz. R. S. Ct., and the Commission's Report  
22           in *Matter of Banta*, File Nos. 02-1070, 02-1628 and 02-2066 (2004), in which censure and  
23           probation was recommended for abusive and offensive conduct.<sup>4</sup>

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26           <sup>4</sup> This matter was also heard at the Commission's July 10, 2004 session and is not final.

1 Unlike Banta, the Respondent in this instant matter has a history of similar disciplinary  
2 offenses and thus, a harsher sanction was recommended. The Commission is satisfied that a 30  
3 day suspension with the additional component of probation in this instant matter will serve the  
4 purposes of discipline, one of which is to deter similar conduct by other lawyers. *Matter of*  
5 *Kersting*, 151 Ariz. 171, 726 P.2d 587 (1986).

6 RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of August, 2004.

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Craig B. Mehrens, Chair  
Disciplinary Commission

10 **Commissioners Atwood and Osborne dissenting:**

11 Respondent, who was representing a man in a bitter divorce, angrily threatened the  
12 man's wife with physical violence after a contentious court proceeding. The threat so  
13 frightened the wife that she obtained an order of protection. In light of the seriousness of  
14 this offense and Respondent's prior discipline, a thirty-day suspension is inadequate.

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16 When an attorney threatens an adverse party with bodily harm in an effort to  
17 influence the party's behavior in litigation, the attorney has committed conduct prejudicial to  
18 the administration of justice in the most fundamental sense. A threat of violence by a lawyer  
19 in the course of representing a party surely undermines our justice system as much as  
20 deceptive or dishonest conduct by the lawyer. Each kind of misconduct can seriously distort  
21 the litigation process, each can significantly harm the participants, and each destroys the  
22 public's confidence in the law. In Arizona, a suspension of six months or more is the  
23 presumptive sanction for deceptive conduct by a lawyer. See *In re Alcorn* 202 Ariz. 62,  
24 41P.3d 600 (2002) and *In re Moak*, 205 Ariz. 351, 71 P.3d 343 (2003). This Respondent,  
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1 who threatened an adverse party with violence, should receive a sanction that is at least  
2 equal to the sanction he would have received had he "merely" lied to the party.

3 Original filed with the Disciplinary Clerk  
4 this 12<sup>th</sup> day of August, 2004.

5 Copy of the foregoing mailed  
6 this 12<sup>th</sup> day of August, 2004, to:

7 Harlan J. Crossman  
8 Hearing Officer 8L  
9 3030 N. Central Ave., Suite 801  
10 P.O. Box 33064  
11 Phoenix, AZ 85067

12 Kent E. Turley  
13 Respondent's Counsel  
14 *Turley, Swan & Childers*  
15 3101 North Central, Suite 1300  
16 Phoenix, AZ 85012

17 David B. Medansky  
18 Respondent  
19 13236 N. Seventh Street, Suite 4288  
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21 Amy K. Rehm  
22 Bar Counsel  
23 State Bar of Arizona  
24 111 West Monroe, Suite 1800  
25 Phoenix, AZ 85003-1742

26 by: K. Weigand

/mps