

FILED
MAR - 8 2004
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

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

IN THE MATTER OF A MEMBER) No. 02-0487
OF THE STATE BAR OF ARIZONA,)
)
RON KENT HOOPER,)
Bar No. 001961)
) **HEARING OFFICER'S REPORT**
)
RESPONDENT.)

PROCEDURAL HISTORY

A Probable Cause Order was filed on April 21, 2003. A Complaint was filed on August 19, 2003. Respondent filed an Answer on September 30, 2003. The parties filed a Tender of Admissions and Agreement for Discipline by Consent (Agreement) and a Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memorandum) on February 9, 2004. No hearing has been held. The Complainant has been notified of this Agreement.

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. At all times relevant hereto, Respondent Ron Kent Hooper ("Respondent") was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on October 14, 1966.

1 2. On or about January 8, 2001, Joseph Waltman contacted Respondent
2 to have his 1984 felony conviction expunged.

3 3. Respondent advised Mr. Waltman that he could have the conviction
4 expunged, and his civil rights restored.

5 4. By check dated January 8, 2001, Mr. Waltman paid Respondent a
6 five hundred dollar (\$500.00) flat fee to have this work performed.

7 5. Thereafter, Respondent filed a pleading styled "Motion to Expunge
8 and Set Aside Defendant's Conviction and Restore Defendant's Civil Rights."
9 However, the Clerk of the Court rejected the pleading and Mr. Waltman received
10 notice thereof directly from the Clerk's office.

11 6. Thereafter, Mr. Waltman went to Respondent's office to find out
12 why the pleading had been rejected. Respondent told Mr. Waltman that the
13 pleading was rejected in error.

14 7. Respondent then prepared, but did not file, a pleading styled
15 "Motion to Vacate Defendant's Judgment of Guilt Dismiss Charges Restore Civil
16 Rights and Right to Own and Possess Firearms."

17 8. Mr. Waltman made numerous attempts to contact Respondent to find
18 out the status of his case. However, Respondent usually failed to take his calls.
19 When Respondent did take Mr. Waltman's calls, he was vague and evasive when
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1 responding to requests for information. Respondent led Mr. Waltman to believe
2 that he would be taking action on his case in furtherance of the representation.

3 9. Respondent did not perform any further work on Mr. Waltman's
4 case.
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6 10. On or about March 6, 2002, Mr. Waltman filed a complaint with the
7 State Bar of Arizona with respect to Respondent's professional conduct. The
8 State Bar advised Respondent of the allegations and requested a response to the
9 charges.
10

11 11. Respondent failed to respond to the State Bar of Arizona in the
12 investigation of this matter, despite two screening letters, one telephone call, and
13 one e-mail from bar counsel requesting that he do so.
14

15 12. Respondent failed to take diligent actions consistent with Mr.
16 Waltman's representation.
17

18 13. Respondent failed to respond to Mr. Waltman's phone calls and
19 failed to keep him reasonably informed about the status of his case. Respondent
20 also failed to promptly comply with Mr. Waltman's reasonable requests for
21 information.
22

23 14. Respondent charged Mr. Waltman a fee for which he did not
24 perform a service.
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1 deterred from such conduct while protecting the interests of the public and the
2 profession. *In re Kersting*, 151 Ariz. 171, 726 P. 2d 587 (1986).

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

8
9 Given the conduct in this matter, it was appropriate to consider *Standards*
10 4.4 and 7.0. Suspension is generally appropriate when a lawyer knowingly fails
11 to perform services for a client and causes injury or potential injury to a client.
12 *Standard* 4.42.

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14 Suspension is generally appropriate when a lawyer knowingly engages in
15 conduct that is a violation of a duty owed as a professional, and causes injury or
16 potential injury to a client, the public or the legal system. *Standard* 7.2.

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18 Respondent admits that he failed to take action on behalf of Mr. Waltman.
19 He further admits that when the client inquired about the progress of the case,
20 Respondent led the client to believe that he was performing the work when in fact
21 he was not. Based on the foregoing, the presumptive sanction for the admitted
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23 conduct is a term of suspension.
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1 AGGRAVATING AND MITIGATING FACTORS

2 This Hearing Officer then considered aggravating and mitigating factors in
3 this case, pursuant to *Standards* 9.22 and 9.32, respectively. Three factors are
4 present in aggravation: (e) bad faith obstruction of the disciplinary proceeding by
5 intentionally failing to comply with rules or orders of the disciplinary agency; (h)
6 vulnerability of victim; and (i) substantial experience in the practice of law.
7 Three factors are present in mitigation: (a) absence of prior disciplinary record;
8 (c) personal and emotional problems; and (h) physical disability. During the
9 period Respondent failed to follow through on the Waltman matter, Respondent
10 was ill with Type II adult onset diabetes, which had not been diagnosed.
11 Respondent's mother had serious problems, which led to a total nervous
12 breakdown on Thanksgiving 2000, and her hospitalization in the psychiatric ward
13 at Boswell until January 15, 2001. Respondent's mother was transferred to the
14 Encore care facility in Sun City for over a year. Respondent's father suffered
15 from dementia and could not cook or handle any financial affairs. Respondent
16 had to take complete charge of his parents' financial affairs, sell his parents'
17 home and store all of their belongings. Respondent's father was relocated to the
18 Baptist Assisted Living facilities in Youngtown.

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24 Respondent's Type 11 Diabetes was diagnosed in April 2002, when
25 Respondent was also diagnosed with recently having contracted hepatitis B.

1 Respondent's physician, Dr. Halberern, ordered Respondent not to return to work
2 until June 3, 2002. Respondent was able to continue a manslaughter case set for
3 trial in April 2002 until June 2002. Following the hearing to continue the
4 manslaughter case, Respondent was so exhausted he was involved in an
5 automobile accident after running a red light. A few months later his back up car
6 gave out and his truck was no longer running.
7

8
9 Respondent tried a vehicular manslaughter case in June 2002 resulting in
10 an excellent verdict of vehicular homicide. Respondent had lost two-thirds of his
11 physical strength and was totally exhausted following the manslaughter trial.
12 Respondent did not regain his physical strength until 2003. The hepatitis
13 adversely affected Respondent's diabetes, which could not be controlled until
14 Respondent's liver healed. As a result of being extremely tired from the hepatitis
15 and diabetes, Respondent did not take any cases which had to be tried for over a
16 year, even though most of his practice involved litigation. Respondent survived
17 by incurring debt. Respondent continued to be tired easily and had to rest during
18 the day and all weekends throughout 2002.
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21 Respondent's illness and his parents' problems caused an enormous stress
22 which adversely affected his diabetes and resulted in his becoming severely
23 depressed.
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1 In the fall of 2003, Respondent tried his first case since the June 2002
2 manslaughter trial. Respondent resumed a full work schedule in November 2003.
3 Respondent is now in good health. His blood sugar readings have dropped from
4 over 300 to a little over 100. He has regained full muscle mass and strength.
5 Respondent controls his diabetes by diet, exercise, vitamins, stress management
6 and oral medication.
7

8 Respondent is now working sixty-hour weeks. Respondent's wife
9 purchased a new Buick, alleviating transportation problems as a result of having
10 only one vehicle. Respondent has been able to get current on his mortgage, credit
11 card debt and similar bills. Respondent now has sufficient cash flow to hire a
12 secretary, purchase new computer equipment and practice at a high level.
13 Respondent has been actively educating solo practitioners and others about using
14 exercise, vitamins and healthy eating habits to manage or avoid adult onset
15 diabetes and other illnesses and how to obtain affordable medical testing and care.
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18 Having identified what they believe to be the relevant aggravating and
19 mitigating factors, the parties believe that these factors justify a decrease in the
20 presumptive sanction in this case.
21

22 **PROPORTIONALITY REVIEW**
23

24 Proportionality requires that the sanction be tailored to fit the facts and
25 circumstances of the case. *Matter Scholl*, 200 Ariz. 222, 227, 25 P.3d 710, 715

1 (2001). Significantly, the purpose of lawyer discipline is not to punish the
2 Respondent, but to protect the public and the administration of justice from
3 attorneys who are either unable or unwilling to discharge the professional
4 obligations to clients, the public and the profession. *Rivkind*, 164 Ariz. at 157,
5 791 P.2d at 1040; *see also Standard 1.1*. Accordingly, sanctions against lawyers
6 must have internal consistency to maintain an effective and enforceable system;
7 therefore, the Court looks to cases that are factually similar to the case before it.
8
9 *In re Pappas*, 159 Ariz. 516, 526, 768 P.2d 1161, 1171 (1988).

11 In *Matter of MacDonald*, Supreme Court No. SB-00-0021-D(2000),
12 Respondent failed to act with reasonable diligence and promptness in representing
13 domestic relations clients. Respondent failed to keep the clients informed as to
14 the status of the case and failed to respond to reasonable requests for information.
15 Additionally, Respondent was instructed by the court to file certain documents
16 and failed to do so. Further, Respondent failed to protect clients' interests and
17 failed to surrender clients' papers in a timely manner. Respondent initially failed
18 to cooperate with the State Bar, but did so after the Complaint was filed.
19 Respondent's conduct was found to have been the result of a neurological
20 disorder manifested by depression and attention deficit disorder. One (1)
21 aggravating and four (4) mitigating factors were present. Respondent was
22 censured and had his probation extended for a period of six (6) months.
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1 In *Matter of Rogers*, Supreme Court No. SB-00-0050-D (2000),
2 Respondent was retained to handle a domestic relations matter. After Respondent
3 performed some legal services, the client reconciled with his wife, and requested
4 the unused portion of the retainer. Thereafter, Respondent failed to abide by the
5 client's decision concerning the objectives of his representation, failed to
6 communicate with the client, failed to keep the client reasonably informed as to
7 the case status, failed to comply with reasonable requests for information, an
8 accounting, and a refund. Four (4) aggravating factors, including prior discipline,
9 and no mitigating factors were present. Respondent was suspended for one (1)
10 year, placed on probation for two (2) years with the LOMAP and MAP programs,
11 and ordered to pay restitution.
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15 The instant case is similar to *MacDonald* in both the nature of the conduct
16 and the attendant circumstances. The conduct in *Rogers* was significantly more
17 egregious than that committed by the Respondent in this matter. Additionally, in
18 *Rogers*, the lack of mitigating factors and prior discipline warranted the
19 imposition of a greater sanction.
20

21 RECOMMENDATION

22 The purpose of lawyer discipline is not to punish the lawyer, but to protect
23 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
24 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
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1 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
2 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
3 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
4 (1994).

5
6 In imposing discipline, it is appropriate to consider the facts of the case, the
7 American Bar Association's *Standards for Imposing Lawyer Sanctions*
8 ("*Standards*") and the proportionality of discipline imposed in analogous cases.
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10 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

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

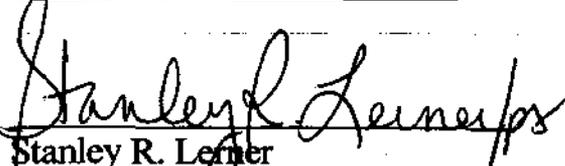
- 14 1. Respondent shall be censured for his conduct.
- 15 2. Respondent shall be placed on probation for a period of one year. The
16 only term of probation shall be participation in the State Bar Law Office
17 Management Assistance Program (LOMAP). Respondent shall, within ten (10)
18 days of the Supreme Court's final Judgment and Order, contact the director of
19 LOMAP to schedule an audit of his law office. The LOMAP director or its
20 designee will conduct an audit of Respondent's law office no later than sixty (60)
21 days thereafter. Following the audit, Respondent shall enter into a Memorandum
22 of Understanding that will be effective for a period of one year from the date
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1 upon which all parties have signed the Memorandum. Respondent shall comply
2 with all recommendations of the LOMAP director or her designee. The State Bar
3 shall notify the Disciplinary Clerk of the effective date of the Memorandum of
4 Understanding.
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6 In the event that Respondent fails to comply with any of the
7 foregoing conditions, and the State Bar receives information, bar counsel shall
8 file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule
9 60(a)5, Ariz. R. S. Ct. The Hearing Officer shall conduct a hearing within thirty
10 days after receipt of said notice, to determine whether a condition of probation
11 has been breached and, if so, to recommend an appropriate sanction. In the event
12 there is an allegation that any of these terms have been breached, the burden of
13 proof shall be on the State Bar of Arizona to prove non-compliance by clear and
14 convincing evidence.
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17 3. Respondent shall pay Mr. Waltman restitution in the amount of
18 \$500.00. Payment shall be made within thirty (30) days of the date of the
19 Supreme Court's final Judgment and Order in this matter.
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21 DATED this 8th day of March, 2004.

22 _____
23 
24 Stanley R. Lerner
25 Hearing Officer TV

1 Original filed with the Disciplinary Clerk
2 this 8th day of March, 2004.

3 Copy of the foregoing was mailed
4 this 8th day of March, 2004, to:

5 Ron Kent Hooper
6 Respondent
7 3420 East Shea Blvd., Suite 247
8 Phoenix, AZ 85028-3351

9 Robert A. Clancy, Jr.
10 Bar Counsel
11 State Bar of Arizona
12 111 West Monroe, Suite 1800
13 Phoenix, AZ 85003-1742

14 by: K Weigand

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