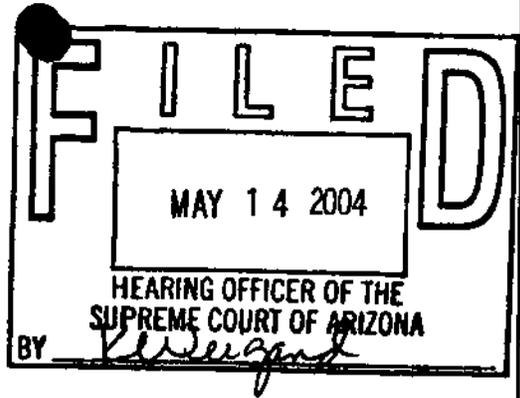


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6 **BEFORE A HEARING OFFICER**
7 **OF THE SUPREME COURT OF ARIZONA**

8 IN THE MATTER OF A MEMBER OF THE)
9 STATE BAR OF ARIZONA,)
10 **DAVID B. MEDANSKY,**)
11 **Bar No. 013963**)
12 **Respondent.**)

No. 03-1606

HEARING OFFICER'S REPORT
AND RECOMMENDATION

12 **PROCEDURAL HISTORY**

13 A one-count Complaint was filed on December 19, 2003 and mailed to Respondent on
14 December 22, 2003. There was no answer filed and a Notice of Default was filed on January 20,
15 2004. An Entry for Default was filed by the Disciplinary Clerk on February 26, 2004. A hearing was
16 held on aggravation/mitigation on April 18, 2004. Respondent appeared along with the attorney for
17 the State Bar, Amy Rehm, and there were two witnesses who testified telephonically.

18 **FINDINGS OF FACT**

19 The facts listed below are those set forth in the Complaint which are deemed admitted by way
20 of default along with the additional findings of the hearing officer.

21 At all times relevant hereto, Respondent was an attorney licensed to practice law in the State
22 of Arizona.

- 23 1. Respondent represented Arielle Nevares in a domestic relations matter.
- 24 2. Dianne Nevares was represented by attorney Patrick McGill.
- 25 3. After a conference in the Expedited Services Department of the Maricopa County
26 Superior Court of Arizona, the Respondent, in the hallway, near the exit of the
27 building, stated "You won't live to see your kid's fifteenth birthday" or words to that
28 effect.
4. Dianne Nevares filed a charge against the Respondent with the State Bar as well as

CROSSMAN LAW OFFICES, P.C.

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a protective order with the police department.

5. There were witnesses to these statements and the Respondent admitted to making these statements to the third-party, Dianne Nevares.
6. This Hearing Officer does not accept the testimony of Dianne Nevares that the conference was calm. This Hearing Officer accepts the testimony of Mr. McGill that there was frustration, snide comments and little snipes being made by each party with a lot of antagonism at the hearing.
7. Between the antagonism at the conference, and the failure to obtain answers to the interrogatories, this Hearing Officer finds that the Respondent was upset, distraught and much too involved in his client's case.
8. The conference hearing officer has no right to mediate any issue and does not have any decision-making powers. His sole purpose is to gather information and present it to the judge at a pre-hearing conference. The conference hearing officer just makes "administerial [sic] calculations" from materials that have been furnished him.

Count I

The Respondent represented Arielle Nevares in a domestic relations matter in Maricopa County. Attorney Patrick McGill represented Dianne Nevares, the opposing party in the domestic relations action. On or about August 27, 2003, Respondent attended a conference with his client, Arielle Nevares, in the expedited services department of the Maricopa County Superior Court of Arizona. Dianne Nevares also attended the conference with Mr. McGill. The conference was antagonistic and contained many verbal snipes between the parties. The purpose of this conference was because Mr. Nevaras had filed a Modification for Child Support and Spousel Maintenance. As they left the conference, the conference hearing officer led the way. The Respondent was next, Mr. McGill followed, and Mrs. Nevares was behind her attorney. After leaving the hearing room, the Respondent turned around and stated to Mrs. Nevares that he wanted the documents that he had requested be produced. Afterwards, he stated to Mrs. Nevares that "You are not going to see your kid's fifteenth birthday" or something to that effect. At all times, Mr. McGill was between the Respondent and Mrs. Nevares.

1 As a result of the statements by Respondent, Mrs. Nevares filed a bar complaint against the
2 Respondent and also an Order of Protection. This Hearing Officer also finds that Mrs. Nevares and
3 inadvertently, the State Bar, are using this disciplinary process to punish her ex-husband by going
4 after his attorney.

5 CONCLUSIONS OF LAW

6 ER 3.5(c) - It is the opinion of this Hearing Officer that Rule 42, Rules of Professional
7 Conduct ER 3.5(c), in existence at the time of this situation, has not been violated. The Respondent
8 did not engage in conduct intended to disrupt a tribunal. The expedited conference hearing officer
9 is not an arbitrator of any kind; he is only a gatherer of information. This conduct occurred after the
10 conference in the hallway. The conference was for the sole purpose to gather information and an
11 employee of the court cannot be deemed a tribunal.

12 ER 4.4 - This rule deals with an attorney using names to embarrass, delay or burden a third-
13 person. This Hearing Officer finds that the Respondent acted out of frustration (his inability to
14 obtain the production of documents), as well as the anxiety, antagonism and sniping that had
15 occurred. This Hearing Officer finds no intent to embarrass, delay or burden the Defendant third-
16 party. These statements had no legal efficiency. This Hearing Officer finds these statements were
17 made out of frustration, rather than with the intent to embarrass, delay or burden a third-person. Mrs.
18 Nevaras may have been scared or shocked, but not embarrassed.

19 ER 8.4(d) - Was this conduct prejudicial to the administration of justice? This Hearing Officer
20 finds that this conduct did have an effect upon the administration of justice. The conference hearing
21 officer is an arm of the judge who helps the administration of justice by compiling all the statistics so
22 that a proper decision can be rendered.

23 Rule 41(g) - This rule deals with an obligation of an attorney to "abstain from all offensive
24 personalities." It is the opinion of this Hearing Officer that the Respondent has violated this
25 obligation. The purpose of the courts and all its concomitant services is to provide justice and
26 mediation for parties who have differing opinions. It is that area of government where an individual
27 can go against large corporations or other individuals of different sizes. It is the one place that the
28 individual in our society can be heard without fear of retribution. Our legal system is not a place for

1 an attorney to vent his frustrations, anxieties or antagonisms. This type of rhetoric by an officer of
2 the court can only create a fear and distrust in the judicial system. This behavior cannot be permitted.

3 This is the third time that the Respondent has demonstrated his offensive personality against
4 participants in the judicial system or other members of the system. If other members of society would
5 treat the legal system in the way the Respondent has, we would return to a state of chaos without
6 justice. This type of language and action is offensive and is a violation of Rule 41(g) as well as being
7 totally unacceptable under any circumstances. The State Bar requests a suspension of six months and
8 one day, and Respondent agrees that a suspension of thirty to ninety days would be appropriate. The
9 ABA Standards for Imposing Lawyer Sanctions is the guidelines used by the Supreme Court in
10 consideration of an appropriate sanction, Matter of Kaplan, 179 Ariz 175, 877 P.2d 274, (1994).

11 ABA STANDARDS

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

15 In this case, the Respondent has violated his duty to the court by using an offensive
16 personality and demeaning the legal process by his total disregard and disrespect for litigants and
17 ways of the court. The Respondent's frustration is noted as is the shock to the third-party. This was
18 potentially, in not in reality, injurious to the third-party. The disrespect for the legal system and the
19 profession by his conduct is reprehensible. Standard 7.2 states that "suspension is generally
20 appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a
21 professional and causes injury or potential injury to a client, the public or the legal system." Standard
22 8.2 states that "suspension is generally appropriate when a lawyer has been reprimanded for the same
23 or similar misconduct and engages in further acts or misconduct that causes injury or potential injury
24 to a client, the public, the legal system, or the profession." In this case, the Respondent's frustration,
25 anxiety, anguish, and lack of ability to control his emotion and mouth have caused him to violate this
26 rule on two previous occasions, and now again for a third time.

27 This Hearing Officer must also look at the mitigating and aggravating factors. Aggravation:
28 The Respondent has had two prior similar disciplinary offenses (9.22(a)). There is a pattern of

1 misconduct (9.22(c)) and substantial experience in the practice of law. (9.22(i)) The Respondent has
2 been practicing law since 1991. Mitigation: There are two factors in mitigation: the absence of a
3 dishonest or selfish motive (9.32(b)) and remorse (9.32(l)). The Respondent realizes that his anxiety
4 in domestic relations cases causes his involvement to be extreme.

5 PROPORTIONALITY

6 This Hearing Officer has reviewed the proportionality and discipline that has occurred in cases
7 of this kind and finds that they are not applicable because of other violations in addition to those
8 involved in the present case. This Hearing Officer also feels that those suspensions were too harsh
9 under the circumstances of this case. Accordingly, it is the opinion of this Hearing Officer that the
10 proportionality issue should not apply in this situation.

11 RECOMMENDATION

12 It is the opinion of this Hearing Officer that the severity of the statements and conduct toward
13 the third-party, and the lack of respect for the judicial process cannot be condoned. Under Standards
14 8.2 and 7.2, the Respondent must be suspended. Suspension should be for a period of thirty (30)
15 days. In addition to the suspension, the Respondent should be required to take the Professionalism
16 Course prior to reinstatement. This Hearing Officer understands that the Respondent has taken the
17 Professionalism Course in the past, but obviously it has not been totally successful. Hopefully one
18 additional time will be more effective than that which occurred in the past.

19 DATED this 14th day of May, 2004.

20 
21 Harlan J. Crossman
22 Hearing Officer 8L

23
24 Original filed with the Disciplinary Clerk
25 this 14th day of May, 2004.

26 Copy of the foregoing
27 this 14th day of May, 2004 to:
28

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