

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

IN THE MATTER OF A MEMBER) Nos. 04-1578
OF THE STATE BAR OF ARIZONA,)
)
STEPHANIE L. BOND,)
Bar No. 019000)
) **HEARING OFFICER'S REPORT**
)
RESPONDENT.)
_____)

PROCEDURAL HISTORY

A Probable Cause Order was filed on September 7, 2005. A Complaint was filed on September 29, 2005. Respondent filed an Answer on October 19, 2005. The parties were able to reach an agreement. A Tender of Admissions and Agreement for Discipline by Consent (Tender) and Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent (Joint Memo) were filed on January 20, 2006. A telephonic hearing on the tender and agreement was held February 15, 2006.

FINDINGS OF FACT

1. Respondent is licensed to practice law in Arizona, having been first admitted to practice in this state on October 16, 1998.
2. On or about June 2, 2004, Respondent telephoned Jacob Amaru, an attorney

- with th firm of Trezza and Bradley, PC. Respondent had previously been employed by the Trezza law firm, but had not personally worked with Amaru.
3. Respondent left a message on Amaru's voice-mail in which she used profane and/or threatening language.
 4. Amaru, on or about June 5, 2004, notified the Tucson Police Department of the message left by Respondent.
 5. A Tucson Police Department report documenting Amaru's complaint was filed on or about June 5, 2004.
 6. On or about June 11, 2004, Respondent was contacted by telephone by Detective Sharon Smith who identified herself to Respondent as an officer of the Tucson Police Department. Det. Smith asked Respondent about the telephone call to Amaru and the message Respondent had recorded.
 7. Det. Smith indicated to Respondent that she possessed a recording of the telephone call in question, in which Respondent identified herself by name.
 8. Respondent denied having called Amaru, and then denied, at first, onowing Amaru's last name. Although Respondent's statement that she had not called Amaru was false, and known by Respondent to be false, Respondent affirmatively asserted, and the State Bar conditionally did not dispute, that

- Respondent only knew Amaru by his first name.
9. Respondent denied having made a telephone call to Amaru or leaving a message that could have been perceived as threatening, stating, "I can't imagine I would have said something like that." This statement was false and known by Respondent to be false. The subject matter of the phone call was professional, but did not have to do with a specific client. (Reporter's Transcript, March 6, 2006, pg 7)
 10. Later in the conversation, when Det. Smith asked, "Yes or no, did you call and make the phone call...", Respondent replied, "No." This statement was false and known by Respondent to be false.
 11. Respondent's suggestion to Det. Smith that two other current or former employees of the Trezza law firm might have placed the call or recorded the profane and/or threatening message could have misdirected Det. Smith's investigation.
 12. Respondent knew this accusation or suggestion that someone else had made the call was false and unfounded.
 13. Respondent was cited in Tucson City Court for a violation of Ariz. Rev. Stat. Sec. 12-2916, Using a Telephone to Intimidate, Terrify and Annoy. This charge was later dismissed.

14. Respondent's conduct as described in this count violated Rule 42, Ariz. Rules of Supreme Court, specifically ERs 8.4(c) and 8.4(d), Rule 41(g) and the Preamble.

CONDITIONAL ADMISSIONS & DISMISSALS

Respondent conditionally admitted she engaged in conduct, as set forth above, involving dishonesty, fraud, deceit or misrepresentation by failing to be truthful in her responses to questions posed by the Tucson Police Detective investigating the alleged threatening voice mail message. Respondent conditionally admitted her conduct therefore violated Rule 42, Ariz. R. S. Ct., ERs 8.4(c) and 8.4(d). Respondent's admissions were tendered in exchange for the form of discipline stated below.

The Hearing Officer also notes the record supports a finding that Respondent's conduct violated Rule 41(g) and Section 1 of the Preamble in failing to conduct herself in an honorable fashion.

There were no conditional dismissals.

ABA STANDARDS

The *ABA Standards* list the following factors to consider in imposing the appropriate sanction: (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 or mitigating circumstances. *ABA Standard 3.0.*

The parties conditionally agreed Respondent's conduct in violation of ER 8.4(c) was the more serious instance of misconduct. As such *Standard 5.1, Failure to Maintain Personal Integrity*, was also implicated.

Standard 5.12 provides that:

(s)uspension is generally appropriate when a lawyer knowingly engages in criminal conduct that does not contain the elements listed in *Standard 5.11* and that seriously adversely reflect on the lawyer's fitness to practice.

Standard 5.13 provides that

(r)eprimand is generally appropriate when a lawyer knowingly engage in any conduct that involves dishonesty, fraud, deceit or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

Based on the conditional admissions, the presumptive sanction for the admitted conduct under the *Standards* falls between suspension and censure.

Undersigned hearing officer agrees with the parties that Respondent violated her fundamental duty to the public by failing to maintain the standards of personal integrity upon which the community relies. Respondent acted in a manner prejudicial to the administration of justice and failed to maintain personal integrity when: 1) she left an inappropriate message for the other lawyer which caused him to notify law enforcement; 2) she knowingly failed to answer the police detective's questions

truthfully; and 3) she falsely suggested someone else had recorded the message.

Injury occurred as the result of Respondent's conduct in that law enforcement was called to investigate the call, and by suggesting that others might have perpetrated leaving the message, law enforcement had to conduct further investigation. Additionally a prosecution was commenced expending additional resources of the legal community. However, the Hearing Officer notes that the conduct in this matter, though reprehensible, was not as the result of the Respondent's representation of a client, but rather concerned the performance of other professional duties.

AGGRAVATING AND MITIGATING FACTORS

The parties conditionally agreed there were no aggravating factors. The Hearing Officer did not find the presence of aggravating factors.

This Hearing Officer considered the parties Joint Memorandum in determining aggravating and mitigating factors in this case as well as statements and arguments of counsel from the hearing.

The Hearing Officer finds the following factors to be considered in mitigation:

1) Absence of prior disciplinary record. Respondent had practiced six years prior to this occurrence. While this might not be considered much experience by some, the nature of Respondent's practice which involved extensive litigation

should also be considered in determining her experience level. She routinely dealt with numerous clients and attorneys in contested matters. This was not an attorney who was involved in her first contested matter. The record does suggest, however, Respondent's behavior in this instance was a one-time occurrence. *Standard 9.32(a)*

2) Full and free disclosure and cooperative attitude. Respondent timely responded to all inquiries by the Bar. *Standard 9.32(e)*

3) Character and reputation. Respondent provided letters from a number of attorneys who would have appeared as witnesses on her behalf indicating her general character to be ethical. This also supported the contention that Respondent's behavior in this instance was aberrant. *Standard 9.32(g)*

4) Remorse. Respondent clearly and unequivocally stated her remorse both in her written letter to the Hearing Officer and in her willingness to admit her conduct in these proceedings. *Standard 9.32(l)*

While the parties submitted additional mitigating factors, the Hearing Officer did not agree they should be considered.

PROPORTIONALITY REVIEW

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).

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *Peasley, supra*, 208 Ariz. at 33, 90 P.3d at 772. However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* 208 Ariz. at 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

The conduct in this case is analogous to that of *In Re Banta*, DC 02-1070, 02-1628, and 02-2066 (2004). In *Banta*, the Respondent publically made inappropriate comments about never paying a doctor lien-holder in a personal injury case from trust funds the Respondent held, about the capabilities of non-attorney pro-tem justices of the peace and a about asitting Superior Court judge. The Respondent also told an opposing attorney to commit an unnatural act upon himself. The Respondent had multiple complaints and attempted to defend his conduct as being a "zealous" advocate. The Commission found that "it has always been an unspoken principal that

within this professional calling, lawyers must *at all times* act honorably and within the standard of conduct for their profession.” The Commission then used their decision to “send a message” that abusive and offensive conduct would not be tolerated. The Commission imposed a sanction of one year probation for the Respondent.

Banta is distinguished by the present case in that the Respondent in *Banta* never admitted remorse for his conduct, but instead tried to justify it. There were also multiple instances of inappropriate conduct before the Commission. However, the *Banta* Respondent did not lie to law enforcement about his comments—he freely admitted them during the Bar investigation.

In *In Re Medansky*, DC 03-1606, the Disciplinary Commission imposed a 30-day suspension and probation upon a Respondent who had threatened physical violence against an adverse party following a bitter divorce proceeding causing the party to obtain a restraining order against the Respondent. This Respondent had a history of similar disciplinary offenses. The Commission reasoned that lawyers have a duty “to act honorably, and to maintain a professional, courteous and civil attitude toward all persons involved in the legal system.” In comparison to the present case, the Respondent has no prior disciplinary history.

The parties correctly noted that lawyers who engaged in conduct involving dishonesty, fraud, deceit or misrepresentation have received sanctions ranging from

suspension to censure. Of the cases cited, *In Re Isler*, SB-04-0073-D (2004), provides the closest comparison to the conduct in the present case. In *Isler*, the Respondent lied to his employer about his personal and family circumstances to obtain benefits. Since there was no criminal conduct, and the presence of both aggravating and mitigating factors, the Respondent received only a censure. Furthermore there was no dishonesty to clients or the court.

The conduct of Respondent, in the instant case, is more egregious as potential criminal conduct was involved, just as in *Medansky*. She initially lied about her involvement, similar to the lies in *Isler*. However, there are no aggravating circumstances and she is clearly remorseful.

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.’” *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). This Hearing Officer believes the sanctions agreed upon by the parties are consistent with these principles.

RECOMMENDATION

Except as stated herein, this Hearing Officer recommends acceptance of the Tender of Admissions and Agreement for Discipline by Consent and the Joint

Memorandum in Support of Agreement for Discipline by Consent which provides for the following:

Respondent shall receive a public Censure.

Respondent be placed on probation for a period of one year to begin when all parties have signed the probation contract. The State Bar would be required to notify Disciplinary Clerk of the exact date of commencement of probation. The term of probation would be as follows:

a. Respondent would be required, within 30 days of the date the probation contract is signed, to contact the director of the State Bar's Member Assistance Program (MAP) to schedule an assessment to be conducted within the next 30 days.

b. Respondent shall comply with all recommendations of the MAP director or his/her designee.

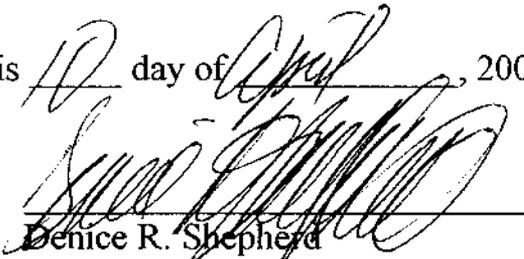
c. Respondent shall follow all the Rules of Professional Conduct and all Trust Account Guidelines. Respondent shall pay all costs incurred by the State Bar in connection with these proceedings, including the assessment by MAP.

d. In the event that Respondent fails to comply with any of the foregoing conditions, and the State Bar receives information, bar counsel shall file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule 60(a)5, Ariz. R. S. Ct. The Hearing Officer shall conduct a hearing within thirty days after receipt of said

notice, to determine whether the terms of probation have been violated and if an additional sanction should be imposed. In the event there is an allegation that any of these terms have been violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence.

Respondent shall pay the costs and expenses incurred in this disciplinary proceeding.

DATED this 10 day of April, 2006.


Denise R. Shepherd
Hearing Officer 7Q

Original filed with the Disciplinary Clerk
this 18th day of April, 2006.

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