

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

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
JOHN THOMAS BANTA,)
Bar No. 010550)
)
RESPONDENT)
_____)

File No. 06-0115

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

The Complaint against Respondent, John Thomas Banta, was filed by the State Bar on December 7, 2006, and thereafter served on him on December 8, 2006, by certified mail/restricted delivery at his address of record

Respondent responded to the Complaint by filing an answer dated January 22, 2007.

Thereafter, Bar Counsel and Respondent entered into negotiations and arrived at a resolution of this matter which was the subject of a Tender Of Admissions And Agreement For Discipline By Consent and Joint Memorandum in Support Of Tender Of Admissions And Agreement For Discipline By Consent.

This matter was tendered to the undersigned Hearing Officer on April 2, 2007, at a hearing attended by Bar Counsel, Respondent, Court Reporter Debra Riggs Torres, and the undersigned Hearing Officer This Hearing Officer questioned the parties about the agreement and was satisfied that the agreement is supported by the facts and the law

FINDINGS OF FACT

At all times relevant hereto, Respondent was a lawyer licensed to practice law in the State of Arizona, having been admitted to the practice in Arizona on May 10, 1986

COUNT ONE (File No. 06-0115/Kruska)

This Hearing Officer finds that Respondent failed to abide by Mrs. Kruska's decisions concerning her objectives for the representation and failed to adequately consult with the client as to the means by which they were to be pursued.

This Hearing Officer further finds that Respondent failed to act with reasonable diligence and promptness in representing Mrs. Kruska.

This Hearing Officer further finds that Respondent failed to reasonably consult with Mrs. Kruska about the means by which the client's objectives were to be accomplished, failed to keep Mrs. Kruska reasonably informed about the status of her case; and failed to promptly comply with reasonable requests for information

This Hearing Officer further finds that Respondent filed a frivolous Motion to Reinstatement

This Hearing Officer further finds that Respondent engaged in conduct that is prejudicial to the administration of justice

SUMMARY OF FACTS/RULE VIOLATIONS

Pursuant to the Tender Of Admissions And Joint Memorandum, both of which were signed by Bar Counsel and the Respondent, as well as the comments of Respondent at the hearing on the Tender Of Admissions And Agreement For Discipline By Consent, this Hearing Officer finds that Respondent's conduct violated the following Rules of

Professional Conduct and the Rules of the Supreme Court Rule 42, ERs 1 2, 1.3, 1 4,
3 1, and 8 4(d)

CONCLUSIONS OF LAW

This Hearing Officer finds that there is clear and convincing evidence that Respondent engaged in professional misconduct that violated his duty to his client and to the legal system Respondent failed to abide by his clients objectives, failed to diligently pursue her case, failed to keep her informed about his inaction in her case, and filed a document he knew was inappropriate to try and placate his client, the filing was prejudicial to the administration of justice

ABA STANDARDS

In determining the appropriate sanction, the parties considered both the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards" or "Standard _____") and Arizona case law The *Standards* provide guidance with respect to an appropriate sanction in this matter. The Supreme Court and Disciplinary Commission consider the *Standards* a suitable guideline *In re Peasley*, 208 Ariz 27, 33, 35, 90 P 3d 764, 770, 772 (2004), *In re Rivkind*, 164 Ariz 154, 157, 791 P 2d 1037, 1040 (1990)

The duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors should be considered in determining the appropriate sanction *In re Peasley*, 208 Ariz at 35, 90 P 3d at 772, *Standard* 3 0

After filing a complaint on Mrs Kruska's behalf, Respondent failed to communicate with her and failed to respond to pleadings that had been filed by defendants to the lawsuit, including a response to a Motion to Dismiss/Motion for More Definitive Statement that Respondent determined to be correct Mrs Kruska's case was dismissed on August 29, 2005, due to Respondent's failure to file a response or objection to the defendants' motions Respondent failed to adequately discuss with Mrs Kruska his reasons for failing to respond to the motions and failed to adequately inform her that her case had been dismissed In an attempt to "placate Mrs Kruska" Respondent filed a Motion to Reinstate and Motion to Amend Complaint to Reflect Declaratory Action that provided little or no substantive legal basis to support the motion

The parties agree that *Standards* 4.0, (Violations of Duties Owed to Clients), and 6.0, (Violations of Duties to the Legal System), are the most appropriate standards.

Standard 4.43 – Reprimand [Censure in Arizona] is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client or fails to comply with a court order or rule, and causes injury or potential injury to a client or interference or potential interference with a legal proceeding

AGGRAVATION/MITIGATION

This Hearing Officer then considered aggravating and mitigating factors in this case, pursuant to *Standards* 9.22 and 9.32 respectively

Mitigation.

This Hearing Officer finds that there is the absence of dishonest or selfish motive under *Standard* 9.32(b)

This Hearing Officer finds that there was timely good faith effort to make restitution or to rectify the consequences of misconduct. Respondent offered to rectify his mistake by filing the Declaratory Action on Ms. Kruska's behalf *Standard 9 32(d)*

This Hearing Officer finds that there was full and free disclosure by Respondent and that he cooperated fully with the State Bar in its investigation of this matter *Standard 9 32(e)*

Aggravation

This Hearing Officer finds that Respondent has prior disciplinary offenses. On March 23, 2005, Respondent received a censure for violations of Rule 42, Ariz R S Ct , ERs 1 15(b) and (c), 3 5, 4 4 and 8 4(d) and Rule 41(g) Ariz R S Ct. This Hearing Officer finds that this aggravating factor should be given little weight because the misconduct in the previous matter is substantially different from the misconduct in this matter *Standard 9 22(a)*

This Hearing Officer finds that Respondent has substantial experience in the practice of law in that at the time of the misconduct Respondent had practiced law in Arizona for approximately 19 years *Standard 9 22(i)*

PROPORTIONALITY REVIEW

The Supreme Court has held that 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).

Respondent has admitted to violating ERs 1.2, 1.3, 1.4, 3.1 and 8.4(d), Rule 42, Ariz R S Ct. Cases set forth below support censure as the appropriate sanction in this case.

In *In re Inserra*, SB-05-0124-D (2005)(one file), Inserra was censured and placed on probation for one year for violations of ERs 1.1, 1.2(a), 1.3, 1.4(a), 3.2 and 8.4(d), Rule 42, Ariz R S Ct. Inserra failed to competently represent his client in a civil litigation, failed to conduct any research on landlord/tenant law and failed to make any meaningful argument opposing summary judgment against his client. Without client consent, he filed an appeal that he then abandoned, entered into negotiations agreeing to opposing party bringing a new action that resulted in a judgment against his client, and waived participating in a court-ordered mediation and his client's right to a trial. There was one aggravating factor. Respondent had a prior disciplinary offense that did not involve the same type of conduct. There were three mitigating factors including personal or emotional problems, absence of a dishonest or selfish motive, and full and free disclosure to the disciplinary board or cooperative attitude toward proceedings.

In *In re Robinson*, SB-05-0014-D (2005)(two files) Robinson was censured, placed on probation for two years for violations of violated ERs 1.1, 1.3, and 1.4, Ariz R S Ct. Robinson failed to provide competent representation to his clients, failed to act with reasonable diligence and promptness in representing his clients, and failed to keep his clients reasonably informed about the status of a matter or to promptly comply with reasonable requests for information. There were three aggravating factors found including a prior disciplinary offense, multiple offenses, and substantial experience in the

practice of law The one mitigating factor was based on Robinson's character and reputation

In *In re Reilly*, SB-04-0006-D (2004), Reilly was censured and placed on two years of probation for violations of ERs 1.1, 1.4, 3.2, 3.4 and 8.4(d), Rule 42, Ariz R.S Ct, and Rule 63, Ariz R S Ct Reilly failed to competently represent his client, failed to adequately communicate the status of the case to his client, failed to expedite the litigation, and failed to provide discovery as ordered by the court In addition, Reilly failed to notify the court, his client and opposing counsel that he was on suspension from April 26, 2002 until December 30, 2002, and he engaged in conduct that was prejudicial to the administration of justice There were two aggravating factors found including prior disciplinary offenses and substantial experience in the practice of law There were five mitigating factors found including the absence of a dishonest or selfish motive, personal or emotional problems, timely good-faith effort to make restitution or to rectify the consequences of his misconduct, full and free disclosure to disciplinary board, and cooperative attitude toward proceeding, and remorse

RECOMMENDATION

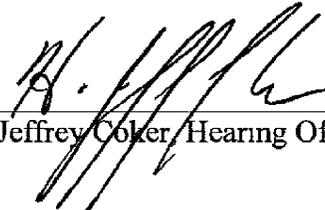
The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct *In re Fioramonti*, 176 Ariz 182, 187, 859 P 2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the administration of justice *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 mitigation factors, and a proportionality analysis, this Hearing Officer recommends the following

- 1 Respondent receive a public censure
- 2 Respondent pay all costs \$658.73

DATED this 15 day of MAY 2007


H Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 24th day of May, 2007.

Copy of the foregoing mailed
this 25th day of May, 2007, to:

John Thomas Banta
Respondent
John Thomas Banta, P.C.
2228 West Northern Avenue, Suite B212
Phoenix, AZ 85021

Copy of the foregoing hand-delivered
this 25th day of May, 2007, to:

Shauna R. Miller
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: Christina Soto