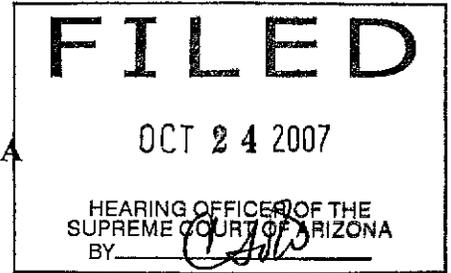


**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**



IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)

File No. 06-1762

PERCIVAL R. BRADLEY,)
Bar No. 017149)

HEARING OFFICER'S REPORT

RESPONDENT)
_____)

PROCEDURAL HISTORY

1. The State Bar filed a Complaint in this matter on June 28, 2007, and service was thereafter accomplished by mail. Respondent filed his answer on July 19, 2007. This matter was assigned to the undersigned on July 11, 2007, and, after having been advised that the matter was settled on August 30, 2007, proceeded to hearing on the Tender of Admissions and Joint Memorandum on September 20, 2007.

FINDINGS OF FACT

2. At all times relevant hereto, Respondent was a member of the State Bar of Arizona having been admitted on October 19, 1996.

COUNT ONE

3. Kathy Williams ("Ms. Williams") retained Respondent to represent her in a personal injury case that resulted from a slip-and-fall at a Starbucks franchise ("Starbucks") on August 10, 2004. Complaint, para.2; Answer, para.2.

4. Respondent agreed to represent Ms. Williams on a contingency fee basis. On August 12, 2004, Ms. Williams signed a Contingency Fee Agreement. Complaint, para. 3, Answer, para 3.
5. The statutory limitation period for filing a lawsuit in Ms. Williams' case was two (2) years from the date of injury, which would start August 10, 2004, and run to August 10, 2006. Complaint, para. 4; Answer, para. 4.
6. Ms. Williams received treatment for her injuries from August 2004 through January 2005. Complaint, para. 5; Answer, para. 5
7. On December 13, 2004, Respondent sent a letter of representation to Starbucks at the franchise location. Respondent informed Starbucks of the status of Ms. Williams' medical treatment and requested that Starbucks contact him regarding insurance coverage and policy limits. Complaint, para. 6; Answer, para 6.
8. On December 15, 2004, Respondent contacted Ms. Williams' medical providers to obtain medical records. Complaint, para. 7; Answer, para 7.
9. By letter dated December 20, 2004, Sally Mixell ("Ms. Mixell") informed Respondent that Gallagher Bassett Services, Inc. ("GBS, Inc ") was the claims administrator for HMS Host Corporation, the operator of the Starbucks franchise. Complaint, para. 8, Answer, para. 8, Ex. 1 attached to the Tender of Admissions.
- 10 Ms. Mixell informed Respondent that she would be handling the claim and that all future correspondence should be directed to her. Complaint, para. 9; Answer, para 9; Ex 1 attached to the Tender of Admissions.

11. Ms. Mixell provided Respondent with various authorization forms to be signed by Ms. Williams and returned to GBS, Inc. In addition, Ms. Mixell requested that Respondent contact her to schedule a time for Ms Mixell to obtain a recorded statement from Ms. Williams. Complaint, para. 10; Answer, para 10;
12. Respondent's phone message log indicates that on January 5, 2005, Ms. Williams informed him that she had concluded her medical care. Complaint, para. 11, Answer, para. 11.
13. On January 14, 2005, Ms Mixell again wrote to Respondent and requested medical records, treatment information and a recorded or written statement from the client. Ms. Mixell also requested that Respondent provide her with his theory of liability. Complaint, para 12, 13; Answer, para. 13; Ex. 2 attached to the Tender of Admissions.
14. On April 21, 2005, Ms. Mixell again wrote to Respondent to inform him that GBS, Inc. was the claims administrator handling Ms. Williams' claim. Ms. Mixell requested medical information, explaining that the records would assist her in properly reserving her file should the time come to discuss settlement. Complaint, para. 14; Answer, para 14, Ex 3 attached to the Tender of Admissions.
15. On April 21, 2005, Ms. Mixell called Respondent's office. The State Bar of Arizona ("SBA") contends that Ms. Mixell verbally communicated to Respondent's paralegal an offer to resolve Ms Williams' claim on the basis of a 50% liability split. See Ex 4 attached to the Tender of Admissions. Respondent contends that he did not receive an offer from the claim adjuster then or later in September 2005 when he spoke to her, and

furthermore, that he did not have a paralegal at all during 2005. The Hearing Officer concludes that there is not sufficient evidence one way or another to conclude that this did or did not happen.

16. On April 29, 2005, Respondent sent a letter to Starbucks at the franchise address Respondent's letter indicated that this was his second attempt to communicate with the company and that if he did not receive a response from either Starbucks or its claims carrier he would have no choice but to pursue legal action on behalf of Ms. Williams Complaint, para. 16; Answer, para 16.
17. On May 3, 2005, Respondent sent a letter identical to the April 29, 2005, letter, again to the Starbucks franchise location. Complaint, para. 17; Answer, para. 17.
18. On June 6, 2005, Respondent received a letter from HS Accounting Services informing him that Ms. Williams' brother and sister had been providing her with financial assistance since October 2004. Complaint, para. 18; Answer, para. 18.
19. The accountant for Ms Williams' brother and sister informed Respondent that the family wished to have the money returned to them at settlement time and asked, "Can this be added to the amount that they will be getting from whomever you are disputing this account with?" Complaint, para. 18; Answer, para 18; Ex. 5 attached to the Tender of Admissions
20. On July 11, 2005, almost a full year since being retained by Ms. Williams, Respondent sent a demand letter to Ms. Mixell at GBS, Inc. The demand letter failed to address the financial assistance provided to Ms. Williams by her family and any claim for those

amounts. Complaint, para. 19; Answer, para. 19, Ex 6 attached to the Tender of Admissions Respondent contends that he represented Ms. Williams only, not her family members, and in his experience he could not make a separate claim for the loan amounts made to Ms. Williams by her family in anticipation of a settlement. For those reasons he did not include any such amounts in his demand letter

21. On September 8, 2005, Ms. Mixell acknowledged receipt of the demand letter and requested information related to missing medical bills and proof of Ms Williams' lost wages. Complaint, para. 20, Answer, para. 20.
22. Respondent's phone message log indicates that he discussed the claim with Ms. Mixell on September 14, 2005 However, there was no further communication with the claims representative subsequent to this date. Complaint, para. 21; Answer, para. 21
- 23 GBS, Inc. closed the claim when the statutory limitation period for the claim expired without a lawsuit being filed. Complaint, para.22; Answer, para 22, Ex. 7 attached to the Tender of Admissions
- 24 Between August 2004 and August 2005, Ms Williams had some communications with Respondent related to her treatment and claim Complaint, para. 23; Answer, para. 23; Ex. 8 attached to the Tender of Admissions
- 25 After August 2005, Respondent failed to respond to Ms. Williams' phone calls or to otherwise communicate with her regarding the status of her case. See Ex's. 8, 9 attached to the Tender of Admissions.

26. Ms. Williams had one telephone conversation with Respondent sometime in 2006. At no time during this conversation did Respondent provide her with a status of her case or inform her of any problems with the claims. See Ex's 8, 9, 10 attached to the Tender of Admissions.
27. Not having been able to communicate with Respondent further during 2006, Ms. Williams expressed her frustration with Respondent's lack of communication to her work supervisor, Connie Robinson ("Ms. Robinson"), at The Gideon Group. Complaint, para. 26; Ex. 10 attached to the Tender of Admissions.
28. On or about October 23, 2006, Ms. Williams submitted a charge against Respondent to the State Bar. Complaint, para. 28; Answer, para. 28.
29. On or about December 13, 2006, Respondent spoke with Ms. Williams' sister, Corine Hatem, who had originally referred Ms. Williams to Respondent. Complaint, para. 29, Answer, para. 29.
30. The State Bar contends that Complainant would offer evidence that Respondent admitted to having mishandled Ms. Williams' case. Respondent denies making such a concession, but would testify that he regretted how things had turned out and the fact that the Complainant was dissatisfied with his representation. Respondent acknowledges that this case was not reflective of his best work. Complaint, para. 29, 30; Answer, para. 29, 30.
31. On March 30, 2007, in response to a request for additional information and a summary of the status of the case, Respondent informed bar counsel that

liability for this claim was denied last year, suit has not been filed. The file is still open in my office. I have let Ms. Williams know through her representatives at Gideon Group in (Dec. '06 & Jan. '07) of my willingness to proceed with claim [sic] . . .

Complaint, para. 31, Answer, para. 31

32. Respondent's March 30, 2007, response to bar counsel failed to acknowledge the expiration of the statutory limitation period on Ms. Williams' claim and the response insinuated that Respondent could continue litigating the claim. Complaint, para. 32, Answer, para. 32 Respondent contends that he consulted with an attorney volunteer from the AADC program, and this attorney advised him to respond in the way that he did to the State Bar. Furthermore, Respondent contends that there were still some options available with respect to Ms. Williams' claim, such as a Rule 60 Motion, an alternative theory of liability against Sky Harbor Airport instead of Starbucks, and while Respondent acknowledges that the chances of success were not great, Respondent would have explored such options had Ms Williams given him her approval to do so

CONCLUSIONS OF LAW

- 33 The Hearing Officer finds by clear and convincing evidence that Respondent violated Rule 42, Ariz.R Sup.Ct; as follows.

ER 1.1: by failing to pay adequate attention to the matter and thoroughly prepare for the representation, and by allowing the statutory limitation period to lapse.

ERs 1 2 and 1 4: by failing to abide by the client's decisions regarding the objectives of the representation and failing to consult with the client as to the means by which the objectives of the representation were to be pursued.

ER 1.3: by failing to pursue the legal claim within the statutory time limitation and by failing to act with reasonable diligence and promptness in representing the client

ER 1.4: by failing to keep the client reasonably informed about the status of the matter and by failing to comply with reasonable requests for information.

ER 3.2: by failing to make reasonable efforts to expedite litigation consistent with the interests of the client.

ER 8.4(d): by engaging in conduct prejudicial to the administration of justice.

ABA STANDARDS

34. ABA *Standard* 3.0 provides that four criteria should be considered: (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 factors
35. This Hearing Officer considered *Standards* 4.4 and 6.2 in determining the appropriate sanction warranted by Respondent's conduct.
36. *Standard* 4.4 provides Absent aggravating or mitigating circumstances, upon application of the factors set out in *Standard* 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client.

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, and causes injury or potential injury to a client.

37. *Standard 6.2* provides: Absent aggravating or mitigating circumstances, upon application of the factors set out in *Standard 3.0*, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim . . . :

6.23: Reprimand [Censure in Arizona] is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

38. Based upon the conditional admissions in this matter, the presumptive sanction with regard to the most serious admissions of misconduct under *Standards 4.4* and *6.2* is censure.

A) The Duty Violated

39. Respondent negligently failed to communicate properly with his client and failed to expedite his client's claim, causing actual injury. Respondent admitted that his conduct, taken as a whole, has violated his duties to his client, the profession and the legal system.

B) The Lawyer's Mental State

40. The Hearing Officer finds that Respondent's conduct was done negligently.

C) The Extent of the Actual or Potential Injury

41. The SBA would argue that Respondent's conduct in this matter caused actual injury to his client, the legal profession and legal system given the inherent harm that results from failing adequately to communicate with his client and failing to protect his client's claim by filing a lawsuit within the statute of limitations. Respondent's client was forced to seek intervention through her sister and her employer because she could not get

Respondent to respond to her Respondent responds that his conduct was, in essence, one of malpractice.

D) The Aggravating and Mitigating Circumstances

42. The Hearing Officer finds that the following factors should be considered in aggravation

- *Standard 9.22(b)* – dishonest or selfish motive. (Respondent covered up his failure to file the lawsuit on time to avoid the negative repercussions from his client and probable civil liability.)
- *Standard 9.22(d)* – multiple offenses (multiple ER violations).
- *Standard 9.22(f)* – submission of false evidence, false statement, or other deceptive practices during the disciplinary process (Respondent answered the bar charge stating to the SBA that he told his client that her case was still open even after the statutory imitations period expired.)
- *Standard 9.22(i)* – substantial experience in the practice of law (Respondent was admitted in Arizona in 1996)

43 The Hearing Officer finds that the following factors should be considered in mitigation:

- *Standard 9.23(a)* – absence of prior disciplinary record. Respondent did have a prior diversion and the SBA argues that this diversion should still be considered when deciding whether to give weight to Respondent’s “absence of prior disciplinary record” Respondent urges that the Hearing Officer conclude that he has no prior disciplinary history because “diversion is an alternative to formal discipline”. The Hearing Officer concludes that 9.23(a) will not be considered as a mitigating factor.

- *Standard 9.23(e)* – full and free disclosure to a disciplinary board or cooperative attitude toward proceedings
- *Standard 9 23(g)* – character or reputation. There was one letter submitted by the Respondent attesting to his good character. See Ex. A
- *Standard 9.23(l)* – remorse Respondent admits telling his client that his handling of her case was not reflective of his best work, and Respondent is genuinely remorseful for his failures with regard to handling Ms. Williams’ case.

PROPORTIONALITY

44. 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. *See Peasley*, 208 Ariz. at 35, 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 cases set forth below demonstrate that a censure with one year of probation is an appropriate sanction in this matter.
45. In *In re Abernathy*, SB-05-0171-D (2006), Abernathy was censured and placed on one year of probation with LOMAP and MAP for violations of Ariz R Sup Ct., Rule 42, specifically ERs 1.1, 1.2, 1.3, 1.4, 3 2, 3 4 and 8.4(d) Abernathy engaged in a pattern of neglect in handling client matters. She failed to represent clients diligently and competently. She knowingly failed to comply with a court order or rule by failing to provide the court with the ordered proof of not charging her client legal fees; she failed to appear at a show cause hearing; she failed to properly request a continuance of the hearing, and she failed to appear at the return hearing. Abernathy also failed to expedite litigation and engaged in conduct that was prejudicial to the administration of justice.

Two aggravating factors were found to exist: prior disciplinary offenses and indifference to making restitution. There were five mitigating factors found: absence of a dishonest or selfish motive; personal or emotional problems; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; mental disability or chemical dependency including alcoholism or drug abuse; and imposition of other penalties or sanctions

46. In *In re Stevens*, SB-06-0157-D (2006), Stevens was censured and placed on two years of probation with LOMAP and MAP and ordered to pay restitution for violations of Ariz R.Sup.Ct., Rule 42, specifically ERs 1.2, 1.3, 1.4 and 8.4(d). Over a three-year period, Stevens failed to complete work for which he was retained and he failed to adequately communicate with his client. Two aggravating factors were found: prior disciplinary offenses and substantial experience in the practice of law. In mitigation four factors existed: absence of a dishonest or selfish motive, personal or emotional problems; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and character or reputation.

RECOMMENDATION

47. 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).

48. 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).
- 49 The Hearing Officer concurs with the parties' Tender of Admissions and recommends the following sanction:
- 1 Respondent will receive a censure for violations of Rule 42, Ariz.R.Sup Ct., specifically ERs 1.1, 1.2, 1.3, 1.4, 3.2 and 8.4(d)
 - 2 Respondent will be placed on one year of probation with the terms and conditions of probation to include a practice monitor and Respondent's agreement to any LOMAP probation contract deemed appropriate.
 - 3 Respondent will pay all costs and expenses incurred by the State Bar in this proceeding.
 4. In the event that Respondent fails to comply with the terms of probation and information thereof is received by the State Bar, bar counsel shall file a Notice of Non-Compliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz.R.SupCt. The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practicable time, but in no event later than thirty days after receipt of notice, to determine whether a term of probation had been breached, and, if so, to recommend an appropriate action and response. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove non-compliance by clear and convincing evidence.

DATED this 24th day of October 2007

H. Jeffrey Coker /cs
H. Jeffrey Coker, Hearing Officer

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

Copy of the foregoing mailed
this 24th day of October, 2007, to:

Nancy A. Greenlee
Respondent's Counsel
821 East Fern Drive North
Phoenix, AZ 85014-3248

David L. Sandweiss
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: 