

FILED

SEP 08 2008

BEFORE THE DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ARIZONA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
DAVID E. WATTEL,)
Bar No. 012405)
)
RESPONDENT)

Nos 07-0609, 07-0691, 08-0225

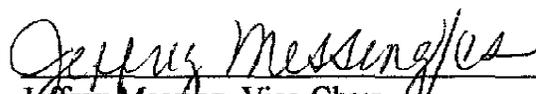
**DISCIPLINARY COMMISSION
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on August 9, 2008, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the Hearing Officer's Report filed June 20, 2008, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent and Joint Memorandum in Support of Discipline by Consent providing for censure and costs

Decision

Having found no facts clearly erroneous, the seven members¹ of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for censure and costs including any costs incurred by the Disciplinary Clerk's office.²

RESPECTFULLY SUBMITTED this 8th day of September 2008


Jeffrey Messing, Vice-Chair
Disciplinary Commission

¹ One lawyer member seat remains vacant. Commissioners Belleau and Katzenberg did not participate in these proceedings Mark Sifferman, Esq , a hearing officer from Phoenix participated as an ad hoc member

² A copy of the Hearing Officer's Report is attached as Exhibit A Total costs and expenses incurred by the State Bar reflect \$643 75

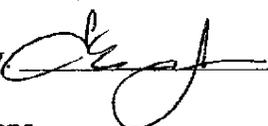
1 Original filed with the Disciplinary Clerk
this 8th day of September, 2008.

2 Copy of the foregoing mailed
3 this 9th day of September, 2008, to.

4 Martin Lieberman
5 Hearing Officer 7W
6 *Office of the State Capital Post Conviction Defender*
3443 North Central Avenue, Suite 706
Phoenix, AZ 85012-001

7 Stephen G Montoya
8 Respondent's Counsel
9 *Montoya Jimenez, P A.*
3200 N Central Ave , Suite 2550
Phoenix, AZ 85012

10 Amy K Rehm
11 Senior Bar Counsel
12 State Bar of Arizona
13 4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

14 by 
15 /mps

1 not discuss fees

2 4 Rivera was sent a fee agreement; he never signed it. Thereafter, there was no
3 discussion of the failure to execute a fee agreement.

4 5 Wattel never suggested that the representation would be free and assumed that the
5 fee agreement had been signed. Rivera contends that, despite receiving the fee agreement,
6 he believed that representation would be without fees and that the fee agreement was sent in
7 error.

8 6 Wattel competently represented Mr. Rivera and settled the case. An itemized
9 statement was sent to Rivera including a reduced amount of attorney's fees.

10 7 Rivera claims he immediately contacted Wattel's office to dispute the attorney's
11 fees.

12 8. Wattel tried to work with Rivera to settle the dispute by further reducing his fee
13 and, when that was unsuccessful, agreed to and participated in fee arbitration. The
14 arbitration panel determined that it did not have jurisdiction over the issue of whether or not
15 a fee should be paid. Rivera admitted that the fee declared in the fee agreement was
16 reasonable.

17 9 After the failed arbitration, Rivera complained to the State Bar. He had not yet
18 received any portion of the settlement by then. Although Wattel claims he told Rivera to
19 accept the amount tendered without prejudice to his right to seek recovery of the disputed
20 attorney's fees, a letter sent with the check advised that " . . . cashing the check will
21 resolve the matter in its entirety [sic] "

22 **COUNT TWO (07-0691)**

23 1 Wattel was retained by Eberle in July, 2005, in connection with property damage
24 suffered in a car accident in Savannah Georgia in June, 2005.

25 2 A signed fee agreement called for a one third contingency fee without mention of
26 out-of-state attorneys.

27 3 No one at Wattel's firm was licensed in Georgia.

28

1 **CONCLUSIONS OF LAW**

2 **COUNT ONE (07-0609)**

3 1 Respondent's conduct violated ER 1 5 (failure to have signed contingency fee
4 agreement)

5 **COUNT TWO (07-06991)**

6 1. Respondent's conduct violated ER 1 4 (a)(3) (failure to keep client reasonably
7 informed) and ER 5 5 (unauthorized practice of law)

8 **COUNT THREE (08-0225)**

9 1 Respondent's conducted violated ER 1 2 (a) (failure to adequately consult with
10 client)

11 **Discussion of ABA's Standards**

12 Lawyer discipline is imposed not to punish the lawyer but to protect the public and
13 deter future misconduct *In re Fioramonti*, 176 Ariz 182, 187, 859 P 2d 1315, 1320 (1993)
14 It is important to instill public confidence in the bar's integrity *Matter of Horwitz*, 180 Ariz.
15 20, 29, 881 P 2d 352, 261 (1994) There is also a concomitant responsibility to show fairness
16 to the Respondent *In re Scholl*, 200 Ariz 222, 25 P 3d 710 (2001)

17 To determine the appropriate sanction, the facts of the case, the *Standards*, and the
18 proportionality of discipline imposed in analogous cases should be considered *Matter of*
19 *Bowen*, 178 Ariz 283, 286, 872 P 2d 1235, 1238 (1994) The ABA's *Standards* require that
20 the following criteria be considered: (a) the duty violated, (b) the lawyer's mental state, (c)
21 actual or potential injury, and (d) aggravating and mitigating factors Neither the nature of
22 the lawyer's practice nor the effect on the lawyer's livelihood are considered *In re Shannon*,
23 179 Ariz 52, 71, 876 P 2d 548, 567 (1994). Discipline must be tailored to the facts of each
24 case *In re Wolfram*, 174 Ariz 49, 59, 847 P 2d 94, 104 (1993).

25 **The Duty Violated**

26 Given the conduct in this matter, it was appropriate to consider Standards 7.3
27 (negligent conduct of duty owed to profession), and 4 43 (negligent client communications)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Mental State

Respondent's conduct was negligent

Actual or Potential Injury

There was no injury to a client

Aggravating and Mitigating Circumstances

Applicable aggravating factors as recognized in the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1991 ed) [hereinafter, *Standards*], § 9 22, are as follows:

- a prior disciplinary offenses (two)
- d multiple offenses
 - 1. Substantial experience in the practice of law (twenty years)

Applicable mitigating factors as recognized in the *Standards*, § 9 32, are

- e full and free disclosure / cooperative attitude towards proceedings

Proportionality Analysis

Discipline in each case must be tailored to the individual case *Matter of Riley*, 142 Ariz. 604, 615 (1984) Review of similar cases reveals the following: *Piekarski*, SB 07-0180-D (2007) involved the negligent unauthorized practice of law when the lawyer was suspended which renders the conduct in that case more egregious than the instant one *Piekarski* was censured *Martin*, SB 06-0174-D (2006) involved negligence in client communications, the lawyer received a censure.

Discussion of Appropriate Sanction

Censure is the appropriate sanction for negligence and for Respondent's conduct After review of analogous cases, aggravating and mitigation factors, and the fact that these events preceded Wattel's placement and successful completion of probation, I find that this sanction provides for the protection of the public, the deterrence of future misconduct, and maintaining the public's trust in the integrity of the bar as a profession

Based upon a proportionality review, the ABA's *Standards*, and the weight of the

1 aggravating and mitigating circumstances, it is recommended that Respondent be Censured
2 and be ordered to pay costs. By agreement of the parties, no restitution is due on any of the
3 three counts

4 Accordingly, it is recommended that the agreement be accepted.

5
6 DATED this 20th day of June, 2008

7
8 Martin Lieberman /MLM
9 Martin Lieberman
Hearing Officer 7W

10 Original filed with the Disciplinary Clerk
11 this 20th day of June, 2008

12 Copy of the foregoing mailed
13 this 23rd day of June 2008, to:

14 Amy Rehm
15 Bar Counsel
16 State Bar of Arizona
17 4201 N 24th Street, Suite 200
18 Phoenix, AZ 85016

19 Stephen G. Montoya
20 Montoy Jimenez PA
21 3200 North Central Avenue, Suite 2550
22 Phoenix, AZ 85012
23 Respondent's Counsel

24 by Nelta Manelkar

25
26
27
28