

FILED

JAN 16 2008

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

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

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

RONALD G. FINCH,
Bar No. 004286

RESPONDENT.

) File Nos. 06-1828, 06-2041, 07-1015
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) **HEARING OFFICER'S REPORT**
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PROCEDURAL HISTORY

1. Probable Cause was found in this matter on July 9, 2007. The Complaint was filed on July 31, 2007. Service was accomplished on August 3, 2007. The case was assigned to the undersigned on August 8, 2007. An Answer was filed on August 22, 2007. The Initial Case Management Conference was held on September 6, 2007. Thereafter the case was settled and a Notice of Settlement was filed on October 12, 2007. At the Final Hearing on November 2, 2007, the parties advised the Hearing Officer that new charges might be filed in the case and they needed more time to investigate. The matter was reset for Final Hearing on December 14, 2007. At the Final Hearing the parties advised that no new charges would be brought and we proceeded on the original Tender of Admissions and Joint Memorandum.

FINDING OF FACT

2. At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted on October 11, 1975.

COUNT ONE (File No. 06-1828)

- 3 In July 2004, Marie Ledan (“Ms. Ledan”) hired Respondent to represent her in an immigration matter
- 4 On behalf of Ms Ledan, Respondent requested Asylum, Withholding of Removal, and relief under the Convention Against Torture in the United States Emigration Court.
5. On January 21, 2005, a hearing on the merits of those claims for relief was held. Respondent represented Ms. Ledan in this hearing.
6. On February 28, 2005, the Immigration Judge issued a decision that denied each of Ms. Ledan’s claims for relief. As a result of that decision, the Court ordered that Ms. Ledan be removed from the United States
7. Respondent filed an appeal of the Immigration Judge’s decision on behalf of Ms. Ledan. On March 10, 2006, the Board of Immigration Appeals affirmed the decision of the Immigration Judge
- 8 The deadline to file a Petition for Review of the Board of Immigration Appeals decision in Ms. Ledan’s case with the United States Court of Appeals for the Ninth Circuit in San Francisco, California, was Monday, April 10, 2006.
9. Respondent drafted a Petition for Review and Stay of Removal on behalf of Ms. Ledan and mailed it to the Ninth Circuit Court of Appeals for filing.
10. The Ninth Circuit Court of Appeals received Ms Ledan’s Petition for Review and Stay of Removal after the filing deadline of Monday, April 10, 2006.
11. Respondent contends that he believed that he had instructed his staff to send the Petition for Review and Stay of Removal via Federal Express. However, Respondent later learned that his staff mailed the documents via regular, first-class mail.

12. Respondent further contends that had the documents been sent via Federal Express, the Ninth Circuit Court of Appeals would have received them in time for the April 10, 2006, filing deadline
13. Respondent admits that it was his ultimate responsibility to meet the April 10, 2006, filing deadline for the Petition for Review and Stay of Removal.
14. On Tuesday, April 11, 2006, one day after the deadline for filing, Ms. Ledan's Petition for Review and Stay of Removal was filed in the Ninth Circuit Court of Appeals.
15. Respondent did not file a Motion to Extend Time for Filing of this pleading with the Ninth Circuit Court of Appeals.
16. Respondent believes that there was no need to file any Motion to Extend Time for Filings, as the tardy filing of the pleadings was the result of a mailing error.
17. On September 27, 2006, the Ninth Circuit Court of Appeals dismissed Ms. Ledan's Petition for Review due to lack of jurisdiction. The merit of Ms. Ledan's Petition for Review was never evaluated
18. Respondent self reported the allegations that are set forth in Count One

COUNT THREE (File No. 07-1015)

19. On June 29, 2004, by Order of the Immigration Court, Sindy Gonzalez-Lopez ("Ms. Gonzalez-Lopez") was ordered removed in absentia from the United States.
20. In March 2006, Ms. Gonzalez-Lopez hired Respondent to represent her in an attempt to reverse the Order of Removal. On March 13, 2006, Respondent filed a Motion to Reopen Ms. Gonzalez-Lopez' case.

21. An Individual Hearing on the merits of Ms Gonzalez-Lopez' Motion to Reopen was scheduled for May 15, 2007.
22. Respondent knew of the scheduled date on which the hearing on the merits of Ms. Gonzalez-Lopez' Motion to Reopen was to be held.
23. Respondent thereafter failed to notify Ms. Gonzalez-Lopez of the May 15, 2007, Individual Hearing date to be held in her matter.
24. Respondent believes that his staff advised Ms Gonzalez-Lopez of the upcoming hearing. Respondent admits that it was his ultimate responsibility to ensure that Ms. Gonzalez-Lopez was advised of the upcoming hearing.
25. Respondent and Ms. Gonzalez-Lopez were given until January 24, 2007, to file an Application for Cancellation of Removal to accompany Ms. Gonzalez-Lopez' Motion to Re-open.
26. Respondent failed to notify Ms. Gonzalez-Lopez of the deadline to file the Application for Cancellation of Removal.
27. Respondent believes his staff advised Ms. Gonzalez-Lopez of the impending deadline to file an Application for Cancellation of Removal to accompany Ms Gonzalez-Lopez' Motion to Re-open.
28. Respondent admits that it was his ultimate responsibility to ensure that Ms. Gonzalez-Lopez was advised of the impending deadline to file an Application for Cancellation of Removal to accompany Ms. Gonzalez-Lopez' Motion to Re-open
29. On March 5, 2007, approximately six (6) weeks after the deadline to do so, Respondent filed the Application for Cancellation of Removal on behalf of Ms. Gonzalez-Lopez.

- 30 On March 6, 2007, as a result of Respondent's late filing of the Application for Cancellation of Removal, the Immigration Judge denied Ms. Gonzalez-Lopez' Motion to Reopen.
31. As a result of Respondent's late filing of Ms. Gonzalez-Lopez' application, the Immigration Court deemed that Ms. Gonzalez-Lopez had abandoned her request for Cancellation of Removal.
32. Respondent self reported the allegations that are set forth in Count Three.

CONCLUSIONS OF LAW

33. The Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz.R Sup Ct , specifically ER's 1.3, 1.4, 3.2, and 8.4 by.
- Failing to diligently represent his clients (ER 1.3).
- Failing to keep a client reasonably informed about the status of a matter (ER1.4 (3))
- Failing to expedite the litigation on behalf of a client (ER 3.2).
- Engaging in conduct that is prejudicial to the administration of justice (ER 8.4(d))
- 34 In exchange for Respondent's Tender of Admissions, the State Bar conditionally agrees to dismiss the allegations set forth in Count Two (File No. 06-2041), specifically the alleged violation of ER's 1.4, 1.5, and 1.16, based on evidentiary concerns.
35. *Standard* 4.43 states. "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."
36. *Standard* 6.23 states: "Reprimand (censure in Arizona) is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes potential injury to a client or other party, or causes interference with a legal proceeding."

37. Accordingly, the presumptive sanction for the admitted conduct is censure

ABA STANDARDS

38. *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; (4) the existence of aggravating or mitigating factors.

The Duty Violated

39. Respondent admits that he was negligent in his failures to file a timely appeal for Marie Ledan before the Ninth Circuit Court of Appeals, and to file a timely Application for Cancellation of Removal on behalf of Sindy Gonzalez-Lopez. Respondent also admits that he was negligent in failing to notify Ms Gonzalez-Lopez of an Individual Hearing date and the deadlines to file the Application for Cancellation of Removal. Respondent's actions caused injury to both clients in that the merits of Ms. Ledan's appeal were never evaluated and Ms. Gonzalez-Lopez was deemed to have abandoned her request for Cancellation of Removal.

40. Respondent admits that he failed to file the Petition for Review on behalf of Ms. Ledan by the court-ordered deadline. Respondent admits that he failed to file the Application for Cancellation of Removal by the court-ordered deadline. As a result of these late filings the merits of both pleadings were never evaluated

The Lawyer's Mental State

41. The Hearing Officer finds Respondent's mental state on all counts was negligent.

Actual or Potential Injury

- 42 Respondent's conduct caused actual and potential injury to Complainants, although Respondent continues to assist Ms. Gonzalez-Lopez in her case

Aggravation/Mitigation

Aggravating Factors

43. Under *Standard* 9.22(a), Respondent has a prior disciplinary offense. Respondent received an Informal Reprimand in August of 2004 for violation of Rule 42, Ariz R Sup.Ct., specifically, ER 8.4(d). Respondent signed, or directed his office staff to sign, immigration clients' names to Immigration Court Notice of Appearance forms. Respondent was also ordered to pay \$300 and costs. Respondent asserts that the prior violation is not substantially related to the conduct alleged herein and should receive minimal weight in aggravation.
44. Under *Standard* 9.22(c), Respondent has engaged in a pattern of misconduct. The two cases that form the basis of this Agreement for Discipline by Consent occurred in July and June of 2004, respectively. Respondent's misconduct that resulted in the prior Informal Reprimand also occurred in the summer of 2004. Respondent asserts that because he has also engaged in a pattern of good-faith efforts to rectify the consequences of his misconduct, including his self-reports to the Bar, and further because Respondent has a high volume practice that he attempts in good faith to manage in compliance with the Ethical Rules, Respondent argues that this factor should receive minimal weight in aggravation.

45. Under *Standard* 9.22(d), Respondent has committed multiple offenses. Respondent failed to meet court-ordered deadlines in two separate matters on behalf of two separate clients, and each client suffered consequences.

46. Under *Standard* 9.22(i), Respondent has substantial experience in the practice of law. Respondent has been practicing law since 1975. His immigration practice has been open for seven years.

Mitigating Factors

47. Under *Standard* 9.32(b), there is no evidence of a dishonest or selfish motive for Respondent's conduct.

48. Under *Standard* 9.32(d), Respondent has attempted to rectify the consequences of his misconduct. Respondent self-reported two of the counts to the State Bar. Additionally, Respondent continues to represent Ms. Gonzalez-Lopez in a pending Motion to Reopen her case before the Board of Immigration Appeals.

49. Under *Standard* 9.32(e), Respondent has been very cooperative in this disciplinary proceeding. As to Counts One and Three, which form the basis of the Tender of Admissions and Agreement, Respondent freely self-reported both instances of misconduct.

50. Under *Standard* 9.32(l), Respondent is remorseful for the actions that led to Counts One and Three, as is evident by his self-reports to the State Bar.

51. The Hearing Officer found Respondent to be extremely remorseful and contrite about his actions that form the basis of the Complaint against him. The Hearing Officer also concludes that Respondent has taken the necessary steps to assure that he does not have

similar problems in the future. The Hearing Officer was also impressed that Respondent self reported his conduct, thus showing honesty and remorse.

52 The parties submit, and the Hearing Officer concurs, that the aggravating and mitigating factors are not sufficient to deviate from the presumptive sanction in this case of censure, followed by a period of probation.

PROPORTIONALITY

53 The Supreme Court has held in order to achieve the purposes of discipline, and proportionality when imposing discipline, the discipline in each situation must be tailored to the individual facts of the case. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983).

54. In *In re Gawolski*, SB-94-0015-D (1994), Mr. Gawolski handled four separate lawsuits, two of which were dismissed from the inactive calendar because Mr. Gawolski failed to ensure service of the Complaint or failed to follow proper firm procedures when the matter was docketed on the inactive calendar. Mr. Gawolski violated ER's 1.3, 1.4, and 3.2 of Rule 42, Ariz.R.Sup Ct. Three aggravators were found in contrast to seven mitigating factors. Mr. Gawolski was censured.

55. In the present matter, Respondent negligently failed to ensure the timely filing of Ms. Ledan's appeal before the Ninth Circuit Court of Appeals. Respondent also failed to timely file Ms. Gonzalez-Lopez Application for Cancellation of Removal. In both matters, the Court did not evaluate the merits of their respective cases. Respondent's sanction is appropriate, because he violated similar ethical rules.

56. In *In re Dalke*, SB-02-0142-D (2002), Ms. Dalke failed to file appeals of parental rights severances for two clients, which resulted in the dismissal of the appeals. Ms. Dalke hired another attorney to draft and file a Petition for Review, but Ms. Dalke did not

supervise that attorney and the Petition was not filed timely either. Ms. Dalke violated ER's 1.1 and 1.3 of Rule 42, Ariz.R.Sup Ct Unlike the present matter, there was also a trust account violation. Three aggravators balanced three mitigators and Ms Dalke was censured.

57. In *In re Magid*, SB-02-019-D (2002), the New Jersey Supreme Court reprimanded Mr. Magid on June 7, 2001 Mr. Magid represented a client in an administrative personnel matter. After moving to Arizona, Mr. Magid failed to file the Motion to Withdraw within the allotted 30 days and the case was dismissed without prejudice Mr Magid also failed to file an emergency Writ of Habeas Corpus in another matter. As a result, Mr. Magid's client served five years and he was ineligible for parole Mr. Magid assured his client that he had prepared an Appeal Notice, Requests for Emergency Relief, Writ of Habeas Corpus and a Request of Stay of the Parole Board's order, but failed to file the same. The action was then commenced as a Reciprocal Discipline matter under Rule 58, Ariz.R.Sup.Ct., and Mr. Magid received a censure.
58. In *In re Lipartito*, SB-06-0164-D (2006), Mr. Lipartito violated ER's 1.3, 1.16, 3.2, and 8.4(d) of Rule 42, Ariz.R.Sup.Ct. Two aggravators weighed against three mitigators and Mr. Lipartito received a censure.

RECOMMENDATION

59. The purpose of lawyer discipline is not to punish the lawyer but to protect the public and deter future misconduct. In *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (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, 881 P 2d. 352 (1994)

60. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's Standards for Imposing Lawyer Sanctions and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 872 P.2d. 1235 (1994)

61. Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and the proportionality analysis, this Hearing Officer recommends the following:

1. Respondent shall be censured.
2. Respondent shall receive probation for 18 months, including LOMAP.
3. Respondent shall pay all costs of these proceedings.

DATED this 16th day of January, 2008.

H. Jeffrey Coker /s/
H. Jeffrey Coker, Hearing Officer 6R

Original filed with the Disciplinary Clerk
this 16th day of January, 2008.

Copy of the foregoing mailed
this 17th day of January, 2008, to:

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