

BEFORE THE ALASKA BAR ASSOCIATION
AREA HEARING COMMITTEE
THIRD JUDICIAL DISTRICT

In The Disciplinary Matter)
Involving)
)
 GLEN D. MARK,)
)
 Respondent.)
_____)

ABA Membership No. 8412159

ABA File Nos. 1991D010, 1991D089 & 1991D127

STIPULATION FOR DISCIPLINE BY CONSENT PURSUANT
TO ALASKA BAR RULE 22(h)

Pursuant to Alaska Bar Rule 22(h), Glen D. Mark,
Respondent, and Mark Woelber, Assistant Bar Counsel, stipulate
as follows:

JURISDICTION AND VENUE

1. Mr. Mark is and was at all times pertinent an
attorney at law admitted to practice by the Supreme Court of
Alaska, and a member of the Alaska Bar Association. At all
times relevant, Mr. Mark practiced law in Anchorage, Third
Judicial District, Alaska.

2. Mr. Mark is and was at all times pertinent
subject to the Alaska Code of Professional Responsibility and
to Part II, Rules of Disciplinary Enforcement, Alaska Bar
Rules, giving the Disciplinary Board jurisdiction to dispose of
this matter.

STIPULATION FOR DISCIPLINE

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FACTS COMMON TO ALL COUNTS

Ferati grievance (ABA File No. 1991D127)

3. Ferat Ferati hired Mr. Mark in 1989 to represent him in a deportation action brought by the Immigration and Naturalization Service (INS). Mr. Ferati paid Mr. Mark \$1,500 to represent him through the deportation hearing. After hearing, the immigration judge ordered Mr. Ferati deported. On December 4, 1989 Mr. Mark filed a notice of appeal. In this notice Mr. Mark identified himself as appellant's attorney and stated his intent to file a written brief. Records of the Board of Immigration Appeals showed Mr. Mark as attorney of record. Mr. Mark received no pay from Mr. Ferati in connection with the appeal, and according to Mr. Mark he did not agree to represent Ferati on appeal, but only filed the notice of appeal for Ferati's convenience.

4. Mr. Mark closed his law practice in Anchorage in June 1990, left Alaska and established residence in Oregon. He deposited Mr. Ferati's file in the office of another lawyer. Mr. Ferati asserts that Mr. Mark furnished no oral or written notice of the intent to close his office or the disposition of the file. Mr. Mark acknowledges that he did not notify Mr. Ferati in writing that he was closing his practice or leaving his file with another lawyer. Mr. Mark asserts that he was fired by Mr. Ferati and was asked to return his file. Mr. Mark asserts that he orally informed a previous representative of

Mr. Ferati's that he was leaving Alaska and where the file could be picked up. Mr. Mark did not withdraw as attorney of record in the immigration appeal.

5. The Office of the Immigration Judge set a briefing schedule and notified Mr. Mark at his address of record. Mr. Mark did not file a brief and did not notify Mr. Ferati that he would not file a brief. INS moved to dismiss the appeal for lack of a timely brief. Mr. Ferati received notice of this motion and retained substitute counsel, who successfully moved to file a late brief and preserved the appeal.

Rivas grievance (ABA File No. 1991D089)

6. Jose Rivas hired Mr. Mark in 1989 to represent him in an immigration action. After Mr. Rivas was notified that he would not receive political asylum and would be required to depart the United States, Mr. Mark around February 12, 1990 entered his appearance in order to ensure timely notice to Mr. Rivas of further proceedings to contest deportation.

7. Mr. Mark closed his practice in June 1990. He did not inform Mr. Rivas that he was leaving Alaska, did not otherwise communicate with Mr. Rivas, and took no other action on Mr. Rivas's behalf. According to Mr. Rivas he attempted unsuccessfully to contact Mr. Mark, but assumed that Mr. Mark was preparing his defense to the deportation proceeding.

According to Mr. Mark, he received no notices of hearings or other actions concerning Mr. Rivas and no action was required until a hearing was set.

8. Mr. Rivas received a notice to present himself at INS offices on September 13, 1990. According to Mr. Mark he did not receive a copy of this notice, though it was served on him at his record address. When Mr. Rivas appeared at INS, he was arrested. He was required to post a \$750 release bond, and missed work resulting in lost wages of approximately \$400 because of the arrest and related proceedings. Mr. Rivas then retained substitute counsel, with whose assistance he ultimately avoided deportation. Mr. Mark refunded all attorney fees (\$2,500) paid to him by Mr. Rivas.

Olah grievance (ABA File No. 1991D127)

9. Sandor Olah hired Mr. Mark in 1989 to represent him in deportation proceedings. After a hearing in April 1989 the immigration judge granted Mr. Olah's request for relief from the INS's deportation action. INS appealed. Mr. Mark appeared as Mr. Olah's attorney of record on the appeal. According to Mr. Mark he did not agree and was not paid to represent Mr. Olah on appeal, but remained as attorney of record for Olah's convenience. Mr. Mark asserts that he told Mr. Olah he could not represent him on appeal as he would be leaving Alaska and for Mr. Olah to stay in touch.

10. As attorney of record, Mr. Mark was served with a

briefing schedule, INS's brief, and related papers; he was also served with notice of an appointment for Mr. Olah to meet with immigration officials.

11. Mr. Mark did not notify Mr. Olah when he closed his practice in June 1990 and left Alaska, he did not file an appeal brief or otherwise defend the appeal, and he did not notify Mr. Olah of the immigration meeting. Mr. Olah's failure to appear at the meeting resulted in forfeiture of his bond, and time in which to contest the forfeiture decision expired unopposed.

12. Mr. Mark asserts that during 1990 he was unable to contact Mr. Olah, who had quit his job and moved. Mr. Mark asserts that he attempted to locate Mr. Olah by writing to him at his last known address, contacting his last known employer, and through telephone information service. According to Mr. Mark, in response to a letter he received from Mr. Olah's wife Juanita in February 1991, in which she first informed him of Olah's address in Copper Center, he delivered a letter dated March 5, 1991 to Olah regarding the overdue appeal brief, bond forfeiture and related matters and advised Olah to attend to these matters immediately. According to Juanita, Mr. Mark at all times had Mr. Olah's address in Copper Center, Alaska, and other personal contacts, but the Olahs heard nothing from Mr. Mark through April 1991.

13. The Board of Immigration Appeals on April 3, 1991 reversed the decision of the immigration judge and ordered Mr. Olah's deportation. The written decision was served on Mr. Mark. He forwarded a copy to Mr. Olah with a note attached advising him to consult with an attorney.

14. Mr. Olah was jailed pending deportation, decided to forego further opposition because of its financial and emotional expense, and was deported to Hungary in December 1991. Juanita and their three children (all U.S. citizens) travelled to Hungary at their own expense (\$3,652). Finding living conditions intolerable there, Juanita and the children returned to the United States, again at their own expense.

DISCIPLINARY RULE VIOLATIONS

15. Disciplinary Rule 2-110(A)(2) provides:

[A] lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

16. Mr. Mark violated DR 2-110(A)(2) by failing to adequately notify his clients in these matters that he was closing his practice, by failing to avoid foreseeable prejudice to their interests, by failing to withdraw as attorney of record where necessary and, in Mr. Ferati's case, by failing to properly dispose of the client file.

17. Disciplinary Rule 6-101 provides:

(A) A lawyer shall not:

...

(3) Neglect a legal matter entrusted to him.

18. Mr. Mark violated DR 6-101(A)(3) by failing to adequately communicate with his clients concerning his intent to close his practice and concerning steps necessary for them to protect their interests, and by failing to take necessary steps to protect or advance their interests while he was their attorney of record.

SANCTION AND CONDITIONS OF DISCIPLINE

19. Reprimand. The appropriate sanction for Mr. Mark's misconduct is described in the ABA Standards for Imposing Lawyer Sanctions:

Reprimand 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.

American Bar Association, Standards for Imposing Lawyer Sanctions §4.43 (1986) (hereinafter, ABA Standards), adopted for guidance in In re Buckalew, 731 P.2d 48 (Alaska 1986). The parties agree that this section of the ABA Standards should govern the discipline to be imposed in this case. The parties understand that a "reprimand" under the ABA Standards may refer to either a censure by the Alaska Supreme Court under Bar Rule 16(a)(4) or to a reprimand by the Disciplinary Board under Bar

Rule 16(a)(5). See also ABA Standards §2.5 commentary. The parties agree that the discipline to be imposed pursuant to this stipulation is a reprimand by the Disciplinary Board.

20. Restitution. As a condition of stipulated discipline Mr. Mark will make restitution to Mr. Rivas in the amount of \$400 and to Mr. Olah (or his family) in the amount of \$2,000. Bar Counsel has specifically considered Mr. Mark's agreement to make restitution as a mitigating factor in reaching this stipulation. See ABA Standards §9.32(d). Mr. Mark will have one year from the date of approval of this stipulation within which to pay the entire \$2,400 in restitution. All payments will be made by check payable to the Mr. Rivas and Mr. Olah and delivered to the Alaska Bar Association. The Bar Association will disburse the checks to Mr. Rivas and Mr. Olah, or to their counsel. Pursuant to Bar Rules 15(a)(8) and 16(d), failure by Mr. Mark to make timely restitution will be a disciplinary offense and grounds for reconsideration of this matter by Bar Counsel or the Disciplinary Board.

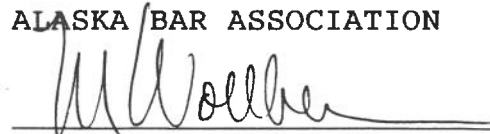
21. Transfer to inactive status. As a further condition of stipulated discipline, Mr. Mark agrees to request transfer to inactive Alaska Bar membership pursuant to Alaska Bar Bylaws Art. II §2(a) within 30 days of final disposition of a pending Alaska Supreme Court appeal, Clark v. ARG Inc., S-5545, which is his only remaining representation in Alaska.

Should Mr. Mark at any time in the future apply for transfer to active Alaska Bar membership under Art. II §4 of the Bylaws, the Board of Governors may consider his misconduct in these matters as it bears on his character and fitness to practice law.

The parties hereby stipulate to this discipline pursuant to Alaska Bar Rules 22(h) and 16(d), subject to approval by the Disciplinary Board.

DATED this 25 day of May, 1993 at Anchorage, Alaska.

ALASKA BAR ASSOCIATION


Mark Woelber
Assistant Bar Counsel

DATED this 21st day of May, 1993 at Portland, Oregon.


Glen D. Mark
Respondent

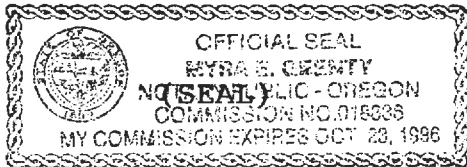
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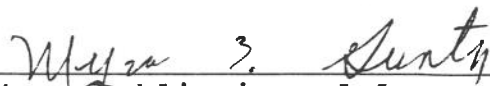
Glen D. Mark hereby consents pursuant to Alaska Bar Rule 22(h)(1) to the disciplinary sanctions set forth above and states that he consent is freely and voluntarily given and is not the subject of any coercion or duress and that he admits to the allegations set forth above.

DATED this 21st day of May, 1993 at Portland, Oregon.


Glen D. Mark
Respondent

SUBSCRIBED AND SWORN to before me this 21 day of May, 1993.




Notary Public in and for Oregon
My Commission expires: 10-23-96

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