BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,	)	No. 08-0358
CHARLES K. SHELL, Bar No. 017051	)	**HEARING OFFICER'S REPORT**
RESPONDENT.	)	

PROCEDURAL HISTORY

1. Probable cause was found on July 4, 2008, and a Complaint was filed on August 29, 2008. Service was accomplished on September 5, 2008. Respondent filed an Answer on September 25, 2008. This case was initially assigned to Hearing Officer 9R on September 9, 2008, but a Notice of Transfer was filed on September 23, 2008, and the matter reassigned to the undersigned Hearing Officer on September 23, 2008.

2. An Initial Case Management Conference was held on October 16, 2008, and a Final Hearing was set on December 8, 2008. An unsuccessful settlement conference was held on November 25, 2008, so the matter proceeded to a contested Final Hearing on December 8, 2008.

FINDINGS OF FACT

3. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona, having been first admitted to the practice in Arizona on May 18, 1996.

4. This case involves allegations that Respondent failed to have an appropriate fee agreement with his clients in violation of ER 1.5(b) (Scope of Representation), and that he violated the conflict of interest rules, ER 1.7.

5. On or about April 20, 2007, John Zion, Jr. (approximately 4 years of age), broke his femur at his home residence ("Zion home").[1]

6. Monica Zion is John Zion, Jr.'s stepmother, and John Zion is the husband of Monica Zion and John Zion, Jr.'s father.

7. Monica Zion ran a small day care out of the Zion home. Monica Zion was watching children at her day care at the time John Zion, Jr. broke his femur. Monica Zion took John Zion, Jr. to the hospital.

8. Sometime after John Zion, Jr. was taken to the hospital, Child Protective Services ("CPS") asked Monica Zion to stop operating her day care, and took John Zion, Jr. from John and Monica Zion's full custody.

9. Sometime after John Zion, Jr. was taken to the hospital, Officer Veronica Roden ("Officer Roden") of the Gilbert Police Department was assigned to investigate John Zion, Jr.'s broken leg.

10. On or about April 24, 2007, John Zion, Jr. was interviewed by Sherri Leffler regarding his broken femur. During this initial interview, John Zion, Jr. was under the influence of codeine.

11. On or about April 25, 2007, John and Monica Zion retained Respondent regarding Officer Roden's and CPS' investigations. Respondent was paid $1,000 as a retainer to assist the Zions regarding the CPS investigation, and then later to

[1] Unless otherwise indicated, the following facts are taken from the stipulated facts deemed material set forth in the Joint Pre Hearing Statement.

represent the Zion family regarding Officer Roden's investigation (Transcript of Hearing "T/H" 159:14 – 161:7).

12. When questioned about whether there were any written documents regarding the details of his representation of and fee arrangement with the Zion's, Respondent claimed that the information was confidential (T/H 187:22 – 188:3). The State Bar subsequently Subpoenaed Respondent's fee records to which Respondent responded with a handwritten note which appears to be more of a receipt than a fee agreement.[2]

13. Respondent acknowledged that his "fee agreement" does not state the scope of his representation because he had no idea what the scope of his representation would be (T/H 189:5–11). Respondent went on to testify that he discussed the scope of his representation with the Zions: "Continuously in emails between myself and John and Monica." Respondent did not provide the emails to the State Bar because he considers them privileged (T/H 190:1–7).

14. CPS scheduled a hearing in the Zion matter for April 27, 2007.

15. On or about April 25, 2007, Respondent telephoned Officer Roden and informed her that he represented Monica Zion (T/H 160:13–20). Officer Roden advised Respondent at this time that Monica Zion was considered a suspect (T/H 19:12-16).

16. On or about April 26, 2007, Respondent, after reviewing relevant documents including medical records and witness statements, was not concerned that John and Monica Zion had done anything to injure John Zion, Jr., and so advised John

[2] Respondent's response to the State Bar's Subpoena was discussed and admitted during the hearing in this matter, but did not get attached to the transcript or listed in the list of exhibits. It is attached as Exhibit 'A' to the State Bar's Closing Memorandum.

and Monica Zion that he did not believe his services were needed at the CPS hearing.

17. On or about April 27, 2007, CPS held a hearing regarding John and Monica Zion. At the CPS hearing, CPS allowed Monica Zion to reopen her day care, and allowed John Zion, Jr. to return to the full custody of John and Monica Zion.

18. On or about May 1, 2007, Officer Roden contacted John Zion, and asked that he schedule a second forensic interview with John Zion, Jr.

19. On or about May 1, 2007, Monica Zion and John Zion consulted Respondent for advice regarding the second forensic interview. On or about May 1, 2007, Monica Zion and John Zion asked that Respondent call, setup, and be present with John Zion at the second forensic interview of John Zion, Jr. Respondent agreed to try to set up and be present at the second forensic interview.

20. On May 2, 2007, Respondent telephoned Officer Roden and explained to her that he would like to facilitate setting up John Zion, Jr.'s second forensic interview. Respondent told Officer Roden that he represented both Monica Zion and John Zion, Jr. (T/H 160:9–20, 24:8–20, 171:3-7). Respondent told Officer Roden that both he and John Zion wanted to be present during John Zion, Jr.'s second forensic interview.

21. Officer Roden denied Respondent's request and told Respondent that Respondent could not represent John Zion, Jr., Monica Zion and John Zion at the same time.

22. Respondent spoke to another lawyer, Ray Schumacher, about meeting with John Zion. Mr. Schumacher scheduled a meeting with John Zion for May 3, 2007. John Zion did not meet with Ray Schumacher.

23. The second forensic interview of John Zion, Jr. was to be held at the Mesa Center Against Family Violence ("MCAFV") on May 3, 2007. John Zion, Jr. went with Monica Zion to the MCAFV.

24. On the way to the MCAFV, Monica Zion telephoned Respondent and John Zion, informing them that she was on the way to the MCAFV. Monica Zion received return telephone calls from Respondent on her cell phone. At one point, Monica Zion handed her cell phone to Sgt. Sy Ray ("Sgt. Ray"). Sgt. Ray spoke with Respondent and then handed the cell phone back to Monica Zion. Monica Zion provided Respondent with directions to the MCAFV.

25. When Respondent arrived at the MCAFV, he claimed that John Zion, Jr. was his client numerous times (T/H 109:20 – 110:3, 111:21).

26. Respondent and Monica Zion were not allowed to accompany John Zion, Jr. into the MCAFV. Respondent and Monica Zion were required to wait outside the MCAFV building.

27. Respondent approached the front door of MCAFV and asked law enforcement officers where John Zion, Jr. was. Respondent told Sgt. Ray he wanted to see John Zion, Jr. Sgt. Ray declined Respondent's request, and Respondent then spoke with Sgt. Ray's supervisor, telling him that he was being denied access to John Zion, Jr.

28. Respondent asked Sgt. Ray whether John Zion was considered a suspect. Sgt. Ray informed Respondent that John Zion was considered a potential suspect.

29. John Zion arrived at MCAFV and was also denied entry while the interview of John Zion, Jr. was taking place.

30. During the time that Respondent and John and Monica Zion were waiting outside while John Zion, Jr. was being interviewed, Respondent advised John and Monica Zion of their constitutional rights and acted as their representative with law enforcement (T/H 115:20-24, 177:24 - 178:21, Hearing Exhibit ("H/E") 3 BSN 10). Respondent also claimed that he represented the alleged victim, John Zion, Jr. (T/H 173:24 – 174:1, H/E 3 BSN 7 – 11).

31. According to police, John Zion, Jr., during the second interview, stated that Monica Zion had caused his injuries (H/E 3 BSN 11).

32. Law enforcement testified that because of Respondent's claim that he represented both the victim and the potential defendant it caused them confusion over who to provide information to (T/H 117:3 – 118:2).

33. Following the second forensic interview, Monica Zion was taken into custody. As Monica Zion was being arrested, Respondent gave her legal advice and told her numerous times that she should "invoke her rights", and that he would be at her Initial Appearance (T/H 177:24 – 178:21, H/E 3 BSN 11).

34. On May 8, 2007, the Maricopa County Attorney's Office filed a criminal Complaint ("Complaint") against Monica Zion alleging that Monica Zion caused John Zion, Jr. to suffer physical injury (H/E 4).

35. At some point subsequent to Monica Zion's arrest (the evidence was not clear when), she was required to separate herself from John Zion, Jr.

36. Respondent represented Monica Zion throughout the criminal proceedings.

37. Deputy Maricopa County Attorney, Laurae Kerchenko ("DCA Kerchenko") was assigned to prosecute Monica Zion's criminal case.

38. On or about May 18, 2007, a Guardian ad Litem ("GAL") was appointed to make sure John Zion, Jr.'s interests were protected.

39. During the pendancy of the criminal action against Monica Zion, John Zion wrote an undated "victim's statement". On or about June 5, 2007, Respondent filed the "victim's statement" written by John Zion with the Court (H/E 6 BSN 18 – 23).

40. John Zion wrote a second undated "victim's statement". On or about June 18, 2007, Respondent filed the second "victim's statement" with the Court (H/E 7 BSN 24 – 27).

41. During the month of November of 2007, in a series of emails between Respondent and the attorney prosecuting Monica Zion, there was a discussion of how the prosecutor, DCA Kerchenko, could set up an interview with John Zion, Jr. Respondent advised DCA Kerchenko that she should contact John Zion, Jr.'s father, John Zion, and that the father wanted to be present at the interview. DCA Kerchenko objected to the presence of the father at John Zion, Jr.'s interview. Respondent replied that the father was a victim under the law and had a right to be present. DCA Kerchenko disagreed and suggested that the Court might need to decide the matter, and also pointed out to Respondent that he could not represent the victim's father and the Defendant, his wife, at the same time. Respondent responded that he could "...represent the defendant and the family members of the defendant at the same time" (H/E 9 BSN 30 -33).

42. DCA Kerchenko filed a Motion to Determine Counsel with the Court, but the motion was never considered by the Court because the criminal case against Monica Zion was resolved through a diversion agreement (T/R 80:4 – 21, 199:7 - 19).

43. Respondent testified that he never informed either John or Monica Zion, even after her arrest, of a potential conflict, or obtained a written waiver because he believed that there was no conflict (T/R 184:21 – 186:11, 187:7-11).

44. Respondent also testified that he never spoke to John Zion, Jr. about the facts of this case (T/H 185:20 -186:3, 187:12 – 16).

45. Respondent testified that he never advised the Zions of a potential conflict because he felt that there was none and, similarly, never obtained their written consent (T/H 184:21 – 185:19, 187:7 – 11, 186:4 – 11), claiming that the interests of the family are all intertwined (T/H 50:17).

46. The police testified that their basis for proceeding against Monica Zion was the following information:

1) The child's first version of how the injury occurred is not consistent with the injury itself. The child's ultimate version of how the injury occurred (due to Monica's actions) was considered consistent with the injury itself (T/H 146:2 – 7).

2) That John Zion, Jr. told law enforcement that he was not allowed to say what happened to his leg (T/H 52:16 – 18, 59:19). John Zion, Jr. also said that someone had hurt him but he was not allowed to say who (T/H 54:22 – 25).

3) Personnel at the hospital where John Zion, Jr. was treated expressed concern about the nature of the injury which resulted in the child being taken by CPS (146:12).

4) Monica's first version of how the injury occurred was not consistent with the injury itself. Monica changed her story of how the injury happened (T/H 146:13 – 24).

5) Other family members told law enforcement that they suspected abuse (T/H 52:24 – 53:3).

47. Respondent strenuously disagrees with these claims, and much of the hearing was devoted to that disagreement. Respondent's main defense to the conflict allegation is that there was no case and that the whole matter was an "absolute and complete farce" (T/H 192:1–5). The information cited above is not listed to show what really happened, but rather to show what information law enforcement testified that it was acting on.

CONCLUSIONS OF LAW

48. This case involves the allegation that Respondent violated ER 1.5(b) by not advising his client the scope of his representation in writing; that he violated ER 1.7 by not avoiding a conflict of interest between his clients and that that conduct was prejudicial to the administration of justice in violation of ER 8.4(d)

49. A) Violation ER 1.5(b), Scope of Representation

Respondent submitted a hand written document that is no more than a receipt for the payment to him of $1,000 by the Zions. It does list his hourly fee but not much else, and clearly is not a fee agreement listing the scope of work to be

performed by him. Respondent does make a valid point that he may have not yet known the full scope of the work at that time, whether it was simply an administrative matter with CPS or whether it would grow into the criminal case that it ultimately became. However, Respondent had an obligation to spell out in more detail what he would do for the Zions when he took their $1,000, and then supplement that explanation if and when the case expanded.

50. Respondent's claim that he discussed the scope of his representation with his clients, but that his fee agreement/discussions with his clients is subject to the attorney/client privilege and need not be given to the Bar or then, presumably, discussed in these proceedings. This position is clearly wrong, Arizona Legal Ethics Handbook by Daniel J. McAuliff at p.283 (2004). While the fee agreement is confidential, it is not privileged, and ER 1.6(d)(4) allows the attorney to disclose the fee agreement to respond to allegations in any proceeding concerning the lawyer's representation. Respondent was asked by the Bar for his fee agreement with the Zions, but refused and made the Bar subpoena his records. All Respondent gave the Bar was a hand written receipt. Respondent's claim that there were emails between himself and the Zions regarding the scope of his representation rings hollow when he refuses to provide them to the Bar.

51. Given what Respondent provided to the Bar, the Hearing Officer must conclude that Respondent had no written fee agreement covering the scope of his representation with the Zions. Based upon the testimony of the Respondent and the information that he provided, the Hearing Officer finds that there is clear and convincing evidence that Respondent failed to comply with ER 1.5(b).

52. B) Violation of ER 1.7, not avoiding a conflict of interest, and ER 8.4 conduct prejudicial to the administration of justice.

ER 1.7 states that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest is described as existing if the representation of one client will be directly adverse to another client; or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. ER 1.7 goes on to allow a lawyer to represent clients where there is a conflict of interest if the affected client gives an informed consent in writing. Even this, however, is not allowed if the representation involves the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

53. Respondent responds to the Bar's allegations by saying that there was no conflict in representing the individual and collective members of the Zion family because, essentially, the State's case against Monica Zion was a "farce", so he had no duty to avoid a conflict or get his clients' consent in writing (T/H 184:21 – 185:13 & 192:1 – 5).

54. This case poses the unique question of whether the attorney can ignore the potential for conflict because he feels that the underlying facts do not support the action.

55. There is no question that Respondent felt, and still does, that there was no case against Monica Zion (T/H 43:5-9). Respondent claims that the only reason

Monica Zion agreed to the diversion resolution of her case was because she got her step son back after months of separation and the criminal charges would be dismissed (T/H 199:7–19). However, that does not divert Respondent from his position that Officer Roden and Sgt. Ray had no basis to proceed against Monica Zion.

56. Respondent even concedes that very early on, at the MCAFV, law enforcement pointed out to him that there was a conflict in him representing the victim and the person suspected of causing the injuries. Once Monica Zion was arrested Respondent acknowledged that red flags were going up but because he disagreed with law enforcement's version of the facts, he felt that he could still represent her (T/H 45:15). Later, during the criminal case while Respondent was representing Monica Zion and yet submitting pleadings on behalf of the victim, the prosecuting attorney also tried to tell Respondent that there was a conflict and yet he still disagreed. This caused the Deputy County Attorney some difficulty in setting up the interview with the victim, and caused her to file a Motion to Determine Counsel (T/H 78:18 – 80:21).

57. The bottom line is that Respondent feels that even though there is a loud and clear potential for conflict, he can proceed in the face of that conflict if he disagrees with the facts. This argument cannot scrutiny.

58. Respondent, rightly or wrongly, felt that law enforcement was proceeding on insufficient facts. As recited above, law enforcement had at least some facts to proceed on, and to allow an attorney to simply ignore the potential for conflict

because he does not think there is a case would mean that he is the ultimate and **only** arbiter of the sufficiency of the State's case.

59. Respondent admitted that he never even talked to John Zion, Jr. about his injuries so was proceeding on his behalf without interviewing him. Once the investigation started to center on Monica, the representation of her was directly adverse to the interests John Zion, Jr. ER 1.7 states that there is a concurrent conflict if there is a "significant risk" that the representation of one client will limit the responsibility to another, not that the conflict must be staring you in the face.

60. Respondent could have no idea where the investigation in the Zion case would go, and to say he can represent the victim and the alleged perpetrator before the case fully developed is to ignore his responsibility to both clients. As the hearing in this matter proceeded, it became clear that Respondent was fully persuaded by what he perceived the facts to be and was completely unwilling to consider that others saw it very differently.

61. Subsequent to Monica Zion's arrest and criminal charges being filed, Respondent continued his representation of the victim and the alleged perpetrator by submitting the two "victim statements" to the Court on behalf of John Zion, Jr. asking that the charges be dismissed. This conduct, while consistent with Respondent's view, tramples all over any objective notion of there being a line between when a lawyer must stop because of divided loyalties. There was the potential for harm to John Zion, Jr. in that, if in fact Monica Zion did cause his injuries, he would be at risk being placed back in her care and custody with no sanction for causing those injuries.

62. Respondent put it very succinctly at the inception of the hearing in this matter: "... at what point would a reasonable attorney believe that there's a conflict of interest." (T/H 42:19–21) Any reasonable attorney should recognize that when there is the possibility, that one client suffered injury at the hands of another and the credibility of both is at issue, he cannot still claim to represent both. The interests of John Zion, Jr. are completely different and directly adverse to those of his step-mother once the investigation of John Zion, Jr.'s injuries started to center on Monica and, at the very least, once Monica was put under arrest.

63. The Hearing Officer finds by clear and convincing evidence that Respondent violated ER 1.7, representing clients with concurrent conflicts of interest, and failing to get informed consent in writing. This Hearing Officer also finds that Respondent violated ER 8.4(d), engaging in conduct that was prejudicial to the administration of justice, by refusing to comply with the request by the State Bar for the information on his fee agreement with the Zion's, and also his conduct in pushing forward in a matter where a conflict clearly existed, which caused confusion with law enforcement over who they should deal with and difficulties with the prosecutor in prosecuting the case against Monica Zion.[3]

[3] The Complaint in this matter also alleged a violation of ER 1.9(a), Duty to Former Client. There was no evidence of a violation of this ER, so that allegation is dismissed.

ABA STANDARDS

64. 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 cause by the lawyer's conduct; (4) the existence of aggravating and mitigating factors.

65. **Duty Violated:**

Because the *Standards* do not account for multiple findings of misconduct, the sanction imposed should be consistent with the sanction for the most serious misconduct. Respondent's most serious misconduct is his violation of his duty to his clients under *Standard* 4.3.

66. *Standard* 4.33 states:

> "Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client."

67. The commentary listed under *Standard* 4.33 indicates that this is the most appropriate *Standard* by which to measure Respondent's conduct. The evidence was that Respondent was negligent in determining whether there was a conflict, and the injury in this matter was potential injury.

68. **The Lawyer's Mental State:**

The Hearing Officer finds Respondent's mental state to be negligent.

69. **The Injury:**

The Hearing Officer finds that Respondent's conduct caused potential injury to John Zion, Jr.

70. **Aggravating and Mitigating Factors:**[4]

Aggravating factors:

71. *Standard* 9.22(e), Bad Faith Obstruction of the Disciplinary Proceeding:

Respondent refused to provide a copy of the documents setting forth the scope of his representation of the Zions as requested by the State Bar in its investigation.

72. *Standard* 9.22(g), Refusal to Acknowledge Wrongful Nature of Conduct:

During the hearing in this matter, Respondent expressed a disdain and disrespect for not only law enforcement, but also the State Bar and these disciplinary proceedings which betrayed a refusal by him to acknowledge the wrongful nature of his conduct and a refusal to accept that he just flat got it wrong.

73. *Standard* 9.22(h), Vulnerability of the Victim:

John Zion, Jr. was approximately 4 years old at the time of Respondent's conduct.

74. *Standard* 9.22(i), Substantial Experience in the Practice of Law

Respondent has been practicing law since May 18, 1996, with 11 years of experience in criminal defense work.

Mitigating Factors:

75. *Standard* 9.32(a), Absence of a Prior Disciplinary Record:

Respondent has no prior disciplinary history.

PROPORTIONALITY REVIEW

76. The Supreme Court has held that one of the goals of attorney discipline should be to achieve consistency when imposing discipline. It is also recognized that the

[4] Although given the opportunity to do so, Respondent chose not to file a Post Hearing Memorandum, so the Hearing Officer was without any evidence of mitigating factors presented by Respondent.

concept of proportionality is "an imperfect process" because no two cases are ever alike, *In re Struthers,* 179 Ariz. 216, 887 P.2d 789 (1994), *In re Wines* 135 Ariz. 203, 660 P.2d 454 (1983). In order to achieve internal consistency, it is appropriate to examine sanctions imposed in cases that are factually similar, *In re Peasley* 208 Ariz. 90, 90 P.3d 772 (2004). It is also the goal of attorney discipline that the discipline imposed be tailored to the individual case and that neither perfection nor absolute uniformity can be achieved, *Peasley* supra.

77. In this case, the State Bar is recommending that the Respondent receive a Censure and one year of probation.

78. In a case very similar to the case at hand, *In re Joe Saienni*, SB-060 0151-D (2006), the lawyer was censured and ordered to pay costs for violation of ER 1.7. The lawyer represented both a child victim and a parent defendant in the same criminal case alleging the parent abused the child. The lawyer filed a response with the Court to a request for the appointment of a GAL on behalf of the entire family. The lawyer also filed a second motion, again stating that he represented the entire family. The State filed a motion to determine counsel that was rendered moot by the entry of a plea agreement. The lawyer argued that there was no conflict of interest as the interests of the individual family members were aligned. There were no aggravating factors, but three mitigating factors were found. The lawyer's mental state was found to be "negligent."

79. In *In re Caroll A. Clark*, SB-02-0017-D (2002), the lawyer was Censured and ordered to pay costs for violations of ERs 1.7, 8.1, 8.4(c) and 8.4(d). The lawyer in Clark represented a landlord who filed a writ of garnishment against his

tenants. The lawyer then answered the writ for the tenants and did not discuss the conflict with the landlord, nor did he have a written fee agreement between himself and the tenants. Three aggravating factors and two mitigating factors were found.

RECOMMENDATION

80. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, the administration of justice, and deter future misconduct, *In re Fioramonti,* 176 Ariz. 182, 859 P.2d 1315 (1993), *In re Neville*, 147Ariz. 106, 708 P.2d 1297 (1985). It is also the purpose of attorney discipline to instill public confidence in the Bar's integrity, *Matter of Horwitz*, 180 P.2d 20, 881 P.2d 352 (1994).

81. This is a difficult case, but not because of the facts or because there is any doubt about whether a conflict existed that required Respondent to either withdraw or get written consent from his clients. The difficulty is due to Respondent's attitude toward the Bar in providing the Bar with the information that it had requested regarding Respondent's fee agreement with the Zion's, and primarily due to his conduct and demeanor during the hearing in this matter.

82. On the one hand, this Hearing Officer expects and respects an attorney who vigorously defends not only his client but himself as well. This Hearing Officer is especially cognizant of the difficulties of being a criminal defense attorney in today's environment. Starting at page 191:23 through page 203:23 of the transcript of the hearing in this matter, Respondent makes a forceful defense of his position, one that he is entitled to make. Certainly too, Respondent can have

and did express his disdain for law enforcement officers that he feels are not being truthful. However, the transcript only partly conveys the contempt and disrespect shown by Respondent toward Deputy County Attorney Laurae Kerchenko, Bar Counsel Rusty Anderson and, to a minor degree, this Hearing Officer during the course of these proceedings: Accusing Officer Roden of being a liar (H/T 198:16–21, calling DCA Laurae Kerchenko "incompetent" (H/T 199:21), calling Bar Counsel Rusty Anderson's case against him "a joke" (T/H 200:2) and "crap" (T/H 203:10 and calling Mr. Anderson "clueless" (T/H 201:2). Respondent's tone of voice during parts of the hearing was belligerent and in full attack mode. Almost from the outset, Respondent's demeanor and conduct showed that he was not at all interested in addressing his own conduct, he wanted to assail everyone else's.

83. Respondent accused this Hearing Officer of being prejudiced because I warned him that he was digging a hole for himself. Indeed, this Hearing Officer did caution Respondent of that, not because the case had already been decided, but because Respondent's clear and present anger at the conduct of others, expressed often and with great vigor during the course of the hearing, was blinding Respondent to the fact that his own conduct was in question and not only was he not addressing that, he was making it worse by his conduct during the hearing. Respondent's attitude was that because everybody around him was wrong, he could not be.

84. This Hearing Officer has no doubt but that Respondent believes in his work and advocates very strongly on behalf of his clients. As evidenced by the facts of this case, when Respondent sees something that he feels is wrong, he is tenacious in

addressing that wrong. The fact that in the 11 years that Respondent has been practicing law in a highly stressful area of the law he has had no prior disciplinary referrals, tells this Hearing Officer that Respondent is usually well able to keep his emotions in check and maintain a balance to his passion by remembering that there are at least two sides to every story. Respondent did not do this in either the case with the Zions or during these proceedings.

85. This Hearing Officer is aware that one of the purposes of these proceedings is to ascertain whether any given Respondent has sufficient self-awareness to realize the errors that have been committed and that will take steps to make sure that they do not happen again. While the recommended sanction in this matter is both fitting and proportional, it is how Respondent progresses from here that is the question. Hopefully this process has been an opportunity for Respondent to take stock of his actions and a reminder to him that being an advocate does not mean being a blind advocate. Being a true professional requires much more. It is also hoped that Respondent approaches the recommended period of probation with the appropriate frame of mind, because if he maintains the attitude he exhibited at the hearing in this matter, he will not have learned much and be no better off.

86. 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) That Respondent be Censured;

2) That Respondent be placed on probation for one year, and that the probation term should include: an assessment of Respondent's conflict check system and

policies for compliance with ER 1.5(b) by the State Bar's Law Office Management Assistant Program ("LOMAP"); that Respondent attend the State Bar's 10 Deadly Sins of Conflict MCLE;

3) That Respondent pay all costs of these proceedings;

4) That Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other Rules of the Supreme Court of Arizona;

5) 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 Noncompliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. 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 30 days after receipt of notice, to determine whether a term of probation has been breached, and, if so, to recommend an appropriate action in 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 noncompliance by clear and convincing evidence.

DATED this 27th day of January, 2009.

Hon. H. Jeffrey Coker /mm
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 27th day of January, 2009.

Copy of the foregoing mailed
this 28th day of January, 2009, to:

Charles K. Shell
Respondent
51 W Elliot Road, Suite 112
Tempe, AZ 85284

Russell Anderson
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: Evelyn Lopez