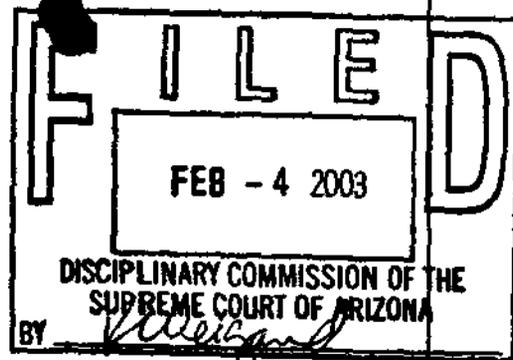


1 Robert A. Clancy, Jr., Bar No. 016424
2 Staff Bar Counsel
3 State Bar of Arizona
4 111 West Monroe, Suite 1800
5 Phoenix, Arizona 85003-1742
6 Telephone: 602-340-7244



7 **BEFORE THE DISCIPLINARY COMMISSION**
8 **OF THE SUPREME COURT OF ARIZONA**

9 IN THE MATTER OF A MEMBER OF) No. 01-0370
10 THE STATE BAR OF ARIZONA,)
11) **FIRST AMENDED**
12) **TENDER OF ADMISSIONS**
13) **AND AGREEMENT FOR**
14) **DISCIPLINE BY CONSENT**
15)
16) **O. MARK MARQUEZ,**
17) **Bar No. 001627**
18)
19) **Respondent.**) (Assigned to Hearing Officer 9H)

20 This Agreement, entered into between the State Bar of Arizona and
21 Respondent O. Mark Marquez, is submitted pursuant to Rule 56(a), Ariz.R.S.Ct.
22 and the guidelines for discipline by consent issued by the Disciplinary Commission
23 of the Supreme Court of Arizona. Respondent agrees to the form of discipline
24 stated herein, subject to review and acceptance by the Disciplinary Commission.

25 **FACTS**

Respondent conditionally admits the following facts:

1. At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having originally been admitted to practice on April 25, 1964.

1 2. At all times relevant hereto, Respondent represented a client who
2 was being sued by Complainant Gina Caracci ("Complainant") as a result of an
3 automobile collision. Complainant was representing herself in the matter which
4 involved a property damage claim of approximately \$1,000.00.
5

6 3. On or about May 4, 2000, Complainant received a note from
7 Respondent asking her to call and make an appointment to meet him and discuss
8 the case.
9

10 4. On or about May 12, 2000, Complainant went to Respondent's
11 office to discuss the case. Complainant brought three property damage estimates
12 to the meeting.
13

14 5. At the May 12, 2000 meeting, Respondent told Complainant that he
15 did not agree with any of the property damage estimates Complainant brought,
16 and gave her the name of another repair shop and asked her to go there for a
17 fourth estimate.
18

19 6. Complainant began to feel uncomfortable when Respondent
20 mentioned that fifty years before when he was in high school in Morenci,
21 Arizona, he had an Italian girlfriend. In an attempt to put an end to the
22 conversation, Complainant replied that she could not be included in this group
23 because she was Sicilian. Complainant then quickly agreed to get an estimate
24 from the repair shop that Respondent had suggested.
25

1 7. Having ended the conversation, Complainant started to leave the
2 office and Respondent accompanied her outside to view the car. Respondent
3 again engaged Complainant in unsolicited conversation. Complainant again
4 became uncomfortable with Respondent's comments about her being attractive.
5 Because she was uncomfortable, Complainant said that Respondent should not be
6 attracted to her because she had her dog Ransom, a rottweiler, in the car to protect
7 her. Complainant also told Respondent that she always carried a gun when she
8 went to the south side.
9
10

11 8. As Complainant attempted to show Respondent the damage to her
12 car, Respondent put his arms around her and gave her a bear hug around the
13 shoulders from behind. Respondent then asked her to lunch, and commented how
14 attractive she was.
15

16 9. Complainant forcibly pulled away from Respondent, and again
17 attempted to show him the damage to her car. He looked at the damage, and then
18 again invited Complainant to lunch. She declined his lunch invitation, and told
19 him to leave her alone and that her dog was in the car and would attack him if he
20 kept touching her.
21

22 10. On May 16, 2000, Complainant went to Respondent's office to tell
23 him that the repair shop wanted \$50 to perform the estimate. Concerned about his
24 behavior, Complainant had a cassette recorder in her purse, to record any
25

1 conversation with Respondent. After they had talked about the estimate charge,
2 Complainant turned to leave and Respondent approached her from behind again
3 giving her a bear hug around her shoulders. Complainant immediately said "no."
4 Respondent stated "Ransom (Complainant's dog) is not here, so I can touch you."
5

6 11. At that point, Complainant stated "Ransom is in the car. If I call
7 him, he will come." Respondent replied "you are beautiful, and I am in love with
8 you."
9

10 12. Complainant became increasingly concerned at this point. She then
11 told Respondent to please take his hands off of her. Respondent stated "I am
12 going to get you some money." Complainant again told him to take his hands off
13 of her. Respondent stated that he would not do so. Finally, Respondent did in
14 fact let go of her. Complainant then left Respondent's office.
15

16 13. Respondent represented his clients on the underlying matter pro
17 bono. Complainant, after several attempts to recover for the damage done to her
18 vehicle, which included going to court and also trying to get a promissory note
19 from the Respondent's clients, was advised on January 18, 2001, by the
20 Respondent that since he was getting no cooperation from his clients in settling
21 the matter, he would no longer represent them.
22
23

24 14. Complainant filed her complaint against Respondent on or about
25 February 20, 2001 (copy attached hereto as Exhibit "4"). She stated she filed the

1 complaint to "let it be known what (Respondent) did." She goes on to state "in
2 my opinion, it was disgusting, unprofessional behavior" and that she did not want
3 "any other women to have to deal with that."
4

5 15. Respondent provided his response to the State Bar of Arizona
6 regarding this matter in a letter dated March 21, 2001 (attached hereto as Exhibit
7 "1"). His letter states, in pertinent part:

8 I have carefully reviewed Ms. Carachi's (sic) complaint, and
9 wonder why the State Bar even considered. (sic)

10 Yes, I will admit to attempting to flirt with Ms. Carachi on the
11 first occasion I met her but never touched her.

12 After I saw her hysterical reaction, I never joked or attempted
13 anything unseemly or unethical regarding this lady.

14 16. Should this matter go to hearing, The State Bar of Arizona would
15 argue that this letter constitutes the submission of false evidence during the
16 disciplinary process, and a refusal to acknowledge the wrongful nature of his
17 conduct.
18

19 17. A formal Complaint was filed against Respondent on October 29,
20 2001.
21

22 18. Respondent filed an Answer to the formal Complaint on November
23 27, 2001 (attached hereto as Exhibit "2"). In his Answer, Respondent denied
24 making any unwelcome advances toward Complainant. Additionally,
25 Respondent affirmatively alleged that the Complainant's motive for making

1 allegations against him was pecuniary gain, in that Respondent was representing a
2 client whom Complainant had sued. He also affirmatively alleged that
3 Complainant was mentally ill.
4

5 19. Respondent provided a verified Disclosure Statement to the State
6 Bar of Arizona on or about January 3, 2002 (attached hereto as Exhibit "3").
7 Therein, Respondent again asserts that Complainant was mentally ill, and that at a
8 court proceeding, Complainant "appeared and testified, dressed in very revealing
9 shorts."
10

11 20. On or about March 18, 2002, Respondent was provided with a
12 transcript of the tape recording made by Complainant.
13

14 21. At the settlement conference held by Bruce G. MacDonald,
15 Settlement Officer 6M, on March 21, 2002, Respondent and his counsel listened
16 to the tape recording made by Complainant.
17

18 22. Thereafter, Respondent, through counsel, admitted the allegations in
19 the Complaint.
20

21 23. Should this matter go to hearing, The State Bar of Arizona would
22 argue that Respondent engaged in unwelcome touching of a sexual nature with
23 Complainant on May 12 and May 16, 2000. Respondent had flirted with
24 Complainant, asked her to lunch, and told her that he was attracted to Italian
25 women prior to grabbing her. The State Bar further believes that this knowing

1 restraint of Complainant constitutes a pattern of misconduct, and constitutes
2 multiple offenses. The State Bar further believes that Respondent's statement
3 that "I am going to get you some money" constitutes an offer to get his clients to
4 pay Complainant's damages in exchange for Complainant agreeing to his
5 unwelcome advances, and demonstrates a dishonest or selfish motive for the
6 conduct.
7

8
9 24. The State Bar would further argue that both Respondent's letter of
10 March 21, 2001, and his Answer to the formal Complaint constitute the
11 submission of false evidence during the disciplinary process, and a refusal to
12 acknowledge the wrongful nature of his conduct. The State Bar of Arizona would
13 also argue that Respondent's Disclosure Statement attempts to shift responsibility
14 for his conduct to Complainant, and constitutes the submission of false evidence
15 during the disciplinary process as well as a refusal to acknowledge the wrongful
16 nature of his conduct.
17

18
19 25. Respondent acknowledges that reasonable persons may have
20 different interpretations as to the incidents that occurred on May 12, 2000, and on
21 May 16, 2000, between Complainant and Respondent. In that respect,
22 Respondent incorporates by reference Exhibit 1 attached to the original
23 Memorandum in Support of Tender of Admissions and Agreement for Discipline
24 by Consent, which was filed with the Disciplinary Commission on August 7,
25

1 2002. This memorandum succinctly states that Respondent's position as to the
2 issues raised by the State Bar in this memorandum and discusses the time lapse
3 that occurred between the incidents and the complaint, which left the Respondent
4 with a cloudy recollection of the events of May 12 and May 16. Respondent
5 further incorporates by reference his Motion to Reconsider which was filed with
6 the Disciplinary Clerk, wherein he states his reasons for his agreement to
7 discipline by consent. The Respondent freely admits that his unauthorized
8 touching of the Complainant, while not sexual in nature, was improper and in
9 violation of the Standards of Conduct.
10
11

12 The State Bar has raised two new issues that have not been specifically
13 addressed before by the Respondent. In one of his pleadings the Respondent
14 raised the issue of the Complainant's mental stability. This issue arose as a result
15 of the Complainant having advised the Respondent that she was on Social
16 Security Disability for what the Respondent understood was some type of nervous
17 condition. This, plus her appearance and testimony at a court hearing, months
18 after the complained of incidents, in what Respondent considered to have been
19 inappropriate and very revealing shorts, and her statements about her guard dog
20 and gun, led him to question the reliability and accuracy of the facts as alleged in
21 her complaint. Especially since the incidents were cloudy in his mind because of
22 the passage of time. He made these assertions before he heard the tape. When
23
24
25

1 his recollection as to the details of the incident was refreshed when he heard the
2 tape, he never again raised those issues, except now in rebuttal to the State Bar's
3 memorandum.
4

5 CONDITIONAL ADMISSIONS

6 Respondent conditionally admits that his conduct as stated herein,
7 specifically Respondent's unwanted and inappropriate advances toward and
8 physical touching of Complainant Gina Caracci, an opposing party, and his denial
9 of the conduct constitutes a violation of Rule 42, Ariz.R.S.Ct., specifically, ER
10 1.7., ER 8.1(a) and ER 8.4(d).
11

12 SANCTIONS

13 Respondent and the State Bar agree that on the basis of the conditional
14 admissions contained herein, the appropriate disciplinary sanction is as follows:
15

16 a. Respondent shall be suspended from the practice of law in Arizona
17 for a period of thirty (30) days;
18

19 b. Respondent shall provide the Complainant a written apology which
20 acknowledges the wrongful nature of his conduct;

21 c. Respondent shall receive a term of probation for one year to include
22 entering into a MAP contract requiring him to participate in a course of treatment
23 as developed by the Director of MAP and Respondent's therapist;
24
25

1 d. Respondent shall pay all costs and expenses incurred by the State Bar
2 of Arizona in bringing these disciplinary proceedings against Respondent,
3 including all costs and expenses incurred by the Disciplinary Commission, the
4 Supreme Court, and the Disciplinary Clerk's Office in this matter. A copy of the
5 Statement of Costs is attached hereto.
6

7 e. Respondent shall refrain from any conduct that would violate the
8 Rules of Professional Conduct or other rules of the Supreme Court of Arizona.
9

10 f. In the event Respondent fails to comply with any of the foregoing
11 terms, and information thereof is received by the State Bar of Arizona, Bar
12 Counsel shall file a Notice of Noncompliance with the imposing entity pursuant
13 to Rule 52(6)(C), Ariz.R.S.Ct. The matter may be referred to a hearing officer to
14 conduct a hearing at the earliest practical date, but in no event less than thirty (30)
15 days following receipt of said Notice. If the matter is referred to a hearing
16 officer, the hearing officer shall determine whether the terms of probation have
17 been breached and, if so, recommend appropriate action and response to such
18 breach. If there is an allegation that Respondent failed to comply with any of the
19 foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove
20 noncompliance by a preponderance of the evidence.
21
22
23

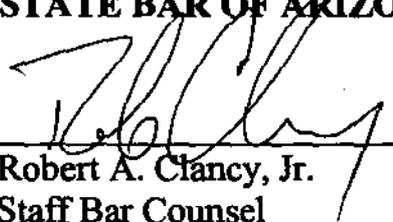
24 By entering into this Agreement, Respondent waives his right to a
25 formal disciplinary hearing, pursuant to Rule 53(c)(6), Ariz.R.S.Ct., and the

1 right to testify or present witnesses on his behalf at a hearing. Respondent
2 further waives all motions, defenses, objections, or requests which he has
3 made or raised, or could assert hereinafter if the conditional admissions and
4 stated form of discipline are approved. Respondent is represented by
5 counsel in these proceedings. Respondent acknowledges that he had read
6 this Agreement and has received a copy of it. Respondent submits this
7 Agreement with conditional admissions, freely and voluntarily and without
8 coercion or intimidation and is aware of the rules of the Supreme Court with
9 respect to discipline.
10
11

12 This Tender of Admissions and Agreement for Discipline by Consent will
13 be submitted to the Disciplinary Commission for approval. Respondent realizes
14 that the Commission may request his presence at a hearing for presentation of
15 evidence and/or argument in support of this Agreement. He further recognizes
16 that the Commission may recommend rejection of this Agreement. He further
17 understands that if the Disciplinary Commission approves this Agreement, such
18 approval shall be final; if the Agreement is rejected, his conditional admissions
19 are withdrawn.
20
21
22
23
24
25

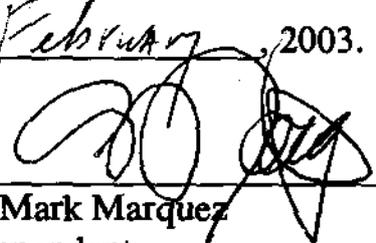
1 Dated this 4th day of FEBRUARY, 2003.

2 **STATE BAR OF ARIZONA**

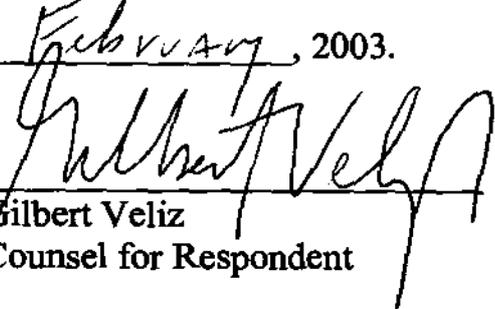
3 
4 _____
5 Robert A. Clancy, Jr.
6 Staff Bar Counsel

7 This agreement, with conditional admission(s), is submitted freely and
8 voluntarily and not under coercion or intimidation. I am aware of the Rules of the
9 Supreme Court with respect to discipline and reinstatement.

10 Dated this 3rd day of February, 2003.

11 
12 _____
13 O. Mark Marquez
14 Respondent

15 Dated this 3rd day of February, 2003.

16 
17 _____
18 Gilbert Veliz
19 Counsel for Respondent

20 Approved as to form and content

21 
22 _____
23 Robert B. Van Wyck
24 Chief Bar Counsel

25 Original filed with the Disciplinary Clerk
this 4th day of February 2003

by Gwendolyn Burke

1
2 Copy mailed via first class mail
3 this 4th day of February, 2003, to:

4 David H. Lieberthal
5 Hearing Officer 9H
6 3900 East Broadway, Suite 210
7 Tucson, Arizona 85711-3453

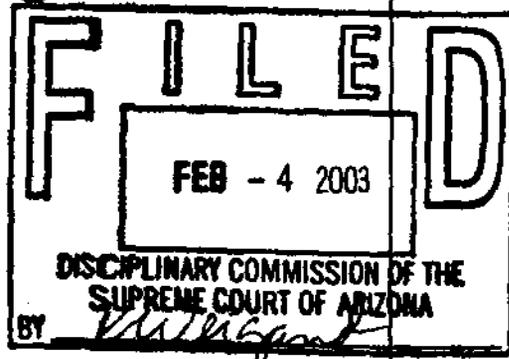
8 Gilbert Veliz
9 Respondent's Counsel
10 334 North Melwood
11 Tucson, Arizona 85745

12 Copy hand delivered
13 this 4th day of February, 2003, to:

14 Dee Steadman
15 Lawyer Regulation Records Manager
16 State Bar of Arizona
17 111 West Monroe, Suite 1800
18 Phoenix, Arizona 85003-1742

19 by Guadalupe Buzke
20 RAC:gb

1 Robert A. Clancy, Jr., Bar No. 016424
2 Staff Bar Counsel
3 State Bar of Arizona
4 111 West Monroe, Suite 1800
5 Phoenix, Arizona 85003-1742
6 Telephone 602-340-7244



7 **BEFORE THE DISCIPLINARY COMMISSION**
8 **OF THE SUPREME COURT OF ARIZONA**

9 IN THE MATTER OF A MEMBER OF) No. 01-0370
10 THE STATE BAR OF ARIZONA,)
11) **FIRST AMENDED JOINT**
12 **O. MARK MARQUEZ,**) **MEMORANDUM IN SUPPORT**
13 **Bar No. 001627**) **OF TENDER OF ADMISSIONS**
14) **AND AGREEMENT FOR**
15) **DISCIPLINE BY CONSENT**
16 Respondent.)
17) (Assigned to Hearing Officer 9H)

18 The State Bar of Arizona and Respondent O. Mark Marquez, hereby submit
19 their First Amended Joint Memorandum in Support of the Agreement for
20 Discipline by Consent, filed contemporaneously herewith.

21 **SANCTION**

22 Respondent and the State Bar agree that on the basis of the conditional
23 admissions contained in the First Amended Tender of Admissions and
24 Agreement for Discipline by Consent, the appropriate disciplinary sanction is as
25 follows:

Respondent shall be suspended from the practice of law for a period of
thirty (30) days; Respondent shall provide the Complainant a written apology

1 which acknowledges the wrongful nature of his conduct; Respondent shall
2 receive a term of probation for one year to include entering into a MAP contract
3 requiring him to participate in a course of treatment as developed by the Director
4 of MAP and Respondent's therapist; Respondent shall pay all costs and expenses
5 incurred by the State Bar of Arizona in bringing these disciplinary proceedings
6 against Respondent, including all costs and expenses incurred by the Disciplinary
7 Commission, the Supreme Court, and the Disciplinary Clerk's Office in this
8 matter; Respondent shall refrain from any conduct that would violate the Rules
9 of Professional Conduct or other rules of the Supreme Court of Arizona.
10
11

12 The purpose of lawyer discipline is not to punish the lawyer, but to protect
13 the public, deter future misconduct, and instill public confidence in the Bar's
14 integrity. In re Horwitz, 180 Ariz. 20, 28-29, 818 P.2d 352 (1994); In re
15 Fioramonti, 176 Ariz. 182, 187, 859 P.2d 1315 (1993); In re Murray, 159 Ariz.
16 280, 282, 767 P.2d 1 (1989). Further, in imposing discipline it is appropriate to
17 consider the facts of the case, the American Bar Association *Standards for*
18 *Imposing Lawyer Sanctions* (1991, with 1992 amendments) and the
19 proportionality of discipline imposed in analogous cases. In re Bowen, 178 Ariz.
20 283, 286, 872 P.2d 1235 (1994); In re Fioramonti, 176 Ariz. at 187, 859 P.2d
21 1315 (1993); In re Murray, 159 Ariz. 280, 767 P.2d 1 (1989); In re Rivkind, 164
22
23
24
25

1 Ariz. 154 (1990); In re Tarletz, 163 Ariz. 548, 554, 798 P.2d 381 (1990); In re
2 Ockrassa, 165 Ariz. 576, 579-580, 799 P.2d 1350 (1990).

3
4 **ABA STANDARDS**

5 According to the American Bar Association *Standards for Imposing*
6 *Lawyer Sanctions*, ("ABA Standards") and In re Cassalia, 173 Ariz. 372, 843
7 P.2d 654 (1992), where there are multiple acts of misconduct, the Respondent
8 should receive one sanction consistent with the most serious instance of
9 misconduct, and the other acts should be considered as aggravating factors.

10
11 In this case, Respondent's most serious ethical violation involved his
12 inappropriate and unauthorized physical restraint on two separate (2) occasions, of
13 Complainant Gina Carracci, an opposing party whose interests were directly
14 adverse to that of Respondent's client. Respondent claims that the unwelcome
15 "touching" was not sexual. The State Bar of Arizona believes that should this
16 matter go to hearing, the evidence would show otherwise. Because the parties
17 differ in their characterization of Respondent's misconduct, both the State Bar of
18 Arizona and Respondent set forth their respective positions regarding the facts and
19 what the facts prove in the Tender of Admissions and Agreement for Discipline by
20 Consent.¹
21
22
23
24
25

¹ The Commission's concern that this case may create an impression of disparate treatment is not accurate and can be dispelled by comparing this case with the other Arizona cases.

1 ABA Standard 4.32 provides that suspension is generally appropriate when a
2 lawyer knows of a conflict of interest and does not fully disclose to a client the
3 possible effect of the conflict, and causes injury or potential injury to a client. The
4 potential injury in this case is obvious: Respondent put his own interests above
5 those of his client, and compromised their position in litigation with Complainant.
6 Additionally, Complainant was subject to the unwelcome touching of her person
7 by Respondent. Any unwelcome touching, sexual or otherwise, is inherently
8 harmful to the victim. Further, because Respondent lied in his responses to the
9 State Bar of Arizona, the Bar was required to expend resources investigating this
10 matter.
11
12

13 MITIGATING AND AGGRAVATING CIRCUMSTANCES²

14 After a determination of the presumptive sanction, the next step under the
15 ABA Standards is consideration of the aggravating and mitigating circumstances.
16

17 1. Mitigating factors include:

18 9.22(b) absence of dishonest or selfish motive

19 9.22(g) character or reputation*

20 9.22(l) remorse

21 2. Aggravating factors include:

22 9.21(b) dishonest or selfish motive
23
24

25 ²The mitigating and aggravating factors agreed to by the parties are denoted with an *

1 9.21(c) pattern of misconduct

2 9.21(d) multiple offenses

3 9.21(f) submission of false evidence, false statements, or other
4 deceptive practices during the disciplinary process*

6 9.21(g) refusal to acknowledge the wrongful nature of his conduct

7 9.21(h) vulnerability of victim

8 9.21(i) substantial experience in the practice of law*

9
10 The State Bar of Arizona does not believe that there is sufficient mitigation
11 to lower the presumptive sanction. In fact, the State Bar believes that any
12 mitigation Respondent proves is outweighed by the aggravating factors, and
13 therefore would argue a longer suspension than that contemplated by the parties.
14

15 **PROPORTIONALITY ANALYSIS**

16 The Disciplinary Commission's Order of November 20, 2002, specifically
17 asked the parties to discuss in greater detail those cases cited in the original Joint
18 Memorandum filed with the Disciplinary Clerk on August 7, 2002. These cases
19 are Matter of Walker, 200 Ariz. 155, 24 P.3d 602 (2001), and Matter of Piatt,
20 191 Ariz. 24, 951 P.2d 889 (1997). Additionally, the Commission asked the
21 parties to discuss the applicability of Matter of Moore, SB-02-0043-D (2002).³
22
23
24

25

³ The parties apologize that Moore was not included in the original Joint Memorandum, and that Piatt and Walker were not distinguished sufficiently from the present matter. The Commission's Order of November 20 makes it

1 In Matter of Walker, 200 Ariz. 155, 24 P.3d 602 (2001), the Respondent
2 attorney attempted to engage in a sexual relationship with a client, and touched
3 her breasts on at least one occasion. The Disciplinary Commission
4 recommended a ninety (90) day suspension for violations of ERs 1.7 and 8.4.
5 However, our Supreme Court reduced the sanction to a censure finding that there
6 was significant mitigation. In its discussion of the significant mitigation present
7 in the case, the Court specifically noted that the hearing officer's findings
8 regarding credibility favored Walker's claim that the sexual contact was
9 consensual, and there was no finding to the contrary.
10

11
12 Additionally, the Court found that Walker's aberrant conduct was not
13 likely to be repeated. Further, the Court found that Walker had been publicly
14 and personally humiliated by being handcuffed and arrested in his office,
15 prosecuted for sexual indecency and prostitution, forced to participate in a
16 diversion program, and the charges against him were made public by the local
17 press. The Court also found significant the fact that he personally paid \$2,500
18 toward the \$50,000 settlement of the malpractice action brought by his client.
19

20
21 Unlike Walker, Respondent's unwelcome touching of Complainant was
22 not even arguably consensual. Complainant repeatedly told Respondent that his
23 physical advances and touching were unwelcome, and still Respondent persisted.
24

25

clear that rather than being helpful, the consent documents as originally drafted only served to baffle the
Commission.

1 Unlike Walker, there is every indication that Respondent's conduct was not an
2 isolated incident. Here, Respondent admits he has always engaged in such
3 conduct; thus the only reasonable inference is that there is a real and present risk
4 that he will do it again.⁴
5

6 Additionally, Walker demonstrated mitigation not present in this matter.
7 Unlike Walker, Respondent cannot demonstrate mitigating factor 9.32(e) full and
8 free disclosure to the disciplinary board and cooperative attitude toward
9 proceedings, nor can he demonstrate mitigating factor 9.32(l) remorse. Finally,
10 unlike Walker, Respondent cannot demonstrate that he suffered the public and/or
11 personal humiliation Walker endured, a mitigating factor the Commission
12 considered important when deciding to censure Walker.
13
14

15 As noted in the original Joint Memorandum, the lawyer in Matter of Piatt,
16 191 Ariz. 24, 951 P.2d 889 (1997) made improper sexual advances to two female
17 clients in violation of ER 1.7. A split Disciplinary Commission recommended
18 that Piatt be censured, participate in MAP, successfully complete a counseling
19 program, and be placed on probation for one year. The Commission report stated
20 that although it was disturbed by Piatt's conduct, the fact that it was a case of
21
22
23
24

25 ⁴ See letters offered by Respondent in support of a finding that mitigating factor 9.32(g) is present . These letters were filed by Bar Counsel with the Disciplinary Clerk on October 7, 2002.

1 first impression was a mitigating factor. Ultimately, the Supreme Court censured
2 Piatt for his conduct.

3
4 As the Commission's Order of November 20, 2002, alludes, Piatt was
5 extremely fortunate to receive only a censure for his conduct. Two factors
6 resulted in Piatt's relatively light sanction: (1) the Disciplinary Commission was
7 treading lightly because it was a case of first impression and (2) the Supreme
8 Court did not want to appear to be punishing Piatt for exercising his right of
9 appeal.⁵ Of course, neither of these factors is present in the instant case.

11 Finally, the Commission asked the parties to distinguish Matter of Moore,
12 SB-02-0043-D (2002) from the instant matter. The Commission correctly points
13 out that Moore engaged in an unwelcome touching, as did the Respondent the
14 instant case. However, this is where the similarities between the two cases end.
15 Unlike Moore, Respondent had actual knowledge that his touching was
16 unwelcome, but persisted anyway.⁶ Unlike Moore, Respondent forcibly held
17 Complainant against her will. Unlike Moore, Respondent offered a *quid pro quo*
18 to an opposing party, offering to compromise his own client. Unlike Moore,
19 Respondent made a knowing misrepresentation to the State Bar of Arizona.
20
21
22
23
24

25 ⁵ The Commission Order correctly states that the only reason Piatt was not suspended was because the Court did not wish to "up the ante" on him where the Commission recommendation was not appealed.

⁶ This is not to say that Moore's conduct is in any way excusable; only that in the instant case Respondent's conduct is clearly worse.

1 Unlike Moore, Respondent blamed Complainant for his conduct, implying that
2 he was somehow compelled to act as he did because she wore a "short skirt".
3

4 It is also important to note that the State Bar has consistently advocated
5 that conduct such as Respondent's should result in a suspension from the practice
6 of law. This position is supported by the case law from other jurisdictions.⁷ In
7 the Matter of Walker, the State Bar argued that if the hearing officer determined
8 that the touching was not consensual, then Walker should be given a long-term
9 suspension or disbarred. Thus, far from taking a *harsher* stance in this case, the
10 State Bar is agreeing to a *lesser* sanction than it has requested in other matters.
11

12 The Respondent agrees with the State Bar's proportionality analysis, if the
13 facts are as the State Bar has alleged. One of the reasons that respondent agreed
14 with discipline by consent was that there exists a possibility that a hearing officer
15 might make a decision against Respondent that was more stringent than that
16 agreed to by the parties and more in line with the State's version of the facts. In
17 the spirit of North Carolina v. Alford, 400 U. S. 25, 91 S. Ct. 160, 27 L. Ed. 2nd
18 162, the Respondent chose to accept a sanction for his admittedly improper
19
20
21
22

23 ⁷See State ex rel. Oklahoma Bar Association v. Miskovsky, 938 P.2d 744, 745 (Okla. 1997) (Attorney suspended
24 for sixty days for two counts of sexual misconduct involving separate instances of sexually explicit and
25 inappropriate language with women who sought representation in divorce proceedings); see also In re Rinella,
175 Ill.2d 504, 677 N.E.2d 909 (Ill. 1997) (three year suspension warranted for using position to gain sexual favors
from clients, and for lying to the disciplinary commission); In re Gilbert, 194 A.D.2d 262, 262-263, 606 N.Y.S.2d
478 (N.Y.App.Div. 1993) (one year suspension warranted for extortion of sexual favors from two clients and
sexually inappropriate comments toward coworkers).

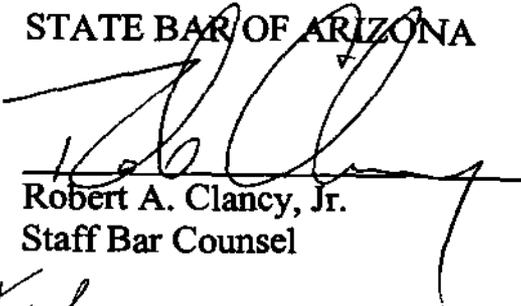
1 actions although, in Respondent's view, his actions were not of the same
2 character as the State has alleged.

3
4 **CONCLUSION**

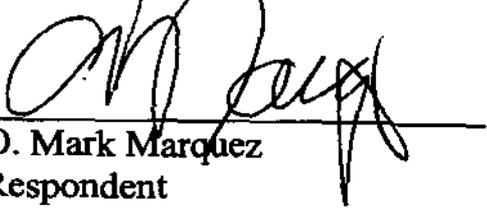
5 Our Supreme Court has made it clear that the discipline in each case must
6 be tailored for the individual case as neither perfection nor absolute uniformity
7 can be achieved. Matter of Riley, 142 Ariz. 604, 615 (1984). As demonstrated
8 above, other Arizona cases involving inappropriate sexual conduct by an attorney
9 are factually distinguishable from the instant case. Respondent's conduct in this
10 matter is sufficiently more egregious than the conduct in the other cases.
11 Therefore a sanction consisting of a thirty (30) day suspension is appropriate and
12 will serve the purposes of discipline. Accordingly the parties respectfully urge
13 the Commission to accept this consent agreement.

14
15
16 Respectfully submitted this 4th day of FEBRUARY, 2003.

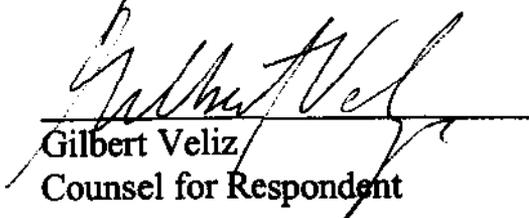
17
18 STATE BAR OF ARIZONA

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20 
21 Robert A. Clancy, Jr.
Staff Bar Counsel

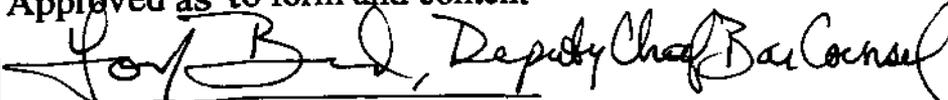
22 Dated this 3rd day of February, 2003.

23
24 
25 O. Mark Marquez
Respondent

1 Dated this 3rd day of February, 2003.

2
3 
4 Gilbert Veliz/
Counsel for Respondent

5 Approved as to form and content

6 

7 Robert B. Van Wyck
Chief Bar Counsel

8
9 Original filed with the Disciplinary Clerk
this 4th day of February, 2003

10 by Gwendolyn Burke

11
12 Copy mailed first class
this 4th day of February, 2003, to:

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