

**FILED**

SEP 29 2006

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA  
BY: *[Signature]*

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

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

No. 04-1581

**JOE SAIENNI,** )  
**Bar No. 0018142** )

**DISCIPLINARY COMMISSION  
REPORT**

RESPONDENT. )  
\_\_\_\_\_ )

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on August 12, 2006, pursuant to Rule 58, Ariz. R. Sup. Ct., for consideration of the Hearing Officer's Report filed May 4, 2006, recommending acceptance of the Tender of Admissions and the Agreement for Discipline by Consent (Tender) and the Joint Memorandum (Joint Memorandum) in Support of Agreement for Discipline by Consent providing for censure and costs.

**Decision**

The seven members<sup>1</sup> of the Disciplinary Commission by a majority of five,<sup>2</sup> recommend accepting and adopting the Hearing Officer's findings of fact, conclusions of law, and recommendation for censure and costs of these disciplinary proceedings.<sup>3</sup>

**Discussion of Decision**

In January 2004, Respondent represented Mr. Dumas who was indicted for child abuse, which involved the alleged slapping of his five year son. There was conflicting evidence in the police report as to who actually hit the child. It was originally

<sup>1</sup> Commissioner Flores recused. One public member seat remains vacant.

<sup>2</sup> Commissioners Baran and Mehrens were opposed. See dissenting opinion below.

<sup>3</sup> A copy of the Hearing Officer's Report is attached as Exhibit A.

1 reported that the child's mother Mrs. Dumas stated that she had hit the child, but later said  
2 that she heard Mr. Dumas hit the child. The State filed motions to appoint guardian ad  
3 litem asserting that Ms. Dumas was not cooperating with the victim advocate. Respondent  
4 filed objections of behalf of the entire Dumas family stating that all contact must be  
5 through him as their counsel. The court denied the state's motions but ordered that the  
6 court would consider appointment of a lawful representative for the child if Ms. Dumas  
7 refused to cooperate with the advocate. Mr. Dumas ultimately pled guilty to child abuse, a  
8 class 6 designated felony.

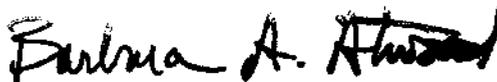
9 In response to bar charges, Respondent admitted to advising the Dumas, but  
10 asserted that no conflict existed as the Dumas family had a shared goal of "pushing back  
11 what they believed to be a corrupt and dishonest government going back on their word and  
12 trying to destroy them by incarcerating their breadwinner." Respondent further claimed  
13 that his representation of Mrs. Dumas and the child was limited solely to the state's motion  
14 for guardian ad litem.  
15

16 Based on Respondent's conditional admissions, the Hearing Officer found and  
17 the Commission agrees that clear and convincing evidence that Respondent violated ER  
18 1.7 (conflict of interest). The record supports that Respondent was negligent in  
19 representing the defendant, victim and potential witness in a criminal matter.  
20

21 The Commission further agrees that mitigating factors 9.32(a) absence of prior  
22 disciplinary offenses, 9.32(b) absence of a dishonest or selfish motive, and 9.32(e) full and  
23 free disclosure to disciplinary board or cooperative attitude toward proceedings are present.  
24  
25  
26

1 In reviewing the proportionality analysis provided, the Commission determined  
2 that a censure is within the range of appropriate sanctions for negligently engaging in a  
3 conflict of interest violation with no actual harm occurring to clients.

4 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of September, 2006.

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Barbara A. Atwood, Chair  
7 Disciplinary Commission

8 **Commissioners Baran and Mehrens respectfully dissent:**

9 Our concern arises from the statement in Respondent's Answer in which he avows  
10 that when confronted with this possible conflict problem, he contacted the State Bar's  
11 Ethics Hotline.<sup>4</sup> See ¶16, Answer. Respondent contends that he was informed that his  
12 conduct was not unethical. Lawyers are encouraged to make use of the Ethics Hotline.  
13 We believe it should have been considered an important mitigating factor in this case. We  
14 think the agreement should have been rejected and sent to a hearing.

15  
16 Original filed with the Disciplinary Clerk  
17 this 29<sup>th</sup> day of September, 2006.

18 Copy of the foregoing mailed  
19 this 29<sup>th</sup> day of September, 2006, to:

20 Robert J. Lord  
21 Hearing Officer 6L  
22 *Berens, Kozub, Lord & Kloberdanz, P.L.C.*  
23 7047 East Greenway Parkway, Suite 140  
24 Scottsdale, AZ

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<sup>4</sup> We are aware that an Ethic's Hotline opinion is just advisory and does not insulate a caller from discipline.

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