

FILED

MAY 04 2006

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *COB*

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

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5 IN THE MATTER OF A MEMBER) No. 04-1581
6 OF THE STATE BAR OF ARIZONA,)
7)
8 **JOE SAIENNI,**)
9 **Bar No. 018142**)
10)
11) **HEARING OFFICER'S REPORT**
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RESPONDENT.)

PROCEDURAL HISTORY

11 A Probable Cause Order was filed on October 4, 2005. A Complaint was
12 filed on November 1, 2005. Respondent filed an Answer on December 14,
13 2005. The State Bar filed a Notice of Settlement on February 10, 2006. The
14 parties filed a Tender of Admissions and Agreement for Discipline by Consent
15 (Tender) and Joint Memorandum in Support of Tender of Admissions and
16 Agreement for Discipline by Consent (Joint Memo) on March 13, 2006. No
17 hearing has been held in this matter.
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FINDINGS OF FACT

21 1. At all times relevant hereto, Respondent was an attorney licensed to
22 practice law in the State of Arizona, having been admitted to practice in Arizona
23 on July 1, 1997.
24
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COUNT ONE (File No. 04-1581)

1 2. On or about January 14, 2004, Thomas Dumas was indicted for child
2 abuse for allegedly slapping his five-year-old son Justin in August 2003.

3 3. According to the police report, evidence indicated that Justin's
4 mother, Julie Dumas, originally said that she hit Justin, but later said that she
5 heard Thomas Dumas hit Justin. Julie Dumas also later claimed that Thomas
6 Dumas admitted to her that he hit Justin. Respondent affirmatively alleges that at
7 the time of the incident, the Dumas family was experiencing difficulties, and they
8 were all unsure of what exactly occurred, although they were all in agreement that
9 it should not have happened.
10

11 4. Respondent represented Thomas Dumas in the criminal proceedings
12 in Maricopa County Superior Court in case no. CR2004-035616—001-SE.
13

14 5. In or about February 2004, the state filed a motion to appoint a
15 guardian ad litem for Justin claiming that Julie Dumas was not responding to calls
16 from the victim advocate.
17

18 6. On or about February 26, 2004, Respondent filed a response to the
19 motion to appoint a guardian ad litem objecting to the request.
20

21 7. On or about March 3, 2004, the court denied the motion.
22

23 8. The state filed a motion to reconsider the motion to appoint a
24 guardian ad litem for Justin claiming that Julie Dumas continued to refuse to
25 speak to the victim advocate.

1 9. On or about March 18, 2004, Respondent filed a response to the
2 motion to reconsider.

3 10. The response filed by Respondent was on behalf of the entire Dumas
4 family.
5

6 11. In his response, Respondent stated that since he represented all of
7 the Dumas family, any attempts to contact them must be through him as their
8 counsel.
9

10 12. On or about April 2, 2004, the court denied the motion to reconsider,
11 but ordered that in the event that the mother refuses to cooperate with the
12 advocate, the court would consider the appointment of a lawful representative for
13 the child.
14

15 13. Respondent then filed a motion for clarification. In that motion,
16 Respondent again made it clear that he represented Thomas Dumas, Julie Dumas
17 and Justin Dumas in regards to the criminal proceedings.
18

19 14. The state then filed a motion to determine counsel. The state later
20 withdrew its motion, and Thomas Dumas entered into a plea agreement with the
21 state to resolve the case. Thomas Dumas pled guilty to child abuse, a class 6
22 designated felony.
23

24 15. In response to the bar charge, Respondent admits advising the
25 Dumas family, and claims that no conflict existed as the Dumas' did not have

1 conflicting claims or positions as all concurred in the goal of “pushing back what
2 they believed to be a corrupt and dishonest government going back on their word
3 and trying to destroy them by incarcerating their bread-winner.” In addition,
4 Respondent’s representation of Julie and Justin Dumas was limited solely to the
5 issue of the state’s motion for a guardian ad litem.
6

7 16. A conflict of interest existed in Respondent’s representation of
8 Thomas Dumas, Julie Dumas, and Justin Dumas.
9

10 CONDITIONAL ADMISSIONS & DISMISSALS

11 Respondent conditionally admits that his representation of the Dumas
12 family constituted a conflict of interest.
13

14 Respondent conditionally admits that his conduct as described in this count
15 violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.7.

16 In Count One, the State Bar has agreed to dismiss allegations that
17 Respondent violated ER 4.4, ER 8.4(d), and Rule 41(g), Ariz.R.S.Ct., in
18 exchange for the settlement in this matter. Those allegations concern statements
19 written by Respondent in his motions or responses to the court. The court struck
20 the statements from the record, and admonished counsel. None of the statements
21 were derogatory to the court, nor did they contain profanities or name-calling.
22 The State Bar believes that the more serious violation in this matter was the
23 conflict of interest violation.
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1 This Hearing Officer agrees with the parties that three factors are present in
2 mitigation:

3 (a) absence of a prior disciplinary record;

4 (b) absence of a dishonest or selfish motive; and,

5 (c) full and free disclosure to disciplinary board or cooperative attitude
6 toward proceedings;

7
8 **PROPORTIONALITY REVIEW**

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10 To have an effective system of professional sanctions, there must be
11 internal consistency, and it is appropriate to examine sanctions imposed in cases
12 that are factually similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567
13 (1994) (quoting *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).
14 However, the discipline in each case must be tailored to the individual case, as
15 neither perfection nor absolute uniformity can be achieved. *In re Riley*, 142
16 Ariz. 604, 615, 691 P.2d 695 (1984).
17

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19 In terms of proportionality, there are several similar cases. The State Bar
20 notes at the outset that proportionality cases for conflicts of interest vary widely
21 depending on the very specific facts of the case, including such facts as whether
22 the conflict resulted caused actual or potential injury to a client or a court.
23

24 The Arizona Supreme Court has previously imposed a censure for violation
25 of ER 1.7 in several cases similar to the present case. For example, in *In re*

1 *Clark*, 2002 Ariz. LEXIS 21, DC No. 99-2295, (2/13 2002) (2002). The lawyer
2 received a censure for violations of ER 1.7, 8.1 and 8.4 (c) and (d). In that case,
3 the lawyer prepared answers for two tenants of his client. The Commission
4 imposed a censure, relying on ABA *Standard* 4.33 (as set forth above). The
5 aggravating factors included dishonest or selfish motive, prior disciplinary history
6 and substantial experience in the practice of law. In mitigation, the Commission
7 cited remorse and remoteness of prior offense.
8

9
10 *In re Kloberdanz*, SB-01-0169-D (2001), also involved a violation of ERs
11 1.7(b) and 1.8(a) for which the lawyer was censured. In that case, the lawyer was
12 negligent in not determining whether he had obtained a legal right in an entity.
13 This negligence resulted in him engaging in a conflict of interest when he gave
14 legal advice while obtaining an ownership interest. He failed to discuss the
15 conflict of interest, failed to obtain a waiver or written consent from his clients,
16 and failed to provide his client with a reasonable opportunity to seek the advice of
17 independent counsel. Respondent later filed suit against his clients, asserting an
18 interest in the object of the work he had performed for his clients. A censure was
19 imposed in that case because it did not appear that the lawyer was intentionally
20 attempting to gain at his client's expense.
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1 DATED this 4 day of May, 2006.

2
3 Robert J. Lord
4 Robert J. Lord
Hearing Officer 6L

5 Original filed with the Disciplinary Clerk
6 this 4th day of May, 2006.

7 Copy of the foregoing was mailed
8 this 4th day of May, 2006, to:

9 Jennifer A. Sparks
10 Respondent's Counsel
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17 by: Christina Soto
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