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BEFORE A HEARING OFFICER OF  
THE SUPREME COURT OF ARIZONA

**FILED**

JUL 10 2007

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

**MICHAEL AARON,**  
**Bar No. 013730**

Respondent.

File No. 06-0088  
HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY DWIGHT M. WHITLEY, JR.

**HEARING OFFICER'S  
REPORT**

(Assigned to Hearing Officer 9I,  
Dwight M. Whitley, Jr.)

**PROCEDURAL HISTORY**

A Probable Cause Order was filed on October 6, 2006. A Complaint was filed on December 29, 2006. A Response was filed by Respondent on January 23, 2007. A Notice of Settlement and Motion to Vacate Hearing was filed by the State Bar on April 13, 2007. An Order vacating the hearing previously set for April 16, 2007, was entered and May 15, 2007 was set for filing the settlement documents. A Tender of Admissions and Agreement for Discipline by Consent was filed on May 15, 2007. The Hearing Officer requested an extension of time within which to file this report to July 6, 2007.

**FINDINGS OF FACT**

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 26, 1991.

1           2. In June 2003, the Client ("the Client") began working as a legal assistant  
2 for Respondent's law firm, Aaron & Rogers. The Client remained an employee of  
3 Aaron & Rogers during all times relevant to this matter.  
4

5           3. Respondent and the Client were engaged in a personal relationship  
6 starting on or about October 8, 2003.  
7

8           4. On October 23, 2003, Respondent filed a Petition for Dissolution of  
9 Marriage ("the Petition") on behalf of the Client as the petitioner with her husband,  
10 Joe Gorman ("Mr. Gorman") as respondent, in Pima County Superior Court, No. D-  
11 20033886. If this matter were to proceed to hearing, Respondent would testify that  
12 the Petition was prepared and filed only on behalf of the Client as the Petitioner in  
13 the Dissolution matter. For the purposes of this consent agreement, the State Bar  
14 does not dispute Respondent's version of events.  
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18           5. Mr. Gorman and the Client have a 14-year old son, J.D.

19           6. Mr. Gorman purportedly believed that Respondent was representing him  
20 and the Client in the marriage dissolution proceedings and relied on the information  
21 and recommendations made by Respondent. If this matter were to proceed to  
22 hearing, Respondent would contest this paragraph and would deny that any meeting,  
23 discussion or conversation took place between himself and Mr. Gorman prior to  
24 October 23, 2003, the day the divorce petition was filed on behalf of the Client. For  
25

1 the purposes of this consent agreement, the State Bar does not dispute Respondent's  
2 version of events.

3  
4 7. Mr. Gorman allowed Respondent to prepare all the necessary pleadings to  
5 be filed in No. D-20033886. If this matter were to proceed to hearing, Respondent  
6 would testify that he did not represent Mr. Gorman during the dissolution  
7 proceedings. For the purposes of this consent agreement, the State Bar does not  
8 dispute Respondent's version of events.  
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11 8. Respondent prepared both the Petition and the Decree of Dissolution of  
12 Marriage ("the Decree") for the Petitioner.

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14 9. The Petition included terms that were not favorable to Mr. Gorman.

15 a. Paragraph VIII of the Petition stated in part: "the parties are fit and  
16 proper persons to have joint physical care, custody, and control of  
17 the aforesaid children of the parties."  
18

19 b. Paragraph VIII then goes on to state: "If Respondent fails to  
20 complete his parent education class, pay his required filing fee or  
21 sign a joint custody plan the Petitioner should be awarded sole  
22 custody with the Respondent liberal and reasonable rights of  
23 visitation."  
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If this matter were to proceed to hearing, Respondent would contest this  
paragraph and would argue that paragraph VIII of the Petition for Dissolution of

1 Marriage is nothing other than a statement of the law regarding preconditions to  
2 being awarded joint legal custody, and the consequence of failure to complete the  
3 requirement of paying the required filing fee. For the purposes of this consent  
4 agreement, the State Bar does not dispute Respondent's version of events.  
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6  
7 10. When Mr. Gorman asked Respondent what sole custody meant,  
8 Respondent told Mr. Gorman it meant that J.D. would live with his mother most of  
9 the time. If this matter were to proceed to hearing, Respondent would testify that he  
10 never had a conversation with Mr. Gorman regarding the meaning of "sole  
11 custody." For the purposes of this consent agreement, the State Bar does not  
12 dispute Respondent's version of events.  
13  
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15 11. The Court entered the Decree prepared by Respondent on December 29,  
16 2003. The Decree awarded sole visitation to the Client, as Mr. Gorman did not file  
17 a Response to the Petition, and accordingly did not pay the filing fee.  
18

19 12. Respondent did not advise Mr. Gorman to obtain his own attorney nor did  
20 he make any effort to explain to Mr. Gorman that he was representing only the  
21 Client in the dissolution proceedings. If this matter were to proceed to hearing,  
22 Respondent would testify that he sent various letters dated October, November, and  
23 December 2003 to Mr. Gorman that he should obtain his own attorney. Further,  
24 Respondent would testify that Mr. Gorman is well versed in the litigation process  
25 and had previously obtained an attorney in his previous divorce case. Mr. Gorman

1 communicated with Respondent as “her attorney.” For purposes of this agreement,  
2 the State Bar does not dispute Respondent’s version of events.  
3

4 13. Respondent did not disclose his relationship with the Client to Mr.  
5 Gorman anytime prior to or during the dissolution proceedings.  
6

7 14. In December 2003, Respondent began to refer people to Mr. Gorman.  
8 Although Respondent would testify that he is unaware of the exact dates that he  
9 referred two people to Mr. Gorman to sell their house, he did refer some clients to  
10 Mr. Gorman.  
11

12 15. On or about April 18, 2004, Respondent represented Mr. Gorman in a  
13 debt collection matter involving Bruce and Maureen Thompson and Stone  
14 Mountain Investments.  
15

16 16. The individual letters sent to Bruce and Maureen Thompson specifically  
17 identified Respondent as Mr. Gorman’s attorney. If this matter were to proceed to  
18 hearing, Respondent would testify that the drafting of the debt collection letter was  
19 the only time he represented Mr. Gorman. For the purposes of this consent  
20 agreement, the State Bar does not dispute Respondent’s version of events.  
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23 17. Mr. Gorman believed that the attorney-client relationship with regard to  
24 his business relationship with Respondent was a continuation of the relationship as  
25 established during the dissolution matter. If this matter were to proceed to hearing,  
Respondent would testify that Mr. Gorman could not believe that the business

1 representation was an extension of any previous representation since he did not  
2 represent Mr. Gorman in the dissolution matter. For the purposes of this consent  
3 agreement, the State Bar does not dispute Respondent's version of events.  
4

5 18. On April 22, 2004, Respondent filed an Amended Decree of Dissolution  
6 in D-20033886. The Amended Decree still awarded sole custody to the Client and  
7 was filed simply to restore the Client's maiden name. If this matter were to proceed  
8 to hearing, Respondent would testify that when the Decree of Dissolution and the  
9 Amended Decree of Dissolution were entered, Mr. Gorman was not legally entitled  
10 to any affirmative custodial relief, such as joint legal custody given Mr. Gorman's  
11 failure to pay an appearance fee. For the purposes of this consent agreement, the  
12 State Bar does not dispute Respondent's proposed testimony.  
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16 19. In March 2005, Mr. Gorman learned that the Client and Respondent were  
17 involved when the Client threatened to commit suicide due to a fight she had had  
18 with Respondent. If this matter were to proceed to hearing, the Client would testify  
19 this never occurred. For purposes of this agreement, the State Bar does not contest  
20 the Client's version of events.  
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23 20. In October 2005, Respondent reviewed documents related to Mortgage  
24 Brokers and wrote a letter on Mr. Gorman's behalf. The State Bar now  
25 acknowledges that a letter was never written. If this matter went to hearing,  
Respondent would testify that he did not end up reviewing the Mortgage Brokers

1 documents and did not write any letter on behalf of Mr. Gorman. For the purposes  
2 of this consent agreement, the State Bar does not dispute Respondent's version of  
3 events.  
4

5         21. Up until October 2005, the Client and Mr. Gorman had an amicable  
6 relationship, and the Client would often use his computer when visiting his home. If  
7 this matter were to proceed to hearing, the Client would testify the parties did not  
8 have an amicable relationship until October 2005. The Client would testify they  
9 had a stormy relationship from the beginning. For the purposes of this consent  
10 agreement, the State Bar does not dispute Respondent's version of events.  
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13         22. In October 2005, Mr. Gorman accessed the Client's emails on his home  
14 computer and discovered romantic emails between Respondent and the Client. If  
15 this matter were to proceed to hearing, the Client would testify she did not give Mr.  
16 Gorman consent to access her emails and pursuant to federal law the emails were  
17 illegally obtained. For the purposes of this consent agreement, the State Bar does  
18 not dispute Respondent's version of events.  
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22         23. In October 2005, Respondent learned that Mr. Gorman was aware of the  
23 relationship between him and the Client, and that Mr. Gorman had found the  
24 romantic emails the Client sent to Respondent.  
25

       24. After October 2005, Mr. Gorman alleged that Respondent became  
increasingly involved in the relationship between Mr. Gorman and his son,

1 including giving gifts to J.D. despite Mr. Gorman's request that the gift giving  
2 cease. If this matter were to proceed to hearing, Respondent would testify his  
3 relationship did not increase with the child after October 2005, the only contact he  
4 had at that time was giving him birthday and Christmas gifts and seeing him  
5 occasionally in the office. Respondent would testify his involvement with Mr.  
6 Gorman increased due to additional efforts to encourage him to have regular  
7 visitations. For the purposes of this consent agreement, the State Bar does not  
8 dispute Respondent's version of events.  
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12         25. Mr. Gorman alleges that Respondent's relationship with the Client and  
13 J.D. became a significant barrier in resolving child visitation issues that arose  
14 between the Client and Mr. Gorman. If this matter were to proceed to hearing,  
15 Respondent would testify he was very helpful and persistent in establishing a  
16 normal visitation schedule for the parties.  
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19         26. In November 2005, Mr. Gorman retained an attorney due to the  
20 breakdown in communication between himself, the Client and Respondent relating  
21 to parenting time and child visitation issues.  
22

23         27. Mr. Gorman's attorney requested that Respondent withdraw from his  
24 representation of the Client in light of their personal relationship. If this matter were  
25 to proceed to hearing, Respondent would testify he was asked to withdraw because  
he was going to be a witness and that there were no pending issues before the court.





1 aggravating and mitigating factors. *Peasley*, 208 Ariz. 27 at 35, 90 P.3d at 772;  
2 *Standard 3.0*.

3  
4 The parties have agreed that Respondent's conduct in representing the Client  
5 while maintaining a personal relationship, affected his ability to properly advise  
6 the Client about on going visitation issues. The parties have also agreed that  
7 Respondent had a conflict in representing the Client in the dissolution matter while  
8 also representing Mr. Gorman in a business matter. Finally, the parties have  
9 agreed that Respondent did not make reasonable efforts to correct Mr. Gorman's  
10 purported misunderstanding that Respondent was representing Mr. Gorman in the  
11 dissolution proceedings, despite a letter that was sent with the original paperwork  
12 for divorce and Acceptance of Service, which Mr. Gorman supposedly never  
13 received, which informed him to contact an attorney of his choice if he had any  
14 questions. These letters were sent to Mr. Gorman in October, November and  
15 December 2003.

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21 ABA *Standards* 4.33 (Failure to Avoid Conflicts of Interest) and 6.33  
22 (Improper Communications with Individuals in the Legal System) are the  
23 appropriate *Standards* to be considered in this matter.

24  
25 *Standard 4.33*

Censure 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

1 will adversely affect another client, and causes injury or potential  
2 injury to a client.

3 Standard 6.33:

4 Censure is generally appropriate when a lawyer is negligent in  
5 determining whether it is proper to engage in communication with an  
6 individual in the legal system, and causes injury or potential injury to  
7 a party or causes interference or potential interference with the  
outcome of the legal proceeding.

8 Based upon the conditional admissions in this matter, the presumptive  
9 sanction is a censure.

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11 Respondent violated his duty to his client, the legal system, and the  
12 profession. The parties have agreed that Respondent mental state was negligent.  
13 The Hearing Officer adopts that agreement. The parties further agreed that  
14 Respondent's conduct caused no actual harm; however, there was potential harm  
15 to both the client and Mr. Gorman.  
16

17  
18 There are two aggravating factors and one mitigating factors present in this  
19 case.

20  
21 In aggravation:

22 Standard 9.22(a) Prior Disciplinary Offenses. Respondent has a history of  
23 prior discipline, having been censured in 1996 for violation of ERs 1.4(b) and ER  
24 8.4(c). However, this factor should be given little weight as the prior discipline  
25 occurred over ten years ago and is not similar to the misconduct in this case.



1 absolute uniformity can be achieved. *Id.* at ¶ 61, 90 P.3d at 778, (citing *In re*  
2 *Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines* 135 Ariz. 203, 207,  
3 660 P.2d 454, 458 (1983)).

5 The cases set forth below demonstrate that a public censure is an  
6 appropriate disciplinary response.  
7

8 In *In re Walker*, 200 Ariz. 155, 24 P.3d 602 (2001), Walker received a  
9 censure for violation of ER 1.7 for touching his client's breast and attempting to  
10 enter into a consensual sexual relationship with her. The Supreme Court found  
11 that Walker had committed misconduct by failing to avoid a conflict of interest  
12 with his client and that there was a potential that Walker's personal interests would  
13 at some point conflict with those of his client. There were no aggravating factors  
14 found and seven mitigating factors were found to be present.  
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18 In *In re Moore*, 2002 Ariz. LEXIS 36 (2002), SB-02-0043-D, Moore  
19 entered into an Agreement for discipline by consent providing for censure and  
20 costs. Moore admitted to violating ER 1.7 and Rule 41(g), Ariz.R.Sup.Ct. Moore  
21 represented a client in a domestic relations matter and shortly after the start of the  
22 representation began making inquiries of his client concerning personal matters  
23 and embracing her upon arrival and departure. On at least three occasions, Moore  
24 also contacted the client at her residence and asked her to meet him at his office  
25 before or after business hours, which the client refused to do. The client

1 terminated the representation because of her belief that Moore had interests in her  
2 that went beyond the normal attorney/client relationship. There were two  
3 aggravating factors, dishonest or selfish motive and substantial experience in the  
4 practice of law. There were three mitigating factors, absence of prior disciplinary  
5 record, full and free disclosure, and remorse. Moore is different from the instant  
6 case because the Client willingly entered into a relationship with Respondent and  
7 there was no actual injury.  
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11 In *In re Herbert*, 2002 Ariz. LEXIS 37, SB-02-0041-D, Herbert entered into  
12 an agreement for discipline by consent that provided for a censure and six-months  
13 probation (with EEP and conflict of interest CLE). Herbert admitted to violating  
14 ERs 1.7(b), 3.1 and 8.4(d) by engaging in a conflict of interest when he  
15 represented a client at a time when Herbert was limited by his own interests in  
16 another legal action against the client (forcible detainer action). Herbert admitted  
17 that he negligently violated his duties owed to his clients and caused actual or  
18 potential injury. There were two aggravating factors: prior disciplinary record and  
19 substantial experience in the practice of law, 9.22(i). The only mitigating factor  
20 was full and free disclosure/cooperative attitude.  
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25 Although not an Arizona case, *In re Chinquist*, 714 N.W.2d 469, (N.D.  
2006), is instructive. The hearing officer in *Chinquist* recommended a 30-day  
suspension for violations of ERs 1.5, 1.7, 1.8, and 1.15, Rules of Profession

1 Conduct, but the parties objected and the North Dakota Supreme Court accepted  
2 review. The Court found, among other violations, that a sexual relationship  
3 between Chinquist and his client occurred at a time when Chinquist was  
4 providing legal representation for her. Chinquist had admitted that he continued  
5 to work on visitation and child support matters for the client for a period of time  
6 after their sexual relationship had terminated. The Court also found that, as an  
7 experienced lawyer, Chinquist had to have known that the sexual relationship  
8 jeopardized the disposition of the client's case. The Court found five factors in  
9 aggravation: prior disciplinary offenses, dishonest or selfish motive, multiple  
10 offenses, vulnerability of victim, and substantial experience in the practice of  
11 law. There were two mitigating factors, full and free disclosure/cooperation,  
12 and remorse. Finding that Chinquist had also entered into unrelated financial  
13 transactions with the client without advising her to seek independent advice, and  
14 the mishandling of client funds, the Court concluded that a six-month and one-  
15 day suspension was the appropriate sanction under the circumstances.

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22 Although similar, Chinquist's conduct was more egregious than that of  
23 Respondent's since the Client was Respondent's client at the time of the  
24 representation in the dissolution, post-dissolution, and child visitation  
25 proceedings, but she was also his law office assistant. In addition, Chinquist

1 was charged with additional misconduct related to financial dealings and  
2 mishandling of client funds.  
3

4 Each of the cited cases relates to an attorney's failure to recognize a  
5 conflict in the representation of a client due to the attorney's self-interest and  
6 establishes that a public censure is within the range of appropriate sanctions.  
7

8 Given the facts of this case, a censure meets the goals of the disciplinary  
9 system. The terms of the agreement serve to protect the public, instill  
10 confidence in the legal system, deter other lawyers from similar conduct and  
11 maintain the integrity of the bar.  
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14 **CONCLUSION**

15  
16 After a comprehensive investigation, the State Bar has, for the purposes of  
17 these disciplinary proceedings, accepted Respondent's explanation of his conduct,  
18 and recommended the imposition of public sanction. The Hearing Officer accepts  
19 and adopts the Findings of Fact and the recommended sanction. Based on all the  
20 foregoing, this Hearing Officer finds that the Tender of Admissions and  
21 Agreement for Discipline by Consent are fair, just and an appropriate resolution,  
22 accepts the same and recommends the adoption thereof.  
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1 DATED this 10<sup>th</sup> day of July, 2007.

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3  
4 Dwight M. Whitley, Jr.  
5 Dwight M. Whitley, Jr.  
6 Hearing Officer 9I

7 Original filed this 10<sup>th</sup> day of  
8 July, 2007 with:

9 Disciplinary Clerk of the Supreme Court  
10 Certification and Licensing Division  
11 1501 W. Washington, #104  
12 Phoenix, Arizona 85007-3329

13 Copy of the foregoing mailed this  
14 10<sup>th</sup> day of July, 2007, to:

15 Cheryl K. Copperstone  
16 Respondent's Counsel  
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19 Shauna R. Miller  
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24 by: Christina [Signature]  
25