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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 06-1816  
1861 *ms*

**EDWARD A. LOSS, III** )  
**Bar No. 016975** )

**DISCIPLINARY COMMISSION  
REPORT**

RESPONDENT )

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on March 15, 2008, pursuant to Rule 58, Ariz R Sup Ct, for consideration of the Hearing Officer's Report filed February 22, 2008, 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, one year of probation with the State Bar's Law Office Management Assistance Program (LOMAP), Member Assistance Program (MAP) assessment, and payment of costs within 30-days of the date of the final Judgment and Order

**Decision**

Having found no facts clearly erroneous, the eight members<sup>1</sup> of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for censure, one year of probation (LOMAP and MAP assessment), and payment of costs of these disciplinary

<sup>1</sup> One lawyer member seat remains vacant

proceedings within 30-days of the date of the final Judgment and Order<sup>2</sup> The terms of probation are as follows

**Terms of Probation**

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3           1    Within 30-days of the date of the final Judgment and Order, Respondent shall  
4 contact the Director of LOMAP who shall develop a probation contract and its terms shall  
5 be incorporated herein by reference The period of probation will begin to run on the date  
6 of the final Judgment and Order and will conclude one year from the date that all parties  
7 have signed the probation contract  
8

9           2    Respondent shall undergo a MAP assessment and any recommendations  
10 resulting from such assessment shall also be incorporated in the probation contract  
11 Respondent shall complete anti-sexual harassment or sensitivity training, as recommended  
12 by the Director of MAP  
13

14           3    Respondent shall refrain from engaging in any conduct that would violate the  
15 rules of professional conduct or other rules of the Supreme Court of Arizona  
16

17           4.    In the event that Respondent fails to comply with any of the foregoing  
18 conditions, and the State Bar receives information, bar counsel shall file with the imposing  
19 entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz R Sup Ct The  
20 Hearing Officer shall conduct a hearing within 30-days after receipt of said notice, to  
21 determine whether the terms of probation have been violated and if an additional sanction  
22 should be imposed In the event there is an allegation that any of these terms have been  
23 violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by  
24  
25  
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<sup>2</sup> A copy of the Hearing Officer's Report is attached as Exhibit A



**FILED**

FEB 28 2008

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

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY T.M. Quigley

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

File No. 06-1861

**EDWARD A. LOSS, III,**  
**Bar No. 016975**

**HEARING OFFICER'S REPORT  
RECOMMENDING ACCEPTANCE  
OF AGREEMENT FOR  
DISCIPLINE BY CONSENT**

Respondent.

(Assigned to Hearing Officer 8W,  
Thomas M. Quigley)

Pursuant to Ariz R. Sup. Ct 56(e), the undersigned hearing officer recommends acceptance of the Tender of Admissions and Agreement for Discipline by Consent and submits the following report

**I. PROCEDURAL HISTORY**

The State Bar filed a Complaint on September 18, 2007. The complaint alleged one count as discussed further below. Respondent Edward A. Loss, III ("Respondent") filed an Answer on October 16, 2007. A notice of settlement was filed on December 13, 2007, and subsequently the parties filed a Tender of Admissions and Agreement for Discipline by Consent ("Agreement") and a Joint Memorandum in Support of Agreement for Discipline by Consent ("Joint Memorandum") on January 8, 2008. No hearing has been held in this matter.

**II. FACTS<sup>1</sup>**

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

**COUNT ONE (06-1861)**

2. On July 28, 2006, Complainant Donna Petersen ("Petersen") hired Respondent to represent her on a matter in the Chandler Municipal Court.

3. Respondent made inappropriate comments to Petersen during the course of the representation.

<sup>1</sup> The following facts have been conditionally admitted and form the basis for the hearing officer's recommendation. See Agreement.

1           4.     On October 7, 2006, Petersen met with Respondent at Respondent's office  
2 to discuss various issues of the representation.

3           5.     During that meeting, Respondent told Petersen that he was attracted to  
4 her.

5           6     Respondent then tried to kiss Petersen, but Petersen rebuffed  
6 Respondent's advance.

7           7.     Respondent inappropriately touched Petersen in an attempt to engage in a  
8 sexual relationship with Petersen.

9           8.     Petersen left Respondent's office following their October 7, 2006,  
10 meeting.

11          9.     On October 31, 2006, Petersen called Respondent's office on the  
12 telephone and terminated Respondent's services

13          10.    On November 1, 2006, in an email to one of Respondent's law office staff  
14 members, Respondent referred to Petersen as an "idiot" and "goof-ball".

15          11.    On November 1, 2006, Respondent signed and filed a Motion to  
16 Withdraw as Counsel of Record from Petersen's case.

17          12.    On November 5, 2006, Petersen sent a letter and email to Respondent that  
18 documented Respondent's October 7, 2006, sexual advance and reiterated that Petersen  
19 was terminating Respondent's services.

20          13.    On November 5, 2006, Respondent replied to Petersen via email  
21 Respondent's email asserted that Petersen's "accusations are untrue, absurd, and  
22 bordering on the insane."

23          14     On November 8, 2006, Petersen filed a charge against Respondent with  
24 the State Bar of Arizona.

25          15.    Respondent has been cooperative with Bar counsel.

26          16     Respondent has submitted nine letters from character witnesses Mark J  
27 Anderson, Benjamin L. Dodge, Fran M Gengo, Steve Hallum, Cedria King, Lori D.  
28 Kunzelman, Lou Lagomarsino, James P Leonard, and Mark A. Nermyr attesting to

1 Respondent's hard work, integrity and professionalism.

2 **III. DISMISSED ALLEGATIONS**

3 The Complaint in this matter, stated as one Count, alleged that Respondent's fee  
4 agreement violated ER 1.5. As part of the Agreement, the State Bar dismissed the  
5 allegation that Respondent violated ER 1.5.

6 **IV. RESTITUTION**

7 There is no issue of restitution in this matter.

8 **V. THE APPROPRIATE SANCTION**

9 The purpose of lawyer discipline is not to punish the lawyer, but to protect the  
10 public and deter future misconduct. *In re Fioramonti*, 176 Ariz 182, 187, 859 P 2d  
11 1315, 1320 (1993). Lawyer discipline should also protect the public, the profession and  
12 the administration of justice *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet  
13 another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*,  
14 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

15 In imposing discipline, it is appropriate to consider the facts of the case, the  
16 American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards")  
17 and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178  
18 Ariz 283, 286, 872 P 2d 1235, 1238 (1994).

19 **A. ABA STANDARDS**

20 The *Standards* provide guidance with respect to the appropriate sanction in this  
21 matter. The Court and Commission consider the *Standards* a suitable guideline. *In Re*  
22 *Rivkind*, 164 Ariz. 154, 157, 791 P 2d 1037, 1040 (1990); *In Re Kaplan*, 179 Ariz. 175,  
23 177, 877 P.2d 274, 276 (1994).

24 In determining an appropriate sanction, both the Court and the Commission  
25 consider the lawyer's mental state, the duty violated, the actual or potential injury  
26 caused by the misconduct, and the existence of aggravating and mitigating factors.  
27 *Matter of Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA Standard 3.0  
28

1                   **1.     The duty violated**

2           The parties agree, and this hearing officer finds, that Respondent violated Ariz.  
3 R. Sup. Ct. 41(g) (“advance no fact prejudicial to the honor or reputation of a party”) and ER 17(a)(2) (conflict of interest). *Standard* 4.33 states, “[Censure] is generally  
4 appropriate when a lawyer is negligent in determining whether the representation of a  
5 client may be materially affected by the lawyer’s own interests, or whether the  
6 representation will adversely affect another client, and causes injury or potential injury  
7 to a client ”

9           Respondent allowed his personal interest in his client to guide his behavior, but  
10 Respondent made only a single attempt to physically engage in a sexual relationship  
11 with his client, an attempt that immediately ceased when Petersen rejected his advance

12           Respondent also exacerbated his violation when he attacked Petersen’s character  
13 both verbally and in writing. *Standards* 5.13/5.14 are instructive on this issue, and  
14 would also indicate that censure is appropriate

15                   **2.     The lawyer’s mental state**

16           Respondent asserts, and the State Bar accepts that Respondent was negligent in  
17 ascertaining the likely effect of his actions. Negligence includes: “the failure to heed a  
18 substantial risk that circumstances exist or that a result will follow, which failure is a  
19 deviation from the standard of care that a reasonable lawyer would exercise in the  
20 situation.” *Standards* Definitions. This hearing officer accepts that Respondent’s initial  
21 conduct was negligent within this definition.<sup>2</sup>

22                   **3.     The potential or actual injury caused by Respondent’s conduct**

23           Respondent’s conduct caused actual and potential injury to Petersen  
24 Respondent’s loyalty to Petersen and her interests was impaired by Respondent’s desire  
25

26 <sup>2</sup> The more difficult question is whether Respondent’s subsequent conduct in attacking  
27 Petersen’s character can be termed negligent. However, because the presumptive  
28 sanction under *Standard* 5.13 would still be censure, this issue does not impact the  
ultimate recommendation. Censure is generally appropriate when a lawyer knowingly  
engages in conduct that involves misrepresentation that adversely reflects on the  
lawyer’s fitness to practice law. *Id*

1 for a sexual relationship with her.

2 **4. The aggravating and mitigating circumstances**

3 The parties agreed, and the hearing officer finds, two factors in aggravation:

4 *Standard 9.22(b)* (selfish motive). Respondent allowed his personal interest to  
5 interfere with his duty to his client.

6 *Standard 9.22(i)* (substantial experience in the practice of law). Respondent was  
7 admitted to the practice over 10 years prior to the events.

8 The parties submitted five mitigating factors, only three of which this hearing  
9 officer can find.

10 *Standard 9.32(a)* (lack of prior disciplinary history). Respondent has no prior  
11 disciplinary history.

12 *Standard 9.32(d)* (timely good faith efforts to rectify the consequences). This  
13 hearing officer declines to find this factor. Rather, it appears that Respondent's initial  
14 instinct was to attempt to discredit Petersen by attacking her character.

15 *Standard 9.32(e)* (cooperation with disciplinary proceedings) Respondent has  
16 been cooperative with the State Bar's investigation.

17 *Standard 9.32(g)* (good character and reputation). Respondent has submitted  
18 ample evidence of good character.

19 *Standard 9.32(l)* (remorse) This hearing officer finds insufficient evidence of  
20 remorse to find this factor.

21 Although the above aggravating/mitigating factors exist, none, either individually  
22 or in combination, are sufficient to change the presumptive sanction of censure.

23 **B. PROPORTIONALITY REVIEW**

24 To have an effective system of professional sanctions, there must be internal  
25 consistency, and it is appropriate to examine sanctions imposed in cases that are  
26 factually similar. *Peasley, supra*, 208 Ariz. at ¶ 33, 90 P.3d at 772. However, the  
27 discipline in each case must be tailored to the individual case, as neither perfection nor  
28 absolute uniformity can be achieved. *Id* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In*

1 *re Alcorn*, 202 Ariz. 62, 76, 41 P 3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207,  
2 660 P.2d 454, 458 (1983)).

3 The parties submit, and the hearing officer finds, *In Re Moore*, SB-02-0043-D  
4 (2002) to be sufficiently similar to support a finding of proportionality. The respondent  
5 in *Moore* was censured for persistent sexual comments and invitations to his client.

6 **VI. RECOMMENDATION**

7 Upon consideration of the facts, application of the *Standards*, including  
8 aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer  
9 recommends acceptance of the Tender of Admissions and Agreement for Discipline by  
10 Consent and the Joint Memorandum in Support of Agreement for Discipline by Consent  
11 providing for the following:

12 1 Respondent shall receive a Censure.

13 2. Respondent shall pay all costs and expenses incurred by the State Bar in  
14 these proceedings within thirty (30) days of the Supreme Court's Final Judgment and  
15 Order

16 3. Respondent shall serve a term of probation for one (1) year under the  
17 following conditions:

18 a Respondent shall contact the State Bar's Law Office Management  
19 Assistance Program (LOMAP) within thirty (30) days of the date of the Supreme  
20 Court's Judgment and Order. The director of LOMAP shall develop a probation  
21 contract, and its terms shall be incorporated herein by reference. The probation  
22 period will begin to run on the date of the final Judgment and Order in this case,  
23 and will conclude one (1) year from the date that all parties have signed the  
24 probation contract;

25 b. Respondent shall undergo an assessment in connection with MAP,  
26 and any recommendations resulting from such assessment shall also be  
27 incorporated in the probation contract. Respondent shall attend and complete  
28 anti-sexual harassment or sensitivity training, as recommended by the Director

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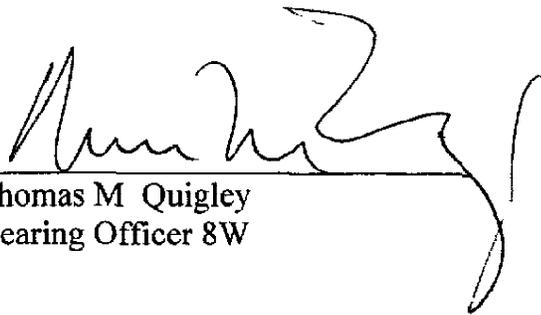
of MAP;

c. 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;

d. In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance with the imposing entity, pursuant to Rule 60(a)(5). The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practicable date, but in no event later than thirty (30) days after receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend appropriate action and response. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the State Bar of Arizona bears the burden of proof to prove noncompliance by clear and convincing evidence.

Respondent shall also pay the costs and expenses of this action during the period of probation.

DATED this 21<sup>st</sup> day of February, 2008.

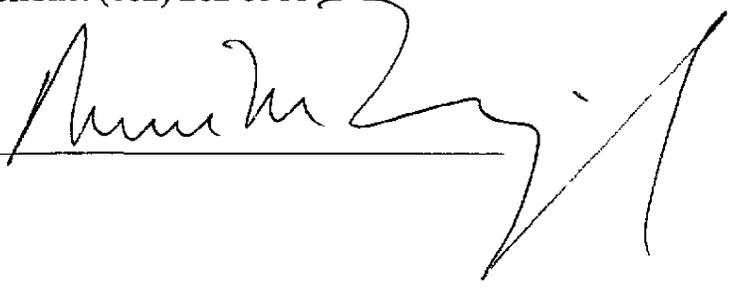
  
Thomas M. Quigley  
Hearing Officer 8W

Original filed this 21<sup>st</sup> day of February, 2008 with the Disciplinary Clerk of the Supreme Court

Copy of the foregoing mailed this 21<sup>st</sup> day of February, 2008, to:

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