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

IN THE MATTER OF A MEMBER	)	No	06-1473
OF THE STATE BAR OF ARIZONA,	)		
	)		
<b>EDWARD E. VANCE,</b>	)		
<b>Bar No. 013111</b>	)	<b>DISCIPLINARY COMMISSION</b>	
	)	<b>REPORT</b>	
	)		
RESPONDENT	)		
_____	)		

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on April 19, 2008, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the Hearing Officer’s Report filed March 25, 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 and costs

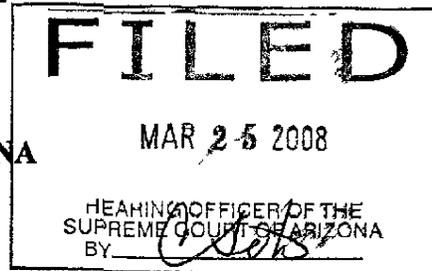
**Decision**

Having found no facts clearly erroneous, the seven 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 and costs of these

<sup>1</sup> Commissioners Flores and Katzenberg did not participate in these proceedings Hearing Officer Mark Sifferman, participated as an ad hoc member One lawyer member seat remains vacant



BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA



IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
)  
EDWARD E. VANCE, )  
Bar No. 013111 )  
)  
RESPONDENT. )

File No. 06-1473

**HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

1. Probable Cause was found in this matter on July 23, 2007. The Complaint was filed on October 17, 2007. Respondent filed his Answer on November 15, 2007, and the matter was assigned to the undersigned Hearing Officer on November 21, 2007.
2. Originally the final hearing date was set on January 28, 2008, but because of discovery problems that involved members of the Ak-Chin Judiciary refusing to cooperate in the setting of their depositions, the final hearing was continued. Ultimately, the case was settled and a hearing on the Tender of Agreement and Joint Memorandum was held on March 11, 2008.
3. On June 20, 2005, pursuant to an Order of the Ak-Chin Community Court, Respondent was suspended from the practice of law in that Court for a period of two years.
4. On February 22, 2006, following briefs and oral argument by Respondent and the State Bar, the Disciplinary Commission issued an order declining to impose reciprocal

discipline on Respondent pursuant to Rules 53(i) and 58, Ariz.R.Sup.Ct.<sup>1</sup>

5. The two-year period of Respondent suspension in the Community Court ran on June 3, 2007.
6. On October 17, 2007, the State Bar filed its Complaint in this proceeding.
7. Respondent avows that he has not worked as a lawyer for pay in Arizona since June 20, 2005. He has handled one limited matter on a pro bono basis.

### **FINDINGS OF FACT**

8. At all times relevant hereto, Respondent was an attorney licensed to practice law in the State of Arizona, having been first admitted on September 18, 1990.

#### **COUNT ONE (06-1473)**

9. In January 2001, Respondent was hired as Chief Prosecutor for the Ak-Chin Indian Community ("the Community") near Maricopa, Arizona.
10. The Ak-Chin Community is one of the smallest of Arizona's Native American communities, on information and belief, consisting of approximately 700 members.
11. Respondent is not a member of the Community. Before he was hired as Chief Prosecutor, the Ak-Chin Community Council granted him authority to practice law in the Ak-Chin Community Court ("Community Court"). As Chief Prosecutor, Respondent was employed by the Community Counsel.

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<sup>1</sup>The majority of the Commission concluded that reciprocal discipline was not appropriate because "it clearly appears that the procedure followed by the Ak-Chin Community Court case was so lacking in due process and opportunity to be heard as to constitute a denial of due process." [Disciplinary Commission Report at 7:45] Two members of the Commission would have rejected reciprocal discipline because the two-year suspension exceeded the sanction that would have been imposed by the Arizona Supreme Court.

12. Prior to being hired by the Ak-Chin Community, Respondent had substantial experience as a prosecutor for other small Arizona Native American communities. Specifically, before becoming Chief Prosecutor for the Community, Respondent served as Chief Prosecutor for the Yavapai Apache and Tonto Apache tribes and as a Special Prosecutor for the Havasupai Tribe. Respondent also served as an Associate Judge for the Duckwater Shoshone tribe in Nevada. In addition, in September 1997, Respondent was appointed Special Assistant United States Attorney. Respondent continued to hold that appointment while employed by the Community.
13. On October 13, 2004, Ms. Lisa Garcia (“Ms. Garcia”) filed a complaint with the Ak-Chin Indian Community Court against Respondent.
14. Title 1, Section 2.5(D) of the Ak-Chin Law and Order Code governs the reporting of misconduct to the Chief Judge, and discipline by the Chief Judge, of a “practitioner” which is defined in Title 1, Section 2.1 as an attorney or an advocate authorized to practice law within the Community. Title 1, Section 2.5(D) provides as follows:

Investigative Misconduct The Chief Judge will review the reported misconduct to determine if the allegations contain sufficient information with assurances [of] reliability and are of a severe nature to warrant a detailed investigation into the allegation(s). Thereafter, the Chief Judge may appoint a neutral practitioner to review the documentation and investigate the allegation(s) to substantiate or unsubstantiated the allegation. Investigation may include, but is not limited to, communication with the practitioner alleged to have committed the misconduct, including a review of appropriate and applicable case files and related documents as well as communication with the person reporting the misconduct, any person suffering injury as a result of the misconduct, and any person who may have knowledge that will assist the investigator in making a determination whether the misconduct occurred.
15. On October 15, 2004, Acting Chief Judge Jerry Derrick issued an Order Authorizing Disciplinary Investigation and related Order to Show Cause (“Show Cause Order”) authorizing a formal disciplinary investigation based on the allegations of Ms. Garcia's

complaint and ordering Respondent to file a written response to Ms. Garcia's complaint by October 29, 2004.

16. The Show Cause Order also stated: "A review of the complaint warrants the filing of a written response from the Respondent and the conducting of a detailed investigation per Title I, Section 2.5(D) of the Community Code."
17. The Show Cause Order also stated: "Taking the allegations as true, Respondent's alleged misconduct would constitute multiple violations of the Rules of Professional Conduct, most importantly Title I, Section 2.3(K)(1) of the Community Code."<sup>2</sup>
18. The Show Cause Order also discussed three matters not alleged or referenced in the Garcia complaint: (a) a prior discipline complaint against Respondent, which Judge Derrick had dismissed with prejudice more than two years earlier;<sup>3</sup> (b) "Respondent's unresponsiveness" to Judge Derrick's two week old order in a juvenile proceeding, unrelated to the Garcia matters, requiring Respondent to file an unauthorized practice of law complaint against a community employee within the next 18 months; and (c) the Arizona Supreme Court lawyer discipline case, *Matter of Kenneth J. Peasley*.<sup>4</sup>
19. The Show Cause Order also stated "the sole purpose of [these three additional matters] is to place Respondent on notice of the Court's intent to use these references as a backdrop against which the Respondent's continued authorization to practice law in this Court may be examined, pending the final resolution of the matter. These references do not and should not be construed to constitute a determination of findings of fact as to whether the

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<sup>2</sup> Title I, Section 2.3(K)(1) is equivalent to ER 3.8(a)

<sup>3</sup> That complaint was filed on August 8, 2002, and was dismissed with prejudice on May 3, 2002. An identical complaint to the State Bar of Arizona was dismissed for lack of probable cause on December 18, 2003.

<sup>4</sup> The parties agree that none of the allegations in the Garcia complaint against Respondent involved the subornation of perjury or the misleading of a trial jury as in *Peasley*

allegations in this matter are later substantiated within the meaning of Title 1, Section 2.5(F) of the Community Code.<sup>5</sup>

20. The Show Cause Order further stated that “there is cause and urgency to order Respondent to appear without delay before the Court and show cause as to why Respondent's authorization to practice law in this Court should not be temporarily suspended... pending final resolution of this matter and in light of [the three above -- referenced matters not alleged or referenced in the Garcia complaint].”
21. Respondent knew that Friday, October 15, 2004, (the day Judge Derrick issued the Show Cause Order), was Judge Derrick's final day as Acting Chief Judge of the Community Court.
22. Respondent also knew that on Monday, October 18, 2004, Judge Ida Wilber was scheduled to, and did, commence her employment as Chief Judge.
23. Respondent also knew that Judge Derrick had acted in a judicial capacity in both civil divorce and criminal matters related to the allegations of the Garcia complaint against Respondent.
24. Respondent also knew that Ms. Garcia's ex-husband, Manuel Garcia, had filed a complaint against Judge Derrick arising out of the Garcia's divorce.
25. On October 18, 2004, when Respondent received the Show Cause Order, he became gravely concerned and anxious.
26. Given the three additional matters cited in the Show Cause Order which Respondent believed he should never have to confront and defend himself against, and given

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<sup>5</sup> Title 1, Section 2 5(F) states that the subject of the investigation shall be permitted to address the Court prior to the imposition of a sanction, if, after hearing the findings of the investigating practitioner, the alleged misconduct is substantiated. Furthermore, if the alleged misconduct is unsubstantiated after hearing the investigating practitioner's findings, then the hearing must terminate immediately.

Respondent's knowledge of Judge Derrick's prior judicial involvement in the Garcia civil divorce and criminal matters, Respondent was surprised that Judge Derrick did not allow the new Chief Judge to handle Ms. Garcia's complaint from the initial steps.

- 27 Respondent would also testify that he (a) formed a belief that Judge Derrick was biased and prejudiced against him; (b) that he formed a belief that it was pre-determined that he would be suspended and lose his job; (c) that he formed a belief, based on the Garcia complaint, that Judge Derrick had not followed the Code requirements for a complaint against a lawyer, which Respondent believed was evidence of bias and prejudice against him; and (d) that he formed a belief that he would be unable to afford counsel to defend himself in this disciplinary investigation.
28. On October 25, 2004, Respondent filed a Motion to Vacate the October 15, 2004, Order to Show Cause ("Motion to Vacate").
29. In Respondent's Motion to Vacate :
- a) Respondent stated with respect to the Court's finding in the Show Cause Order that the prior Ak-Chin discipline complaint was "not frivolous": "This is a false statement by the Court."
  - b) Respondent stated that Judge Derrick's findings in the October 15, 2004, Order to Show Cause (with regard to the prior discipline case) "defies logic and reason and demonstrates bias and prejudice towards Respondent."
  - c) Respondent stated: "The Court's findings that the allegations [of the prior discipline case] were 'not frivolous' demonstrates a lack of respect for the law, namely the findings and Court Orders in PC02-001.

- d) Respondent further stated that “The factually incorrect basis of the Court's finding and use of the ‘new’ contradictory finding to justify ‘cause and urgency’ demonstrates bias and prejudice on the part of the Court and disrespect for the law.”
- e) With regard to the 18-month deadline in the juvenile order and Judge Derrick's finding 14 days later, Respondent stated: “This is another clear example of illogical reasoning on the part of Judge Derrick and lack of competence in the law.”
- f) Also with respect to the juvenile order, Respondent wrote: “The most troubling and serious aspect of the Court's findings is that the Court is using the false, unsupported findings as the basis to jump to a finding of ‘cause and urgency’ which in turn is being used to justify a rush to a show cause hearing.”
- g) Respondent also wrote that: “The Court abdicated its responsibility to conduct a review [pursuant to the Code] and abdicated its responsibility to apply the LAW adopted by the Community, instead of the law stated by the complainant.”
- h) Respondent also wrote that: “A careful reading [of the Garcia complaint] by a competent judge will reveal that the complainant appears to confuse ‘probable cause’ for arrest with ‘beyond a reasonable doubt’ necessary for a criminal conviction.”
- i) Respondent also wrote (with regard to the 18-month deadline in the juvenile order): “The Court ordered Respondent Prosecutor to commit an [sic] unethical act and then cited the Respondent-Prosecutor’s ‘unresponsiveness’ in committing such unethical act as giving the Court ‘serious concern’.”
- j) Respondent also wrote, with regard to the 18-month deadlines in the juvenile order: “This is an example of utter failure or refusal on the part of the Court to analyze the law

and another example of extreme prejudice and bias based on faulty legal reasoning by the court.”

k) Respondent also wrote: “Respondent recommends that the Court consider, pursuant to Canon [sic] 3.D of the Code of Judicial Conduct, informing the appropriate authority, such as Arizona Commission on Judicial Conduct to review the conduct of Judge Derrick.

30. In the Motion to Vacate, in support of his allegation that Judge Derrick had performed his judicial duties with an extreme bias and prejudice against Respondent, Respondent also informed of the new Chief Judge of the Community Court (Judge Ida Wilber) that, with respect to a case that Ms. Garcia had mentioned in her complaint against Respondent: “Judge Derrick presided over parts of the Complainant’s civil case, CV03-055, and was the subject of a complaint by a party to that case.”

31. On October 26, 2004, Judge Wilber set a hearing for Oral Argument on Respondent's Motion to Vacate and Judge Derrick's Order to Show Cause.

32. On October 29, 2004, Respondent complied with Judge Derrick's order and filed a written response to Ms. Garcia's complaint (“Respondent's Response”). In Respondent's Response, he wrote:

a) “The Court has bypassed the requirements of section 2.5(D) without a proper showing of the Court’s authority to bypass such Code requirements.”

b) “The Court Orders of October 15, 2004, and October 26, 2004, which ‘take the allegations as true’ and order Respondent to file a written response, are based on knowingly false findings. Such false findings by the Chief Judge discredit the integrity of the Ak-Chin Community Court. This is not a matter of a court enforcing its orders to

compel respect for the court, but rather, it is a matter of perpetuating the false findings, which discredits the integrity of the Court.”

c) “Respondent further asserts that the Court, by failing to fulfill its obligation to review the complaint to determine the existence of sufficient information, with assurances of reliability of a severe nature, the Court was taken in by Complainant’s allegations, Complainant’s legally incorrect conclusions, Complainant’s lack of knowledge of the tasks of a prosecutor, and Complainant’s lack of knowledge of the distinction between probable cause and beyond a reasonable doubt. The Chief Judges, being law trained, would recognize the erroneous legal conclusions and assumptions in Complainant’s complaint had the judges reviewed the allegations and made the required determinations.”

33 On November 1, 2004, Respondent appeared on his own behalf at the Oral Argument on his Motion to Vacate held before Judge Wilber

34. At the Oral Argument, Respondent stated:

a) “The misrepresentations [in the Order to Show Cause] were not only false but they were misleading misrepresentations, and they were made to deceive or to be unfair.”

b) “Now there was some, considerable amount of wrongdoing by the Court in handling that complaint and I did set that out in the motion but the, as far as Judge Derrick’s actions go as being fraudulent, misrepresenting, mischaracterizing, Judge Derrick’s made a *finding*, that certainly the court knows when a *finding* is made by the Court, and the Court signs it as the, in this case, as the acting chief judge, and uses it as a basis for an order, that generally we look at that and rely on it as being factually correct, there is a basis for it, there is some substance for it, some credibility for it.”<sup>6</sup>

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<sup>6</sup> The exact text of the written and oral response as provided in the Tender is replicated here without editing for grammar or punctuation

c) "What we started with and what was done was fraud and misrepresentation on the part of acting Chief Judge Jerry Derrick."

d) "So, there is the analogy of the house of cards of building something up without a foundation. But your honor, this is even weaker than that in that the foundation was alleged to have been-- in fact, not alleged it was a finding-- a finding by the chief judge "

e) "Judge Derrick had a preconceived judgment or opinion, irrational attitude, a hostility against in this case, the Respondent. It's certainly clear from the timeframe Judge Jerry Derrick has noticed that, your Honor was going to assume the position of chief judge on a Monday. We received this Complaint on a Wednesday. On Friday afternoon without doing the necessary steps according to the Code, he issues not only an order that's based on faults, findings, mischaracterizations and misrepresentations. He did it very hastily."

f) "The Court took absolutely the path of least resistance, ignored the obligations of Rule 2.5(d), and simply assumed that everything in there was true-- made a finding."

g) "I think by signing over the -- as acting chief judge of the Community Court does a lot of discredit to the Court and its integrity by making findings which are blatantly on their face to be without merit and unsubstantiated such as serious concern."

h) "[My] request to the Court is to follow the law. Unlike the Court's predecessor, acting Chief Judge Jerry Derrick, who decided that he was above the law, it so actually look very closely, and I've tried to point that out, and I did point it out in the motion."

i) "Jerry Derrick maybe was hastily trying to get this out in his last hours as chief judge, and I think that's another aspect of bias and prejudice on his part."

35. At the hearing on November 1, 2004, Judge Wilber denied Respondent's Motion to Vacate.

36. In response to Judge Wilber's ruling, Respondent stated: "[T]he Court may not appreciate how astonished I am that the Court is ratifying the false findings of Judge Derrick. That does not give me probably as much concern as the Court indicated that concerns about my statements that his conduct is prejudicial." The State Bar would contend that this statement was another incident of improper decorum to the tribunal.
37. After the oral argument, Judge Wilber issued an order denying Respondent's Motion to Vacate, stating that, "[A]ny investigation into Lisa Garcia's complaint shall be expanded to include a review of the allegations and posture of Respondent's Motion to Vacate and Oral Argument to determine if any violations of 2.4(J) exist."<sup>7</sup>
38. On December 13, 2004, Respondent, through newly retained counsel Tom Crowe, filed a Motion to Withdraw Previous Motion to Vacate ("Motion to Withdraw").
39. The Motion to Withdraw stated:
- a) "Notwithstanding [his] serious concerns [about the Show Cause Order] and the pending threat to Respondent's livelihood, he deeply regrets that his 'passion' was inappropriately reflected in his motion in terms of his concerns regarding the judiciary by expressing those concerns in personal terms."
  - b) "Accordingly, Respondent sincerely apologizes to the members of the judiciary for his inappropriate comments and requests that the motion be withdrawn."

#### CONCLUSIONS OF LAW

40. The Hearing Officer finds that Respondent's conduct violated Rule 42, Ariz.R.Sup.Ct., specifically, ER 8.2(a).

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<sup>7</sup> Title I, Section 2.4(J) is equivalent to ER 8 2(a).

## ABA STANDARDS

41. ABA *Standard* 3.0 provides that four criteria should be considered. (1) the duty violated, (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyers misconduct; and (4) the existence of aggravating and mitigating factors.

### **The Duty Violated:**

42. The Hearing Officer finds that Respondent violated his duty under Rule 42 Ariz.R.Sup.Ct., ER 8.2 not to make statements that are false or reckless concerning the qualifications or integrity of a judge.

43. *Standard* 6.13 states: "Reprimand [Censure in Arizona] is generally appropriate when a lawyer is negligent either in determining whether the statements or documents are false ... and causes injury or potential injury to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding."

### **The Lawyer's Mental State:**

44. The parties submit, and the Hearing Officer concurs, that Respondent's actions were made with reckless disregard as to the truth or falsity of the statements made and due to the Respondent's passionate beliefs that the rules were not being followed, he was acting with a *negligent state of mind*.

### **The Injury Caused:**

45. The Respondent caused actual and potential injury to not only the integrity of the judges, but also the process.

## **Aggravating and Mitigating factors**

### **Aggravating Factors:**

46 *Standard 9.22(b) Selfish Motive.* Respondent was extremely concerned about the loss of his employment both as a prosecutor for the Ak-Chin Tribe as well as his ability to practice law in the Tribal Courts. Respondent's comments were made, in part, in order to defend that status. By way of explanation, Respondent feels it is important to keep in mind the reason for his being upset:

1) In addition to an investigation being ordered into the Garcia allegations, he was also asked to show why his ability to practice law in the Community should not be summarily suspended based on three unrelated matters that had not been raised in the Garcia complaint.

2) A summary suspension would effectively have immediately terminated his position as Chief Prosecutor who had been hired by the Tribal Counsel

3) Respondent believed that Judge Derrick had not followed the Code requirements for a complaint against a lawyer, which Respondent believed was evidence of bias and prejudice against him.

4) Respondent knew that Judge Derrick had acted in a judicial capacity in civil and criminal matters directly related to the Garcia complaint and Judge Derrick had himself been the subject of a complaint by Ms. Garcia's ex-husband.

47 *Standard 9.22(i) Substantial Experience in the Practice of Law.* The State Bar submits that Respondent was admitted to the practice of law in the State of Arizona on September 18, 1990, over 17 years ago. Given that Respondent had substantial experience as a prosecutor for other small Arizona Native American communities, the State Bar contends

that Respondent should have recognized “his passion and concern was causing him to make reckless statements about the judiciary” (Joint Memo pg. 6 line 10). Respondent, on the other hand, feels that due to the unusual and highly stressful events that led to his misconduct, this factor should be given little weight.

**Mitigating Factors:**

48. The parties submit that there are four mitigating factors under *Standard 9.32*.
49. *Standard 9.32(a)*. Respondent has no prior disciplinary history with the State Bar of Arizona.
50. *Standard 9.32(e)*. Respondent has been cooperative with the State Bar's investigation. Respondent, through counsel, has provided timely responses and disclosures to the State Bar. Respondent is taking further responsibility for his conduct by entering into the agreement for discipline by consent in this matter.
51. *Standard 9.32(k)*. Other Penalties or Sanctions. On June 20, 2005, pursuant to an Order of the Ak-Chin Community Court in the underlying disciplinary matter, Respondent was suspended from the practice of law in that Court for a period of two years. On February 22, 2006, following briefs and oral argument by Respondent and the State Bar, the Disciplinary Commission issued an order declining to impose reciprocal discipline on Respondent pursuant to Rules 53(i) and 58, Ariz.R.Sup.Ct. A two-year period of Respondent suspension in the Community ran on June 3, 2007. Respondent avows that he has not worked as a lawyer for pay in Arizona since June 20, 2005. He has handled one limited matter on a pro bono basis.
52. *Standard 9.32(l)*. Respondent is remorseful for his conduct. Respondent apologized to the members of the judiciary, through pleadings, in the underlying disciplinary matter.

Also, Respondent has expressed his remorse on numerous occasions in his responses to the State Bar.

53. The parties submit that, given these aggravating and mitigating factors, the appropriate sanction in this case is censure with the imposition of costs.

### PROPORTIONALITY REVIEW

54. The Supreme Court has held that in order to achieve the purposes of discipline, the discipline in each situation must be tailored to the individual facts of the case, and yet have a sanction that is commensurate with other cases with similar factual patterns. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983), and *In re Wolfram* 174 Ariz. 49, 847 P.2d 94 (1993).
55. In *In re Izen*, SB-97-0012-D (1997), Mr. Izen was admitted pro hoc vice on an appellate matter and filed a pleading with several derogatory remarks about the Judge. Mr. Izen stated that both Judges were "abysmally ignorant;" that the two Judges gambled on the outcome of the case; that both Judges exhibited a bias and prejudice towards Mr. Izen's client and case; that one of the Judges was not competent to hear the case; and that the findings were disingenuous and less than candid. The Commission found that the "abysmally ignorant" comment was not an ethical violation. *Standards* 6.13 and 6.22 were cited. Two aggravating factors (selfish motive and refusal to acknowledge wrongful conduct) were found. There were no mitigating factors. Because Mr. Izen was not a member of the State Bar, suspension was found to be an impractical sanction. Instead, Mr. Izen received a censure with costs.

56. In *In re Coker*, SB-02-0045-D (2002), Mr. Coker represented a client on a post-dissolution domestic relations matter. Mr. Coker filed a pleading with the Court that alleged the Commissioner, the Judge, the Guardian Ad Litem, and his own client's prior attorney received bribes from the opposing party in the form of home mortgage payments. Mr. Coker admitted that he did not do any investigation of his own before filing the pleading. Mr. Coker received a censure with costs for violations of ERs 3.1, 8.2(a), and 8.4(d). The parties cited to *Standard 6.13*. There was one aggravating factor (prior discipline) in contrast to two mitigating factors (cooperative attitude, remorse). Mr. Coker also wrote an apology letter to the Judge.
57. In *In re Sherr*, SB-98-0061-D (1998), Mr. Sherr made several inappropriate and disparaging remarks about a Commissioner to the courtroom gallery while the Commissioner was not in the courtroom. Mr. Sherr received a censure plus costs. The parties cited to *Standards 5.13* (Censure) and *7.2* (Suspension). Two aggravating factors (dishonest or selfish motive, experience) were found in contrast to two mitigating factors (absence of prior discipline, remorse). The Commission found that the mitigation far outweighed the aggravation. Mr. Sherr also wrote a letter of apology, albeit after the State Bar's investigation.

#### RECOMMENDATION

58. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the administration of justice, and to instill public confidence in the Bar's integrity. *In re*

*Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985), and *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

59. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Associations *Standards for Imposing Lawyer Sanctions* ("Standards") and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994).
60. During the Respondent's testimony before the Hearing Officer, this Hearing Officer was impressed by the Respondent's remorse and his embarrassment. Although he felt passionate about his cause and the injustice that he perceived, Respondent recognizes that he stepped over the line. It is further this Hearing Officer's impression that the Respondent has learned from this experience, and there will be no repeat of this kind of conduct.
61. Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and the proportionality analysis, this Hearing Officer recommends the following:
- A) That Respondent receive a censure.
  - B) That Respondent pay the costs of these proceedings.

DATED this 25<sup>th</sup> day of March, 2008.

Hon. H. Jeffrey Coker/es  
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk  
this 25<sup>th</sup> day of March, 2008.

Copy of the foregoing mailed  
this 26<sup>th</sup> day of March, 2008, to:

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Respondent's Counsel  
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By 