

**FILED**

OCT 03 2008

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

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

IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
)  
**J. MURRAY ZIEGLER,** )  
Bar No. 012427 )  
)  
RESPONDENT )  
\_\_\_\_\_ )

No 07-0254

**DISCIPLINARY COMMISSION  
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 20, 2008, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the Hearing Officer's Report filed August 15, 2008, recommending acceptance of the Second Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Second Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memorandum") providing for censure, one year of probation with the State Bar's Ethics Enhancement Program (EEP) and 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 (EEP), and costs within 30-days of the date of the final Judgment and Order

<sup>1</sup> One lawyer member seat remains vacant Commissioner Flores did not participate in these proceedings. Daniel P. Becks, Esq , a hearing officer from Phocnix participated as an ad hoc member

including any costs incurred by the Disciplinary Clerk's office<sup>2</sup> The terms of probation are as follows

**Terms of Probation**

1 Respondent shall attend a one-day Ethics Enhancement Program (EEP)

2 Respondent must contact Lisa Casablanca, Program Coordinator, State Bar of Arizona, at  
3 (602) 340-7250, within 20-days from the date of the Judgment and Order. Respondent shall be  
4 responsible for the cost of attending the program

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7  
8 2. Respondent shall refrain from engaging in any conduct that would violate the  
9 Rules of Professional Conduct or other rules of the Supreme Court of Arizona

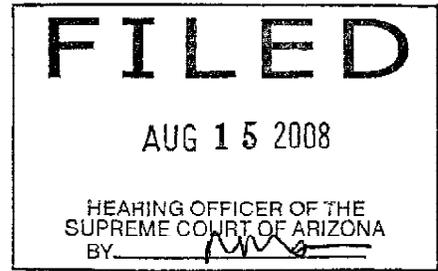
10 3 Probation will start at the entry of the Judgment and Order, and will conclude one-  
11 year from that date

12 4 In the event that Respondent fails to comply with any of the foregoing  
13 probation terms, and information thereof is received by the State Bar of Arizona, Bar  
14 Counsel shall file a Notice of Noncompliance with the imposing entity, pursuant to Rule  
15 60(a)(5), Ariz R Sup Ct The imposing entity may refer the matter to a hearing officer to  
16 conduct a hearing at the earliest practicable date, but in no event later than 30-days after  
17 receipt of notice, to determine whether a term of probation has been breached and, if so, to  
18 recommend appropriate action and response If there is an allegation that Respondent  
19 failed to comply with any of the foregoing terms, the burden of proof shall be on the State  
20  
21  
22  
23  
24

25  
26 <sup>2</sup> A copy of the Hearing Officer's Report is attached as Exhibit A The State Bar's total costs and expenses incurred are \$600 00



1 Stanley R. Lerner  
2 Hearing Officer 7V  
3 3707 North 7<sup>th</sup> Street, Suite 250  
4 Phoenix, AZ 85014-5057



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

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

9 **J. MURRAY ZEIGLER,**  
10 **Bar No. 012427**

11 Respondent.

File No. 07-0254

**HEARING OFFICER'S REPORT**

(Assigned to Hearing Officer 7V,  
Stanley R. Lerner)

12  
13 The State Bar of Arizona, represented by undersigned Bar Counsel, and  
14 Respondent, J. Murray Zeigler, who is representing by Counsel Guy W. Bluff  
15 in this matter, submitted a Tender of Admissions and Agreement for Discipline  
16 by Consent pursuant to Rule 56(a), Ariz R.Sup.Ct., and the guidelines for  
17 discipline by consent issued by the Arizona Supreme Court's Disciplinary  
18 Commission. The tender is accepted.  
19

20  
21 The formal complaint in this matter was filed on November 26, 2007. No  
22 hearing on the merits was held. The Respondent conditionally admits violating  
23 the duties owed to his client described in detail below. There is a dispute as to  
24 whether Respondent had a client, because despite the belief by Respondent that he  
25

1 had a client, the client disavowed an attorney client relation. Usually the case is  
2 one where the client thinks that he or she is the client. See: Franko v. Mitchell

3  
4 Respondent agreed to accept a censure, one year of probation, and  
5 Respondent will participate in the State Bar's Ethics Enhancement Program  
6 ("EEP"). Pursuant to Rule 60(b) Ariz.R.Sup.Ct., Respondent shall pay the  
7 reasonable costs of the State Bar in pursuing this matter. See, Exhibit "A"  
8 attached.  
9

10 The parties understood that their agreement was subject to review and  
11 acceptance by the hearing officer, the Disciplinary Commission and the  
12 Supreme Court.  
13

#### 14 **GENERAL ALLEGATIONS**

15 1. At all times relevant, Respondent was a lawyer licensed to  
16 practice law in the state of Arizona having been first admitted to practice in  
17 Arizona on October 21, 1988.  
18

#### 19 **COUNT ONE (File No. 07-0254)**

20  
21 2. In or about 2004, while working as a Deputy Navajo County  
22 Attorney, Respondent drafted the organizational paperwork that formed the  
23 Northeast Arizona Training Center, Inc. ("NATC").  
24  
25

1           3.     NATC is an Arizona nonprofit corporation formed to build and  
2 operate a large multi-jurisdictional regional law enforcement and public safety  
3 training facility.  
4

5           4.     On or about February 28, 2005, Respondent was retained to be the  
6 Executive Director of NATC.

7           5.     During the interview process for the Executive Director position,  
8 Respondent discussed providing legal services for NATC with the selection  
9 committee, and later with the NATC Board of Directors.  
10

11           6.     Each of the members agreed that Respondent should continue to  
12 serve as NATC's general counsel, but no written employment agreement was  
13 presented to the Hearing Officer.  
14

15           7     Respondent left the employ of the Navajo County Attorney's  
16 Office to pursue his position with NATC.  
17

18           8.     In addition to his responsibilities as Executive Director,  
19 Respondent performed all legal work for NATC during his employment, and  
20 routinely identified himself as either "General Counsel" or "Chief Counsel" of  
21 NATC.  
22

23           9.     Hatch Construction ("Hatch") was the general contractor for  
24 NATC's training facility.  
25

1           10. NATC was involved in a dispute with Hatch over amounts owed  
2 to Hatch.

3           11. Respondent represented NATC in this dispute, and routinely  
4 communicated with Hatch on NATC's behalf in regard to the dispute.  
5

6           12. On or about March 28, 2005, April 15, 2005, May 5, 2005, May  
7 18, 2005, July 7, 2005, August 1, 2005, November 3, 2005, November 16,  
8 2005, and December 8, 2005, Respondent sent letters to third parties in which  
9 he identified himself as "Executive Director/Chief Counsel" of NATC.  
10

11           13. Respondent's business card identified him as "Executive Director  
12 and Chief Counsel" of NATC.  
13

14           14. In or about March of 2005, Respondent, at the direction of the  
15 NATC Board and on behalf of NATC, filed an application for \$500,000.00 in  
16 funding through the Rural Facility assistance program of the Department of  
17 Agriculture  
18

19           15. Respondent periodically informed the NATC Board about the  
20 status of the Rural Facility funding application.

21           16. On December 15, 2005, Northland Pioneer College ("NPC"), one  
22 of the participating members of NATC, gave written notice to Respondent and  
23 NATC that they would not extend their agreement with NATC to administer  
24  
25

1 the Executive Director position as an independent grant funded position  
2 effective February 28, 2006.

3  
4 17. In this letter, NPC explained that they believed Respondent's  
5 position as legal counsel for NATC created potential conflicts of interest for  
6 NPC.

7  
8 18. On or about January 13, 2006, Respondent informed the NATC  
9 Board that a USDA representative had visited the project site on December 1,  
10 2005 in furtherance of NATC's Rural Facility funding application.  
11 Respondent indicated he would attempt to get an update on the status of the  
12 application.

13  
14 19 On or about February 17, 2006, the NATC Board of Directors  
15 voted not to extend Respondent's contract beyond its expiration date of  
16 February 28, 2006.

17  
18 20. Respondent was present at this meeting of the NATC Board of  
19 Directors.

20  
21 21. The USDA Rural Funding application was also discussed at the  
22 February 17, 2006, NATC Board meeting. Respondent updated the Board that  
23 nothing had been finalized yet in regard to the status of the funding  
24 application.

25

1           22. The Board discussed with Respondent whether the loan could  
2 ultimately be converted into a grant, but engaged in no votes, nor took any  
3 action regarding the Rural Facilities funding.  
4

5           23. On or about February 22, 2006, Respondent sent an e-mail to Jim  
6 Matteson ("Mr. Matteson"), the NATC project engineer.

7           24. In this e-mail, Respondent told Mr. Matteson that the board had  
8 voted not to extend Respondent's contract, and that the board made it clear  
9 they had only hired Respondent to be NATC's Executive Director, and not  
10 NATC's attorney.  
11

12           25. Respondent went on in his e-mail to explain that since, despite his  
13 prior belief that he was counsel to NATC, he apparently was not representing  
14 NATC in a legal capacity, he therefore had no duties of confidentiality or  
15 conflicts of interest with respect to NATC.  
16

17           26. Respondent indicated in his e-mail that because he had no such  
18 duties, he could ethically tell Hatch anything and everything about the case,  
19 and that he might even represent Hatch against NATC in the litigation.  
20

21           27. Respondent also informed Mr. Matteson in his e-mail that the  
22 Board had voted not to get the Rural Facilities loan funding he had been  
23 working to obtain.  
24  
25

1           28.    The Board had made no such vote, but Respondent had left the  
2 Board meeting with the understanding that the Board would not pursue further  
3 loan funding.  
4

5           29.    On or about February 23, 2006, Respondent sent an e-mail to  
6 Leonard Gradillas ("Mr Gradillas") a USDA representative.  
7

8           30.    In this e-mail, Respondent told Mr. Gradillas that the NATC  
9 Board of Directors voted to withdraw their application for Rural Facility  
10 assistance at the February 17, 2006 Board Meeting. Respondent concluded by  
11 asking that the application for funding be withdrawn.  
12

13           31.    NATC's Board had made no such vote, and had not given  
14 Respondent permission to withdraw the application for funding.  
15

16           32.    Respondent testified that his actions requesting that the funding be  
17 withdrawn were based on his belief that because the NATC was no longer  
18 represented by legal counsel as required by the terms of the Application  
19 documents, the Application could not legally be processed further by the  
20 USDA.  
21

22           33.    On information and belief, USDA cancelled NATC's application  
23 for rural Facility funding as a result of Respondent's e-mail of February 23,  
24 2006.  
25

1           34. On or about April 6, 2006, Respondent sent an e-mail to Jason  
2 Hatch ("Mr. Hatch"), the owner of Hatch. In it, Respondent informed Mr.  
3 Hatch of numerous facts and legal arguments, which are laid out in paragraphs  
4 40 through 45 below  
5

6           35. Respondent requested of Mr. Hatch that the contents of the e-mail  
7 remain between the two of them and that NATC not be advised of the  
8 substance of the e-mail.  
9

10          36 Respondent informed Mr. Hatch that NATC did not have a signed  
11 copy of the original contract, and that if the case were to go to court, NATC  
12 would be unable to prevail in a claim for liquidated damages since they would  
13 be unable to produce a copy of the signed contract.  
14

15          37. Respondent informed Mr. Hatch that the final specifications for  
16 the foundation were not delivered to Hatch until after the date for completion  
17 of the contract. The contract allowed for automatic extensions of the deadline  
18 when the extension was caused by someone other than Hatch, but Hatch must  
19 submit a change request in order to take advantage of the delay. Respondent  
20 advised Mr. Hatch to submit such a change request in order to preserve their  
21 rights if the case ever went to court.  
22  
23

24          38. Respondent informed Mr. Hatch that the contract required NATC  
25 to make any changes in a specific written form. Respondent speculated that

1 Hatch had probably not received such written notices of changes, and  
2 therefore would not be legally obligated to vary from the original plans.  
3  
4 Respondent advised Mr. Hatch to request a written change order before  
5 performing work in order to head off any claims for liquidated damages that  
6 NATC may pursue.

7           39. Respondent advised Mr. Hatch that he should "go on the offensive  
8 as well as try to get [his] money." Respondent informed Mr. Hatch that the  
9 contract required NATC to make specific progress payments, and that if those  
10 payments were not made, the contract allowed Hatch to stop all work upon  
11 written seven days notice. Respondent advised Mr. Hatch to send such a  
12 written notice advising NATC that Hatch would be stopping all work until  
13 payments are made. Respondent advised Mr. Hatch that this would stop the  
14 accrual of any liquidated damage claims, and put pressure on NATC to make  
15 sure Hatch got paid.  
16  
17  
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19           40. Respondent advised Mr. Hatch that it was critical that Hatch not  
20 complete the foundation until he was paid in full. Respondent advised Mr.  
21 Hatch that NATC didn't owe creditors anything and had the money on hand to  
22 pay with. Respondent advised Mr. Hatch that a work stoppage would be legal  
23 and withstand any challenge in court.  
24  
25



1 original submission by the Complainant that the State Bar elected not to file formal  
2 charges on. The State Bar agreed not to file any new complaint in this matter  
3 alleging new violations.  
4

### 5 **RESTITUTION**

6 The misconduct Respondent is admitting to in this matter is not fiscal in  
7 nature. Regarding the cancelled grant application, the State Bar cannot  
8 definitively state that the application would have been granted and NATC  
9 would have received the funds but for Respondent's conduct. Accordingly,  
10 restitution is not an issue in this case.  
11

### 12 **HEARING OFFICER QUESTIONS**

13  
14 During the presentation of the first Tender of Admissions in this case,  
15 the Hearing Officer raised two questions of fact that he felt necessary to answer  
16 before approving the Tender. Below are those questions of fact and stipulations  
17 of the parties in response.  
18

- 19 1. Were there any documents authored or distributed by NATC  
20 revealing Mr Zeigler as their lawyer?

21 **ANSWER PROVIDED BY HE PARTIES:** The parties stipulated for the  
22 purpose of the Tender, that during his tenure with NATC, Respondent was the  
23 primary person running the organization on a day-to-day basis. As such, the  
24 vast majority documentation created by NATC was drafted by Respondent In  
25

1 this documentation, Respondent routinely listed himself as "Executive Director  
2 / General Counsel". However, the documentation drafted by persons other than  
3 Respondent, such as Respondent's Offer of Employment and the Board of  
4 Directors' Meeting minute entries, **did not** identify Respondent as attorney for  
5 NATC. These documents only identified Respondent as "Executive Director".  
6

7  
8 2. Did NATC believe Respondent was their lawyer?

9 **ANSWER PROVIDED BY THE PARTIES:** The parties stipulated,  
10 for the purpose of the Tender, that NATC's position on that subject appears to  
11 have shifted on multiple occasions. The documentation drafted by persons  
12 other than Respondent did not refer to Respondent as attorney for NATC, but  
13 in negotiations for the position, Respondent spoke with NATC principals at  
14 length about the fact he would be providing legal services for NATC. Upon  
15 taking the position, Respondent routinely identified himself as General  
16 Counsel for NATC and undertook tasks routinely performed by attorneys.  
17  
18 None of the NATC principals objected to this throughout the bulk of  
19 Respondent's tenure. However, this implicit acceptance of Respondent as  
20 counsel for NATC changed at the February 17, 2006 board meeting when  
21 Respondent was notified his contract would not be renewed. One of the  
22 primary reasons Respondent was given for his termination was that  
23 Respondent had not been hired to act as NATC's counsel. It was shortly after  
24  
25

1 that meeting that the alleged misconduct in this case occurred. Subsequent to  
2 the alleged misconduct, NATC appears to have shifted their opinion back to  
3 recognizing Respondent as having been their counsel, as they referred him to  
4 the State Bar for discipline and alleged Respondent violated the attorney-client  
5 privilege.

7           3.           Did Respondent have a duty of loyalty / a duty not to disclose  
8                           information to adverse parties as a lawyer and as an executive  
9                           director?  
10

11 **ANSWER PROVIDED BY THE PARTIES:** This question is two-fold. First,  
12 as a lawyer Respondent clearly owes a duty to his clients, whether they be  
13 individuals or an organization. The duty of loyalty is the underlying principle  
14 of ERs 1.7, 1.8 and 5.4. *AZ Ethics Opinion 98-09, 96-05, 95-10*. This duty  
15 includes the duty not to disclose client confidences. *Ariz.R.Sup.Ct. 42, ER 1 6*.  
16 As an executive director, Respondent would have a separate set of duties and  
17 responsibilities relating to his client. Pursuant to ER 1.6(d)(5), he would be  
18 permitted to reveal protected information “to comply with other law.”  
19 Accordingly, if there was law pertaining to executive directors *requiring*  
20 Respondent to reveal the information, then he would be *permitted* to reveal it  
21 pursuant to ER 1.6. *Id.* Officers of nonprofit corporations and associations are  
22 governed by ARS § 10-3840 *et seq.* Pursuant to that law, an executive director  
23  
24  
25

1 has the duties as set forth in the corporate bylaws as well as the duties  
2 prescribed by the board of directors. *ARS § 10-3841*. An executive director  
3 also has the obligation to discharge his duties in good faith, with the care of an  
4 ordinarily prudent person, and in a manner reasonably believed to be in the  
5 best interests of the corporation. *ARS § 10-3842*.

- 7           4.           Did NATC, based on its status as either a public or private  
8                           entity, have a duty of fairness and disclosure to adverse  
9                           parties?  
10

11 **ANSWER PROVIDED BY THE PARTIES:** Complainants describe NATC  
12 as “a quasi-governmental Arizona nonprofit corporation”. Respondent  
13 describes NATC as “an Arizona non-profit corporation”. Respondent maintains  
14 that NATC is not “a quasi-governmental entity”. A detached look at the  
15 operation NATC reveals that legally, it is an Arizona nonprofit corporation. It  
16 possesses tax-exempt status from the IRS as a nonprofit corporation. However,  
17 much of NATC’s direction, control, and funding come from governmental  
18 agencies and sources. What constitutes a Quasi-governmental entity is not  
19 specifically defined by Arizona law. American Jurisprudence defines a quasi-  
20 public corporation as one that is limited in character but that enjoys the power  
21 to discharge its duties as provided it by an enabling statute. *18 Am.Jur.2d*  
22 *Corporations § 32*. NATC does not appear to have been created by, or to  
23  
24  
25

1 exercise special powers granted to it by any type of enabling statute.

2 Accordingly, NATC would appear to be a private non-profit corporation, and  
3 not a public or quasi-public entity. As a private entity, NATC would not  
4 possess any special duties of fairness or disclosure to adverse parties.  
5

6 5. Does the belief of either the lawyer or the client in regard to  
7 whether an attorney-client relationship existed have bearing on  
8 the mental state of the offense?  
9

10 **ANSWER PROVIDED BY THE PARTIES:** The belief of the client, by  
11 itself, does not generally have a direct bearing upon Respondent's mental state,  
12 since the Respondent's beliefs and mental state can be completely separate and  
13 distinct from what the client believes. However, the Respondent's belief in  
14 whether an attorney-client relationship existed is very relevant to the  
15 Respondent's mental state. If the Respondent reasonably and objectively  
16 believed that there was no attorney-client relationship, then his mental state  
17 would be one of negligence since he was disclosing information based upon an  
18 erroneous belief that he owed no duty. It is in this instance that the client's  
19 belief as to whether a relationship existed becomes relevant, *if that belief was*  
20 *conveyed to the Respondent and he relied upon it*, as he did in the case at hand.  
21  
22  
23  
24  
25

1           6.           Is anger a sufficient modifier of state of mind to bring the  
2                            mental state from knowingly to negligent, and what standard  
3                            would have to be applied to do so?  
4

5   **ANSWER PROVIDED BY THE PARTIES:** Anger, in and by itself, would  
6   not be sufficient to change the applicable mental state from one to another.  
7   However, it could be probative in determining the applicable mental state. The  
8   ABA Standards for Imposing Lawyer Sanctions defines “intent” as the  
9   conscious objective or purpose to accomplish a particular result, “knowledge”  
10   as the conscious awareness of the nature or attendant circumstances of the  
11   conduct but without the conscious objective or purpose to accomplish a  
12   particular result, and “negligence” as the failure of the lawyer to heed a  
13   substantial risk that circumstances exist or that a result will follow, which  
14   failure is a deviation from the standard of care that a reasonable lawyer would  
15   exercise in the situation. Clearly, the defining differences between these mental  
16   states are the intent and knowledge of the attorney at the time he commits the  
17   misconduct. For anger to be substantial enough to preclude the attorney from  
18   knowing or understanding what he was doing, it would have to be substantial  
19   enough to the point that disability proceedings or interim suspension would be  
20   appropriate to prevent further and immediate harm to the public. However,  
21   anger to a lesser degree could be probative, along with other circumstantial  
22  
23  
24  
25

1 clues, as to the attorney's actual knowledge and intent in committing the  
2 misconduct. Furthermore, anger could be a contributing factor to the finding of  
3 a ABA Standard 9.32 Mitigator, such as personal or emotional problems.  
4

5 7. Would the appropriate sanction change if the Hearing Officer  
6 found a mental state higher than negligence?

7 **ANSWER PROVIDED BY THE PARTIES:** The parties have submitted  
8 negligence as the appropriate mental state, as Respondent erroneously believed  
9 he could reveal the information he did. This implicates ABA Standard 4.23,  
10 calling for censure. The commentary to Standard 4.23 provides the example of  
11 an attorney who leaves a client's documents in a conference room following a  
12 meeting or discusses a client matter in a public place.  
13  
14

15 Should the Hearing Officer find the mental state to be knowingly, then  
16 ABA Standard 4.22 would be implicated, which calls for suspension. However,  
17 even in such an instance, the Hearing Officer would be empowered to bring the  
18 sanction back down to censure when the multiple ABA 9.32 Mitigators are  
19 taken into consideration. The commentary to Standard 4.22 provides the  
20 example of an attorney who knowingly revealed confidential information to the  
21 opposing party in litigation, with the result that the client's position was  
22 weakened.  
23  
24  
25

1 Finally, should the Hearing Officer find the mental state to be  
2 knowingly, and found that there was a conscious intent by Respondent to  
3 benefit himself or another person at the cost of the client, then ABA Standard  
4 4.21 would be implicated and would call for disbarment. In such a case, even  
5 the mitigators would be insufficient to reduce the sanction all the way down to  
6 a censure. At best, they would mitigate down to a suspension. The commentary  
7 to Standard 4.21 provides the example of a defense attorney who gave  
8 prosecutors the location of a safety deposit box containing incriminating  
9 evidence in order to gain access to obtain funds to cover the costs of his  
10 investigation. The example notes that this situation should be distinguished  
11 from a situation in which the attorney is acting under a good faith belief that  
12 there is no choice but to reveal a client's confidence.  
13  
14  
15

## 16 CONDUCT

17 As reflected in the Tender of Admissions and Agreement for  
18 Discipline by Consent, Respondent engaged in professional misconduct that  
19 violated duties owed to his client by: failing to maintain inviolate the  
20 confidences and preserve the secrets of a client, revealing information  
21 relating to the representation of a client without informed consent, engaging  
22 in conduct involving dishonesty, fraud, deceit or misrepresentation, and  
23 engaging in conduct prejudicial to the administration of justice.  
24  
25

1 Respondent admitted the facts as set forth in the Tender and admitted  
2 that his conduct violated the following Rules of Professional Conduct, Rule  
3 41(f) Ariz.R.Sup.Ct, and Rule 42 Ariz.R.Sup.Ct., specifically, ERs 1.6, 1.9,  
4 8.4(c), and 8.4(d)  
5

#### 6 ABA STANDARDS

7 The *Standards* provide guidance with respect to an appropriate sanction in  
8 this matter. The Supreme Court and Disciplinary Commission consider the  
9 *Standards* a suitable guideline. See *In re Peasley*, 208 Ariz 27, 33, 35, 90 P 2d  
10 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P. 2d 1037, 1040  
11 (1990).  
12

13 In determining an appropriate sanction, the Supreme Court and the  
14 Disciplinary Commission consider the duty violated, the lawyer's mental state, the  
15 actual or potential injury caused by the misconduct and the existence of  
16 aggravating and mitigating factors. See, *Peasley*, 208 Ariz. at 35, 90P.3d at 772;  
17 *Standard 3.0*.  
18

19 The parties agree that the most serious violation implicated in this case is  
20 Respondent's failure to preserve his client's confidences. Respondent's conduct,  
21 in violation of ERs 1.6 and 1.9 implicate *Standard 4.23*. *Standard 4.23* provides  
22 that "reprimand (censure) is generally appropriate when a lawyer negligently  
23 reveals information relating to representation of a client not otherwise lawfully  
24  
25

1 permitted to be disclosed and this disclosure causes injury or potential injury to a  
2 client." Respondent submits, and the State Bar is not contesting for the purposes of  
3 this agreement, that Respondent's conduct was negligent in that he mistakenly  
4 believed he could reveal the information after being told by NATC members that  
5 he was never actually hired to be NATC's legal counsel.  
6

7 The presumptive sanction in this matter appears to be censure. Application  
8 of the aggravating and mitigating factors also assists in determining the  
9 appropriate sanction. The parties agree that the following factors should be  
10 considered in aggravation:  
11

12 *Standard 9.22(1)* substantial experience in the practice of law.

13 Respondent was admitted October 21, 1988.  
14

15 The parties agree that the following factors should be considered in mitigation:

16 *Standard 9.32(e)* full and free disclosure to disciplinary board.

17 Respondent promptly responded to all requests for information from the State  
18 Bar during its investigation.

19 *Standard 9.32(a)* absence of prior disciplinary record. Respondent has no  
20 prior discipline.<sup>1</sup>  
21

22  
23 <sup>1</sup> According to the Tender of admissions, Respondent's record shows a prior informal  
24 reprimand for violation of ER 1.4 on March 4, 1997. However, Respondent indicated  
25 he was unaware of any prior discipline, and a review of the archived file reveals that  
the volunteer bar counsel who prosecuted the prior case never properly served the  
informal reprimand upon Respondent in accordance with the rules. Accordingly, the  
State Bar and Respondent agreed that this informal reprimand should not be  
considered a 9.22(a) aggravator for the purpose of this consent.



1           In *In re Hayes*, SB-04-0092-D (2004), Hayes received a Censure for  
2 violation of ERs 1.6 and 1.9(b). Hayes represented a client regarding her  
3 deceased relative's estate. Hayes divulged confidential client information to a  
4 third party, and used information relating to the representation to the  
5 disadvantage of his client.  
6

7           In *In re Ellett*, SB-06-0163-D (2006), Ellett received a Censure with one  
8 year of probation and LOMAP for violation of ERs 1.2, 1.3, 1.7, 1.15 and  
9 1.16(d). Ellett failed to act with reasonable diligence and promptness in  
10 representing clients. Ellett failed to maintain the client's objectives with fund  
11 held in trust. Ellett further failed to identify a potential conflict of interest.  
12 Ellett also failed to safeguard client's property and converted funds to pay his  
13 legal fees.  
14

15           Based on the above cases, and on the specific facts of Respondent's matter,  
16 the parties agreed and the Hearing Officer imposes a sanction of a censure with  
17 one year of probation, as detailed above. This is an appropriate sanction in this  
18 matter. Such sanction matches the ABA Standards, the comparable case law, and  
19 is appropriate to the facts of the case at hand.  
20

21           The sanction meets the goals of the disciplinary system. The terms of  
22 the agreement serve to protect the public, instill confidence in the public, deter  
23 other lawyers from similar conduct and maintain the integrity of the Bar.  
24  
25

## SANCTIONS

1  
2 The following disciplinary sanctions shall be imposed: 1. Respondent shall  
3 receive a censure. 2. Respondent shall be placed on probation for a period of one  
4 year under the following terms and conditions:  
5

6 A. Respondent shall attend a one-day Ethics Enhancement  
7 Program (EEP). Respondent must contact Lisa Casablanca, Program  
8 Coordinator, State Bar of Arizona, (602) 340-7250, within 20 days from the  
9 date of the Judgment and Order. Respondent shall be responsible for the  
10 cost of attending the program.  
11

12 B. Respondent shall refrain from engaging in any conduct that would  
13 violate the Rules of Professional Conduct or other rules of the Supreme  
14 Court of Arizona.  
15

16 C Probation will start at the entry of the judgment and order, and  
17 will conclude one year from that date.  
18

19 D. In the event that Respondent fails to comply with any of the  
20 foregoing probation terms and information thereof is received by the State  
21 Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance with the  
22 imposing entity pursuant to Rule 60(a)(5), Ariz.R Sup.Ct. The imposing  
23 entity may refer the matter to a hearing officer to conduct a hearing at the  
24 earliest practicable date, but in no event later than 30 days after receipt of  
25

1 notice, to determine whether a term of probation has been breached and, if  
2 so, to recommend an appropriate sanction. If there is an allegation that  
3 Respondent failed to comply with any of the foregoing terms, the burden of  
4 proof shall be on the State Bar of Arizona to prove noncompliance by clear  
5 and convincing evidence.  
6

7 E. Respondent shall pay all costs incurred by the State Bar in  
8 bringing these disciplinary proceedings within thirty (30) days of the  
9 Supreme Court's Final Judgment and Order. An Itemized Statement of  
10 Costs and Expenses is attached as Exhibit A and incorporated herein. In  
11 addition, Respondent shall pay all costs incurred by the Disciplinary  
12 Commission, the Supreme Court, and the Disciplinary Clerk's office in this  
13 matter.  
14  
15

16 DATED this 15<sup>th</sup> day of August, 2008.

17  
18 Stanley R Lerner /NMM  
19 Stanley R. Lerner  
20 Hearing Officer TV  
21

22 Original filed with the Disciplinary Clerk  
23 this 15<sup>th</sup> day of August, 2008.

24 Copy of the foregoing mailed  
25 this 18<sup>th</sup> day of August, 2008, to:

1 Guy Bluff  
2 Respondent's Counsel  
3 844 N. 4<sup>th</sup> Avenue  
4 Phoenix, AZ 85003

5 Stephen P. Little  
6 Bar Counsel  
7 State Bar of Arizona  
8 4201 North 24<sup>th</sup> Street, Suite 200  
9 Phoenix, AZ 85016-6288

10 by: Neelkan Manelkar

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