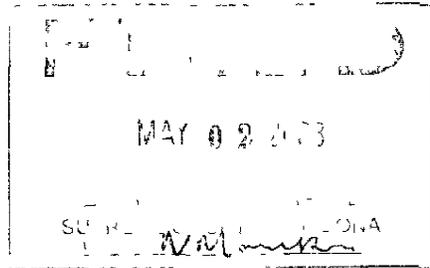


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7 Hearing Officer 7M



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

10 **IN THE MATTER OF A MEMBER**
11 **OF THE STATE BAR OF ARIZONA,**

No 07-0264

12 **STEPHEN GOREY,**
13 **Bar No. 004357**

HEARING OFFICER'S
REPORT

14 Respondent

(Assigned to Hearing Officer 7M,
Daniel P Beeks)

15 The parties have filed a First Amended Tender of Admissions and
16 Agreement for Discipline by Consent ("Tender"), and a Joint Memorandum in
17 Support of Agreement for Discipline by Consent ("Joint Memorandum")
18 agreeing that Respondent Stephen Gorey ("Gorey" OR "Respondent") should
19 receive a censure with one year of probation, and be required to complete the
20 State Bar's "Ten Deadly Sins of Conflicts" MCLE course, and pay all costs
21 and expenses incurred by the State Bar in these proceedings as a result of
22 Gorey's violations of Ethical Rules 1.7, and 1.8(e).
23
24
25

1 The State Bar was represented by Russel J. Anderson in negotiating the
2 Tender, and Gorey was represented by Mark Rubin. The Hearing Officer has
3 determined that no hearing is necessary in order to rule on the Tender.
4

5 For reasons discussed in more detail below, the Hearing Officer
6 recommends that the Tender be approved and accepted. The parties
7 understand, however, that this agreement is subject to review by the
8 Disciplinary Commission, and by the Arizona Supreme Court
9

10 **STIPULATED FACTS**

11 1. At all relevant times, Gorey has been a lawyer licensed to practice
12 law in the states of Arizona and California.
13

14 2. Gorey was first admitted to practice in Arizona on December 2,
15 1975. Gorey was first admitted to practice in California on December 11, 1986
16

17 3 A formal complaint was filed against Gorey in this matter on
18 November 9, 2007.

19 **COUNT ONE**

20 4. On or about November 1, 2004, Nicole Jordan ("Ms Jordan") was
21 injured in a motor vehicle accident. Her boyfriend, Michael Adamczyk ("Mr.
22 Adamczyk"), was driving
23

24 5. Ms. Jordan's children, Destin and Nico, were also in the car at the
25 time of the accident

1 6. Ms. Jordan was treated for her injuries by Dr. Ty Endean and Dr
2 Robert Berens.

3
4 7 If this matter went to a hearing, Gorey would testify that he did not
5 interview Dr. Endean or Dr. Berens.

6 8 If this matter went to a hearing, Gorey would testify that it was the
7 responsibility of his co-counsel, Robert M. Gregory ("Gregory"), to interview Dr.
8 Endean and Dr. Berens.

9
10 9 If this matter went to a hearing, Gregory would testify that neither
11 Dr. Endean nor Dr. Berens would return his telephone calls

12
13 10. On or about November 3, 2004, Ms. Jordan retained Gorey to
14 represent her in pursuing a personal injury claim, as well as the claims of her
15 children.

16 11 Mr. Adamczyk also retained Gorey to represent him in connection
17 with his personal injury claim on or about November 3, 2004.

18
19 12 If this matter went to a hearing, Gorey would testify that the scope
20 of his representation of Ms. Jordan, her children, and Mr. Adamczyk did not
21 include property damage resulting from the motor vehicle accident.

22
23 13. If this matter went to a hearing, Gorey would testify that Ms. Jordan
24 asked Gorey to rent a car for her and Mr. Adamczyk while Mr. Adamczyk's car
25 was being repaired.

1 14 Gorey failed to inform Ms Jordan that renting a car for her would
2 create a conflict of interest pursuant to ER 1 8(e), Arizona Rules of Professional
3 Conduct
4

5 15 If this matter went to hearing, Gorey would testify that renting a car
6 for a client in California does not constitute an ethical violation, and would
7 further testify that he was unaware of the difference in the rules because he
8 practiced in California for approximately 20 years.¹
9

10 16. Gorey did not obtain written, informed consent from Mr. Adamczyk
11 or Ms Jordan regarding the issue of renting a car on their behalf
12

13 17 On or about November 22, 2004, Gorey rented a car for Mr
14 Adamczyk through Enterprise Rent-A-Car Company ("Enterprise") using his
15 personal credit card.

16 18 If this matter went to a hearing, Gorey would testify that the
17 Enterprise lease was for the benefit of Mr. Adamczyk.
18

19 19 If this matter went to a hearing, Gorey would testify that his intent
20 was that the car rental would be limited to approximately two weeks
21
22

23
24 ¹ California's ethical rules regarding providing financial assistance to clients are
25 somewhat different than Arizona's rules. *Compare* ER 1.8(e) and Rule 4-210 of the
California Rules of Professional Conduct. Rule 4-210(A)(2) appears to allow attorneys
to make loans to clients. The State Bar does not dispute that in California, it is
permissible for attorneys to rent cars for clients in personal injury cases.

1 20. Mr. Adamczyk retained the rental car for a period of time and, then,
2 returned it and obtained a more expensive rental car. Ultimately, he rented cars
3 that were paid for by Gorey for approximately six months. Gorey was not aware
4 of the fact that a car continued to be rented.
5

6 21. The Enterprise rental car bill totaled \$9,699.68.

7 22 Sometime between late November and early December 2004, Gorey
8 contacted and associated with Gregory to help Gorey represent Ms. Jordan, Mr.
9 Adamczyk, Destin, and Nico
10

11 23 On or about May 11, 2005, Gregory filed a personal injury lawsuit
12 on behalf of Ms. Jordan, Mr. Adamczyk, Destin, and Nico in Pima County
13 Superior Court Case No C2005-2630.
14

15 24 If this matter went to a hearing, Gorey would testify that he was co-
16 counsel for his clients in Case No C2005-2630
17

18 25. If this matter went to a hearing, Gorey would testify that he was
19 jointly responsible for the representation of his clients in Case No. C2005-2630.

20 26 There were two central defendants named in C2005-2630: Jennifer
21 Witten, and Complete Landscaping, Inc. that owned a vehicle driven by an
22 employee
23
24
25

1 27 On or about February 14, 2006, the Court scheduled a jury trial for
2 July 25, 2006. The Court also set a status conference for September 11, 2006
3 (“Status Conference”)
4

5 28 On or about April 18, 2006, the Court continued the jury trial to
6 October 11, 2006

7 29 Based on the October trial date, the deadline for Gorey to disclose
8 all of his expert witnesses was July 13, 2006.
9

10 30. If this matter went to hearing, Gorey would testify that Gregory had
11 agreed to handle all status conferences.

12 31. If this matter went to a hearing, Gorey would testify that neither he
13 nor Gregory received notice of the Status Conference
14

15 32 Gorey did not appear at the Status Conference

16 33. During the course of litigation in Case No. C2005-2630, the
17 Defendants provided notice to Ms. Jordan that she must undergo an Independent
18 Medical Examination (“IME”).
19

20 34. The IME was originally scheduled to take place on June 19, 2006.

21 35. On or about June 19, 2006, Ms. Jordan canceled the IME as she
22 needed to take her son to a previously scheduled dental appointment.
23
24
25

1 36 If this matter went to a hearing, Gorey would testify that shortly
2 after Ms. Jordan missed the IME he spoke with defense counsel for Complete
3 Landscaping to address the missed appointment
4

5 37 If this matter went to a hearing, Gorey would testify that he
6 attempted to negotiate a resolution with defense counsel for Complete
7 Landscaping to resolve the costs of the missed IME at the end of the case
8

9 38 On or about July 26, 2006, defense counsel for Complete
10 Landscaping filed a motion seeking compensation ("Motion for Sanctions") for
11 the missed IME
12

13 39 The Motion for Sanctions requested a cancellation fee of \$1,000 00
14 and an award of attorneys fees totaling \$500 00
15

16 40. If this matter went to a hearing, Gorey would testify that he did not
17 receive a copy of the Motion for Sanctions.
18

19 41 If this matter went to a hearing, Gorey would testify that Gregory
20 likely did receive a copy of the Motion for Sanctions, but did not inform Gorey
21 that he received said copy
22

23 42. A response to the Motion for Sanctions was not filed
24

25 43 Defense counsel for Complete Landscaping filed a request that the
26 Motion for Sanctions be granted.
27

28 44. The Court partially granted the Motion for Sanctions
29

1 45. The Court awarded Complete Landscaping's request for the
2 \$1,000 00 cancellation fee, but did not order the \$500.00 of attorneys' fees
3 requested
4

5 46 If this matter went to a hearing, Gorey would testify that he received
6 *notice either of the Court's Ruling or Complete Landscaping's request that the*
7 *Motion for Sanctions be summarily granted because no opposition had been*
8 *filed*
9

10 47 If this matter went to a hearing, Gorey would testify that after
11 receiving the notice referred to in paragraph 46, above, Gorey asked Gregory
12 why he had not responded to the Motion for Sanctions and advised him to file a
13 motion for reconsideration to address the Court's award of the cancellation fee.
14

15 48. If this matter went to a hearing, Gorey would testify that he advised
16 Gregory specifically what the motion for reconsideration should address the issue
17 of the unreasonableness of the amount of the cancellation fee
18

19 49. On or about August 11, 2006, Gregory filed a motion for
20 reconsideration that included arguments not suggested by Gorey as to why no
21 response had originally been filed to the motion for sanctions, but the matter was
22 settled before the Court made a ruling
23
24
25

1 50 If this matter went to a hearing, Gorey would testify that it was
2 Gregory's responsibility to conduct discovery and disclose witnesses in
3 accordance with deadlines
4

5 51. If this matter went to a hearing, Gorey would testify that he advised
6 Gregory about the manner and level of detail that was required in connection
7 with expert witness disclosures.
8

9 52 If this matter when to a hearing, the evidence would show Gregory
10 had agreed to draft and serve any disclosure statements that would be needed
11

12 53. Gorey did not disclose expert witnesses reports and summaries for
13 Ms. Jordan by July 13, 2006.
14

15 54 On or about August 31, 2006, defense counsel for Complete
16 Landscaping filed a motion to preclude expert testimony ("Motion to Preclude").
17

18 55 On or about September 25, 2006, the Court granted the Motion to
19 Preclude
20

21 56. The Court's ruling referenced in paragraph 55, above, based its
22 decision on the failure to serve expert witness reports and summaries.
23

24 57 The Court's ruling referenced in paragraph 55, above, excluded the
25 opinion testimony of certain medical experts, but not all witnesses.

1 58 If this matter went to a hearing, Gregory would testify that he made
2 numerous attempts to secure the expert witness reports and summaries for Ms.
3 Jordan
4

5 59. If this matter went to a hearing, Gregory would testify that the
6 expert witnesses were uncooperative in providing their reports and summaries
7

8 60. Sometime in July 2006, defense counsel for Complete Landscaping
9 offered to settle Mr Adamczyk's claims against the company for \$10,000.00
10

11 61 Mr Adamczyk accepted Complete Landscaping's settlement offer.

12 62 If this matter went to trial, Gorey would testify that he wanted to be
13 reimbursed for the Enterprise rental car bill
14

15 63 If this matter went to trial, Gorey would testify that he came to an
16 agreement with Mr. Adamczyk to resolve the Enterprise rental car bill.
17

18 64. If this matter went to trial, Gorey would testify that Mr Adamczyk
19 agreed to pay Gorey \$8,000.00 out of the \$9,699.98 Enterprise bill out of the
20 proceeds from Complete Landscaping's settlement offer.
21

22 65 If this matter went to trial, Gorey would testify that he received a
23 check from Gregory in the amount of \$8,000.00 in or around October 2006
24

25 66. If this matter went to trial, Gorey would testify that he cashed the
\$8,000 00 check and kept the proceeds

1 67 On or about September 27, 2006, Gregory called Gorey. If this
2 matter went to a hearing, Gorey would testify that Gregory informed him that
3 despite the ruling precluding the use of certain witnesses, \$25,000 was still being
4 offered to Ms. Jordan. Gorey informed Gregory that if Ms. Jordan wanted the
5 settlement that Gorey would waive his portion of the attorney fees and suggested
6 to Gregory that he should consider doing the same, but that if Ms. Jordan wanted
7 to accept the \$25,000 that Ms Jordan give them a malpractice waiver
8
9

10 68 If this matter went to a hearing, Gorey would testify that he advised
11 Gregory to include language in the malpractice waiver instructing Ms Jordan and
12 Mr Adamczyk to consult an independent attorney before signing it.
13

14 69. Gregory prepare a malpractice waiver that contained language
15 instructing Ms Jordan and Mr Adameczyk to consult an independent attorney
16 before signing it (the "Malpractice Waiver")
17

18 70. On or about September 28, 2006, Ms Jordan signed the Malpractice
19 Waiver

20 71. On or about September 28, 2006, Mr Adamczyk also signed the
21 Malpractice Waiver.
22

23 72. If this matter went to a hearing, Gregory would testify that Ms
24 Jordan told him she had spoken with an attorney prior to signing the Malpractice
25 Waiver

1 Court's Final Judgment and Order [A statement of costs is
2 attached to the Tender as Exhibit A]

3
4 80 Gorey has conditionally admitted that, in exchange for the form of
5 discipline set forth above, he has engaged in the conduct described above and the
6 *Rule violations described above*

7
8 81. By entering into the Tender, Gorey waived his right to a formal
9 disciplinary hearing that he would otherwise be entitled to pursuant to Rule 57(i),
10 Ariz.R Sup.Ct , and the right to testify or present witnesses on his own behalf at a
11 hearing

12
13 82. Gorey was represented by counsel in this matter Based upon the
14 terms of the tender, Gorey and his attorney waived all motions, defenses,
15 objections, or requests that he Gorey made or raised or could have asserted
16 Gorey has read the Tender and has received a copy of the Tender.

17
18 83 Gorey entered into the Tender freely and voluntarily, and without
19 coercion or intimidation.

20
21 84 Gorey understands that the Disciplinary Commission must approve
22 this Report and that this matter will only become final upon judgment and order
23 of the Arizona Supreme Court. If this Report is rejected, the parties' conditional
24 admissions should be deemed to be withdrawn

25

1 throughout the formal proceedings, and often stated that he will not
2 provide rental cars for clients again.

3
4 97. The Hearing Officer finds that the mitigating factors outweigh the
5 only aggravating factor, and that the balance of the aggravating and mitigating
6 factors supports the imposition of a censure in this case

7
8 **Application of Standards**

9 98. The parties agree that Standard 4.33 is the most applicable Standard
10 Standard 4.33 provides that. “[r]eprimand is generally appropriate when a lawyer
11 is negligent in determining whether the representation of a client may be
12 materially affected by the lawyer’s own interest, or whether the representation
13 will adversely affect another client, and causes injury or potential injury to a
14 client.” Reprimand is the equivalent of a censure in Arizona.⁴

15
16 99. Based upon the application of Standard 4 33, and considering the
17 finding that Gorey’s conduct was negligent, rather than knowing, censure is the
18 presumptive sanction.
19

20 100 The Hearing Officer does not find that the aggravating or mitigating
21 factors would justify a departure from the presumptive sanction of a censure in
22 this case.
23

24
25 ⁴ The ABA Standards use the term “reprimand” rather than “censure.” Public reprimand under the ABA Standards is the same as public censure under Arizona’s disciplinary rules. *In re Castro*, 164 Ariz. 428, 433, 793 P.2d 1095, 1100 n.1 (1990).

1 PROPORTIONALITY

2 101. The last step in determining if a particular sanction is appropriate is
3 to assess whether the discipline is proportional to the discipline imposed in
4 similar cases. *In re Peasley*, 208 Ariz 27, 41, ¶ 62, 90 P 3d 764, 778 (2004).
5 “This is an imperfect process because no two cases are ever alike.” *In re Owens*,
6 182 Ariz 121, 127, 893 P 2d 1284, 1290 (1995). As the Arizona Supreme Court
7 has recently observed:
8

9
10 Consideration of the sanctions imposed in similar cases is
11 necessary to preserve some degree of proportionality, ensure
12 that the sanction fits the offense, and avoid discipline by whim
13 or caprice. Proportionality review however, is an imperfect
14 process . . . Normally the fact that one person is punished more
15 severely than another involved in the same misconduct would
16 not necessarily lead to a modification of a disciplinary sanction.
17 Both the State Bar in its capacity as prosecutor and the
18 Disciplinary Commission in its quasi-judicial capacity have
19 broad discretion in seeking discipline and in recommending
20 sanctions.

21 *In re Dean*, 212 Ariz. 221, 225, ¶ 24, 129 P 3d 943, 947 (2006)

22 102 Because perfect uniformity cannot be achieved, the Arizona
23 Supreme Court has long recognized that the discipline in each situation must be
24 tailored for the individual case *In re Platt*, 191 Ariz. 24, 31, 951 P.2d 889, 896
25 n.5 (1997). The Hearing Officer has evaluated the agreed upon sanction to make
sure that it is adequately tailored for the individual case, while keeping in mind
the State Bar’s broad discretion in recommending sanctions *See In re Dean*, 212

1 Ariz 221, 225, ¶ 24, 129 P.3d 943, 947 (2006) (State Bar, in its capacity as
2 prosecutor has broad discretion in seeking discipline and in recommending
3 sanctions)
4

5 103. The Hearing Officer has considered the cases cited by the parties in
6 the Joint Memorandum, and has performed independent research regarding
7 similar cases
8

9 104 There are no Arizona decisions dealing with closely analogous
10 situations
11

12 105. The cases cited in the Joint Memorandum are not particularly
13 helpful, but they do support the imposition of a censure in this case
14

15 106 Cases from other jurisdiction that follow the ABA standard would
16 support the imposition of a censure as well. *See, e g, Rubenstein v Statewide*
17 *Grievance Comm'n*, 35 Conn L Rptr 34, 2003 Conn. Super LEXIS 1727
18 (2003) ; *Mississippi Bar Ass'n v Attorney HH*, 1996 Miss. LEXIS 75 (Miss
19 1996) (attorney was reprimanded after advancing “necessary and essential living
20 and medical expenses” to client); *Hanish v Kentucky Bar Ass'n*, 875 S.W 2d 95
21 (Ky. 1994) (attorney reprimanded for making loans to clients), *Kentucky Bar*
22 *Ass'n v Mills*, 808 S W 2d 804 (1991) (attorney reprimanded for providing
23 financial assistance to clients; attorney acted knowingly) *But see, Counsel for*
24 *Discipline of the Nebraska Supreme Court v Kratina*, 746 N W.2d 378 (Neb
25

1 2008) (attorney suspended for 60 days for advancing transportation and vehicle
2 expenses to client); *Oklahoma Bar Ass'n v Smolen*, 17 P 3d 456 (Okla 2000)
3 (attorney who had previously been censured for providing financial assistance to
4 clients was suspended for 60 days after he continued to advance funds to clients).
5

6 107 Based upon the Arizona decisions discussed in the Joint
7 Memorandum, the presumptive sanction provided by the ABA standards, and the
8 decisions from other states discussed above, the Hearing Officer finds that the
9 agreed upon sanction in this case is proportional to the sanctions imposed in the
10 past in similar cases
11

12 108. The Hearing Officer believes that the agreed upon censure is
13 sufficient punishment to deter others and to protect the public. *In re Pappas*, 159
14 Ariz. 516, 526, 768 P.2d 1161, 1171 (1988)
15

16 **CONCLUSION**

17 109. For the reasons discussed above, the Hearing Officer recommends
18 that the following punishment be imposed on Respondent Stephen Gorey:
19

- 20 a Gorey should receive a censure;
21 b Gorey should be placed on probation for one year,
22 c Gorey should be required to complete the State Bar's "Ten Deadly Sins
23 of Conflicts" MCLE course, and
24
25

1 d Gorey should be required to pay all costs and expenses incurred by the
2 State Bar in these proceedings, in the amount of \$1,207.56

3
4 DATED: May 1, 2008

5 Hearing Officer 7M

6
7 

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11
12 ORIGINAL of the foregoing mailed for
filing on May 1, 2008, to:

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16 COPIES of the foregoing mailed
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