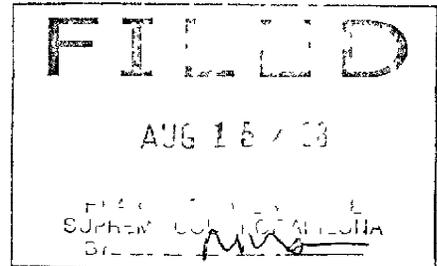


1 Stanley R Lerner
2 Hearing Officer 7V
3 3707 North 7th Street, Suite 250
4 Phoenix, AZ 85014-5057



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

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
8 39. Respondent advised Mr. Hatch that he should "go on the offensive
9 as well as try to get [his] money." Respondent informed Mr. Hatch that the
10 contract required NATC to make specific progress payments, and that if those
11 payments were not made, the contract allowed Hatch to stop all work upon
12 written seven days notice. Respondent advised Mr. Hatch to send such a
13 written notice advising NATC that Hatch would be stopping all work until
14 payments are made. Respondent advised Mr. Hatch that this would stop the
15 accrual of any liquidated damage claims, and put pressure on NATC to make
16 sure Hatch got paid.
17

18
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 2. Did NATC believe Respondent was their lawyer?
8

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 None of the NATC principals objected to this throughout the bulk of
18 Respondent’s tenure. However, this implicit acceptance of Respondent as
19 counsel for NATC changed at the February 17, 2006 board meeting when
20 Respondent was notified his contract would not be renewed. One of the
21 primary reasons Respondent was given for his termination was that
22 Respondent had not been hired to act as NATC’s counsel. It was shortly after
23
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 16*
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 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 CONDUCT

15 As reflected in the Tender of Admissions and Agreement for
16 Discipline by Consent, Respondent engaged in professional misconduct that
17 violated duties owed to his client by: failing to maintain inviolate the
18 confidences and preserve the secrets of a client, revealing information
19 relating to the representation of a client without informed consent, engaging
20 in conduct involving dishonesty, fraud, deceit or misrepresentation, and
21 engaging in conduct prejudicial to the administration of justice.
22
23
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(i)* 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.¹
21

22
23 ¹ 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

16 Based on the above cases, and on the specific facts of Respondent's matter,
17 the parties agreed and the Hearing Officer imposes a sanction of a censure with
18 one year of probation, as detailed above. This is an appropriate sanction in this
19 matter. Such sanction matches the ABA Standards, the comparable case law, and
20 is appropriate to the facts of the case at hand.
21

22 The sanction meets the goals of the disciplinary system. The terms of
23 the agreement serve to protect the public, instill confidence in the public, deter
24 other lawyers from similar conduct and maintain the integrity of the Bar.
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 15th day of August, 2008.

17
18 

19 Stanley R. Lerner
20 Hearing Officer 7V
21

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

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

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

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

10 by: Norton Manelkar

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25