

**FILED**  
FEB 09 2009  
DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA  
BY M. Smith

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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, )  
)  
**CRAIG J. SIMON,** )  
**Bar No. 018920** )  
)  
RESPONDENT. )  
\_\_\_\_\_ )

No. 08-0051  
  
**DISCIPLINARY COMMISSION  
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 10, 2009, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed December 16, 2008, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum ("Joint Memorandum") providing for a 60 day suspension, one year of probation with the State Bar's Member Assistance Program ("MAP"), and costs including costs within 30-days of the date of the Supreme Court's final Judgment and Order.

**Decision**

Having found no facts clearly erroneous, the nine members of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for a 60 day suspension, one year of probation (MAP), and costs of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk's office within 30 days.<sup>1</sup>

<sup>1</sup> The Hearing Officer's Report is attached as Exhibit A.

**Terms of Probation**

1           1.       The probation period shall begin to run at the time of acceptance of the  
2 Consent Agreement by the Hearing Officer and will conclude upon completion of the  
3 terms of probation as listed below.

4           2.       Respondent shall contact the State Bar of Arizona's Member Assistance  
5 Program to participate in an evaluation and referral to services as needed. Respondent shall  
6 cooperate with any recommendations made by the Member Assistance Program.  
7 Respondent shall be responsible for the cost of the evaluation and any subsequent referral  
8 programs.

9           3.       Respondent's probation shall terminate upon successful completion of  
10 MAP's recommendations, if any.

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

13           5.       In the event that Respondent fails to comply with any of the foregoing  
14 conditions, and the State Bar receives information, bar counsel shall file with the imposing  
15 entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The  
16 Hearing Officer shall conduct a hearing within 30-days after receipt of said notice, to  
17 determine whether the terms of probation have been violated and if an additional sanction  
18 should be imposed. In the event there is an allegation that any of these terms have been  
19 violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by  
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# EXHIBIT A

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

**FILED**  
DEC 16 2008  
HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *NMA*

**IN THE MATTER OF A MEMBER  
OF THE STATE BAR OF ARIZONA,**  
  
**Craig J Simon,**  
**Bar No. 018920**  
  
Respondent.

No. 08-0051

**HEARING OFFICER'S REPORT**

(Assigned to Hearing Officer 9R,  
Robert J. Stephan, Jr.)

**PROCEDURAL HISTORY**

1. Probable cause was found in this matter on July 23, 2008. An amended probable cause order was issued by the Panelist on August 27, 2008.  
  
Prior to the filing of any formal complaint, the parties negotiated a settlement, filing Direct Consent documents on November 6, 2008.
2. This matter was assigned to the undersigned Hearing Officer on November 7, 2008.

**FINDINGS OF FACT**

3. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on May 16, 1998.

- 1 4. In or about December of 2002, Laurel Martlage (“Ms. Martlage”)  
2 retained Respondent to defend her in a civil action brought by her former  
3 partner (“the first case”).  
4
- 5 5. Respondent was the primary attorney handling this first case.
- 6 6. From December of 2002 through February of 2006, Respondent engaged  
7 in a sexual affair with Ms. Martlage.  
8
- 9 7. The majority of Respondent and Ms. Martlage’s sexual encounters  
10 occurred in early 2003, with the last isolated encounter occurring in  
11 February of 2006.
- 12 8. In or about September of 2003, Ms. Martlage retained Respondent’s firm  
13 to defend her in a civil action brought by her neighbor (“the second  
14 case”).  
15
- 16 9. Respondent was not the primary line attorney handling this second case,  
17 but did have supervisory authority over the case as well as some limited  
18 involvement in the actual handling of the case.  
19
- 20 10. In or about November of 2003, the second case against Ms. Martlage  
21 proceeded to trial, with the plaintiffs’ requested relief being denied, but  
22 an injunction against harassment being affirmed as to Ms. Martlage.  
23
- 24 11. In or about April of 2004, a contempt hearing was held for Ms.  
25 Martlage’s alleged violation of the injunction against harassment.

1 12. Respondent's firm continued to represent Ms. Martlage for these  
2 contempt proceedings.

3  
4 13. On or about April 6, 2005, the second case against Ms. Martlage was  
5 ultimately dismissed by the Court.

6 14. On or about August 25, 2005, the first case against Ms. Martlage's was  
7 dismissed by the Court, effectively ending Respondent's representation  
8 of Ms. Martlage.

9  
10 15. With respect to both the first and second cases described in Paragraphs  
11 4-14, the affair identified above did not result in any prejudice to the  
12 legal interests of Ms. Martlage, the opposing party, the court, or any  
13 other affected person or entity.  
14

15  
16 **CONCLUSIONS OF LAW**

17  
18 16. Respondent engaged in professional misconduct that violated duties  
19 owed to his client by representing a client when there was a significant  
20 risk that the representation of the client would be materially limited by a  
21 personal interest of Respondent.

22  
23 17. This conduct violated Rule 42, Ariz.R.Sup.Ct., ER 1.7.

24 18. Respondent's conduct in violation of ER 1.7 implicates *Standard 4.32*,  
25 which provides that "(s)uspension is generally appropriate when a

1 lawyer knows of a conflict of interest and does not fully disclose to a  
2 client the possible effect of that conflict, and causes injury or potential  
3 injury to a client.”  
4

5 19. By engaging in an affair with his client, Respondent knowingly engaged  
6 in a potential conflict of interest.

7 20. Ms. Martlage was not injured by Respondent’s actions in that he was  
8 ultimately successful in his representation of her. She was however,  
9 subject to potential injury had the relationship been discovered or had it  
10 adversely affected the lawyer-client relationship.  
11

12 21. The presumptive sanction in this matter appears to be suspension.

13 22. There are no aggravating factors to be considered in this case.

14 23. The Following mitigating factors are applicable:

15 a. 9.32(a) *Absence of Prior Disciplinary Record*

16 i. The Respondent has no disciplinary record.  
17

18 b. 9.32(3) *Full and Free Disclosure to Disciplinary Board*

19 i. The Respondent cooperated with the State Bar.  
20

21 c. 9.32(g) *Character or Reputation*

22 i. The Respondent has a good character and strong  
23 reputation in the local community.  
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25 24. The Following proportional cases are persuasive in this matter:

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- a. *In re Pearlstein*, SB-03-0155 (2004), The lawyer was suspended for 60 days with 2 years of probation for subjecting a client to unwelcome commentary of a sexual nature. In a second matter, the lawyer failed to keep his client informed as to the matter, failed to act with diligence, and failed to properly supervise his staff. ERs 1.4, 1.7, 1.15, 1.16 and 5.3.
- b. *In re Marquez*, SB-03-0072 (2004), The lawyer was suspended for 30 days with 1 year of probation for making unwelcome sexual comments and unwelcome touching of an opposing party who was representing herself pro per. The lawyer denied the conduct until confronted with a tape recording of the incident. ERs 1.7, 8.1 and 8.4.
- c. *In re Spence*, SB-05-0026 (2005), The lawyer was suspended for 30 days and received probation for making inappropriate and sexually explicit comments to clients. The lawyer also disobeyed an obligation under the tribunal, disobeying a court order. ERs 1.7, 3.4, 8.4, Rule 41(g) and 51(e).
- d. *In re Moore*, SB-02-0043 (2002), The lawyer was Censured for making persistent comments and extending invitations of a

1                   sexual nature to his client during the course of the  
2                   representation in violation of ER 1.7 and Rule 41(g).

3  
4                   25. Based on Respondent's conduct, the ABA Standards, the applicable  
5                   aggravators and mitigators, as well as past comparable cases, this  
6                   Hearing Officer determines that the proposed sanction submitted by the  
7                   parties is appropriate.

8  
9                   26. This Hearing Officer recommends the Tender of Admissions be accepted  
10                  and the following disciplinary sanctions be imposed:

- 11                   a. Respondent shall receive a suspension of 60 days;
- 12                   b. Respondent shall pay all costs incurred by the State Bar in  
13                   bringing these disciplinary proceedings within thirty (30) days  
14                   of the Supreme Court's Final Judgment and Order. In addition,  
15                   Respondent shall pay all costs incurred by the Disciplinary  
16                   Commission, the Supreme Court, and the Disciplinary Clerk's  
17                   office in this matter.
- 18                   c. Respondent shall be placed on probation for a period not to  
19                   exceed one year under the following terms and conditions:
- 20                   i. The probation shall begin to run at the time of  
21                   acceptance of the Consent Agreement by this Hearing  
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Officer, and will conclude upon completion of the terms of probation as listed below.

- ii. Respondent shall contact the State Bar of Arizona's Member Assistance Program to participate in an evaluation and referral to services as needed. Respondent shall cooperate with any recommendations made by the Member Assistance Program. Respondent shall be responsible for the cost of the evaluation and any subsequent referral programs.
- iii. Respondent's probation shall terminate upon successful completion of MAP's recommendations, if any.
- iv. Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other rules of the Supreme Court of Arizona.
- v. In the event that Respondent fails to comply with any of the foregoing probation terms and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance with the imposing entity pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the matter to a hearing officer to

1                               conduct a hearing at the earliest practicable date, but in  
2                               no event later than 30 days after receipt of notice, to  
3                               determine whether a term of probation has been  
4                               breached and, if so, to recommend an appropriate  
5                               sanction. If there is an allegation that Respondent failed  
6                               to comply with any of the foregoing terms, the burden of  
7                               proof shall be on the State Bar of Arizona to prove  
8                               noncompliance by clear and convincing evidence.  
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11  
12               **DATED** this 16<sup>th</sup> day of December, 2008.

13  
14  
15   Robert J. Stephan, Jr. /NMM  
16   Robert J. Stephan, Jr.  
17   Hearing Officer 9R

18   Original filed this 16<sup>th</sup> day  
19   of December, 2008, with:

20   Disciplinary Clerk of the Supreme Court of Arizona

21  
22   Copies of the foregoing mailed this 17<sup>th</sup> day  
23   of December, 2008, to:

24   Craig J Simon  
25   Cantor Simon PLLC  
2141 E Broadway Suite 120  
Tempe, AZ 85282-1705

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by: 