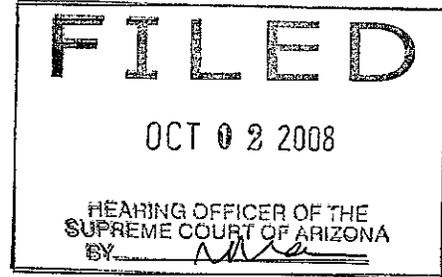


1 Bruce G. Macdonald  
2 State Bar No. 010355  
3 1670 E. River Road #200  
4 Tucson, AZ 85718  
5 Hearing Officer 6M



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

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

10 **CHARNA R. JOHNSON,**  
11 **Bar No. 007422**

12 Respondent.

No. 07-1645

**HEARING OFFICER'S REPORT**

( Bruce G. Macdonald, Hearing  
Officer 6M)

13 **PROCEDURAL HISTORY**

14 A Probable Cause Order was filed by Probable Cause Panelist, Richard  
15 T. Platt, on March 21, 2008. A Motion to File Complaint Under Seal was filed  
16 by the State Bar on April 28, 2008. A Complaint was filed under seal on April  
17 28, 2008. The Complaint was served by mail on May 14, 2008. Respondent  
18 filed an Answer on May 29, 2008. The case was assigned to this Hearing  
19 Officer on May 8, 2008. A telephonic Initial Case Management Conference  
20 took place on May 30, 2008. A hearing on the merits was scheduled for  
21 September 12, 2008. On June 9, 2008, the case was assigned to Settlement  
22 Officer 6R, Honorable H. Jeffrey Coker, for the sole purpose of facilitating a  
23 settlement of the case. On July 10, 2008, the State Bar filed a Notice of  
24  
25

1 Settlement. On August 28, 2008, a Tender of Admissions and Agreement for  
2 Discipline by Consent and Joint Memorandum in Support for Discipline by  
3 Consent were filed. On September 12, 2008, a hearing on the agreement took  
4 place. At the hearing, the complainant in this case, David Hecht, testified in  
5 opposition to the agreement and further testified that, in his opinion, the  
6 Respondent should receive a more significant sanction than the sanction agreed  
7 upon by the parties.  
8  
9

10 **FINDINGS OF FACT**

11 1. At all times relevant, Respondent was a lawyer licensed to  
12 practice law in the state of Arizona having been first admitted to practice in  
13 Arizona on October 23, 1982.  
14

15 2. In or about May of 2004, Mary Hecht ("Ms. Hecht") retained  
16 Respondent to represent her in a dissolution of marriage action.  
17

18 3. On or about March 31, 2006, the dissolution case resulted in a  
19 Decree of Dissolution.

20 4. On or about April 14, 2006, David Hecht ("Mr. Hecht"), Ms.  
21 Hecht's ex-husband, filed a petition to modify his child support and spousal  
22 maintenance obligations.  
23

24 5. Respondent represented Ms. Hecht in that matter as well.  
25

1           6.     On or about August 9, 2006, the modification case resulted in an  
2 order reducing Mr. Hecht's child support and spousal maintenance  
3 obligations.  
4

5           7.     On or about May 2, 2006, Mr. Hecht filed a motion for new trial  
6 in the dissolution matter.

7           8.     Respondent represented Ms. Hecht in that matter as well.

8           9.     In or about May of 2007, while the Ms. Hecht's case was still  
9 pending, Respondent prepared and drafted a Last Will and Testament ("the  
10 first will") for Ms. Hecht.  
11

12           10.    In the first will, Ms. Hecht's two minor children were each  
13 bequeathed \$1,000.  
14

15           11.    The first will bequeathed all remaining property, both real and  
16 personal, to Respondent.

17           12.    The first will appointed Respondent to be personal representative  
18 of the estate upon Ms. Hecht's death.  
19

20           13.    Respondent was neither related to, nor shared a close familial  
21 relationship with, Ms. Hecht.  
22

23           14.    In or about June of 2006, the Court denied Mr. Hecht's motion for  
24 new trial.  
25





1 she was the beneficiary, in violation of ER 1.8. This conduct implicates  
2 *Standard 4.33*. *Standard 4.33* provides that “[Censure] is generally appropriate  
3 when a lawyer is negligent in determining whether the representation of a client  
4 may be materially affected by the lawyer’s own interests, or whether the  
5 representation will adversely affect another client, and causes injury or potential  
6 injury to a client.”  
7

8  
9 Because Respondent’s intent was to use the will as a vehicle to hold  
10 property for the benefit of her client’s children, and not as a benefit to herself, the  
11 parties agree that the mental state involved in this case is negligence. The client  
12 suffered no actual harm, but was subject to potential harm. The presumptive  
13 sanction in this matter appears to be censure. Application of the aggravating and  
14 mitigating factors also assists in determining the appropriate sanction. This  
15 Hearing Officer finds that the following factors should be considered in  
16 aggravation:  
17

18  
19 *Standard 9.22(i)* substantial experience in the practice of law.

20 1. *Respondent was admitted to practice on October 23, 1982.*

21 This Hearing Officer finds that the following factors should be considered in  
22 mitigation:

23 *Standard 9.32(a)* absence of prior disciplinary record;

24 1. *Respondent has no formal discipline history.*  
25

1           *Standard 9.32(b) absence of dishonest or selfish motive*

2           1.   *Respondent's intent was to use any inherited wealth for the benefit*  
3               *of the client's children.*

4  
5           *Standard 9.32(e) full and free disclosure to disciplinary board or*  
6           *cooperative attitude toward proceedings*

7           1.   *Respondent admitted all of the allegations, and was very cooperative*  
8               *with the State Bar at all times.*

9  
10  
11                                   **II.   PROPORTIONALITY REVIEW**

12           In the past, the Supreme Court has consulted similar cases in an attempt  
13           to assess the proportionality of the sanction recommended.   *See In re Struthers,*  
14           179 Ariz. 216, 226, 887 P.2d 789, 799 (1994).   The Supreme Court has  
15           recognized that the concept or proportionality review is “an imperfect process.”  
16           *In re Owens,* 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995).   This is because  
17           no two cases “are ever alike.”   *Id.*

18  
19  
20           To have an effective system of professional sanctions, there must be internal  
21           consistency, and it is appropriate to examine sanctions imposed in cases that are  
22           factually similar.   *Peasley, supra,* 208 Ariz. at ¶ 33, 90 P.3d at 772.   However, the  
23           discipline in each case must be tailored to the individual case, as neither perfection  
24           nor absolute uniformity can be achieved.   *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778  
25

1 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135  
2 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

3  
4 The cases set forth below demonstrate that censure is an appropriate  
5 sanction in this matter.

6 In *In re Hineman*, SB-02-0154-D (2003), the lawyer received a censure  
7 and one year probation. The lawyer entered into a business transaction  
8 with his client to satisfy unpaid legal fees. Absent advice from  
9 independent counsel, he then failed to obtain the client's written consent  
10 to proceed with the transaction. ERs 1.5 and 1.8.

11  
12 In *In re Susman*, SB-03-0005-D (2003), the lawyer received a censure.  
13 The lawyer entered into business transactions (three loans) with a client.  
14 He did not advise the client to seek advice of independent counsel and  
15 one transaction was not in writing. ERs 1.8 and 8.4(a).

16 In *In re Davies*, SB-01-0158-D (2001), the lawyer received a 30 day  
17 suspension. The lawyer drafted a will for a close, personal friend and  
18 made amendments to the will, pursuant to his client's wishes, leaving  
19 portions of the estate to himself. He failed to advise his client to seek  
20 advice of outside counsel. ERs 1.7, 1.8, and 8.4(d).

21  
22 Based on the above cases, the mitigating factors presented, and on the  
23 specific facts of Respondent's matter, this Hearing Officer finds that a censure  
24 with probation is an appropriate sanction. Such sanction is in accordance with  
25

1 the ABA Standards, the comparable case law, and is appropriate for the facts of  
2 the case at hand.

3  
4 In sum, this hearing Officer believes that the agreement provides for a  
5 sanction that meets the goals of the disciplinary system. The terms of the  
6 agreement serve to protect the public, instill confidence in the public, deter  
7 other lawyers from similar conduct and maintain the integrity of the Bar.  
8

### 9 SANCTIONS

10 The Hearing Officer finds that the appropriate disciplinary sanctions are as  
11 follows:

- 12 1. Respondent shall receive a censure;
- 13  
14 2. Respondent shall pay all costs incurred by the State Bar in bringing these  
15 disciplinary proceedings within thirty (30) days of the Supreme Court's Final  
16 Judgment and Order. An Itemized Statement of Costs and Expenses is attached  
17 as Exhibit A and incorporated herein. In addition, Respondent shall pay all  
18 costs incurred by the Disciplinary Commission, the Supreme Court, and the  
19 Disciplinary Clerk's office in this matter.  
20
- 21 3. Respondent shall be placed on probation for a period of one year under the  
22 following terms and conditions:  
23  
24  
25

1           A.     The probation period shall begin to run at the time of acceptance of  
2           the Consent Agreement by the Hearing Officer, and will conclude one  
3           year from the date of the Hearing Officer's acceptance.  
4

5           B.     Respondent shall contact State Bar of Arizona publications at 602-  
6           340-7318 to either obtain and listen to the CD or obtain and view the  
7           DVD entitled "The Ten Deadly Sins of Conflict" within ninety (90) days  
8           of the judgment and order. Respondent may alternatively go to the State  
9           Bar website ([www.myazbar.org](http://www.myazbar.org)) and complete the self-study online  
10          version. Respondent shall provide Bar Counsel with evidence of  
11          completion by providing copies of handwritten notes. Respondent shall  
12          be responsible for the cost of the CD, DVD or online self-study.  
13  
14

15          C.     Respondent shall refrain from engaging in any conduct that would  
16          violate the Rules of Professional Conduct or other rules of the Supreme  
17          Court of Arizona.  
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  
21          State Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance  
22          with the imposing entity pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The  
23          imposing entity may refer the matter to a hearing officer to conduct a  
24          hearing at the earliest practicable date, but in no event later than 30 days  
25

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

7  
8 **CONCLUSION**

9 The purpose of lawyer discipline is not to punish the lawyer, but  
10 to protect the public, the profession, and the administration of justice, *In Re*  
11 *Peasley*, 208 Ariz. at 41, 90 P.3d at 778; *In Re Neville*, 147. Ariz. 106, 708  
12 P.2d 1297 (1985).  
13

14 This Hearing Officer finds that the objectives of discipline will be met  
15 by the imposition of the proposed sanction.  
16

17 **DATED** this 2nd day of October, 2008.  
18

19 Bruce G. Macdonald /NM  
20 Bruce G. Macdonald  
21 Hearing Officer 6M  
22  
23  
24  
25

1 Original filed this 2nd day  
2 of October, 2008, with  
3 the Disciplinary Clerk of the Supreme Court of Arizona

4 Copies of the foregoing mailed this 3rd day  
5 of October, 2008, to:

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15 Hon. H. Jeffrey Coker  
16 Settlement Officer 6R  
17 P. O. Box 23578  
18 Flagstaff, Arizona 86002

19 By: Claine Jensen  
20  
21  
22  
23  
24  
25