

**FILED**

JAN 14 2010

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

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA  
BY: *M. Smiley*

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4	IN THE MATTER OF A MEMBER	)	No. 08-0020
5	OF THE STATE BAR OF ARIZONA	)	
6		)	
7	<b>PATRICK C. COPPEN,</b>	)	
8	<b>Bar No. 014756</b>	)	<b>DISCIPLINARY COMMISSION</b>
9		)	<b>REPORT</b>
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This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 9, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed December 16, 2009, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum ("Joint Memorandum") providing for censure, one year of probation with the State Bar's Law Office Management Assistance Program ("LOMAP"), continuing legal education ("CLE") involving the reviewing of the State Bar's seminar entitled "*Ten Deadly Sins of Conflict*" within 120 days of the date of the final Judgment and Order, 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 (LOMAP), CLE (review "*Ten Deadly Sins of Conflict*" within 120 days from the

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<sup>1</sup> Commissioner Belleau did not participate in this proceeding.

1 date of the final Judgment and Order), and payment of costs of these disciplinary  
2 proceedings including any costs incurred by the Disciplinary Clerk's office within 30 days  
3 of the date of the final Judgment and Order.<sup>2</sup> The terms of probation are as follows:

4 **Terms of Probation**

5 1. Respondent shall contact LOMAP within 30 days of the date of the final  
6 Judgment and Order. Respondent shall submit to a LOMAP audit of his office,  
7 specifically focused on his conflicts checking system. The director of LOMAP shall  
8 develop a probation contract, and its terms shall be incorporated herein by reference. The  
9 probation period will begin to run at the time of the final Judgment and Order, and will  
10 conclude one year from the date of the final Judgment and Order.

11 2. Respondent shall contact the State Bar of Arizona publications at (602) 340  
12 7318 and either obtain and listen to the CD or obtain and view the DVD entitled "*Ten*  
13 *Deadly Sins of Conflict*" within 120 days of the date of the final Judgment and Order.  
14 Respondent may alternatively go to the State Bar website and complete the self-study  
15 online version. Respondent shall provide bar counsel with evidence of completion by  
16 providing copies of hand written notes. Respondent shall be responsible for the cost of the  
17 CD, DVD, or online self-study area.

18 3. Respondent shall refrain from engaging in any conduct that would violate the  
19 rules of Professional Conduct or other Rules of the Supreme Court of Arizona.

20 4. In the event that Respondent fails to comply with any of the foregoing  
21 conditions, and the State Bar receives information thereof, bar counsel shall file with the  
22 imposing entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct.  
23 The imposing entity may refer the matter to a hearing officer to conduct a hearing at the  
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<sup>2</sup> The Hearing Officer's Report is attached as Exhibit A. The State Bar's costs total \$1,200.00.

1 earliest practicable date, but in no event later than 30 days after receipt of notice, to  
2 determine whether the terms of probation have been breached and, if so, to recommend  
3 appropriate action and response. If there is an allegation that Respondent failed to comply  
4 with any of the foregoing terms, the State Bar of Arizona bears the burden to prove non-  
5 compliance by a preponderance of the evidence.

6 RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of January, 2010.

7  
8 Jeffrey Messing / mps  
9 Jeffrey Messing, Chair  
Disciplinary Commission

10 Original filed with the Disciplinary Clerk  
this 14<sup>th</sup> day of January, 2010.

11 Copy of the foregoing mailed  
12 this 14 day of January, 2010, to:

13 Hon. H. Jeffrey Coker  
14 Hearing Officer 6R  
15 P.O. Box 23578  
Flagstaff, AZ 86002-0001

16 Paul J. McGoldrick  
17 Respondent's Counsel  
18 *Shorall McGoldrick Brinkmann*  
1232 E. Missouri Avenue  
Phoenix, AZ 85014

19 Matthew McGregor  
20 Bar Counsel  
21 State Bar of Arizona  
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22 Phoenix, AZ 85016-6288

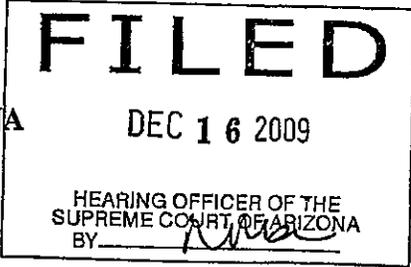
23 by: Deann Barker

24 /mps  
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# **EXHIBIT**

**A**

BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA



IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
)  
**PATRICK C. COPPEN,** )  
**Bar No. 014756** )  
)  
RESPONDENT. )  
\_\_\_\_\_ )

No. 08-0020

**HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

1. Probable cause was found in this matter on December 19, 2008. A Tender of Admissions and Joint Agreement were thereafter direct filed on August 25, 2009. The matter was assigned to the undersigned on September 1, 2009, and a hearing was held on the agreement on November 13, 2009. Present at the hearing were Bar Counsel Matthew McGregor, Respondent and Respondent's counsel Paul McGoldrick, and the undersigned.

**FINDINGS OF FACT**

2. At all times relevant, Respondent was an attorney licensed to practice law in the state of Arizona, having been admitted to practice in this state on May 15, 1993.<sup>1</sup>

**COUNT ONE (08-0020)**

**The 2003 Marital Dissolution Concurrent Conflict of Interest:**

3. Respondent testified at the hearing in this matter that he had a very long and close relationship with Michelle Eicher and Mark Eicher, these two individuals acting as surrogate parents to him. Respondent also grew to know their daughter, Melissa, who was married to Andrew Diodati, Transcript of Hearing ("T/H") 7:2-

<sup>1</sup> Unless otherwise referenced, all of the facts cited to herein are taken from the Tender of Admissions.

- 8:2. Respondent also knew Andrew Diodati from law school, T/H 7:25. Many of the problems that Respondent caused in this matter were as a result of his friendship with all of these people.
4. Respondent had represented the Eicher family during the 1990's in various matters, T/H 8:7-22.
  5. In August 2001, attorney Andrew Diodati was the subject of a bar charge (File No. 01-1600), which was investigated by the State Bar of Arizona.
  6. In June 2003, Respondent was the attorney of record for Andrew Diodati in the bar charge investigation, which was still being investigated by the State Bar of Arizona.
  7. Respondent testified at the hearing in this matter that he had not heard from the State Bar concerning the bar charge against Mr. Diodati in over a year, T/H 10:10-14 & 14:19-15:3, when, in June 9, 2003, Melissa Diodati, wife of Andrew Diodati, filed a Petition for Dissolution of Marriage against Andrew Diodati in D2003-2096 before the Pima County Superior Court, and Respondent represented her in that dissolution action.
  8. On June 10, 2003, Respondent expressed to Andrew Diodati via letter his intent to withdraw from the representation of Mr. Diodati in the bar charge case, as Respondent believed he had a greater ethical duty to Melissa Diodati.
  9. On June 11, 2003, Andrew Diodati notified Respondent via letter that he did not consent to Respondent's withdrawal from the representation in the bar charge case.

10. On June 16, 2003, after claiming to have received no response from Respondent to the June 11, 2003, letter, Andrew Diodati demanded via letter that Respondent immediately withdraw from the representation of Melissa Diodati in the marital dissolution matter.
11. On June 19, 2003, Andrew Diodati filed a Motion to Disqualify Petitioner's Counsel Due to Conflict of Interest in the marital dissolution matter, and requested that the Court disqualify Respondent as counsel of record for Melissa Diodati.
12. Respondent sought advice from other attorneys on whether there existed a conflict of interest. After determining that there was a conflict of interest, Respondent attempted to locate substitute counsel for Mrs. Diodati and withdrew from her representation, T/H 11:7-13.
13. On June 20, 2003, Respondent withdrew from the representation of Melissa Diodati in the marital dissolution, and attorney Joseph Riley was substituted in as counsel of record.
14. Ultimately the bar charge against Mr. Diodati was dismissed, T/H12:10-18.

**The 2006 Criminal Defense Concurrent Conflict of Interest:**

15. In July 2005, Respondent made a special appearance for Andrew Diodati in a deposition with the State Bar of Arizona related to a trust account disciplinary investigation (File Nos. 04-1903, and 05-0196).
16. On August 15, 2005, Respondent sent to the State Bar of Arizona, a short letter serving as Respondent's formal Notice of Appearance on behalf of Andrew Diodati for all pending disciplinary matters, which at that time were an October

- 2004 bar charge (Filed No. 04-1676), a November 2004 trust account investigation (File No. 04-1903), and a February 2005 trust account investigation (File No. 05-0196).
17. Approximately 5 months later, in January 2006, based upon his general notice of appearance sent to the State Bar of Arizona on August 15, 2005, Respondent was still representing Andrew Diodati in the two trust account investigations, which were still under investigation by the State Bar of Arizona.
  18. On January 18, 2006, Melissa Diodati filed a new Pro Se Petition for Dissolution of Marriage against Andrew Diodati in D2006-0211 before the Pima County Superior Court.
  19. Respondent assisted, but he did not formally represent, Melissa Diodati in preparing and modifying the new Petition for Dissolution of Marriage at a time when Respondent was still representing Andrew Diodati in pending State Bar of Arizona disciplinary investigations. Respondent testified that he merely changed the dates on the previously prepared 2003 Petition for Dissolution and eliminated his name from the pleadings, T/H 28:8-29:21.
  20. On January 23, 2006, at a pretrial conference before the Marana Municipal Court, Respondent filed a Notice of Appearance on behalf of Melissa Diodati in CR 2006-00065, a domestic violence criminal charge in which Respondent's client, Andrew Diodati was the alleged victim.
  21. On March 14, 2006, Respondent made another court appearance on behalf of Melissa Diodati in CR 2006-00065 at a pretrial conference.

22. On May 31, 2006, the criminal charge against Melissa Diodati in CR 2006-00065 was dismissed and Respondent's representation of Melissa Diodati effectively ended.

**The Ex Parte Contact with the Court**

23. In March 2007, Respondent withdrew from the representation of Andrew Diodati in all pending disciplinary matters.
24. On August 2, 2007, and August 3, 2007, Respondent represented Melissa Diodati's parents, Michelle Eicher and Mark Eicher, respectively, in obtaining Orders of Protection against Andrew Diodati. Respondent testified that he helped the Eichers obtain the Orders of Protection because the Eichers were very elderly and their son-in-law, Andrew Diodati had threatened to kill them, T/H 13-19.
25. On August 4, 2007, Andrew Diodati was served with these Orders of Protection.
26. Both Orders of Protection served on Andrew Diodati required that he turn over to the Marana Police Department any and all weapons and/or firearms that he possessed at the time of service.
27. Respondent, his clients, and the family of Respondent's clients, all believed, based upon contact with the City of Marana Police Department, that Andrew Diodati failed to turn over his firearms to the Marana Police Department and continued to believe that Andrew Diodati posed a threat to their safety and health, T/H 17:1-9.
28. On August 6, 2007, Andrew Diodati was arrested for allegedly failing to comply with the condition of the Orders of Protection, and then released from custody on bond after arraignment.

29. Between August 6, 2007, and August 27, 2007, Respondent, on several occasions, engaged in ex parte contacts with the Justice of the Peace who had issued the Orders of Protection, asking the Court to take action against Andrew Diodati.
30. Respondent's ex parte contacts consisted of personal face-to-face contacts with the Justice of the Peace about Andrew Diodati's alleged failure to turn over his firearms, and they occurred while Respondent was present at or near the Justice Court on other matters, T/H 20:1-8.
31. Although Respondent believed these ex parte contacts were appropriate given the nature of the surrounding circumstances, no law or court order authorized these ex parte contacts.
32. Respondent testified that he felt that the law did not address how to protect threatened parties when weapons were not turned in pursuant to an Order of Protection, T/H 19:15-20:1.
33. On August 27, 2007, both verbally at a hearing and in writing via a Minute Entry, Justice of the Peace Maria Felix admonished both Respondent and opposing counsel to follow the rules and cease all ex parte contacts in the Order of Protection proceedings.
34. Respondent testified at the hearing on the Agreement that during this period of time he was experiencing severe problems in his personal life, specifically the loss of several family members (Grandmother, Aunt, Brother in law, Father in law) his wife became ill and, when this was combined with the stress of the threats being made by Mr. Diodati against Melissa Diodati, the Eichers, as well as himself and his family, his judgment was clouded, T/H 26:3-27:8 and 29:24-30:6.

## CONCLUSIONS OF LAW

35. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.7(a)(1) and 3.5(b)

### ABA STANDARDS

36. ABA *Standards* 3.0 provides that four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors.

#### **The Duty Violated**

37. Respondent violated his duty not only to his clients, but to the profession as well. The appropriate *Standard* in this case hinges on whether Respondent's conduct was "negligent" or "knowing". If Respondent's conduct in having conflict of interest, and ex parte communication with the judge was a knowing violation, then a suspension is appropriate (*Standard* 4.32 & 6.32). On the other hand, if Respondent's mental state was negligent, reprimand (Censure) is the presumptive sanction (*Standard* 4.33 & 6.33).

#### **Lawyer's Mental State**

38. As pointed out in the Joint Memorandum, Respondent represented Melissa Diodati and her interests were directly adverse to Respondent's already existing client Andrew Diodati on two separate occasions. In that the first conflict of interest was brought to Respondent's attention in 2003 and he withdrew appropriately, the second conflict of interest in 2006 is harder to justify as a

“negligent” act. The parties submit that given: Respondent's sporadic involvement in the investigations of the bar charges against Andrew Diodati in 2004 through 2006, the close relationship between Respondent and Melissa Diodati and her parents the Eichers, the minimal participation by Respondent on behalf of Mrs. Diodati (changing the dates on her original dissolution petition), together with the age of the violations and other surrounding circumstances in Respondent's life,<sup>2</sup> Respondent's actions with the second conflict of interest were also “negligent”.

39. Similarly, Respondent's contacts with the Court could be construed as “knowing” misconduct given that it is common knowledge that you simply do not have an ex parte communication with a judge about a pending matter. The parties submit that, given the ex parte nature of the original Order of Protection proceedings, combined with Respondent's good faith beliefs and legitimate concerns that Andrew Diodati had not complied with the specific terms and conditions of both Orders of Protection and so still posed a potential life-threatening danger to the health and safety of Respondent's friends and clients due to Andrew Diodati's alleged death threats, Respondent's actions were committed with a “negligent” state of mind. Respondent further testified that he checked the rules, and simply could figure no other way to notify the judge of the fact that he had been advised that Mr. Diodati had been less than cooperative with the Justice of the Peace about the existence of the guns and still had numerous guns and ammunition in his possession.

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<sup>2</sup> See Mitigation discussed below.

40. For reasons that will be dealt with later, this Hearing Officer finds that Respondent's Mental state was in fact "negligent".

### **Injury Caused**

41. Respondent's conduct in concurrently representing Melissa Diodati and Andrew Diodati caused actual and potential injury to complainant Andrew Diodati. In each instance of a conflict of interest, there was the potential risk that confidential information obtained from either client could have been disclosed to or used against the other client, although, as the parties stipulate, there appears to be no evidence that any confidential information was actually disclosed.
42. Regarding the ex parte contacts with the Justice of the Peace, there was the potential risk that the Justice of the Peace would be swayed or influenced by something Respondent said, to which there was no chance for Andrew Diodati, or his attorney to respond. Respondent's conduct also placed the Justice of the Peace in an awkward position of having to deal with these ex parte contacts on the record as well as use judicial resources to address them. Based on the information contained in the pleadings, the Court dealt appropriately with the ex parte communication, and there was no injury caused by Respondent's conduct.

### **Aggravating and Mitigating Factors**

#### **Aggravating Factors**

43. *Standard 9.22(c)*, Respondent engaged in a Pattern of Misconduct in the years 2003, 2006 and 2007.
44. *Standard 9.22(d)*, Respondent committed Multiple Offenses. Respondent's conduct on two separate occasions amounted to violations of ER 1.7(a)(1).

Additionally, Respondent violated ER 3.5(b) on several occasions over a period of several weeks.

45. *Standard 9.22(i)*, Respondent has substantial experience in the practice of law in that he has been practicing since May 15, 1993, over 16 years.

#### **Mitigating Factors**

46. *Standard 9.32(a)*, Respondent has no prior disciplinary sanctions.
47. *Standard 9.32(b)*, there is an absence of a selfish or dishonest motive. Respondent felt that he owed a greater ethical duty to Melissa Diodati over Andrew Diodati. Additionally, Respondent was attempting to address the legitimate safety concerns of his clients, the Eichers. Respondent testified that he did not know how to protect the threatened parties when the weapons were not turned in pursuant to the Order of Protection, T/H 19:15-20:1.
48. *Standard 9.32(c)*, Respondent experienced several personal and emotional problems during the relevant time periods related to multiple deaths of family members. In the period of 2003-2006, Respondent's mother, grandmother, and a very close aunt passed away. In January through March of 2006, Respondent's brother-in-law and niece both suddenly passed away. These events resulted in several illnesses in Respondent's family, including his wife. Additionally, Respondent testified that complainant Andrew Diodati made death threats against Respondent and Respondent's family, which only served to increase Respondent's concern about the safety of others.
49. *Standard 9.32(d)*, Respondent did make good-faith efforts to rectify the consequences of his misconduct. Respondent withdrew from the representations

when he recognized that a conflict of interest existed. Additionally, Respondent initiated the Law Office Management Assistance Program's recommended conflicts check system. Respondent also ceased all of his ex parte communications with the court upon direction by the court to cease that conduct.

50. *Standard* 9.32(e), Respondent has been cooperative in the disciplinary proceedings and readily admitted to his conduct.

### PROPORTIONALITY

51. The Supreme Court has held that one of the goals of attorney discipline should be to achieve consistency when imposing discipline. In order to achieve internal consistency, it is appropriate to examine sanctions imposed on cases that are factually similar. It is also recognized that the concept of proportionality is "an imperfect process" because no two cases are ever alike, *In re Struthers*, 179 Ariz. 216, 887 P.2d 789 (1994), *In re Peasley*, 208 Ariz. 90, 90 P.3d. 772 (2004). It is also the goal of attorney discipline that the discipline imposed be tailored to the individual case and that neither perfection nor absolute uniformity can be achieved, *Peasley* supra.
52. In *In Re Bemis*, 189 Ariz. 119, 938 P.2d 1120 (1997), Mr. Bemis was censured and placed on one year of probation with costs. Mr. Bemis, on two separate occasions in two separate matters, attempted to engage in ex parte contacts with the Court regarding pending litigation. Mr. Bemis was found to have violated 3.5(a) and (b), 8.4(a) and 8.4(d). Mr. Bemis also was found to have violated 8.4(c) and (d) for submitting a draft order in one matter that was worded to make

the Judge look bad. The Court stated “[r]egardless of [Mr. Bemis’] belief that his actions were necessary to protect the client’s interests, his behavior was inexcusable.” Id at p.122, 1123. *Standard* 6.3 was cited as the Court adopted the Commission’s finding that Mr. Bemis was negligent.

53. In *In Re Riley*, 142 Ariz. 604, 691 P.2d 695 (1984) Mr. Riley was censured and costs were imposed. Mr. Riley was initially suspended for 30 days for making ex parte communications to a judge regarding a sentencing hearing, denying that such communications took place, and then making derogatory statements about an opposing candidate for a judge position. Mr. Riley was disciplined under DR 7-110(B), which is essentially the same prohibition as ER 3.5(b).
54. In *In Re Saienni*, SB- 06-0151-D (2006), Mr. Saienni was censured for a violation of ER 1.7. Mr. Saienni represented the Defendant in a criminal case of child abuse as well as represented the victim and the victim's mother, basically the entire family.
55. In *In Re Aaron*, SB-07-0185-D (2007). Mr. Aaron represented his legal assistant in her divorce from her husband while representing her husband in a debt collection matter. Mr. Aaron also had a personal relationship with his legal assistant. Mr. Aaron violated ER's 1.7 and 4.3. Mr. Aaron was censured.
56. In *In Re Schlievert*, SB-02-0110-D (2002), Mr. Schlievert represented one client in a dissolution of marriage while pursuing a collection claim against the same client on behalf of the second client. Mr. Schlievert violated ER 1.7. In a second unrelated count, Mr. Schlievert did not communicate with his client, failed to

return a client file, and failed to return a refund of a disputed fee in a prompt manner. Mr. Schlievert was censured and placed on one year of probation.

### RECOMMENDATION

57. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, the administration of justice and deter future misconduct, *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993), *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). It is also the purpose of attorney discipline to instill public confidence in the Bar's integrity, *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).
58. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Associations *Standards for Imposing Lawyer Sanctions* and the proportionality of discipline imposed in analogous cases, *Matter of Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994).
59. Respondent was engaged in a series of events wherein he represented several old friends in conflicting circumstances. Respondent also engaged in inappropriate communications with a judge concerning an Order of Protection.
60. The sanction to be imposed for Respondent's violations hinges upon whether his conduct was "knowing" or "negligent". While Respondent's actions in contacting the judge concerning Mr. Diodati's perceived failure to turn in his firearms can be explained by his confusion concerning how to bring that matter to the Court's attention, the problems with his conflicts of interests between Mr. and Mrs. Diodati are more problematic.

61. Respondent's explanation of how the first instance of conflict of interest occurred pretty clearly shows a negligent frame of mind. There was a very long time between his representation of Mr. Diodati in the Bar matter and representing Mrs. Diodati in the dissolution. Additionally, once Respondent confirmed that there was a conflict, he "promptly" withdrew.
62. In the second conflict, wherein he assisted Mrs. Diodati in changing the dates on her earlier petition for dissolution of marriage while still representing Mr. Diodati, especially after the earlier conflict forced him to withdraw as her attorney, is more problematic. Clearly Respondent's actions in representing Mrs. Diodati in the second dissolution action were minimal. Additionally, there was a tremendous amount of stress going on, both in Respondent's personal life as well as trying to assist his longtime friend, Mrs. Diodati. Bar Counsel went to some length during the hearing in this matter to explain that there is much more to this case than has been set forth and, based upon its review of all of the voluminous information, it concluded that the "negligent" frame of mind was more appropriate to Respondent's conduct, T/H 39:2-21. Further, Bar Counsel submits that, given the complexities of everything that has happened in this case, the proposed sanction of Censure and probation is the appropriate recommendation.
63. Indeed, this case is very convoluted, and has several twists and turns. After witnessing Respondent's testimony, it is clear that he was, and still is to some extent, under a considerable amount of stress. Respondent does, however, now understand that his loyalties to the Eicher family and his attempts to remain friends with Mr. Diodati are mutually incompatible. Respondent also understands

the importance of not only recognizing conflicts when they occur, but having a conflicts recognition process within his law office to keep track of pending cases.

64. The State Bar did not feel that it could prove by clear and convincing evidence the “knowing” frame of mind which would invoke a possible suspension, and this Hearing Officer concurs that, given the limited degree of Respondent's participation in the second conflict, as well as all of the stress that was happening to Respondent in his personal life, the “negligent” frame of mind is probably most appropriate.
65. Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and the proportionality analysis, this Hearing Officer recommends that:
  1. Respondent shall receive a Censure.
  2. Respondent will submit and participate in a term of probation for one year under the following terms and conditions:
    - a. Respondent shall contact the State Bar's Law Office Management Assistance Program (LOMAP) within 30 days of the date of the Supreme Court's Judgment and Order. Respondent shall submit to a LOMAP audit of his office specifically focused on Respondent's conflicts check system. The director of LOMAP shall develop a probation contract, and its terms shall be incorporated herein by reference. The probation period will begin to run at the time of the Judgment and Order, and will conclude one year from the date of the Judgment and Order.

- b. 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.
- c. Respondent shall contact the State Bar of Arizona publications at 602-340-7318 and either obtain and listen to the CD or obtain and view the DVD entitled "Ten Deadly Sins of Conflict" within 120 days of the Judgment and Order. Respondent may alternatively go to the State Bar website ([www.myazbar.org](http://www.myazbar.org)) and complete the self-study online version. Respondent shall provide Bar Counsel with evidence of completion by providing copies of hand written notes. Respondent shall be responsible for the cost of the CD, DVD, or online self-study area.
- d. In the event that Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, 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 conduct a hearing at the earliest practicable date, but in no event later than 30 days after receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend appropriate action and response. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the State Bar of Arizona bears the burden of proof to prove noncompliance by a preponderance of the evidence.

3. Respondent shall pay all costs and expenses incurred by the State Bar in these proceedings within 30 days of the Supreme Court's Final Judgment and Order. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court of Arizona, and the Disciplinary Clerk's Office in this matter.

DATED this 16<sup>th</sup> day of December, 2009.

Hon. H. Jeffrey Coker / HJM  
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk  
this 16<sup>th</sup> day of December, 2009.

Copy of the foregoing mailed  
this 17 day of December, 2009, to:

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Respondent's Counsel  
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by: Deann Baker