BEFORE A HEARING OFFICER

OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JAMES L. LEATHER,** **Bar No. 005002** RESPONDENT.	)	No. 05-0819, 05-1048, 05-1112, 05-1188, 05-1421 **HEARING OFFICER'S REPORT AND RECOMMENDATION**

A. PROCEDURAL HISTORY

The State Bar filed a formal complaint on June 28, 2006, which Respondent answered on July 25, 2006. The State Bar then filed an Amended Complaint on November 15, 2006, and Respondent filed his Amended Answer on November 29, 2006. The Amended Complaint pertains to matters 05-0819, 05-1048, 05-1112, 05-1188, 05-1421, and 06-1378. The hearing was scheduled to take place on January 25 and 26, 2007, but was vacated after the parties reached a verbal settlement on January 18, 2007. A Tender of Admissions and Agreement for Discipline by Consent and Joint Memorandum in Support of Agreement for Discipline by Consent were filed on February 14, 2007.

I adopt the Stipulated Findings of Fact. I deem it unnecessary to hold an evidentiary hearing and commend the parties for a careful, thorough, calm, and courteous resolution of the matter.

B. STIPULATED FINDINGS OF FACT

C. General Allegations

1. At all times relevant hereto, Respondent was a lawyer licensed to practice law in Arizona, having been first admitted to practice on October 8, 1977.

2. At all times relevant hereto, Respondent was a partner at Burton & Leather (the "firm") and was the firm's Managing Partner for Legal Services.

3. On Friday, January 19, 2007, Respondent gave his partner, Charles B. Burton, Esq., a sixty-day notice of his permanent withdrawal from Burton & Leather. Respondent then retained independent ethics counsel to review and implement operations and practices for Respondent's new firm.

COUNT ONE (File No. 05-0819/Bohinc)

4. On or about October 25, 2004, Tara Bohinc ("Ms. Bohinc") retained the firm to represent her in her divorce proceeding. The fee agreement provides that, upon retaining Burton & Leather, Ms. Bohinc retained the entire firm, including "the services of partners, associate attorneys, [and] 'of counsel' attorneys," not only those of Respondent. The fee agreement goes on to provide that, "[i]n the event one or more of the attorneys or associates working with you has a scheduling or other conflict, you may rest assured that another qualified attorney or associate will be there working for you." Ms. Bohinc initialed this provision of the agreement.

5. Ms. Bohinc first met with Respondent's partner, Charles Burton, at which time she signed a fee agreement and paid a $1,250 retainer.

6. Mr. Burton informed Ms. Bohinc that Respondent would be the attorney representing her in the divorce proceedings.

7. The fee agreement set forth hourly rates for various attorneys at the firm

with a space next to each designation for the client to initial. Respondent's rate was shown as $190/hour. Mr. Burton quoted Respondent's rate to Ms. Bohinc as $160/hour. Ms. Bohinc did not initial the space for the $190/hour rate.

8. During her first meeting with Respondent on or about October 26, 2004, Ms. Bohinc stated that she did not wish to have her case transferred to another attorney within the firm, as she was willing to pay the $160/hour rate quoted by Mr. Burton for Respondent's representation.

9. On or about November 5, 2004, an employee of the firm informed Ms. Bohinc that her case had been transferred to an associate, David Yuhas, Esq. When Ms. Bohinc asked to speak with Respondent about the matter, the employee told her that she could not schedule an appointment with Respondent, because he was no longer her attorney.

10. Respondent's unilateral change in the identity of the primary attorney in the case was done without Ms. Bohinc's consent. If this matter went to a hearing, Respondent would testify that Mr. Yuhas' lower billing rate of $145/hour was more aligned with Ms. Bohinc's expectations, and Respondent's transfer of the file was appropriate given his customary rate of $190/hour, as evidenced by Ms. Bohinc's fee agreement, and her express agreement that she retained the entire firm, including Mr. Yuhas, despite the fact that Ms. Bohinc was quoted $160/hour for Respondent's services and her concomitant refusal to initial the space on the fee agreement designating a $190/hour rate for Respondent.

11. On or about November 8, 2004 (fourteen days after retaining the firm), Ms. Bohinc advised she no longer needed the firm's services and requested a $500 refund of her retainer.

12. An employee of the firm informed Ms. Bohinc that only the partners

could determine the propriety and amount of any refund she would receive.

13. On or about November 16, 2004, having not yet received her full refund, Ms. Bohinc contacted the firm and was told that someone would look into her request.

14. On or about November 20, 2004, Ms. Bohinc sent a certified letter to the firm requesting a $500 refund.

15. Respondent signed the certified letter receipt on November 26, 2004. However, Ms. Bohinc received no response from the firm regarding her refund.

16. On or about January 25, 2005, Ms. Bohinc sent a second certified letter to the firm regarding a refund of her advance fee amount.

17. Ms. Bohinc did not receive an immediate response to her request.

18. Between February and March 2005, Ms. Bohinc spoke to the firm's staff and left messages about her refund. Ms. Bohinc received a variety of explanations for the firm's failure to provide a refund as she requested.

19. The State Bar alleges, and Respondent admits, that besides Ms. Bohinc's in-office consultation with Respondent, no partner or associate of the firm performed any work on Ms. Bohinc's legal matter. In the time that Ms. Bohinc retained and terminated Burton & Leather, only nine business days had passed; thus, there was little time within which Respondent could have done any work. This is borne out by Respondent's billing statements directed to Ms. Bohinc. The individual entries on Respondent's client statements during the entirety of the relationship between Respondent and Ms. Bohinc consist of the following: "Office conference w/client"; "Review file and letter to client"; and "Final review of file, calls to/from client; refund retainer balance per Fee Agreement & close".

20. On October 16, 2006, nearly two years after Ms. Bohinc discharged Respondent's firm and requested a refund, Respondent refunded the full amount of

Ms. Bohinc's retainer plus 10% interest per annum, in the total sum of $1,575.00.

21. Although he twice received notice that the firm's services were terminated, Respondent continued to bill Ms. Bohinc a $50.00 "administrative fee" during the months of November and December 2004, and January 2005. Respondent admits that charging such fees to Ms. Bohinc was inappropriate. If this matter went to a hearing, Respondent would assert that Respondent's refund of Ms. Bohinc's retainer compensates for any allegations regarding the firm's administrative fee.

22. A billing invoice dated November 9, 2004, shows that Respondent billed his conference with Ms. Bohinc at the rate of $195/hour, instead of the $190/hour noted in the fee agreement, or the $160/hour quoted by Mr. Burton. Respondent admits that billing Ms. Bohinc at the rate of $195/hour was inappropriate. If this matter went to a hearing, Respondent would assert that Respondent's refund of Ms. Bohinc's retainer compensates for the firm's apparent administrative error in charging incorrect rates.

23. In a billing invoice dated January 31, 2005, Respondent billed Ms. Bohinc .3 hours to review her file and a letter. Respondent again charged Ms. Bohinc at the rate of $195.00/hour, or $58.50. Respondent admits that billing Ms. Bohinc at the rate of $195.00/hour was inappropriate. If this matter went to a hearing, Respondent would assert that Respondent's refund of Ms. Bohinc's retainer compensates for the firm's apparent administrative error in charging incorrect rates.

24. The same billing invoice shows that on January 31, 2005, Respondent billed Ms. Bohinc $375.75 for .5 hours related to a "final review of file, calls to/from client; refund retainer balance per fee agreement & close." The $375.75 billed amount equates to an hourly rate of $751.50. Respondent admits that billing Ms. Bohinc at the rate of $751.50/hour was inappropriate. If this matter went to a hearing,

Respondent would assert that Respondent's refund of Ms. Bohinc's retainer compensates for the firm's apparent administrative error in charging incorrect rates.

25. The State Bar alleges that Respondent failed to promptly inform Ms. Bohinc of the firm's decision to transfer her legal matter to an associate of the firm and failed to promptly comply with Ms. Bohinc's reasonable requests for information regarding her case. Respondent admits to the foregoing failures, but if this matter went to a hearing, Respondent would argue that Ms. Bohinc's decision to terminate the firm's services within fourteen days of retaining the firm should receive weight in a determination of whether Respondent acted "promptly" or within a reasonable amount of time.

26. The State Bar alleges, and for purposes of this Agreement Respondent admits, that Respondent collected an unreasonable fee, charged an unreasonable amount for expenses in this matter, and failed to obtain Ms. Bohinc's consent for the transfer of her file to an associate of the firm.

27. The State Bar alleges, and for purposes of this Agreement Respondent admits, that Respondent failed to withdraw from the representation when discharged by Ms. Bohinc, and upon termination of the representation, failed to immediately refund Ms. Bohinc's portion of her advance fee payment that was not earned.

Respondent conditionally admits that his conduct in this matter violated Rule 42, ARIZ.R.SUP.CT., ERs 1.4, 1.5, and 1.16.

COUNT TWO (File No. 05-1048/Brown)

28. On or about December 30, 2004, Joseph and Florence Brown ("the Browns") retained Respondent's firm to file a Chapter 7 Bankruptcy on their behalf.

29. The bankruptcy petition was filed on January 3, 2005.

30. The Browns wanted to reaffirm the mortgage on their primary residence

and the loan on their 2004 GMC Envoy so that they could retain the property involved. If this matter went to a hearing, Respondent would testify that National City Mortgage, the primary lien holder on the Browns' residence, did not send a reaffirmation agreement, thus precluding the Browns from reaffirming their mortgage. Chase Home Financial, the second lien holder, sent a reaffirmation agreement, which Respondent forwarded to the Browns on January 26, 2005. The Browns did not return that reaffirmation agreement to Respondent.

31. If this matter went to a hearing, Respondent would have offered testimony from a bankruptcy expert who would have testified that, pursuant to the bankruptcy law then in effect, the Ninth Circuit allowed individual debtors in the Browns' position to retain their property without entering into formal reaffirmation agreements. The State Bar would have offered evidence that the Respondent's bankruptcy expert is his attorneys' law partner at Jennings, Strouss & Salmon.

32. The Browns attempted to contact Respondent about the representation by telephone on several occasions, but they were unable to do so.

33. On or about April 29, 2005, the Browns faxed and mailed a letter to Respondent indicating their inability to speak with him over the telephone, and they requested information related to their vehicle's reaffirmation agreement.

34. On or about June 4, 2005, the Browns mailed a certified letter to Respondent requesting information related to the reaffirmation agreement and disbursement from funds collected from the sale of additional property.

35. A firm employee signed the certified letter receipt on June 7, 2005.

36. As of June 18, 2005, the Browns had not received their reaffirmation agreements, even though their bankruptcy was discharged on May 25, 2005.

37. The Browns became concerned that the reaffirmation agreements would

not be in place within the 60-day deadline after the filing of the bankruptcy discharge.

38. The Browns made several unsuccessful attempts, prior and subsequent to the bankruptcy discharge, to discuss their concerns about the reaffirmation agreements and other matters with Respondent, but Respondent failed to communicate with them.

39. Respondent responded to the Browns' concerns by letter dated July 10, 2005.

40. In his July 10, 2005, letter, Respondent advised the Browns that, if they continued making their monthly payments for their 2004 Envoy, then they should not have any further issues with GMAC. Respondent also advised the Browns that their bankruptcy was complete.

41. Respondent acknowledges that he received the reaffirmation agreement from GMAC for the Browns' 2004 Envoy but failed to forward it to the clients. If this matter went to a hearing, Respondent would testify that, had the Browns signed and returned the reaffirmation agreement, Respondent would have advised them against reaffirming their debt with GMAC.

42. If this matter went to a hearing, Respondent would have offered testimony from a bankruptcy expert who would have testified that, under the bankruptcy law then in effect, the Ninth Circuit permitted individual debtors to retain their collateral without entering into formal reaffirmation agreements, so long as the debtors continued making timely payments under the loan provisions of the secured debt. The purpose of this testimony would be to prove lack of prejudice to the Browns. The State Bar would have offered evidence that the Respondent's bankruptcy expert is his attorneys' law partner at Jennings, Strouss & Salmon.

43. The State Bar alleges, and for purposes of this Agreement Respondent admits, that at the time Respondent filed for bankruptcy protection on behalf of the

Browns, the Browns' 2004 Envoy vehicle had a trade-in value of $21,525.00. At that time, the balance due on the GMAC loan on that vehicle was $30,000.00. Were GMAC to repossess the vehicle, it would have derived approximately $21,525.00 in a sale. The Browns, in a letter to Respondent dated April 29, 2005, notified Respondent that they would be willing to pay GMAC $22,000.00 in exchange for allowing the Browns to keep the vehicle. It is reasonable to believe that GMAC would have agreed to those terms. Due to Respondent's failure to attempt to renegotiate their vehicle's loan, however, the Browns had to surrender their vehicle. If this matter went to a hearing, Respondent would have offered testimony from an expert who would have testified that only nonpayment or other breaches of the loan agreement could result in the repossession of the Browns' 2004 Envoy. The State Bar would have offered evidence that the Respondent's expert is his attorneys' law partner at Jennings, Strouss & Salmon.

44. The State Bar alleges, and for purposes of this Agreement Respondent admits, that he failed to abide by the Browns' decisions concerning the objectives of the representation.

45. The State Bar alleges, and for purposes of this Agreement Respondent admits, that he failed to reasonably consult with the Browns about the means by which to accomplish their objectives, failed to keep them reasonably informed about the status of their bankruptcy, failed to promptly comply with reasonable requests for information, and failed to explain the representation to the extent reasonably necessary to permit the Browns to make informed decisions regarding the representation.

46. The State Bar alleges, and for purposes of this Agreement Respondent admits, that he failed to surrender documents upon termination of the representation and failed to refund advanced payment of fees that were unearned.

47. Respondent conditionally admits that his conduct in this matter violated Rule 42, ARIZ.R.SUP.CT., ERs 1.2, 1.4 and 1.16.

COUNT THREE (File No. 05-1112/Odom)

48. On or about April 12, 2005, Shirley Odom ("Ms. Odom"), retained Respondent's firm to represent her in a divorce proceeding.

49. Ms. Odom first met with Respondent's partner, Mr. Burton, at which time she signed a fee agreement and paid a $1,500.00 retainer.

50. On or about April 19, 2005, Ms. Odom personally met with Respondent to discuss her divorce proceedings.

51. Ms. Odom specifically informed Respondent that she wished to be notified when her husband was served with the Petition for Dissolution of Marriage Without Children (the "Petition").

52. Ms. Odom also told Respondent that she wished to include in the Petition a request for spousal maintenance.

53. On April 21, 2005, Ms. Odom returned to Respondent's office to sign the Verification to the Petition.

54. Upon reviewing the Petition, Ms. Odom informed Respondent that he had failed to include the request for spousal maintenance. Respondent admits that, while he did not believe it was wise to include a request for spousal maintenance in the Petition for Dissolution, he did not include a request for spousal maintenance in the draft Petition as Ms. Odom had required. After speaking with Ms. Odom on April 19 and April 21, 2005, Respondent included in the Petition a request for spousal maintenance per Ms. Odom's instruction.

55. Respondent signed the Petition on April 25, 2005, and it was filed with the Clerk of the Superior Court on April 28, 2005.

56. On May 2, 2005, and May 5, 2005, Ms. Odom called Respondent's office to ask if her husband had been served.

57. Respondent failed to return both telephone calls.

58. On May 12, 2005, Ms. Odom again called Respondent's office to find out the status of the service of the Petition.

59. At that time, Respondent's assistant, Raygina Yduarte, informed Ms. Odom that her husband had been served on May 8, 2005. However, neither an Affidavit of Service nor documentation of an alternative acceptance of service method was filed with the Clerk of the Court.

60. During her calls to Respondent's office, Ms. Odom also requested copies of the Petition and her husband's filed answer.

61. Respondent's staff told Ms. Odom that the documents would be forwarded to her.

62. Ms. Odom never received copies of the Petition or her husband's answer from Respondent, despite requests on various occasions, and was forced to obtain copies from the court's records department.

63. On June 2, 2005, Ms. Odom telephoned Respondent to find out what the next step in the process would be since her husband had filed an answer to the Petition.

64. On June 6, 2005, Respondent left a telephone message for Ms. Odom informing her that he was working on requesting a Resolution Management Conference ("RMC") date from the judge assigned to the case.

65. Upon reviewing the court's file, Ms. Odom determined that Respondent had, in fact, failed to request a RMC date.

66. The State Bar alleges, and for purposes of this Agreement Respondent

admits, that based in part on Respondent's failure to communicate with her, failure to keep her informed, and failure to diligently represent her in the proceedings, Ms. Odom terminated Respondent's services on June 29, 2005.

67. Ms. Odom informed Judge Burke that she was terminating Respondent's services. Judge Burke's office received the letter on July 6, 2005.

68. On July 8, 2005, Ms. Odom requested a refund of the remainder of her advance fee and a copy of her file.

69. Upon picking up the refund check at Respondent's office, Ms. Odom noted that the check was made out to the wrong client.

70. Upon returning to Respondent's office a second time to get her refund, Ms. Odom noticed that the check was also made out for the incorrect amount.

71. Respondent's staff attempted to persuade Ms. Odom to sign a release form accompanying the check, assuring her that the missing balance would be refunded to her by separate check.

72. Ms. Odom refused to accept the refund check for the incorrect amount.

73. Ms. Odom finally received a correct and properly made out check on her third visit to Respondent's office.

74. The parties disagree whether the Amended Complaint contains any allegation other than that regarding Respondent's alleged failure to request spousal maintenance that falls within the ambit of ER 1.2. Respondent conditionally admits, however, that he failed to abide by his client's decisions concerning the objectives of the representation and failed to consult with Ms. Odom as to the means by which the objectives were to be pursued.

75. The State Bar alleges, and for purposes of this Agreement Respondent admits, that he failed to keep Ms. Odom reasonably informed about the status of the

case and failed to promptly comply with reasonable requests for information.

76. Respondent conditionally admits that his conduct in this matter violated Rule 42, ARIZ.R.SUP.CT., ERs 1.2 and 1.4.

COUNT FOUR (File No. 05-1188/Rogers)

77. Robert Rogers, ("Mr. Rogers"), a federal retiree, met with Mr. Burton on February 14, 2005. At the meeting, Mr. Rogers explained his need for legal assistance to have his child support obligation terminated, because his child would soon be turning 18 years of age and would be graduating from high school on May 31, 2005.

78. Mr. Rogers specifically requested that a petition be filed with the court to terminate the child support obligation; that an Order be obtained canceling Mr. Roger's Order of Assignment; and that an Order be obtained requiring the Clerk of the Court to refund any child support payments received subsequent to the May 31, 2005, date of the child's high school graduation.

79. Mr. Rogers explained to Mr. Burton that the Federal Office of Personnel Management ("OPM") would require a minimum of two to three months to process any court documents terminating the Order of Assignment for the child support payments. Mr. Rogers requested that the matter be handled as expeditiously as possible.

80. Mr. Burton informed Mr. Rogers that Respondent would handle the child support matter and an appointment was scheduled with Respondent for February 17, 2005.

81. During his conference with Respondent, Mr. Rogers reiterated to Respondent the requests made to Mr. Burton, and re-emphasized the need for the matter to be handled without delay given OPM's processing time requirements.

82. Mr. Rogers also requested that copies of all pleadings, orders, and

correspondence associated with his case be forwarded to his attention.

83. Prior to the conclusion of their initial conference, Respondent provided Mr. Rogers with his personal cell phone number and told him to call at any time.

84. Approximately two weeks after their initial meeting, Mr. Rogers attempted to contact Respondent at the cell phone number provided but received no response to his calls.

85. Over the next several weeks, Mr. Rogers attempted, unsuccessfully, to speak with Respondent regarding the status of the child support termination matter.

86. On or about April 14, 2005, nearly two months after his initial meeting with Respondent, Mr. Rogers received a request from Respondent's assistant, Raygina, asking him to appear at the office to sign the Petition for Termination of Child Support.

87. In response to Mr. Rogers' inquiry regarding the delay in the filing of the petition, Raygina told Mr. Rogers that she had just received the file.

88. Mr. Rogers continued his attempts to contact Respondent on the cell phone but received no response.

89. Mr. Rogers continued to call Respondent's office to inquire about the status of the petition and to request copies of the filed documents, but Mr. Rogers did not receive any copies or form of response.

90. During one of his calls to Respondent's office, Mr. Rogers was informed that his Petition had been returned by the Court because Respondent's staff had failed to supply the Court with stamped/self-addressed envelopes.

91. Mr. Rogers again requested copies of the Petition, but the firm failed to honor his request.

92. In or about the end of May 2005, more than three months after his initial

meeting with Respondent, Respondent's staff advised Mr. Rogers that they were unable to provide him with a status of his case.

93. During this call, Mr. Rogers insisted on speaking with Respondent, and he and Respondent discussed Respondent's lack of diligence, failure to return calls, and failure to diligently and expeditiously pursue the matter as requested by Mr. Rogers.

94. If this matter went to a hearing, Respondent would have testified that, while the file shows some delay in filing Mr. Rogers' petition, at least some of the delay was due to factors outside Respondent's control, including the process server's difficulty in serving Respondent's ex-wife in Texas.

95. Respondent advised Mr. Rogers that he would "make everything right."

96. An examination of the court records by the State Bar indicates that the petition to Stop or Modify Wage Assignment was filed with the Clerk of the Court of Maricopa County Superior Court on June 17, 2005.

97. Further, examination of the Request to Stop Order of Assignment shows that incorrect information, including the Petitioner's name, was provided to the Court.

98. On June 30, 2005, Respondent's assistant informed Mr. Rogers that she was attempting to contact the court's support clerk to request that all child support monies received be held until a court order could be obtained.

99. Raygina informed Mr. Rogers that she would contact him the following day with more information. As of the end of June 2005, Mr. Rogers had not had any further contact with Respondent or any one from his office.

100. In early August 2005, Mr. Rogers received a copy of an affidavit indicating that his ex-wife had been served on July 26, 2005.

101. At that time, Mr. Rogers contacted the court's Family Support Center to

ask for guidance.

102. On September 8, 2005, a Family Support Center staffer informed Mr. Rogers that Respondent had failed to include a current employer information sheet and that Mr. Rogers and his ex-wife simply could have stipulated to terminating the child support. If this matter went to a hearing, Respondent would have testified that nothing in Mr. Rogers' file indicates that Mr. Rogers and his ex-wife were on speaking terms. Mr. Rogers did not know to volunteer such information, and the Respondent did not ask.

103. The Court entered the Order Stopping Order of Assignment on September 9, 2005.

104. On January 11, 2007, Mr. Rogers failed to appear at a deposition noticed by Respondent's counsel.

105. On January 18, 2007, Mr. Rogers withdrew his Bar charge against Respondent.

106. The State Bar alleges, and for purposes of this Agreement Respondent admits, that he failed to represent Mr. Rogers with the required legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

107. The State Bar alleges, and for purposes of this Agreement Respondent admits, that he failed to act with reasonable diligence and promptness in representing Mr. Rogers. The State Bar alleges, and for purposes of this Agreement Respondent admits, that he failed to keep Mr. Rogers reasonably informed about the status of the termination of child support, failed to promptly comply with reasonable requests for information, and failed to explain the representation to the extent reasonably necessary to permit Mr. Rogers to make informed decisions regarding the representation.

108. Respondent conditionally admits that his conduct in this matter violated

Rule 42, ARIZ.R.SUP.CT., ERs 1.1, 1.3, and 1.4.

COUNT FIVE (File No. 05-1421/Pecora)

109. Robin and Gary Pecora ("the Pecoras") and their son, Kevin Pecora ("Kevin"), met with Mr. Burton on or about April 6, 2005.

110. The Pecoras wished to retain the firm to represent Kevin in several criminal and domestic relations matters that included domestic violence charges, preparation of a petition for annulment, and orders of protection involving Nicole and Gloria Corby, Kevin's wife and mother-in-law, respectively. As alleged by the State Bar, the Pecoras retained Respondent to represent Kevin. If this matter went to a hearing, Respondent would have testified that Robin and Gary Pecora were not his clients. Robin and Gary Pecora would have testified that they told Respondent, and therefore Respondent knew, that Kevin consented to have Respondent share with them information related to Kevin.

111. The Pecoras paid a $2,000 retainer and informed Mr. Burton during their meeting that Kevin had a pre-trial conference scheduled for April 11, 2005.

112. Mr. Burton assured the Pecoras that someone from the firm would be in touch with them prior to Kevin's April 11 court date.

113. The Respondent failed to present the Pecoras or Kevin Pecora a fee agreement to sign, and the firm did not provide the Pecoras or Kevin Pecora with the scope of the representation and the rate or basis of the fee and expenses in writing. If this matter went to a hearing, Respondent would have testified that, while he was unable to locate a signed fee agreement for Kevin, the firm's standard practice was to obtain a signed fee agreement with all clients. Respondent's partner, Mr. Burton, would have testified that the reason a fee agreement was not signed was that, during his conference with the Pecoras and Kevin Pecora, he called Respondent to determine

if the firm could handle the urgent criminal matter for which the Pecoras had consulted the firm. Mr. Burton also told Respondent that Respondent would need to review the case with Robin Pecora before having her sign a retainer agreement. The agreement reached between Mr. Burton, Ms. Pecora, and Respondent was that Ms. Pecora would leave a check for $2,000.00 with Mr. Burton as a retainer, and meet with Respondent the following day. If Ms. Pecora was satisfied with her conference with Respondent, she would then sign a retainer agreement and proceed. If she was not satisfied with the conference, the firm would then return her money and she would find another attorney. Respondent failed to present a fee agreement for her, Gary, or Kevin Pecora to sign.

114. On April 11, 2005, the day of Kevin's initial pretrial conference (the "IPC") in the domestic violence criminal matter, Dennis Bassi ("Mr. Bassi"), an "of counsel" attorney associated with the firm, contacted Kevin for the first time to determine where the two would meet at the courthouse.

115. Kevin had no discussion with Mr. Bassi or any attorney associated with the firm prior to the April 11, 2005, court date. Respondent would have testified that, following the IPC, Respondent met with Kevin and the Pecoras at the firm's Tempe office to discuss Kevin's matters at length. The Pecoras would have denied meeting Respondent then.

116. At the April 11, 2005, hearing, Mr. Bassi requested that the hearing be continued, and the IPC was continued until May 2, 2005.

117. The State Bar alleges, and for purposes of this Agreement Respondent admits, that on April 22, 2006, Robin Pecora spoke with Respondent and expressed her concerns that no one had contacted Kevin prior to the IPC or since that day. If this matter went to a hearing, Respondent would have testified that Robin Pecora also

discussed upcoming dates on which she would be out of town.

118. Respondent scheduled a meeting at his Tempe office between himself, Kevin, and Robin Pecora. Michael Cordrey ("Mr. Cordrey"), another attorney associated with the firm, was also present at the April 26, 2006 meeting where the full scope of the representation was discussed. If this matter went to a hearing, Respondent would have testified that they discussed upcoming dates in Kevin's criminal and domestic relations matters.

119. On May 2, 2005, Respondent appeared with Kevin at the continued IPC. After the IPC, Respondent informed Kevin that someone from the firm would contact him to set up an in-office conference.

120. By letter dated May 4, 2005, the Chandler City Prosecutor presented a plea offer to Respondent related to Kevin's domestic violence criminal case.

121. According to the letter, Kevin would plead guilty to Disorderly Conduct in exchange for two years supervised probation, among other terms. The City Prosecutor also told Respondent to contact him if he wanted to discuss the case or the offer.

122. Respondent conveyed the fact that the prosecutor had made a plea offer to Kevin.

123. However, Respondent informed Kevin that the offer required him to plead guilty to domestic violence, rather than disorderly conduct. Kevin informed Respondent that he could not accept a domestic violence charge or two years probation, as he hoped to join the military, and he asked Respondent to re-negotiate the deal with the prosecutor.

124. Respondent told Kevin that the prosecutor would not offer anything less than the domestic violence charge.

125. On May 17, 2005, Ms. Pecora left a message for Respondent requesting a return call, because she had not had any contact with him since their initial meeting in April. Respondent failed to call Ms. Pecora. The parties disagree whether Respondent had an obligation to return Ms. Pecora's phone call or whether Ms. Pecora had a reasonable expectation that Respondent would communicate with her. Respondent concedes that Ms. Pecora would testify at a hearing that she had such an expectation. The Bar would argue that her expectation was reasonable.

126. On May 23, 2005, Mr. Cordrey arrived two hours late for a pre-trial conference scheduled in the domestic violence matter. The domestic violence matter was set for trial on June 3, 2005.

127. In a memo to Respondent dated May 23, 2005, Mr. Cordrey noted that "[t]he judge and prosecutor made no great issue of the fact that we were late because of the calendaring (sic) accident."

128. In his memo, Mr. Cordrey also informed Respondent that Ms. Pecora was unhappy with the trial date and would like the firm to file a motion to continue the trial. Mr. Cordrey allegedly informed Ms. Pecora "that it was unlikely that the continuance would be granted," but that Mr. Cordrey would ask Respondent to file the motion. If this matter went to a hearing, Respondent would argue that the Pecoras wanted to continue Kevin's trial because it conflicted with their vacation, which vacation Kevin was not scheduled to attend.

129. On May 25, 2005, Ms. Pecora left a message for Respondent regarding the trial date. Robin Pecora requested that Respondent file a motion to continue the trial, because it was scheduled for a time when she would be out of town.

The parties disagree whether Respondent had a duty to continue the trial based on Ms. Pecora's request.

130. On May 26, 2005, Respondent informed Ms. Pecora that he was unsure whether the June 3 court date could be changed but would look into it.

131. On May 31, 2005, the City Prosecutor informed Respondent that he would be requesting a continuance of the trial.

132. On June 3, 2005, Kevin contacted Respondent's office to find out if his trial was still taking place on that date, as Respondent had failed to follow-up with Kevin or the Pecoras about a trial date continuance.

133. Despite Ms. Pecora's and Kevin Pecora's requests, Respondent did not file a motion to continue the case and did not inform them that the trial had been continued until June 3, 2005. If this matter went to a hearing, Respondent would have testified that the City Prosecutor filed a motion to continue the trial, thus preempting Respondent's need to file a motion for a continuance.

134. The court continued Kevin's trial to June 17, 2005.

135. On June 14, 2005, Ms. Pecora contacted Respondent to confirm that Kevin's trial date was still set for June 17, 2005.

136. On the afternoon of June 14, 2005, Respondent filed Defendant's Motion to Continue and a Motion to Accelerate Defendant's Motion to Continue the June 17, 2005, non-jury trial.

137. Respondent filed the motion to continue, because he had a personal conflict with the June 17, 2005, date. However, Respondent did not notify Robin and Gary Pecora of his conflict with the June 17, 2005, trial date until the evening of June 16, 2005.

138. The trial date was re-scheduled to July 8, 2005.

139. By letter dated July 15, 2005, Respondent informed Kevin that his trial had been continued again from July 8 to July 22, 2005. Respondent also informed

Kevin that he would like to discuss how to proceed at the time of trial, and that Respondent anticipated only calling Kevin and Robin Pecora as witnesses.

140. Respondent spoke with Kevin on July 21, 2005, the day before trial. Respondent then met with Robin, Gary, and Kevin Pecora before the trial on July 22, 2005, and took notes regarding the events that led to the filing of the criminal charges.

141. The court found Kevin guilty of assault, acquitted him on the disorderly conduct charges, ordered him to undergo domestic violence screening, and placed him on probation.

142. The State Bar alleges, and for purposes of this Agreement Respondent admits, that Kevin's assault conviction has prevented him from joining the military as he hoped. The State Bar alleges, and for purposes of this Agreement Respondent admits, that had Kevin known that the previous plea offer required him to plead guilty to disorderly conduct rather than domestic violence, Kevin likely would have accepted the offer. If this matter went to a hearing, Respondent would have presented evidence of Kevin's prior criminal convictions in order to raise an issue whether the domestic violence conviction was the sole cause of Kevin's inability to join the military.

143. The State Bar alleges, and for purposes of this Agreement Respondent admits, that he was aware that Kevin hoped to join the military and an assault conviction would prevent him from doing so. Again, if this matter went to a hearing, Respondent would have presented evidence to raise an issue whether Kevin could have joined the military.

144. In reference to the matter involving the Order of Protection obtained by Nicole Corby, the court held a hearing on the Order of Protection on July 14, 2005, and granted the permanent order for Nicole, and the couple's infant son.

145. The court granted the permanent order because Respondent failed to

appear on Kevin's behalf to contest the order of protection.

146. Respondent filed a Motion to Set Aside the Order, arguing that he did not have notice of the hearing.

147. The court denied the motion and found that it provided notice to Kevin but not to Respondent, because Respondent had not filed a notice of appearance.

148. The State Bar alleges, and for purposes of this Agreement Respondent admits, that he failed to abide by Kevin's and the Pecoras' decisions concerning the objectives of the representation, failed to consult with Kevin and the Pecoras as to the means by which to pursue those objectives, and failed to properly and adequately consult with Kevin and the Pecoras regarding the plea agreement proffered in Kevin's domestic violence case. If this matter went to a hearing, Respondent would have argued that the Pecoras' payment for Respondent's representation of Kevin did not create an attorney-client relationship with Robin and Gary Pecora. The Pecoras would have testified that, notwithstanding the foregoing, they made it clear to Respondent, and Respondent therefore knew, that Kevin wanted the Pecoras included in the communications and decision-making regarding Kevin's legal matters.

149. Respondent admits that he failed to act with reasonable diligence and promptness in filing the notice of appearance in the Nicole Corby Order of Protection matter.

150. Respondent admits that he failed to promptly inform Kevin of continuances to pre-trial conferences and trial dates; failed to keep Kevin reasonably informed of the status of the matter; and failed to promptly comply with reasonable requests for information from Kevin. If this matter went to a hearing, Respondent would have argued that he was not ethically required to inform the Pecoras of continuances to pre-trial conferences and trial dates, keep the Pecoras reasonably

informed of the status of Kevin's matter, or comply with the Pecoras' requests for information about their son's case. The State Bar would have argued that Respondent breached his ethical duties to Kevin by failing to keep the Pecoras promptly and reasonably informed of the foregoing events.

151. Respondent admits that he failed to promptly and fully inform Kevin of all proffered plea agreements in the domestic violence criminal case.

152. Respondent admits that he failed to communicate the scope of the representation and the basis or rate of the fee and expenses for which Kevin Pecora and/or the Pecoras would be responsible, in writing.

153. Respondent conditionally admits that his conduct in this matter violated Rule 42, ARIZ.R.SUP.CT., ERs 1.2, 1.3, 1.4, and 1.5.

COUNT SIX (File No. 06-0378/Francis)

154. On August 2, 2004, Randall Francis ("Mr. Francis") retained the firm to represent him in his bankruptcy matter.

155. Mr. Francis agreed to pay $959.00 for the representation.

156. During the representation, Mr. Francis was concerned with maintaining possession of his 2000 Ford F-350 truck and his Wells Fargo credit card. To that end, Mr. Francis requested that Respondent take the steps necessary to reaffirm the debts he owed on his truck and his Wells Fargo credit card.

157. The State Bar alleges, and for purposes of this Agreement Respondent admits, that he assured Mr. Francis that the debts would be reaffirmed. If this matter went to a hearing, Respondent would have testified that he advised Mr. Francis that Respondent would attempt to have the debts reaffirmed; however, the final decision to enter into the reaffirmation agreement belongs to the creditor.

158. At the first meeting of creditors, in or about January 2005, Mr. Francis

again told Respondent's associate that he wanted to reaffirm the Ford Motor Credit and Wells Fargo debts.

159. In or about December 2004 or January 2005, Respondent's office sent the reaffirmation agreements to Mr. Francis for his signature. Mr. Francis signed the reaffirmation agreements and returned them to Respondent's office. If this matter went to a hearing, Respondent would have testified that he sent signed reaffirmation agreements to Ford Motor Credit Company and Wells Fargo Card Services on or about January 31, 2005.

160. Mr. Francis assumed that Respondent's office would forward the reaffirmation agreements to Ford Motor Credit and Wells Fargo to reaffirm the debts. If this matter went to a hearing, Respondent would have testified that, even though he sent Mr. Francis' signed reaffirmation agreements to both creditors, Respondent's paralegal followed up with both companies and learned that they were unable to locate the signed reaffirmation agreements sent by Respondent on January 31, 2005. Respondent would have introduced evidence showing that that he sent re-executed reaffirmation agreements to both Ford Motor Credit and Wells Fargo Card Services on May 22, 2005.

161. After the completion of his bankruptcy, Mr. Francis did not receive any correspondence from Ford Motor Credit regarding his payments on his truck. Mr. Francis also learned that Wells Fargo had cancelled his credit card account. If this matter went to a hearing, Respondent would have offered expert testimony showing that, for the reasons stated above, assuming that Respondent did not procure Mr. Francis' reaffirmation agreements for Wells Fargo Card Services, such could not have caused the closure of Mr. Francis' credit card account. The State Bar would have offered evidence that the expert is Respondent's attorneys' law partner at Jennings,

Strouss & Salmon.

162. When Mr. Francis contacted Wells Fargo, he was informed that they had not received paperwork regarding the reaffirmation of his credit card debt; therefore, Wells Fargo had cancelled the debt and closed the account. If this matter went to a hearing, Respondent would have offered expert testimony that, under the bankruptcy law then in effect, only nonpayment or other breaches of the loan agreement could result in the closure of Mr. Francis' credit card account. The State Bar would have offered evidence that the expert is Respondent's attorneys' law partner at Jennings, Strouss & Salmon.

163. Mr. Francis contacted Ford Motor Credit and was told that they did not receive a reaffirmation agreement for the loan on his truck.

164. In or about February 2006, Mr. Francis began calling Respondent's office to obtain copies of the reaffirmation agreements with Ford Motor Credit and Wells Fargo Bank.

165. Mr. Francis called Respondent's office several times before someone from Respondent's office returned his calls.

166. On or about February 20, 2006, Mr. Francis spoke to Respondent's assistant, Raygina Yduarte, who told him that she would send him copies of the reaffirmation agreements.

167. As of March 8, 2006, Mr. Francis had not received the reaffirmation agreements from Respondent.

168. Respondent admits that, despite Mr. Francis' requests to Respondent to reaffirm the debts owed to Ford Motor Credit and Wells Fargo Card Services, Respondent did not ensure that the debts were reaffirmed (even though Respondent asserts that he twice sent both companies signed reaffirmation agreements).

169. Respondent admits that he failed to keep Mr. Francis reasonably informed about the status of the reaffirmation agreements.

Respondent conditionally admits that his conduct in this matter violated Rule 42, ARIZ.R.SUP.CT., ER 1.4.

C. SANCTION AND ABA STANDARDS

The State Bar and Respondent agree that the appropriate sanction includes: (1) censure; (2) the retention of independent ethics counsel to review and implement ethical operations and practices for Respondent's new firm; (3) probation for two years under a memorandum of understanding with the Law Office Management Assistance Program ("LOMAP"); (4) restitution; and (5) offer of fee arbitration to, and removal of any existing liens by Respondent against, the Complainant in State Bar matter 06-0915; and (6) payment of the State Bar's costs and expenses in these disciplinary proceedings.

In determining the appropriate sanction, the parties considered both the American Bar Association's STANDARDS FOR IMPOSING LAWYER SANCTIONS ("STANDARDS," or "STANDARD *x*") and Arizona case law. The STANDARDS are designed to promote consistency in sanctions by identifying relevant factors for the Court to consider and applying these factors to situations in which lawyers have engaged in various types of misconduct. STANDARD 1.3 at commentary. The Supreme Court and the Disciplinary Commission consider the STANDARDS to be suitable guideline in lawyer discipline. *In re Peasley*, 208 Ariz. 27, ¶ 23, ¶ 33, 90 P.3d 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining the appropriate sanction, both the Arizona Supreme Court and Disciplinary Commission consider the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at ¶ 33, 90 P.3d at 772; STANDARD 3.0.

Duty Violated

Given Respondent's conditionally admitted conduct, it is appropriate to consider STANDARD 4.0 (Violations of Duties Owed to Clients) and STANDARD 7.0 (Violations of Duties Owed as a Professional):

4.1 Failure to Preserve the Client's Property

> 4.13: Reprimand (Censure, in Arizona) is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
>
> 4.42: Suspension is generally appropriate when:
>
> * * *
>
> (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
>
> 4.43: Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
>
> 4.53: Reprimand is generally appropriate when a lawyer: (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.
>
> 4.63: Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

7.1 Unreasonable or Improper Fees

> 7.3: Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

Based on Respondent's conditional admissions and the duty violated, the presumptive sanction is censure or suspension. Given the mitigating factors described below, the parties agree that censure is the more appropriate sanction.

Respondent's Mental State

The parties agree, for purposes of this agreement, that Respondent's mental state in this matter was negligent rather than knowing or intentional.

Actual or Potential Injury

Based on Respondent's conditional admissions, there was actual injury to his clients in Counts Two, Four, Five, and Six.

Aggravating and Mitigating Factors

The parties agree that the following aggravating factors are present in this matter:

In aggravation.

STANDARD 9.22(a) (prior disciplinary offenses): Respondent was on probation at the time of these disciplinary proceedings.

STANDARD 9.22(c) (pattern of misconduct): The State Bar alleges, and for purposes of this agreement Respondent admits, that he engaged in a pattern of misconduct, as evidenced by the fact of there being six Complainants, all of which charged Respondent with a failure to communicate and act diligently.

STANDARD 9.22(d) (multiple offenses): The Amended Complaint contains six counts.

STANDARD 9.22(i) (substantial experience in the practice of law): Respondent was admitted to the Bar on October 8, 1977.

In mitigation.

STANDARD 9.32(b) (absence of a selfish or dishonest motive): Respondent's conditional admissions demonstrate that he acted with a negligent mental state and not for self-gain at the expense of his clients.

STANDARD 9.32 (e) (full and free disclosure to the State Bar): Respondent has displayed a cooperative attitude toward these proceedings, particularly by 1) permanently withdrawing from his firm; 2) retaining independent ethics counsel to implement ethical operations and practices for his new firm; and 3) consenting to significantly involve the State Bar in monitoring his new business arrangement for the two-year period of his probation. to provide additional safeguards and sufficient monitoring of his new practice, Respondent proposed, and the State Bar accepted, the following structural and procedural safeguards that will govern the establishment and operation of Respondent's new firm and its on-going conduct during the two-year period of probation:

1) Respondent has retained independent ethics counsel Lynda C. Shely, Esq., to review and implement operations and practices for Respondent's new firm. Ms. Shely will advise Respondent with respect to all organizational aspects of the establishment of his new law practice, including the formation of Respondent's new entity, preparation of an operating agreement or other organizational agreement for the firm, development of a practice/business plan, setting up an IOLTA trust account and operating account, selection of software for account management, calendaring, document and data management, and interviews with potential staff. She will also conduct comprehensive ethics and professionalism training for Respondent and his staff, including lawyers, legal assistants, and support staff, and assist in the preparation of templates for, *inter alia*, engagement letters, non--representation letters,

invoices, and status letters. In addition, she will advise Respondent with respect to client services procedures, including initial intake procedures, understanding of fee and cost structures, and client communication, as well as caseload management procedures. Respondent anticipates the retention of Ms. Shely will eliminate any future issues arising under Rule 42, ARIZ.R.SUP.CT., ERs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.16, as well as any other issues related to Respondent's interactions with his clients.

2) Respondent shall also enter into a two-year memorandum of understanding with LOMAP. One of the terms of his memorandum will require Ms. Shely to give regular written reports to LOMAP and Bar counsel (on a schedule to be determined in consultation with LOMAP) regarding Respondent's progress. Subject to LOMAP's approval, for the first year of Respondent's probation, Ms. Shely shall provide monthly reports to LOMAP. Thereafter, she shall provide quarterly reports. Respondent has provided a limited waiver of his attorney-client privilege with Ms. Shely to enable her to provide reports to LOMAP and Bar counsel.

STANDARD 9.32(g) (character or reputation): Respondent has devoted significant time to volunteer activities that benefit the Bar and the public. Respondent was Vice Chairperson, for approximately three years, of the State Bar's Fee Arbitration Committee. He is also a member of the Arizona Bar Foundation and has served as volunteer Bar counsel. Respondent also participated in the Volunteer Lawyer's Program on a regular basis, usually handling one case at all times for no fee. Finally, for the past several years, Respondent has participated in the Family Law Assistance Program, which entails contributing three hours per month to helping individuals finalize their forms and discuss their rights.

D. PROPORTIONALITY

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *Peasley*, 208 Ariz. at ¶ 33, 90 P.3d at 772. The discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In re Fortner (SB-03-0144-D) is instructive. In *Fortner*, a bankruptcy practitioner received censure and a two-year probation pursuant to the terms of a LOMAP contract after conditionally admitting to failing to competently and diligently represent his clients. *See In re Fortner* Tender of Admissions and Agreement for Discipline by Consent at 2:8-12:2. Indeed, the United States Bankruptcy Trustee ("Trustee") and another bankruptcy practitioner reported Respondent for, *inter alia*, submitting incomplete bankruptcy schedules (or schedules with misspelled clients' names), submitting bankruptcy petitions without schedules, failing to pay filing fees (for which he charged clients), failing to provide the Trustee with requested documents, and failing to appear at meetings between creditors and the Trustee. *Id.* Respondent also admitted to violations of Rules 43 and 44, ARIZ.R.SUP.CT., for failing to properly manage his trust accounts. Fortner acted with a negligent mental state and had identical aggravating factors -- STANDARDS 9.22(a), (c), (d), and (i) -- as the Respondent in this case.

In re Whitehead (SB-03-0076-D) also serves as a proportionality case. In *Whitehead*, Respondent agreed to a nine-month suspension and two years of probation after conditionally admitting to violations of Rule 42, ARIZ.R.SUP.CT., ERs 1.3, 1.4,

1.5, 1.7, 1.15, 1.16(d), 5.1, 5.3, 8.1(a), 8.4(c) and (d) and Rule 51(h), ARIZ.R.SUP.CT. Whitehead's misconduct was far more egregious than in this case. Whitehead made misstatements to the State Bar, failed to timely respond to requests for information, and acted with a knowing mental state, in addition to having failed to communicate with clients and act diligently. *Whitehead* demonstrates that Respondent's sanction of censure is appropriate, because it is based on less egregious conduct and a negligent mental state.

Based on the STANDARDS and case law, the parties believe that censure, the retention of independent ethics counsel, probation, and restitution are within the range of appropriate sanctions and will serve the purposes of lawyer discipline. The sanction will serve to protect the public, instill confidence in the Bar, deter lawyers from similar misconduct, and maintain the integrity of the profession.

D. RECOMMENDATION

The objective of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, and the administration of justice. *In re Neville*, 147 Ariz. 106, 116, 708 P.2d 1297, 1307 (1985). I find the proposed settlement to be balanced, fair, and equitable, and the proposed Sanctions of censure, probation, restitution, and other relief as set out in pages 27-29 of the Tender to be equitable, just, proportionate, protective of the public, and consistent with the Sanctions imposed in like cases

I therefore recommend that the Disciplinary Commission accept the proposed settlement and impose the Sanctions agreed upon. I recommend, however, that the negative reference to the "operations and practices" of the partnership of Burton and Leather, lines 9-12 of page two of the Joint Memorandum be omitted, and, as well, the references to the tardiness of Mr. Cordrey in paragraphs 129 and 130 of the Tender. The references are not essential to support the proposed ruling and they are

implicit criticisms of Mr. Burton and Mr.Cordrey, who are not parties to this proceeding and therefore not in a position to explain or defend themselves.

I have received a copy of a letter dated January 18, 2007, addressed to me at the offices of the Arizona Supreme Court, in which one of the Complainants, Robert. E. Rogers, states his strong dissatisfaction with Mr. Leather and of the State Bar's handling of his complaint, for which reasons he says he "hereby withdraws" his complaint against Mr. Leather. His letter has not affected my recommendation, nor do I believe that it should. My own reaction is that procedurally it does not divest the Commission of authority to order Mr. Leather to pay restitution to Mr. Rogers, as the proposed Sanctions would do, but I defer to the Commission on the point.

DATED this 16th day of March, 2007.

Frederick K. Steiner, Jr. /ss

Frederick K. Steiner, Jr.
Hearing Officer 8T

Original filed with the Disciplinary Clerk,
this 16th day of March, 2007.

Copies of the foregoing mailed
this 16th day of March, 2007, to:

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