

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**TERENCE J. HISLOP,
Bar No. 026963**

Respondent.

PDJ-2016-9032

FINAL JUDGMENT AND ORDER

State Bar No. 15-0669

FILED APRIL 4, 2016

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on March 29, 2016, under Rule 57(a), Ariz. R. Sup. Ct., accepted the parties' proposed agreement. Accordingly:

IT IS ORDERED Respondent, **Terence J. Hislop**, is reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this order.

IT IS FURTHER ORDERED Mr. Hislop shall be placed on probation for one (1) year, under the following terms:

TERMS OF PROBATION

1. Mr. Hislop shall undergo an evaluation and audit of his trust account management by the State Bar's Law Office Management Assistance Program ("LOMAP"). Mr. Hislop shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from this order to arrange the evaluation and audit. Mr. Hislop shall comply with any reasonable recommendations following the evaluation and audit. Mr. Hislop will be responsible for any costs associated with LOMAP;
2. Mr. Hislop shall attend a half-day Trust Account Ethics Enhancement Program (TAEHP). Mr. Hislop shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from this order, to schedule attendance at the next available class. Alternatively, Mr. Hislop may attend

TAEPP electronically. If he attends electronically he shall provide a copy of his class notes to the State Bar's probation compliance officer. Mr. Hislop shall be responsible for the cost of attending the program;

3. Mr. Hislop, at his expense, shall retain an accountant with attorney trust account experience to review the trust account of Mr. Hislop, prepare all necessary documentation including three-way reconciliations, and develop a report specifying what amounts need to be paid to clients or third parties;
4. Following review and approval of the accountant's findings, Mr. Hislop shall pay any amounts owed to clients or third parties, and transfer all earned fees to the operating account of Mr. Hislop, to assure his trust account fully complies with applicable rules.

IT IS FURTHER ORDERED Mr. Hislop shall pay the costs and expenses of the State Bar of Arizona for \$1,241.36, within thirty (30) days from this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

DATED this 4th day of April, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 4th day of April, 2016, to:

David L Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
Email: srhodes@jsslaw.com
Respondent's Counsel

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**TERENCE J. HISLOP,
Bar No. 026963**

Respondent.

PDJ-2016-9032

**DECISION ACCEPTING
AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar No. 15-0669

FILED APRIL 4, 2016

Under Rule 57(a), Ariz. R. Sup. Ct., an Agreement for Discipline by Consent for reprimand, costs and probation for one (1) year was filed on March 29, 2016 with the Disciplinary Clerk. The matter has not been presented to the Attorney Discipline Probable Cause Committee. That agreement and any supporting documents are incorporated by this reference and the agreement is accepted.

A final judgment and order is entered this date.

DATED this 4TH day of April, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 4TH day of April, 2016, to:

David L Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
Email: srhodes@jsslaw.com
Respondent's Counsel

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: AMcQueen

David L. Sandweiss, Bar No. 005501
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7269
Email: LRO@staff.azbar.org

J. Scott Rhodes, Bar No. 016721
Jennings Strouss & Salmon PLC
One E. Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
Telephone 602-262-5862
Email: srhodes@jsslaw.com
Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

TERENCE J. HISLOP,
Bar No. 026963,

Respondent.

PDJ 2016-_____

State Bar File Nos. **15-0669**

**AGREEMENT FOR DISCIPLINE BY
CONSENT (PREFILING)**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Terence J. Hislop, who is represented in this matter by counsel, J. Scott Rhodes, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.¹ This matter has not been presented to the Attorney Discipline Probable Cause Committee ("ADPCC") and ADPCC has not entered a probable cause order. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which

¹ All references herein to rules are to the Arizona Rules of the Supreme Court unless otherwise expressly stated.

have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

The State Bar is the complainant; therefore no notice of this agreement pursuant to Rule 53(b)(3) is required.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.5(c), 1.5(d)(3), 1.15(a), 1.15(d), and Rule 43(b)(1)(A), (b)(1)(C), (b)(2)(A), (b)(2)(B), (b)(2)(C), (b)(2)(D), and (d)(3). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline:

- Reprimand;
- One year of probation to include—
 - Evaluation and audit of Respondent's trust account management by LOMAP with Respondent's agreement to comply with any reasonable recommendations following the evaluation and audit;
 - Respondent shall attend (electronically or in person) the State Bar's trust account ethics enhancement program (TAEPP). If Respondent attends electronically he shall provide a copy of his class notes to the State Bar's probation compliance officer;
 - Respondent, at his expense, shall retain an accountant with attorney trust account experience to review Respondent's trust account, prepare all necessary documentation including three-way reconciliations, and develop a report specifying what amounts, if any, need to be paid to clients or third parties;
 - Following review and approval of the accountant's findings, Respondent shall pay any amounts owed to clients or third parties, and transfer all earned fees to Respondent's operating account, to assure Respondent's trust account fully complies with applicable rules.
- Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at

the legal rate.² The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

WARNING RE: NON-COMPLIANCE WITH TERMS OF PROBATION

If 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 Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether Respondent breached a term of probation and, if so, to recommend an appropriate sanction. If the State Bar of Arizona alleges that Respondent failed to comply with any of the foregoing terms, it shall have the burden by a preponderance of the evidence to prove noncompliance.

FACTS

COUNT ONE (File no. 15-0669/Trust Account)

1. Respondent was licensed to practice law in Arizona on May 27, 2009.
2. The State Bar of Arizona received an insufficient funds notice on Respondent's client trust account. On March 6, 2015, check number 1045 for \$1,050.08 attempted to pay against the account when the balance was \$923.26. The bank paid the check and did not charge an overdraft fee leaving the account with a negative balance of \$126.82.
3. The State Bar initiated a conventional trust account investigation for the limited time period involved. However, due to Respondent's lack of required

² Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

records, the investigation was expanded to cover the period from January 1, 2014 to October 31, 2015.

4. On May 27, 2015, after receiving two extensions, Respondent provided a response to the State Bar's request for information. However, Respondent failed to provide a complete set of the following requested documents:

- a. Copies of an administrative funds/bank charges ledger;
- b. Copies of the general ledger/checkbook register;
- c. Copies of all individual client ledgers;
- d. Copies of the back of cancelled checks;
- e. Copies of the actual items deposited in the IOLTA; and
- f. Copies of the monthly three-way reconciliations.

5. Respondent provided an individual ledger for client Van Stralen, whom Respondent represented in a bodily injury case. In December 2014, he settled the case for \$13,650.00, consisting of \$6,650 in property damage and \$7,000 for the bodily injury. Respondent deposited the two settlement checks into his IOLTA and paid the entire property damage amount to the client on December 13, 2014. He disbursed the bodily injury recovery with IOLTA checks for \$5,360.08 to cover medical liens and expenses. His attorney's fees (reduced) were \$1,639.92, but his records do not show when or how he disbursed those earned funds from the IOLTA.

- a. In addition to a contingency fee, the Van Stralen ledger reflects that Respondent collected a "Client nonrefundable retainer" at the start of the representation. The fee agreement signed on January 22, 2013 states that the client will provide a \$2,000 retainer, in addition to 35% of any settlement or recovery obtained. The agreement further states that should no recovery be obtained, the "Client owes Lawyer nothing for legal services but must pay expenses [...] not to exceed \$2,000 without written approval of Client." The fee agreement does not state that the retainer is non-refundable, nor does it advise the client that he

may discharge the lawyer at any time and in the event of termination may be entitled to a refund of all or part of the fee.

- b. The Van Stralen ledger bears a creation date of May 22, 2015, but describes transactions beginning on January 22, 2014. Respondent admits the ledger was recreated, it and other ledgers that he recreated are not maintained accurately, and in some cases he did not keep client ledgers at all.
 - c. The Van Stralen ledger reflects an additional non-refundable retainer deposited on February 25, 2015, described as "[N.] Hernandez." Hernandez is a separate client with no involvement with the Van Stralen matter.
 - d. The Van Stralen ledger does not account for all of the activity transacted in the IOLTA. For example, the trust account bank statements reflect two deposits not recorded on the client ledger, each in the amount of \$25,000; one on March 20, 2015 and the other on March 31, 2015. Respondent admits the deposits correspond to clients other than Van Stralen and Hernandez.
 - e. The Van Stralen ledger shows an unexpended balance of \$7,500 as of December 12, 2014; yet, the actual balance held in the IOLTA as of February 1, 2015 (with no intervening transactions) was \$6,433.26, for a deficit of \$1,066.74. Respondent was unaware of the deficit.
6. The examiner subsequently requested additional information from

Respondent. Respondent's response did not provide the following:

- a. Copies of an administrative funds/bank charges ledger for the period of 01/01/2014 to 01/31/2015;
- b. Copies of the general ledger/checkbook register for the period of 01/01/2014 to 01/31/2015;
- c. Copies of all individual client ledgers for the period or equivalent documents for clients who held or should have held funds on deposit in the IOLTA during the period of 01/01/2014 to 03/01/2015; and
- d. Copies of all fee agreements, billing statements, and settlement statements for clients for whom Respondent held or should have held funds on deposit in the IOLTA during the period of 01/01/2014 to 03/01/2015.

Respondent agreed to provide the remaining items on July 31, 2015.

7. On July 22, 2015, the State Bar received certain documents requested from the bank and advised Respondent that the remaining outstanding documents were due no later than July 31, 2015. Respondent failed to provide the remaining documents by that date.

8. On August 4, 2015, Respondent provided an excel spreadsheet of his IOLTA activity, as reflected on the bank statements. The client and corresponding amount is not identified on the spreadsheet. Instead, all deposited items are recorded as "Deposit" and all transfers to Respondent's operating account are recorded as "Hislop Law Group."

9. The State Bar subpoenaed the pertinent trust account records from Bank of America for the period spanning from 11/01/2013 to 03/31/2015. The copies of the deposits revealed that settlement checks were received and deposited for several clients for whom Respondent had not provided a fee agreement.

10. On November 7, 2015, the examiner made another request for copies of all fee agreements, billing statements, and settlement statements for all clients who held or should have held funds on deposit in the IOLTA during the period of 01/01/2014 to 03/01/2015. Respondent timely complied, with exceptions.

11. On November 20, 2015, the examiner followed up with Respondent for a final request for additional information. Respondent timely complied, again, with exceptions.

12. Respondent provided a recreated general ledger for the period of review and recreated individual client ledgers reflecting various client transactions from the start of representation, in one case dating back to October 24, 2012.

However, the general ledger and the individual client ledgers were inaccurate and incomplete. For example:

- a. Four (4) insurance checks were received on behalf of client Carson with regard to an auto accident as follows:

Date	Credit	Check Number
04/04/14	\$6,348.21	#7690463 Payor: USAA
04/30/14	\$659.01	#7934068 Payor: USAA
03/20/15	\$25,000.00	#10680937 Payor: USAA
08/13/15	\$37,000.00	#0012084445 Payor: USAA

Respondent provided two (2) separate client ledgers and failed to account for the check received in the amount of \$659.01. Ledger one accounts for the \$6,348.21 and \$25,000 checks. Ledger two accounts for the receipt and complete expenditure of the \$37,000 check. A filing fee in the amount of \$319 is reflected as an advanced cost on both ledgers, noted as operating account check number 1026. Ledger one describes the amount as "9/17/14, Superior Court," while ledger two describes the amount as "Maricopa County file complaint." It is unclear if two separate fees were disbursed by way of the same check or whether the client was assessed the same fee twice.

- b. The Dougherty client ledger records all disbursements as deposits but are counted as debits when calculating the unexpended balance.
- c. The Miller client ledger reflects a settlement deposit in the amount of \$32,500 on 1/16/15, while the general ledger records the deposit on 09/02/2015. The copy of the actual item deposited reflects the settlement check was issued on 08/06/2015 and the copy of the opposing parties' letter which accompanied the settlement check is dated 08/31/2015. Therefore, Respondent was not in possession of the settlement check on 1/16/15. The duplicate deposit slip provided for the transaction is dated 09/02/2015 and the IOLTA bank statements reflect the deposit posted on that date.

- 13. Despite the recreated ledgers, several transactions remain unidentified.

For example, on January 30, 2014, a \$2,500 Wells Fargo Bank N.A. Cashier's Check payable to Respondent's firm was deposited in the IOLTA. No further identifiable information was reflected on the actual item or on the corresponding deposit records. Moreover, it appears the funds were transferred to Respondent's operating

account that same day. Respondent could not identify the client on whose behalf the funds were deposited.

14. During the period of review, Respondent made thirty-six (36) transfer disbursements from the IOLTA to his operating account for funds alleged to be earned fees and costs, totaling \$84,787.95. Respondent states that the transactions were disbursed on behalf of multiple clients. However, he was unable to provide a breakdown by client name and respective amount for each transaction.

15. Respondent made two transfers days after the overdraft occurred; specifically, \$8,500 on March 20, 2015 and \$8,400 on March 31, 2015. Near those dates, Respondent deposited settlement checks on behalf of clients Carson and Dougherty. It appears that Respondent disbursed the funds in reliance on those deposits; however, he was unable to provide a breakdown by client name and respective amount. Accordingly, although Respondent's recreated client ledgers reflect various entries for earned fees and costs, the majority do not record the date on which the funds were removed from the IOLTA.

16. Respondent states that he has since revised his procedures such that henceforth he will only make individual transfers attributable to each respective individual client. The examiner explained to Respondent that transfers on behalf of multiple clients are acceptable as long as he maintains accurate accounting records, including a breakdown by client and respective amount.

17. With regard to client Takata, Respondent mistakenly sent a \$3,350 check to the wrong medical lienholder. The lienholder refunded the erroneous payment and Respondent deposited it into his IOLTA. Respondent's recreated ledger, however, shows that Respondent recorded the deposit on behalf of client

Hernandez and described it as a "Client nonrefundable retainer." The copy of the actual item clearly indicates the deposit was not remitted by client Hernandez, there is no indication that the funds were associated with a retainer for her, the copy of the client fee agreement makes no reference to a non-refundable fee, and it does not advise the client that she may discharge the lawyer at any time and in the event of termination may be entitled to a refund of all or part of the fee. Respondent admits the error in attributing the deposit to the wrong client.

18. With regard to client Green, the copy of the client fee agreement provided indicates Respondent's fee was to be 25%. Between March 1, 2014 and December 31, 2014, ten (10) insurance checks were received totaling \$57,364. Therefore, the client should have received a total of \$43,023 after attorney's fees were deducted. Yet, the trust account records only reflect nine check disbursements to the client, totaling \$40,503, for a difference of \$2,520. Furthermore, a copy of a correspondence to the client dated March 30, 2015, indicates that at the client's request, Respondent terminated representation regarding a Medicare issue. The correspondence further states that "the entire \$1,000.00 retainer" is enclosed, indicating Respondent should have held a balance in the amount of \$1,000 in his IOLTA for client Green as of the date of the letter. However, Respondent's response and records contain no evidence of any funds being held on deposit on behalf of client Green. Respondent explained that advanced costs were the cause of instances where the client did not receive disbursements. Respondent did not obtain a separate fee agreement for the Medicare issue. Respondent claims that he spent approximately two hours on that issue and subsequently agreed to "donate"

his time and returned to the client her retainer. Respondent did not address why the funds were not previously recorded.

19. On January 12, 2016, Respondent informed the State Bar examiner that "[he] wasn't clear on when to take out of the IOLTA and when to disburse from the operating account." As such, Respondent states that in some instances the expenses recorded were disbursed from the IOLTA, while at other times they were disbursed from the operating account. Respondent states that he has reviewed the trust account rules and learned a great deal as a result of this incident. He further states that he has attempted to identify all of the transactions to provide as complete as possible ledgers but acknowledge that they may still be incomplete.

20. The examiner completed the review of the records, but was unable to reconcile the IOLTA due to Respondent's lack of records and the inconsistent amounts he disbursed to his operating account. Additionally, the following deficiencies were revealed:

Misappropriation of funds:

The deficit, discovered as a result of the overdraft, predated the period of review. Due to the lack of a proper audit trail, the examiner was unable to determine the exact amount of the deficit. However, the client ledgers indicate that the IOLTA should have held at minimum an unexpended balance of \$9,588.80 through February 2, 2014: Cernik - \$8,500 and Sciarro - \$1,088.80. As of November 1, 2013, the IOLTA bank statements reflect an actual balance of \$6,809.21, for a minimum deficit of \$2,779.59. On October 23, 2013, check number 1017 was issued to MCSO for \$5, on behalf of client Venegas. However, no funds have ever been held on deposit in the IOLTA on behalf of said client. Respondent

states that the check was remitted to obtain a police report for client Venegas. Respondent further states that he erroneously wrote the check out of the trust account, contributed to the already existing deficit.

The client ledgers further reflect that client Hernandez was the only other client on whose behalf funds were received prior to November 1, 2013. It is unclear if funds should have remained on deposit for her as of that date. On November 18, 2013, a check issued by the client in the amount of \$1,000 was deposited in the IOLTA. On that date \$1,250 was transferred to Respondent's operating account. Respondent exhibited a pattern of disbursing funds received on behalf of client Hernandez on the same date deposited. Thus, it is likely that the deposited funds were removed as part of the transfer to Respondent's operating account. However, it is unclear on whose behalf the difference of \$250 was disbursed. Furthermore, on December 18, 2013, an additional transfer in the amount of \$5,000 was disbursed to Respondent's operating account. Again, it is unclear on whose behalf the funds were disbursed. Therefore, the examiner was unable to determine if the difference of \$5,250 constituted funds that should have been held on deposit on behalf of a client, thereby indicating the deficit as of November 1, 2013 was larger; or whether the funds were erroneously disbursed from the IOLTA such as with client Venegas, thereby inflating the deficit.

Funds were held on behalf of sixteen (16) clients during the period of review. Based on the documentation provided, funds for seven (7)³ clients should have been disbursed by the time of the overdraft while three (3)⁴ clients did not have funds on

³ Becvar; Hernandez; Manojalvic; Porras; Rivas; Sciarro; and Smigla.

⁴ Castine; Dougherty; and Langley.

deposit until after the overdraft occurred. Accordingly, the examiner determined that leading up to the date of the overdraft, a minimum of \$24,624.79 should have been held on deposit in the IOLTA as of March 1, 2015, on behalf of six (6) clients, as follows:

- a. Carson \$4,352.71 – Two insurance checks totaling \$7,007.22 were received on behalf of the client prior to the overdraft, and \$319 in advanced costs are reflected as being incurred on 09/17/2014. Therefore, the client should have held at minimum, \$4,352.71 on 03/01/2015, calculated as \$7,007.22 less fees (\$2,115.86⁵) and costs (\$319).
- b. Cernik \$13,191 - The Cernik client ledger reflects retainers of \$8,500 received on 10/15/2013 and \$5,000 received on 08/21/2014, resulting in an unexpended balance of \$13,500. Respondent only identified two expenses totaling \$309 prior to 03/01/2015. Therefore, the client should have held at minimum an unexpended balance of \$13,191 on 03/01/2015.
- c. Takata \$3,350 – Check number 1046 was issued on 02/25/2015 on behalf of client Takata, payable to a medical provider in the amount of \$3,350. The check posted on 03/02/2015. Therefore, the full amount should have been held on deposit on 03/01/2015.
- d. Lane \$1,681 - On 04/29/2014, a check from Lane's personal account payable to Respondent in the amount of \$2,000 was deposited in the IOLTA. The client ledger reflects the deposit on said date. More importantly, the ledger reflects a single expense to date in the amount of \$319, remitted to the Maricopa County Court Clerk to "file complaint." Although no date is specified, a basic online search engine query of the client and Respondent yields the following possible match; case number 2:2014cv01688, filed on or about 07/28/2014. Therefore, at minimum the client should have held an unexpended balance in the amount of \$1,681 on 03/01/2015.
- e. Van Stralen \$1,050.08 – On 02/09/2015, check number 1045 was issued payable to a medical provider in the amount of \$1,050.08. The check posted on 03/06/2015, therefore, the full amount should have been held on deposit on 03/01/2015.

⁵ 33.33% of \$6,348.21. The insurance check for \$659.01 was not recorded on the ledger; therefore, the full amount should have been held on deposit.

- f. Green \$1,000 – The client ledger reflects \$1,000 was retained in the IOLTA as of 12/13/2014, as an advance fee retainer for a possible Medicare matter. However, the matter was not pursued and on 03/30/2015, check number 1048 was issued payable to the client in said amount. Therefore, the full amount should have been on deposit on 03/01/2015.

The IOLTA bank statements reflect an actual balance of \$4,273.26, on 03/01/2015, for a difference of \$20,351.53. Respondent was not aware of the deficiency in his IOLTA. Consequently, with the exception of the \$600 administrative funds Respondent deposited on March 9, 2015 to correct the overdraft, there is no indication that he deposited more administrative funds to make the IOLTA whole again. Respondent thereby misappropriated and converted other client funds for in excess of 700 days and counting.

Verified instances of commingling:

In his response dated May 27, 2015, Respondent acknowledged that he failed to keep personal funds separate from the client funds maintained in the IOLTA. Based on the disbursement patterns, it does not appear Respondent disbursed earned fees and costs when due. The examiner was able to determine the following verified instances of commingling:

- a. On 06/27/2014, a workers compensation check in the amount of \$1,280 was received on behalf of client Green. Per the fee agreement, the funds were to be disbursed as: 25% Attorney's Fee - \$320; and Net to Client - \$960. The client's share was disbursed on that day by way of IOLTA check number 1028, leaving only Respondent's earned fee yet to be paid. However, the IOLTA bank statements do not reflect any transfers occurring to the operating account until 07/03/2014, indicating that Respondent commingled earned funds for at least six (6) days.
- b. On 11/25/2013, a JP Morgan Cashier's Check payable to Respondent's firm in the amount of \$10,134 was deposited in the IOLTA. No further identifiable information was reflected on the actual item nor the corresponding deposit records. Coincidentally, on that day a transfer

was made to Respondent's operating account in that exact amount. Respondent was asked to identify the client on whose behalf the funds were deposited. Respondent identified the funds as "[N.] Hernandez retainer payment" and provided copies of various client correspondences as supporting documentation. The files reflect the funds were actually received in connection with a settlement agreement reached on behalf of the client and Chase Bank USA, N.A. ("Chase"). The client files provided contained a copy of the settlement agreement and a correspondence from Chase's counsel Kutak Rock, LLP, specifically referencing the check number and amount as being remitted pursuant to the settlement terms. The files also included invoices for legal services rendered during the period of 10/24/2012 through 12/16/2014. Specifically: 01/25/2013 - \$19,012; 10/02/2014 - \$14,850; and 12/16/2014 - \$853, for a total of \$34,715. Therefore, although the funds were not received specifically as a retainer payment from the client, it does appear the funds were subsequently earned. Moreover, as reflected with the Chase check, it appears Respondent regularly disbursed earned fees immediately after deposits were received on behalf of the client. The IOLTA bank statements reflect nine (9) additional deposits on behalf of the client during the period of review; eight (8) of which were remitted by the client. Furthermore, for seven (7) of those transactions, the IOLTA bank statements reflect transfers in the exact amount of each deposit to Respondent's operating account, and transfers in larger amounts on the same date of the two (2) additional deposits. Respondent thereby commingled earned funds by depositing the client payments in the IOLTA, while simultaneously transferring the funds to his operating account.

In addition, in each of the following instances, respondent failed to disburse, within the period of review, the portion of the funds deemed earned by Respondent.

- a. On 09/02/2015, a settlement check in the amount of \$32,500 was deposited on behalf of client Castine. The settlement breakdown provided to the client reflects the following: Reduced⁶ Attorney's Fee - \$10,725; Attorney's Costs - \$1,277; Disputed Lien Amount held in trust - \$11,500; and Net to Client - \$8,998. On 09/09/2015 check number 1055 was issued to the client in the amount of \$8,998. However, the IOLTA bank statements do not reflect any transfers occurring to the operating account during the period of review.
- b. On 06/26/2015, a settlement check in the amount of \$24,500 was deposited on behalf of client Langley. The settlement breakdown provided to the client reflects the following: 33.33% Attorney's Fee - \$9,999; Attorney's Costs - \$3,363.75; Negotiated Lien - \$5,500; and

⁶ Respondent reduced his contingency fee from 40% to 33.33%

Net to Client - \$11,137.25. On 08/10/2015 check number 1053 was issued to the client in the amount of \$11,137.25. However, the IOLTA bank statements do not reflect any transfers occurring to the operating account during the period of review.

Rate of fee deficiency:

The Carson contingency fee agreement, signed and dated December 31, 2013, does not specify the rate of fee. The agreement merely states that in the event of recovery Respondent's firm "may deduct the attorney's fees to which it is entitled, together with all costs and expenses, [...]." Yet, the copy of the settlement breakdown⁷ letter provided to the client, dated August 13, 2015, reflects the following line item: "Legal fee per agreement (33.33%)."

Similarly, the Langley contingency fee agreement signed and dated 03/06/2013, does not specify the rate of fee. The agreement merely states that in the event of recovery Respondent's firm "may deduct the attorney's fees to which it is entitled, together with all costs and expenses, [...]." Yet, the copy of the settlement breakdown letter provided to the client, dated 08/10/2015, reflects the following line item: "Legal fees (agreed upon 33.33 percent of settlement)."

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, ERs 1.5(c), 1.5(d)(3), 1.15(a), 1.15(d), and Rule 43(b)(1)(A), (b)(1)(C), (b)(2)(A), (b)(2)(B), (b)(2)(C), (b)(2)(D), and (d)(3).

⁷ Settlement breakdown was for the \$37,000 settlement check deposited on 08/13/2015. No such records were provided for the additional settlement checks deposited in the IOLTA.

RESTITUTION

To the extent restitution may be an issue in this case, the parties agree that Respondent's agreement to pay the amount of any deficiencies in his trust account following completion of the trust account audit is a reasonable and sufficient mechanism for assuring payment of restitution, if any such payment proves to be necessary.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate:

- Reprimand;
- One year of probation to include—
 - Evaluation and audit of Respondent's trust account management by LOMAP with Respondent's agreement to comply with any reasonable recommendations following the evaluation and audit;
 - Respondent shall attend (electronically or in person) the State Bar's trust account ethics enhancement program (TAEHP). If Respondent attends electronically he shall provide a copy of his class notes to the State Bar's probation compliance officer;
 - Respondent, at his expense, shall retain an accountant with attorney trust account experience to review Respondent's trust account, prepare all necessary documentation including three-way reconciliations, and develop a report specifying what amounts, if any, need to be paid to clients or third parties;
 - Following review and approval of the accountant's findings, Respondent shall pay any amounts owed to clients or third parties, and transfer all earned fees to Respondent's operating account, to assure Respondent's trust account fully complies with applicable rules.

- Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, as stated above.

If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to 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 35, 90 P.3d at 772; *Standard* 3.0.

The duty violated

As described above, Respondent's conduct violated his duty to his clients.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent's management of his trust account was grossly negligent to a degree that, over a period of time he knew or should have known of the mismanagement, resulting in

commingled funds, and failure to include compulsory language in his written fee agreement. Hence, the "knowing" mental state applies to this consent.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential harm to clients.

The parties agree that *Standard 4.12* is the appropriate *Standard* given the facts and circumstances of this matter. *Standard 4.12* states: "Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client."

Aggravating and mitigating circumstances

The presumptive sanction in this matter is suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22(c): A pattern of misconduct;

Standard 9.22(d): Multiple offenses;

In mitigation:

Standard 9.32(a): Absence of a prior disciplinary record (although Respondent is administratively suspended in Minnesota for nonpayment of dues, he has no discipline history in Arizona⁸);

Standard 9.32(b): Absence of a dishonest or selfish motive;

⁸ Respondent states that he has or will soon pay the amount in arrears and believes, based on his communications with the State Bar of Minnesota, that he will be reinstated upon payment.

Standard 9.32(e): Full and free disclosure to a disciplinary board or cooperative attitude toward proceedings;

Standard 9.32(l): Remorse – Respondent admits his trust accounting deficiencies and wants this experience to serve an educational purpose in how to properly administer his trust account.

Discussion

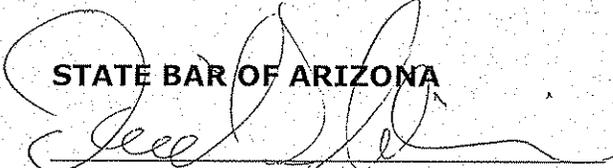
The parties conditionally agree that the presumptive sanction of suspension should be reduced to reprimand as the principal term. Respondent's mitigating factors outnumber and outweigh the aggravating factors, and the demanding probation terms will suffice to protect the public and serve the other purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand with Probation and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

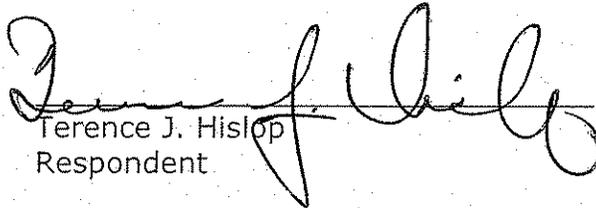
DATED this 29th day of March 2016.

STATE BAR OF ARIZONA


David L. Sandweiss
Senior Bar Counsel

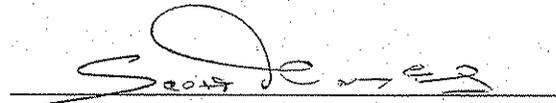
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 23 day of March, 2016.


Terence J. Hislop
Respondent

DATED this 24th day of March, 2016.

Jennings Strouss & Salmon PLC


J. Scott Rhodes
Counsel for Respondent

Approved as to form and content


Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 29th day of March, 2016.

Copy of the foregoing emailed
this 29th day of March, 2016, to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/mailed
this 29th day of March, 2016, to:

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
Email: srhodes@jsslaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 29th day of March, 2016, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

by: Jackie Overton
DLS: jld

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Terence J. Hislop, Bar No. 026963, Respondent

File No. 15-0669

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings

\$1,200.00

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

11/16/15	Bank of America, subpoenaed documents	\$	41.36
	Total for staff investigator charges	\$	41.36
	TOTAL COSTS AND EXPENSES INCURRED		\$ 1,241.36

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

TERENCE J. HISLOP,
Bar No. 026963,

Respondent.

PDJ

FINAL JUDGMENT AND ORDER

State Bar No. 15-0669

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on _____, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Terence J. Hislop**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order or _____.

IT IS FURTHER ORDERED that Respondent is on probation for one year, on the following terms:

- Respondent shall undergo an evaluation and audit of his trust account management by the State Bar's Law Office Management Assistance Program ("LOMAP"). Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order to arrange the evaluation and audit. Respondent shall comply with any reasonable recommendations following the evaluation and audit. Respondent will be responsible for any costs associated with LOMAP;
- Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to schedule attendance at the next available class.

Alternatively, Respondent may attend TAEPP electronically. If he attends electronically he shall provide a copy of his class notes to the State Bar's probation compliance officer. Respondent will be responsible for the cost of attending the program;

- Respondent, at his expense, shall retain an accountant with attorney trust account experience to review Respondent's trust account, prepare all necessary documentation including three-way reconciliations, and develop a report specifying what amounts, if any, need to be paid to clients or third parties;
- Following review and approval of the accountant's findings, Respondent shall pay any amounts owed to clients or third parties, and transfer all earned fees to Respondent's operating account, to assure Respondent's trust account fully complies with applicable rules.

WARNING RE: NON-COMPLIANCE WITH PROBATION

If 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 Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether Respondent breached a term of probation and, if so, to recommend an appropriate sanction. If the State Bar of Arizona alleges that Respondent failed to comply with any of the foregoing terms, it shall have the burden by a preponderance of the evidence to prove noncompliance.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ _____, within 30 days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within 30 days from the date of service of this Order.

DATED this _____ day of March, 2016.

William J. O'Neil, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of March, 2016.

Copies of the foregoing mailed/mailed
this _____ day of March, 2016, to:

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
Email: srhodes@jsslaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this _____ day of March, 2016, to:

David L Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this _____ day of March, 2016 to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: _____