

1 Robert A. Clancy, Jr., Bar No. 016424  
 2 Staff Bar Counsel  
 3 State Bar of Arizona  
 4 111 West Monroe, Suite 1800  
 5 Phoenix, Arizona 85003-1742  
 6 Telephone: 602-340-7244

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

9 IN THE MATTER OF A MEMBER ) No. 01-1511  
 10 OF THE STATE BAR OF ARIZONA, )  
 11 ) **TENDER OF ADMISSIONS**  
 12 **CAL BASKERVILLE,** ) **AND AGREEMENT FOR**  
 13 **Bar No. 009014** ) **DISCIPLINE BY CONSENT**  
 14 )  
 15 **Respondent.** ) **(Assigned to Hearing Officer 8Z)**

16 This Agreement is entered into between the State Bar of Arizona and  
 17 Respondent Cal Baskerville. It is submitted pursuant to Rule 56(a), *Ariz.R.S.Ct.*,  
 18 and the guidelines for discipline by consent issued by the Disciplinary  
 19 Commission of the Supreme Court of Arizona. Respondent conditionally admits  
 20 he violated Ethical Rule 1.15, Supreme Court Rule 43(d) State Bar of Arizona  
 21 Trust Account Guideline 1(c) & 2(e), and Supreme Court Rule 44(b).  
 22 Respondent agrees to accept a censure; one (1) year of probation; a LOMAP  
 23 audit, the recommendations of which he agrees to abide by; to attend the State  
 24 Bar of Arizona's Trust Account Ethics Enhancement Program; to pay all costs  
 25 and expenses incurred by the State Bar in bringing these disciplinary proceedings

1 against him, including all costs and expenses incurred by the Disciplinary  
2 Commission, the Supreme Court, and the Disciplinary Clerk's Office in this  
3 matter. Restitution is not an issue because no client funds were lost. Respondent  
4 understands that this agreement is subject to review and acceptance by the  
5 Disciplinary Commission, and the Supreme Court of Arizona.  
6

7 FACTS

8 The parties conditionally admit the following facts:  
9

10 1. The State Bar received a notice from Bank of America advising that  
11 Respondent's client trust account was overdrawn. The overdraft report indicates  
12 that on July 23, 2001, a check in the amount of \$19,843.40 attempted to pay  
13 against the trust account when the balance in the account at the time was only  
14 \$16,857.60. Bank of America paid the check, and as a result, Respondent's trust  
15 account became overdrawn \$2,985.80.  
16

17 2. Respondent was asked to provide Bar Counsel with the following  
18 documents relating to Respondent's trust account: copies of trust account bank  
19 statements on Bank of America trust account number 0002 3565 2590 from  
20 January 1, 1999 through July 31, 2001; trust account general ledger that  
21 corresponded to the submitted trust account bank statements; copies of cancelled  
22 checks that were disbursed from the trust account relevant to the five (5) cases  
23 which Respondent identified as having caused the overdraft in the trust account;  
24  
25

1 copies of the duplicate deposit slips or their equivalents that correspond to the  
2 five (5) cases which had disbursement errors that caused the overdraft in the trust  
3 account; individual client ledgers or their equivalents that corresponded to the  
4 submitted trust account bank statements.  
5

6 3. A review of the trust account documents revealed that Respondent:

7 a. failed to properly safeguard client funds in that there were four (4)  
8 disbursement errors that resulted in client funds on deposit in Respondent's trust  
9 account being negligently converted;  
10

11 b. failed to conduct a monthly reconciliation of his trust account;

12 c. failed to maintain proper internal controls to adequately safeguard  
13 funds on deposit in his trust account.  
14

15 4. The Complaint against Respondent contained an allegation that  
16 Respondent violated Ethical Rule 1.8 by providing financial assistance to clients  
17 in connection with pending or contemplated litigation by advancing client funds  
18 on personal injury cases prior to receiving the settlement drafts. The State Bar of  
19 Arizona conditionally admits that it cannot prove by clear and convincing  
20 evidence that Respondent violated Ethical Rule 1.8.  
21  
22  
23  
24  
25



1 shall complete an audit of Respondent's trust account no later than ninety (90)  
2 days after issuance of a judgment and order by the Supreme Court of Arizona.  
3 Following the audit, Respondent shall enter into a Memorandum of  
4 Understanding.

6 (2) Respondent shall be responsible for the costs and expenses  
7 associated with his participation in the LOMAP program.

8 (3) In the event Respondent fails to comply with any of the foregoing  
9 terms, and information thereof is received by the State Bar, Bar Counsel shall file  
10 a Notice of Non-Compliance with the Hearing Officer previously assigned to this  
11 matter. The Hearing Officer shall conduct a hearing at the earliest practical date,  
12 but in no event later than thirty (30) days following receipt of said notice, and  
13 shall determine whether the terms of probation have been breached and, if so, to  
14 recommend appropriate action and response to such breach. If there is an  
15 allegation that Respondent failed to comply with any of the foregoing terms, the  
16 burden of proof shall be on the State Bar to prove non-compliance by a  
17 preponderance of the evidence.  
18  
19  
20

21 c. attendance at the State Bar of Arizona's Trust Account Ethics  
22 Enhancement Program.

24 d. Respondent shall pay the costs and expenses in the amount of  
25 \$769.78 incurred by the State Bar in bringing these disciplinary proceedings

1 within thirty (30) days of the Order approving the settlement. Attached hereto is  
2 a statement of costs and expenses incurred by the State Bar in this matter.

3 e. Respondent shall pay the administrative costs imposed by the  
4 Disciplinary Commission, the Supreme Court of Arizona, and the Disciplinary  
5 Clerk's Office in this matter.<sup>1</sup>

7 f. Respondent shall report his compliance with the terms of his  
8 probation to Bar Counsel.

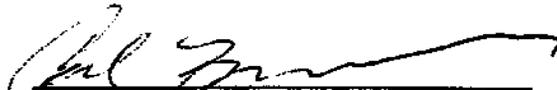
9 g. Respondent shall refrain from any conduct that would violate the  
10 Rules of Professional Conduct or other rules of the Supreme Court.

12 By entering into this Agreement, Respondent waives his right to a formal  
13 disciplinary hearing, pursuant to Rule 53(c)(6), Ariz.R.S.Ct., and the right to  
14 testify or present witnesses on his behalf at a hearing. Respondent further waives  
15 all motions, defenses, objections, or requests which he has made or raised, or  
16 could assert hereinafter if the conditional admissions and stated form of discipline  
17 are approved. Respondent is not represented by counsel in these proceedings.  
18 Respondent acknowledges that he has read this Agreement and has received a  
19 copy of it. This agreement, with conditional admissions, is submitted freely and  
20 voluntarily and not under coercion or intimidation. Respondent is aware of the  
21 Rules of the Supreme Court with respect to discipline and reinstatement.  
22  
23  
24

25 \_\_\_\_\_  
<sup>1</sup> As noted above, no client funds were lost. Therefore, no order of restitution is necessary.

1 This Tender of Admissions and Agreement for Discipline by Consent will  
2 be submitted to the Disciplinary Commission for approval. Respondent realizes  
3 that the Commission may request his presence at a hearing for presentation of  
4 evidence and/or argument in support of this Agreement. He further recognizes  
5 that the Commission may recommend rejection of this Agreement. He further  
6 understands that the Disciplinary Commission must approve this Agreement, and  
7 that this matter shall be final upon judgment and order of the Supreme Court of  
8 Arizona. If the Agreement is rejected, the conditional admissions stated herein  
9 are withdrawn.  
10  
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12 DATED this 8<sup>th</sup> day of October, 2002

13  
14   
15 Cal Baskerville  
16 Respondent

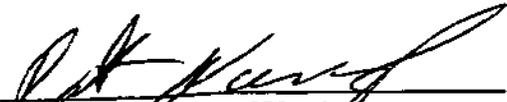
17 DATED this 9<sup>th</sup> day of October, 2002

18 STATE BAR OF ARIZONA

19   
20 Robert A. Clancy, Jr.  
21 Staff Bar Counsel

22 \* \* \*  
23 \* \* \*

1 Approved as to form and content:

2  
3   
4 Robert B. Van Wyck  
Chief Bar Counsel

5 Original of the foregoing filed with the Disciplinary Clerk  
6 this 9<sup>th</sup> day of October, 2002

7 by: Quendolyn Burke  
8

9 Copy of the foregoing mailed via first class mail/hand delivered\*  
this 9<sup>th</sup> day of October, 2002, to:

10 Christopher D. Thomas  
11 Hearing Officer 8Z  
12 40 North Central, Suite 2700  
Phoenix, Arizona 85004-4441

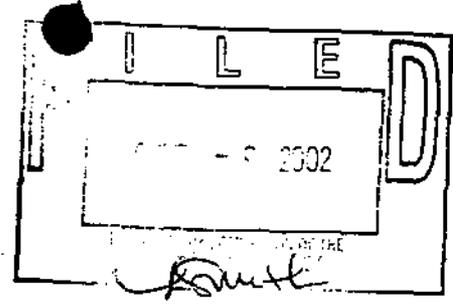
13 Patricia E. Nolan  
14 Settlement Officer 7Y  
15 2702 North 3<sup>rd</sup> Street, Suite 3000  
16 Phoenix, Arizona 85004-4607

17 Cal Baskerville  
18 Respondent  
19 616 East Southern, Suite 103  
Mesa, Arizona 85204-4941

20 Linda Perkins\*  
21 Lawyer Regulation Records Manager  
22 State Bar of Arizona  
111 West Monroe, Suite 1800  
23 Phoenix, Arizona 85003-1742

24 by: Quendolyn Burke  
RAC:gb

25



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9 IN THE MATTER OF A MEMBER ) No. 01-1511  
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11 ) **JOINT MEMORANDUM**  
12 **CAL BASKERVILLE,** ) **IN SUPPORT OF**  
13 **Bar No. 009014** ) **AGREEMENT FOR**  
14 ) **DISCIPLINE BY CONSENT**  
15 Respondent. )  
16 ) (Assigned to Hearing Officer 8Z)

17 The State Bar of Arizona through undersigned Bar Counsel and Respondent,  
18 who is not represented, hereby submit their Joint Memorandum in Support of the  
19 Agreement for Discipline by Consent, filed contemporaneously herewith.

20 **RECOMMENDED SANCTION**

21 The sanctions agreed upon by the State Bar and Respondent are that;  
22 Respondent agrees to be censured for violating Ethical Rule 1.15, Supreme Court  
23 Rule 43(d) State Bar of Arizona Trust Account Guideline 1(c) & 2(e), Supreme  
24 Court Rule 44(b); one (1) year of probation; to a LOMAP audit, the  
25 recommendations of which he agrees to abide by; to attend the State Bar of  
Arizona's Trust Account Ethics Enhancement Program; Respondent shall pay the

1 costs and expenses of the State Bar of Arizona in the amount of \$769.78 within  
2 thirty (30) days of the Order approving the settlement; Respondent shall pay the  
3 administrative costs imposed by the Disciplinary Commission, the Disciplinary  
4 Clerk's Office, and the Arizona Supreme Court in this matter; Respondent shall  
5 refrain from any conduct that would violate the Rules of Professional Conduct or  
6 other rules of the Supreme Court of Arizona. There is no issue of restitution in  
7 this matter.  
8  
9

10 In considering the appropriate sanction with respect to Respondent's ethical  
11 violations, it is useful to review the standards set by the Arizona Supreme Court.  
12 First, the purpose of lawyer discipline is not to punish the lawyer, but to protect  
13 the public, deter future misconduct, and instill public confidence in the Bar's  
14 integrity. In re Horwitz, 180 Ariz. 20, 28-29, 818 P.2d 352 (1994); In re  
15 Fioramonti, 176 Ariz. 182, 187, 859 P.2d 1315 (1993); In re Murray, 159 Ariz.  
16 280, 282, 767 P.2d 1 (1989). Second, in imposing discipline, it is appropriate to  
17 consider the facts of the case, the ABA Standards for Imposing Lawyer Sanctions  
18 (1991, with 1992 amendments) (the ABA Standards), and the proportionality of  
19 discipline imposed in analogous cases. In re Bowen, 178 Ariz. 283, 286, 872  
20 P.2d 1235 (1994); In re Fioramonti, 176 Ariz. at 187, 859 P.2d 1315 (1993); In re  
21 Murray, 159 Ariz. 280, 767 P.2d 1 (1989); In re Rivkind, 164 Ariz. 154 (1990); In  
22  
23  
24  
25

1 re Tarletz, 163 Ariz. 548, 554, 798 P.2d 381 (1990); In re Ockrassa, 165 Ariz.  
2 576, 579-580, 799 P.2d 1350 (1990).

### 3 ABA STANDARDS

4  
5 Standard 4.13 provides: "Reprimand (censure in Arizona) is generally  
6 appropriate when a lawyer is negligent in dealing with client property and causes  
7 injury or potential injury to a client."

8  
9 In the instant case, Respondent has conditionally admitted that he failed to  
10 appropriately manage his trust account and safeguard his clients' funds. Further,  
11 Respondent has conditionally admitted that his conduct was potentially harmful  
12 to his clients. The State Bar of Arizona and Respondent agree that a censure is  
13 the appropriate sanction because Respondent's conduct was not dishonest or self-  
14 dealing, but simply negligent.

### 15 MITIGATING AND AGGRAVATING CIRCUMSTANCES

16  
17 After a determination of the presumptive sanction, the next step under the  
18 Standards is consideration of the aggravating and mitigating circumstances.  
19

#### 20 Aggravating Factors:

21 9.22(c) pattern of misconduct. The record demonstrates that Respondent  
22 failed to comply with the trust account guidelines for a period of approximately  
23 two (2) years.  
24  
25

1           9.22(i) substantial experience in the practice of law. Respondent was  
2 admitted to practice law in Arizona on October 15, 1983.

3           **Mitigating Factors:**

4  
5           9.32(b) Absence of a dishonest or selfish motive. The disbursement errors  
6 which caused the overdraft in the trust account were due to clerical errors and  
7 Respondent's failure to reconcile and provide safeguards against clerical and  
8 mathematical errors. There was no dishonesty nor personal gain involved when  
9 Respondent committed these errors. Clients received all funds due to them.  
10

11  
12           9.32(d) Timely good faith effort to rectify consequences. Upon notice by  
13 the bank of the overdraft, funds were promptly deposited to avoid delay or  
14 expense to the clients. An extensive reconciliation was initiated and the errors  
15 located. Other procedures were initiated within Respondent's office to avoid  
16 future errors.  
17

18  
19           9.32(e) Full and free disclosure to disciplinary board. Upon inquiry by the  
20 State Bar of Arizona, all records were promptly and fully disclosed and the errors  
21 recognized by Respondent.  
22

23           9.32(e) Cooperative attitude toward proceedings. Every effort has been  
24 made by Respondent to cooperate with Bar Counsel during their investigation.  
25

1 Upon Complaint, Respondent recognized the errors in disbursement and has  
2 agreed to accept the proposed discipline.

3  
4 9.32(g) Character and reputation. Respondent is submitting herewith  
5 letters of his colleagues attesting to his character.

6  
7 9.32(j) Interim rehabilitation. Respondent has recognized his errors and  
8 has instituted procedures in his office to carefully monitor the trust funds. Other  
9 procedures have been instituted to check and cross check disbursements before  
10 they are issued. Respondent welcomes the recommendations of a LOMAP audit  
11 to improve the trust account management.

#### 12 13 14 PROPORTIONALITY ANALYSIS

15 To have an effective system of professional sanctions, there must be  
16 internal consistency and it is appropriate to examine sanctions imposed in cases  
17 that are factually similar. In re Shannon, Id at 72 (quoting In re Wines, 135, Ariz.  
18 203, 207 (1983)). However, the discipline in each case must be tailored for the  
19 individual case as neither perfection nor absolute uniformity can be achieved.  
20  
21 Matter of Riley, 142 Ariz. 604, 615 (1984).

22  
23 In determining the appropriate sanction for Respondent's conduct, Matter  
24 of Leiber, SB-01-0122-D is instructive. Attorney Leiber failed to comply with  
25 trust account guidelines, and issued a check in the amount of \$8,000.

1 Additionally, Leiber commingled funds by placing earned upon receipt fees, and  
2 other earned fees, as well as personal funds into his trust account. Leiber was  
3 censured, and placed on probation for one (1) year for his conduct.  
4

5 The agreed upon sanction in the instant matter is also consistent with other  
6 similar cases, including Matter of Riggs, 177 Ariz. 494, 869 P.2d 170 (1994).  
7 Attorney Riggs was censured and placed on probation for violating Ethical Rule  
8 1.15, and Supreme Court Rule 43, and Supreme Court Rule 44. Specifically,  
9 Riggs commingled client funds with his own in his trust account.  
10

### 11 CONCLUSION

12 The facts in this case, the ABA Standards, and the prior decisions of the  
13 Arizona Supreme Court all indicate that the proper discipline in this matter is a  
14 censure; probation for a period of one (1) year; a LOMAP audit, the  
15 recommendations of which he agrees to abide by; and attendance at the State Bar  
16 of Arizona's Trust Account Ethics Enhancement Program. The sanction and  
17 payment of costs support the purpose of attorney discipline. Respondent and the  
18 State Bar respectfully request that the Disciplinary Commission accept this  
19 Agreement for Discipline by Consent.  
20  
21

22 DATED this 8<sup>th</sup> day of October, 2002.  
23

24   
25 Cal Baskerville  
Respondent

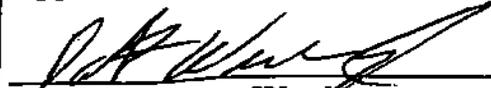
1 DATED this 9<sup>th</sup> day of OCTOBER, 2002.

2 STATE BAR OF ARIZONA

3  
4 

5 Robert A. Clancy, Jr.  
6 Staff Bar Counsel

7 Approved as to form and content

8 

9 Robert B. Van Wyek  
10 Chief Bar Counsel

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