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

IN THE MATTER OF A MEMBER)	Nos. 00-1635, 00-2128, 00-2212
OF THE STATE BAR OF ARIZONA,)	00-2286, 00-2491, and
)	01-1001*
PATRICK J. GEARE,)	TENDER OF ADMISSIONS
Bar No. 015748)	AND AGREEMENT FOR
)	DISCIPLINE BY CONSENT
Respondent.)	
)	(Assigned to Hearing Officer 8V
)	John M. Neis)

The State Bar of Arizona, and Respondent, who is not represented by counsel hereby submit the following Tender of Admissions and Agreement for Discipline by Consent ("Tender of Admissions") pursuant to Rule 56(a), Ariz.R.S.Ct., and the guidelines for discipline by consent issued by the Disciplinary Commission of the Supreme Court of Arizona. Respondent conditionally admits for purposes of this agreement that he committed violations involving a lack of diligence and communications in representing clients and that he failed to maintain a trust account for the safekeeping of client funds.

* Additional Matter

1 The parties have agreed to a sanction of ninety (90) day suspension, a term
2 of probation, and an assessment of costs and expenses, subject to review and
3 acceptance by the Disciplinary Commission and the Arizona Supreme Court.
4

5 **I. FACTS:**

6 1. At all times relevant hereto, Respondent was an attorney licensed to
7 practice law in the State of Arizona, having been admitted to practice in Arizona
8 on December 20, 1994. The following facts were alleged in connection with the
9 above enumerated files:

10 **A. COUNT ONE (FILE NO. 00-2212, Otte):**

11 2. In or about December 1999, Carol Otte ("Ms. Otte") retained
12 Respondent to pursue a workmen's compensation claim before the Industrial
13 Commission.

14 3. Although Respondent prepared a request for hearing on December 30,
15 1999, he did not file the request for hearing until on or about February 22, 2000.

16 4. Ms. Otte believes Respondent's delay in filing the request for hearing
17 delayed Ms. Otte's medical treatment and hearing by several months.

18 5. On May 9, 2000, Respondent received notices of two independent
19 medical examinations ("IME"), one for May 24, 2000, and a second for May 26,
20 2000. However, Respondent did not send either notice to Ms. Otte until May 23,
21 2000, one day before she was scheduled to attend the first IME.

22 6. On March 3, 2000, Respondent wrote to Ms. Otte advising her of a
23 hearing scheduled for June 6, 2000. Respondent also requested that Ms. Otte
24 contact him at least twenty-five (25) days before the hearing.
25

1 7. However, Respondent did not respond to Ms. Otte's numerous
2 telephone messages. It was not until June 5, 2000, one day before the scheduled
3 hearing, that Ms. Otte finally received an appointment to see Respondent.

4 8. When Ms. Otte arrived for her June 5, 2000, appointment with
5 Respondent, she was informed that she had actually missed the hearing because it
6 was scheduled for June 2, 2000.

7 9. Respondent asserted that one of his secretaries must have put the
8 wrong date in the computer, and stated he would write to the Administrative Law
9 Judge and explain the error. Respondent advised Ms. Otte to return the following
10 day to pick up the letters.

11 10. On June 6, 2000, Ms. Otte arrived at Respondent's office at the
12 appointed time, however Respondent was not at the office. Ms. Otte and
13 Respondent's secretary signed affidavits concerning the circumstances of the
14 missed hearing to be submitted to the Administrative Law Judge. Ms. Otte later
15 received a copy of Respondent's letter to the Administrative Law Judge dated June
16 12, 2000, but received no proof that such a letter had been sent.

17 11. Sometime after June 5, 2000, Ms. Otte received new information from
18 her doctor, correspondence from a collection agency, and a bill that the worker's
19 compensation insurer had not paid. Ms. Otte telephoned Respondent numerous
20 times about these matters, but received no response.

21 12. On July 14, 2000, Ms. Otte finally spoke with Respondent's secretary
22 who informed her that Respondent had a lot of hearings that week and that she
23 would inform Respondent about Ms. Otte's telephone call.
24
25

1 13. During the July 14, 2000, telephone conversation, Ms. Otte asked
2 Respondent's secretary if they had heard anything from the judge concerning her
3 case and was told that nothing with Ms. Otte's name had come across her desk.

4 14. On July 27, 2000, Ms. Otte called the Industrial Commission and was
5 told that a decision dismissing her case had been sent to Respondent on June 13,
6 2000.

7 15. Ms. Otte then contacted the Administrative Law Judge's office and
8 confirmed that the decision had been mailed to respondent on June 13, 2000, and
9 that the time limit to appeal that decision was thirty (30) days.

10 16. Respondent did not file an appeal, request for review or motion to re-
11 consider and the decision became final.

12 17. Ms. Otte telephoned Respondent on July 27, 2000, and left a message
13 for Respondent to return her call. Ms. Otte telephoned Respondent again on July
14 31, 2000, requesting her file.

15 18. Respondent failed to return either of Ms. Otte's telephone calls.

16 19. On August 23, 2000, Bar Counsel wrote Respondent requesting that he
17 file a response to Ms. Otte's charges. When Respondent failed to respond, a
18 probable cause order was issued by the Probable Cause Panelist on November 15,
19 2000. Thereafter, Respondent obtained counsel and ultimately filed a response to
20 Ms. Otte's charges on January 10, 2001. As to these facts, Respondent asserts and
21 the State Bar does not dispute that Respondent's delay in responding was a
22 product of the circumstances cited in mitigation in the Memorandum in Support of
23 Tender of Admissions and Agreement for Discipline by Consent ("Memorandum
24 in Support"), filed contemporaneously with this Tender.
25

1 **B. COUNT TWO (FILE NO. 00-2128, Da Silva):**

2 23. Dina Da Silva ("Da Silva") retained Respondent to pursue a worker's
3 compensation claim before the Industrial Commission based on a July 31, 1998,
4 work injury.

5 24. At the time Respondent was retained, he was associated with the law
6 firm of Grabb & Durando. However, after about a year, Respondent left the firm
7 and by agreement took the worker's compensation cases with him.

8 25. It was at the time that Respondent left the firm of Grabb & Durando
9 that Da Silva became aware of problems with Respondent.

10 26. Respondent would get behind in sending Da Silva the worker's
11 compensation checks two or three times each month.

12 27. Whenever Da Silva called Respondent's office, she would either not
13 receive a return telephone call or would be told "the check was in the mail."
14 Respondent would also recite personal problems as excuses.

15 28. Ms. Da Silva claims that as a result of Respondent's not timely
16 sending her workers' compensation checks, Da Silva, a single mother with two
17 children receiving no child support, lost her apartment and car. As to these
18 allegations, Respondent asserts that any delays in payment were of short duration
19 and any losses suffered by Ms. Da Silva were more likely the result of Ms. Da
20 Silva's other personal problems.

21 29. Respondent did not send Da Silva checks drawn on an IOLTA trust
22 account, but rather sent her a two-party out-of-state check or his own personal
23 checks.
24
25

1 30. Da Silva requested that Respondent send her photocopies of the
2 worker's compensation insurance company's original checks. Respondent failed to
3 do so.

4 31. On October 24, 2000, Bar Counsel wrote Respondent requesting that
5 he file a response to Da Silva's charges. When Respondent failed to respond, a
6 probable cause order was issued by the Probable Cause Panelist on November 28,
7 2000. Thereafter, Respondent obtained counsel and ultimately filed a response to
8 Da Silva's charges on January 10, 2001. As to these facts, Respondent asserts and
9 the State Bar does not dispute that Respondent's delay in responding was a
10 product of the circumstances cited in mitigation in the Memorandum in Support
11 filed contemporaneously with this Tender of Admissions.

12 **C. COUNT THREE (FILE NO. 00-2212, Tobias):**

13 32. Cynthia Tobias ("Ms. Tobias") retained Respondent to represent her in
14 a worker's compensation matter while Respondent was employed with Grabb and
15 Durando for an injury Ms. Tobias received in February 1992.

16 33. In or about August 1999, Respondent left Grabb and Durando. At that
17 time, Respondent took Ms. Tobias' file with him after consultation with Ms.
18 Tobias.

19 34. Ms. Tobias was awarded total loss of earnings and received a large sum
20 in back payments. The employer appealed this decision.

21 35. The employer prevailed in the appeal and Ms. Tobias' loss of earnings
22 capacity was reduced from 100% to zero.

23 36. Respondent agreed to appeal the decision to the Court of Appeals in
24 July 2000. Respondent's opening brief was due in August 2000.
25

1 37. When Ms. Tobias had not heard from Respondent concerning the
2 appeal, she attempted to contact Respondent and was only able to leave voice
3 messages that were unreturned by Respondent.

4 38. When Ms. Tobias was unable to contact Respondent, she wrote
5 Respondent requesting information on the status of her appeal by September 25,
6 2000. Ms. Tobias also inquired about the checks for the medical reimbursement
7 she was entitled to and for which she had sent Respondent her bills in May and
8 June 2000. Ms. Tobias has alleged she has not received reimbursement checks
9 from Respondent for medical benefit bills submitted by Respondent on Ms. Tobias
10 behalf on May 23, 2000, in the amount of \$250.77 and on July 19, 2000, in the
11 amount of \$270.90. As to this allegation, Respondent asserts that medical benefit
12 checks would have been sent to Ms. Tobias if he had received them and
13 Respondent asserts such checks were never issued or if they were, he did not
14 receive them. For purposes of this Tender of Admissions, the State Bar admits
15 that it has no clear and convincing evidence to dispute Respondent's assertion.

16 39. When Respondent failed to reply, Ms. Tobias called the Court of
17 Appeals and learned that Respondent had been granted an extension to file until
18 September 12, 2000, but that Respondent had failed to file the opening brief by
19 that deadline.

20 40. On September 23, 2000, Ms. Tobias again wrote to Respondent
21 requesting the status of her appeal. Respondent failed to answer that letter.

22 41. Ms. Tobias learned that Respondent had been granted another
23 extension to file the brief until October 13, 2000. However, Respondent failed to
24 file the brief and, on October 20, 2000, the employer filed a motion to dismiss.
25

1 42. In December 2000, Respondent was allowed to withdraw from
2 representation of Ms. Tobias so that she could retain other counsel.

3 43. Ms. Tobias alleged that despite requests from for copies of what was
4 being filed on her behalf, Respondent did not send Ms. Tobias copies of any of the
5 filings he made in her case to her. Further, Ms. Tobias claims she requested her
6 file from Respondent, but Respondent did not give Ms. Tobias the file nor did he
7 return her messages requesting her file. As to this allegation, Respondent asserts
8 that he never received any requests from Ms. Tobias and would have returned her
9 files had he received such a request. For purposes of this Tender of Admissions,
10 the State Bar admits that it has no clear and convincing evidence to dispute
11 Respondent's assertion.

12 44. Ms. Tobias alleged Respondent failed to abide by the August 16, 1999,
13 fee agreement signed in connection with the representation which provided that
14 Respondent would pay the first \$2000 in costs. Respondent allegedly deducted
15 \$310.76 for a vocational expert from a disability check sent to Ms. Tobias on
16 April 1, 2000, even though the \$2,000 cost level had not yet been reached.
17 Respondent concedes that the written fee agreement includes a term referring
18 Respondent's payment of costs, but Respondent disagrees with Ms. Tobias'
19 interpretation of the fee agreement term. In consideration of this Tender of
20 Admissions, Respondent has agreed that in the event Ms. Tobias requests fee
21 arbitration, Respondent will participate to determine what fee was appropriate and
22 to determine the effect on the fee of the disputed term in the fee agreement. The
23 State Bar will inform Ms. Tobias of the availability of fee arbitration should she
24 choose to avail herself of that option.
25

1 45. Ms. Tobias also alleged that Respondent should repay his attorney fee
2 if the appeal failed as the fee was based on a contingent fee contract. In
3 consideration of this Tender of Admissions, Respondent has agreed to submit to
4 fee arbitration to determine if any fee refund is appropriate. For purposes of this
5 Tender of Admissions, the State Bar admits that it has no clear and convincing
6 evidence to prove Respondent's fee was excessive and agrees that fee arbitration
7 would be an appropriate forum to resolve the dispute with the client.

8 46 On October 31, 2000, Bar Counsel wrote Respondent requesting that
9 he respond to Tobia's charges. Although Respondent was given twenty (20) days
10 to file a response, he did not do so. When Respondent failed to respond, a
11 probable cause order was issued by the Probable Cause Panelist on December 15,
12 2000. Thereafter, Respondent obtained counsel and ultimately filed a response to
13 Tobia's charges on January 10, 2001. As to these facts, Respondent asserts and the
14 State Bar does not dispute that Respondent's delay in responding was a product of
15 the circumstances cited in mitigation in the Memorandum in Support filed
16 contemporaneously with this Tender of Admissions.

17 **D. COUNT FOUR (FILE NO. 00-2286, Chepil):**

18 47. Jacquelyn Chepil ("Ms. Chepil") retained Respondent to assist her with
19 a worker's compensation case.

20 48. In July 1999, Ms. Chepil was awarded a 100% disability.

21 49. In February 2000, this award was reduced to 52.2%. In the reduction, a
22 determination was made that an overpayment of \$22,000 had been made.

23 50. Respondent had been paid his fees based on the 100% disability award.
24 However, when the award was reduced, Complainant claims this meant that
25 respondent was overpaid by \$1,095, which Respondent has failed and refused to

1 refund to the client. As to this allegation, Respondent believes he earned the fee,
2 that it was not excessive and that as a matter of law, he does not owe Ms. Chepil a
3 refund. However, in consideration of this Tender of Admissions, Respondent has
4 agreed to submit to fee arbitration to determine what fee was appropriate in the
5 event Ms. Chepil requests fee arbitration.

6 51. Ms. Chepil wrote to Respondent and requested his assistance in this
7 matter. However, Respondent failed to respond to Ms. Chepil's letter.

8 52. Ms. Chepil attempted numerous telephone calls to respondent, but
9 could only leave messages that were never returned.

10 53. On or about October 8, 2000, Ms. Chepil terminated Respondent's
11 services by certified mail, return receipt requested. In the termination letter, Ms.
12 Chepil requested her file from Respondent to be picked up on November 20, 2000.

13 54. On November 20, 2000, Ms. Chepil waited at Respondent's office,
14 along with another client who had an appointment with Respondent, for over an
15 hour, but Respondent failed to appear. As to this allegation, Respondent denies
16 any knowledge of any appointment as he was in the hospital at the time and had
17 been for three weeks.

18 55. Ms. Chepil again wrote and set a date for picking up the file from
19 respondent. When she arrived again, Respondent was not there and did not appear.

20 56. Ms. Chepil was finally able to obtain her file in or about December,
21 2000, but from a legal assistant working for the lawyer leasing space to
22 Respondent.

23 57. On November 10, 2000, Bar Counsel wrote Respondent requesting that
24 he respond to Ms. Chepil's charges. Although Respondent was given twenty (20)
25 days to file a response, he did not do so. When Respondent failed to respond, a

1 probable cause order was issued by the Probable Cause Panelist on December 15,
2 2000. Thereafter, Respondent obtained counsel and ultimately filed a response to
3 Ms. Chepil's charges on January 10, 2001. As to these facts, Respondent asserts
4 and the State Bar does not dispute that Respondent's delay in responding was a
5 product of the circumstances cited in mitigation in the Memorandum in Support
6 filed contemporaneously with this Tender of Admissions.

7 **E. COUNT FIVE (FILE NO. 00-2491, State Bar)**

8 58. In addition to the matters alleged in Counts One through Four hereof, in
9 November 2000, the Bar received a report from a paralegal ("Hildebrand")
10 employed by the lawyer from whom Respondent was leasing office space
11 indicating that Respondent had at least temporarily abandoned his practice and
12 clients.

13 59. Hildebrand reported that she had been informed that Respondent had
14 checked into a treatment facility on November 5, 2000. Hildebrand became
15 concerned that Respondent was not coming in to the office to open his mail and
16 had 60 or 70 files in his office that may or may not have been active files.
17 Hildebrand reported that Respondent's clients would come to the office looking
18 for Respondent and not find him or otherwise get Respondent's assistance with
19 their cases. In addition, Hildebrand came to believe that Respondent did not have
20 a trust account as two or three faxes had been received from clients of Respondent
21 indicating that checks issued to them by Respondent had bounced and the copies
22 of checks attached to such faxes indicated they had been written on Respondent's
23 operating account.
24
25

1 60. On or about December 6, 2000, the State Bar of Arizona received
2 confirmation of Hildebrand's concerns in the form of an affidavit from Hildebrand
3 signed on December 4, 2000

4 61. On December 14, 2000, Bar Counsel wrote Respondent requesting that
5 he respond to the charges set forth in Hildebrand's affidavit. Although
6 Respondent was given twenty (20) days to file a response, he did not do so. When
7 Respondent failed to respond, a probable cause order was issued by the Probable
8 Cause Panelist on April 25, 2001. As to these facts, Respondent asserts and the
9 State Bar does not dispute that Respondent's failure to timely respond was a
10 product of the circumstances cited in mitigation in the Memorandum in Support
11 filed contemporaneously with this Tender of Admissions.

12 **F. ADDITIONAL MATTER (01-1001, Sate Bar, Trust Account)**

13 62. On May 16, 2001, Bank of America notified the State Bar that on April
14 20, 2001, check number 1041 in the amount of \$400.00 and check number 1040 in
15 the amount of \$327.28 were presented for payment against Respondent's trust
16 account at a time when there was an insufficient balance.

17 63. Respondent admits that he failed to have adequate client ledgers and
18 failed to perform a monthly reconciliation of his trust account. As a result,
19 Respondent miscalculated the amount of funds in the account. The check for
20 \$327.28 payable to a client cleared. The check for \$400.00 representing what
21 Respondent believed to be earned fees was dishonored by the bank. No client
22 funds were misappropriated and all clients received the funds to which they were
23 entitled.
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1 **II. CONDITIONAL ADMISSIONS OF MISCONDUCT:**

2 Respondent and the State Bar make the following conditional admissions
3 concerning the misconduct alleged herein:
4

5 **A. COUNT ONE (FILE NO. 00-2212, Otte)**

6 Respondent, conditionally admits that his conduct as described in this count
7 violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.1, ER 1.2, ER 1.3, ER 1.4, ER
8 1.16(d), and ER 8.4(d).

9 The State Bar conditionally admits it could not prove by clear and
10 convincing evidence Respondent violated ER 8.1(b) or Rules 51(h) and (i),
11 Ariz.R.S.Ct.

12 **B. COUNT TWO (FILE NO. 00-2128, Da Silva)**

13 Respondent conditionally admits his conduct as described in this count
14 violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.2, ER 1.3, ER 1.4, ER 1.15, and
15 ER 8.4 and Rules 43 and 44 Ariz.R.S.Ct.

16 The State Bar conditionally admits it could not prove by clear and
17 convincing evidence Respondent violated ER 8.1(b) or Rules 51(h) and (i),
18 Ariz.R.S.Ct.

19 **C. COUNT THREE (FILE NO. 00-2212, Tobias)**

20 Respondent conditionally admits his conduct as described in this count
21 violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.1, ER 1.2, ER 1.3, ER 1.4, ER
22 1.15, ER 1.16, ER 3.2, ER 8.4 and Rules 43 and 44 Ariz.R.S.Ct.

23 The State Bar conditionally admits it could not prove by clear and
24 convincing evidence Respondent violated ER 8.1(b) or Rules 51(h) and (i),
25 Ariz.R.S.Ct.

1 ER 1.15 Safekeeping Property, Rule
2 43 and Rule 44, Ariz.R.S.Ct.
3 (Trust Account Rules and
4 State Bar Guidelines)

5 (Counts Two, Three, Four, Five and
6 Additional Matter)

5 ER 1.16 Declining or Withdrawing

2 (Counts One, Two and Three)

6 ER 8.4 Misconduct

5 (Counts One, Two, Three, Four and
7 Five)

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9

Total:

28 violations

10 **IV. RESTITUTION:**

11 **A. COUNT ONE (FILE NO. 00-2212, Otte):** Undersigned Bar Counsel
12 personally spoke with Ms. Otte in June 21, 2002 to determine if she had any
13 claims for restitution. Ms. Otte reported that although she felt she had to undergo
14 two operations instead of one and that her case was "messed up" as a result of
15 Respondent's mishandling of her representation, she did receive all of the funds to
16 which she believed she was entitled to receive from Respondent. Accordingly, the
17 State Bar conditionally admits for purposes of this tender of admissions that there
18 is no basis to order restitution to Ms. Otte.
19

21 **B. COUNT TWO (FILE NO. 00-2128, Da Silva):** Undersigned Bar
22 Counsel spoke personally with Ms. Da Silva at 4:16 P.M. on May 5, 2002, and
23 inquired as to whether she had received all funds she believed she was entitled to
24 in connection with her representation by Respondent, including any refunds she
25

1 may have been entitled to for any advances of costs she may have made. Ms. Da
2 Silva indicated that she never gave Respondent any funds for costs or for any other
3 purpose. Further, she indicated that although she had to retain other counsel to
4 settle her case, and "lost everything" because of the delay in handling of her case,
5 she was not aware of any funds not received that she would have been entitled to.
6 Accordingly, the Bar conditionally admits for purposes of this Tender that no
7 restitution is due to Ms. Da Silva.
8

9
10 **C. COUNT THREE (FILE NO. 00-2212, Tobias):** Undersigned bar
11 counsel spoke with Ms. Tobias at approximately 4:44 P.M., on May 5, 2002, and
12 inquired as to whether she had received all funds to which she was entitled. Ms.
13 Tobias indicated that at this time she could not remember the exact amounts, she
14 felt she had not received the sums she felt she was entitled to as set forth in her
15 original complaint. Ms. Tobias claims in her original complaint were based on
16 two situations.
17

18
19 First, Ms. Tobias claimed in her original complaint to the Bar that the fee
20 agreement she signed provided that Respondent was to assume the first \$2,000 of
21 costs associated with "trial preparation, medical records, vocational experts, etc."
22 In that regard, as alleged in Count Three, instead of advancing such costs,
23 Respondent deducted \$310.76 for a vocational expert from a benefit check sent to
24
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1 Ms. Tobias on April 1, 2000, even though the \$2,000 cost level had not yet been
2 reached.

3
4 Second, as alleged in Count Three, Respondent claimed she had not
5 received reimbursement checks from Respondent for medical benefit bills
6 submitted by Respondent on Ms. Tobias behalf on May 23, 2000, in the amount of
7 \$250.77 and on July 19, 2000, in the amount of \$270.90. As specified in
8 paragraph 38. herein, Respondent asserts that medical benefit checks would have
9 been sent to Ms. Tobias if he had received them and Respondent asserts such
10 checks were never issued or if they were, he did not receive them. For purposes of
11 this Tender of Admissions, the State Bar admits that it has no clear and convincing
12 evidence to dispute Respondent's assertion. Accordingly, no restitution is due for
13 such benefit checks.
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16 Ms. Tobias claims a refund of fees is due based on the reduction in her
17 disability rating and Respondent's contingent fee agreement. In consideration of
18 this Tender of Admissions, Respondent has agreed that in the event Ms. Tobias
19 requests fee arbitration, Respondent will participate to determine if any fee refund
20 is appropriate and the amount, if any. The State Bar will inform Ms. Tobias of the
21 availability of fee arbitration should she choose to avail herself of that option.
22
23

24 **D. COUNT FOUR (FILE NO. 00-2286, Chepil):** Undersigned
25 Bar Counsel personally spoke with Ms. Chepil at approximately 5:50 P.M. on

1 May 8, 2002, and inquired as to whether she had received all funds to which she
2 was entitled. Ms. Chepil indicated that Respondent had "messed up" her case and
3 that as a result of his mishandling, her disability rating was reduced from 100% to
4 50%. Ms. Chepil claims that the resulted in her being required to pay back half of
5 the 100% disability benefits paid to her during the pendency of her case. As a
6 result he claims she is ineligible for further benefits until such funds are paid back.
7 However, Ms. Chepil indicated that her fee agreement with Respondent was a
8 contingent fee agreement and that she had not advanced any funds to Respondent
9 nor did she claim Respondent was holding any funds belonging to her.
10 Accordingly, the State Bar conditionally admits for purposes of this tender that
11 there is no restitution due to Ms. Chepil in Count Four.
12
13
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15 **E. COUNT FIVE (FILE NO. 00-2491, State Bar):** The individual who
16 advised the State Bar of the facts enumerated in Count Five was not a client of
17 Respondent's and had no specific evidence of any particular client not receiving
18 funds to which they were entitled. As a result, the State Bar conditionally admits
19 for purposes of this tender that there is no restitution due in connection with Count
20 Five.
21

22 **F. NEW MATTER (01-1001, State Bar: Trust Account):**

23
24 The State Bar has not found any evidence that any one did not receive funds
25 to which they were entitled in connection with this count and accordingly

1 conditionally admits for purposes of this agreement that there is no restitution due
2 in connection with Count Six.

3
4 **V. SANCTIONS**

5 Respondent and the State Bar agree that on the basis of the conditional
6 admissions contained herein, the appropriate disciplinary sanctions are as follows:

7 1. Respondent shall be suspended for ninety (90) days and shall
8 therefore be subject to the requirements for re-instatement as provided by
9 Rule 71(a), (d), and (h) Ariz.R.S.Ct. and Rule 72 Ariz.R.S.Ct..

10 2. Respondent shall be placed on probation for a period of one
11 year, effective upon Respondent's reinstatement to practice from the
12 foregoing suspension. The parties agree at this time that if Respondent
13 returns to the active practice of law, at a minimum Respondent shall submit
14 to an audit of his practice by the Director of the Law Office Management
15 Assistance Program (LOMAP) of the State Bar or her designee and that
16 Respondent shall also submit to an assessment by the Director of the
17 Members Assistance Program of the State Bar (MAP). The
18 recommendations of the Director of the LOMAP and MAP shall then be
19 incorporated as additional terms of the Probation ordered pursuant to this
20 Agreement for Discipline by Consent.

21 3. Respondent shall pay all costs and expenses incurred by the
22 State Bar, the Hearing Officer, the Disciplinary Commission, the
23 Disciplinary Clerk's Office and the Arizona Supreme Court in this matter.

24 4. In the event respondent fails to comply with any of the
25 foregoing terms, and information thereof is received by the State Bar, bar
counsel shall report "material violations of the terms of probation to the
imposing entity" pursuant to the provisions of Rule 52(a)6.C. Ariz.R.S.Ct..
The imposing entity may refer the matter to a hearing officer to conduct a
hearing at the earliest practical date, but in no event less than thirty-days
(30) following receipt of said report of the probation violation. If the matter
is referred to a hearing officer, the hearing officer shall determine whether
the terms of probation have been breached and, if so, to recommend
appropriate action and response to such breach. If there is an allegation that

1 respondent failed to comply with any of the foregoing terms, the burden of
2 proof shall be on the State Bar to prove non-compliance by a preponderance
3 of the evidence.

4 Respondent, by entering into this agreement, waives his right to a formal
5 disciplinary hearing, pursuant to Rule 53(c)6, Ariz.R.S.Ct., and the right to testify
6 or present witnesses on his behalf at a hearing. Respondent further waives all
7 motions, defenses, objections, or requests which he has made or raised, or could
8 assert hereafter, if the conditional admissions and stated form of discipline are
9 approved. Respondent is represented by counsel in these proceedings.
10 Respondent acknowledges that he has read this agreement and has received a copy
11 of it. Respondent submits this agreement, with conditional admissions, freely and
12 voluntarily and without coercion or intimidation and is aware of the Rules of the
13 Supreme Court with respect to discipline.
14
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16 This tender of admissions and agreement for discipline by consent will be
17 submitted to the Disciplinary Commission for approval. Respondent realizes that
18 the Disciplinary Commission may order a Hearing Officer to conduct an
19 evidentiary hearing, if necessary. Respondent further recognizes that the
20 Disciplinary Commission may recommend rejection of this agreement or may
21 propose modifications. Respondent further understands that if the stated form of
22 discipline herein includes a sanction imposable only by the Arizona Supreme Court
23 the Court must approve this agreement before it becomes final; if the agreement is
24
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1 rejected, his conditional admissions are withdrawn.

2
3 **This agreement, with conditional admissions, is submitted freely and**
4 **voluntarily and not under coercion or intimidation. I am aware of the Rules**
5 **of the Supreme Court with respect to discipline and reinstatement.**

6 DATED this 25th day of JUNE, 2003.

7 
8 _____
9 Patrick J. Geare
10 Respondent

11 DATED this 25th day of June, 2003.

12 STATE BAR OF ARIZONA

13 
14 _____
15 Loren J. Braud
16 Deputy Chief Bar Counsel

17 Original filed with the Disciplinary Clerk
18 this 26 day of June, 2003.

19 by 
20 _____
LJB/cm

21 Approved as to form and content:

22 
23 _____
24 Robert Van Wyck
25 Chief Bar Counsel

1 Original filed this 26 day of
2 June 2003, with :

3 Disciplinary Clerk of the Supreme Court
4 Certification and Licensing Division
5 1501 W. Washington, #104
6 Phoenix, Arizona 85007-3329

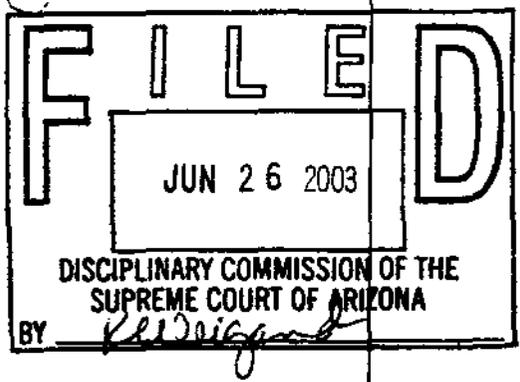
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7 **BEFORE THE DISCIPLINARY COMMISSION OF**
8 **THE SUPREME COURT OF ARIZONA**

9 **IN THE MATTER OF A MEMBER) Nos. 00-1635, 00-2128, 00-2212**
10 **OF THE STATE BAR OF ARIZONA,) 00-2286 and 00-2491;**
11 **) and File No. 01-1001***
12 **)**

13 **PATRICK J. GEARE,) MEMORANDUM IN SUPPORT**
14 **Bar No. 015748) OF TENDER OF ADMISSIONS**
15 **) AND AGREEMENT FOR**
16 **) DISCIPLINE BY CONSENT**
17 **)**
18 **Respondent.)**
19 **) (Assigned to Hearing Officer 8V**
20 **) John M. Neis)**

21 The State Bar of Arizona, through counsel, and Respondent, pro per, hereby
22 submit their Joint Memorandum in Support of the Agreement for Discipline by
23 Consent filed contemporaneously herewith.

24 The conduct that Respondent has conditionally admitted is set forth in the
25 accompanying agreement. In this memorandum, the parties will address the stated
form of sanction that is a ninety (90) day suspension, plus probation and payment of
the costs incurred by the State Bar in this disciplinary proceeding.

* Additional Matter

1 **I. ABA Standards**

2 **A. Presumptive Sanction**

3 In arriving at the agreed upon sanction, the parties considered the ABA
4 Standards for Imposing Lawyer Sanctions (Standards). According to the ABA
5 Standards:
6

7 "[t]he ultimate sanction imposed should at least be consistent with the
8 sanction for the most serious instance of misconduct among a number of
9 violations; it might well be and generally should be greater than the sanction
10 for the most serious misconduct." *1991 ABA Standards, Theoretical*
11 *Framework, p. 6.*; See also Disciplinary Commission Report as adopted by
12 Supreme Court of Arizona in *Matter of Redeker, 177 Ariz. 305, 310, 868*
13 *P.2d 318 (1994)*

14 The misconduct conditionally admitted by the Respondent in the Tender of
15 Admissions and Agreement for Discipline by Consent filed contemporaneously
16 herewith, included two types of misconduct that could be considered the most
17 serious. First, Respondent admitted that he failed to maintain a trust account for the
18 safekeeping of client funds at a time when substantial worker's compensation
19 benefits were being paid to him for the benefit of his clients. The applicable ABA
20 Standards provide :

21 ***ABA Standard 4.1 Failure to Preserve the Client's Property***

22 *Absent aggravating or mitigating circumstances, upon application of*
23 *the factors set out in 3.0, the following Sanctions are generally appropriate*
24 *in cases involving the failure to preserve client property:*
25

1 *Aggravation and Mitigation* identifies aggravating and mitigating factors that may
2 be considered in determining an appropriate sanction.

3
4 The parties agree there are three (3) aggravating factors present in this case,
5 including:

- 6 1. *Standard 9.22 (c)* pattern of misconduct;
- 7 2. *Standard 9.22(d)* multiple offenses;
- 8 3. *Standard 9.22(h)* vulnerability of victim;

9 The parties agree there are nine (9) mitigating factors in this case include:

- 10 1. *9.32(a)* absence of a prior disciplinary record;
- 11 2. *9.32 (b)* absence of a dishonest or selfish motive;
- 12 3. *9.32 (c)* personal or emotional problems;
- 13 4. *9.32(d)* timely good faith effort to make restitution or to rectify
14 consequences of misconduct;
- 15 5. *9.32(e)* full and free disclosure to a disciplinary board or cooperative
16 attitude toward proceedings;
- 17 6. *9.32(g)* character or reputation;
- 18 7. *9.32(i)* mental disability or chemical dependency including
19 alcoholism or drug abuse when:
 - 20 (1) there is medical evidence that the respondent is affected by a
21 chemical dependency or mental disability.
 - 22 (2) the chemical dependency or mental disability caused the
23 misconduct;
 - 24 (3) the respondent's recovery from the chemical dependency or
25 mental disability is demonstrated by a meaningful and sustained
period of successful rehabilitation; and
 - (4) the recovery arrested the misconduct and recurrence of that
misconduct is unlikely.
8. *9.32 (j)* delay in disciplinary proceedings;
9. *9.32 (l)* remorse;

10 In entering into this agreement, the State Bar believes particular weight must
11 be given to the mitigating factor of *Standard 9.32(i)* because of the evidence of

1 Respondent's psychological and chemical dependency problems and his
2 demonstrated success in addressing such problems. The State Bar acknowledges the
3 evidence Respondent suffered from a mental disability and chemical dependency
4 (See Appendix to Memorandum In Support of Tender of Admissions and
5 Agreement for Discipline By Consent, filed contemporaneously herewith with a
6 request for a protective order). The State Bar further acknowledges that such
7 disability and dependency caused the misconduct, that Respondent's recovery has
8 been demonstrated by a meaningful and sustained period of successful rehabilitation,
9 and that Respondent's recovery has arrested the misconduct and recurrence is
10 unlikely.
11
12
13

14 Although not one of the listed mitigating factors, the Parties also believe that
15 other facts should be taken into consideration. In particular, Respondent has
16 established a successful jewelry making business and does not intend to return to the
17 active practice of law for the foreseeable future. However, this agreement provides
18 for a term of probation including a requirement that in the event Respondent returns
19 to the active practice of law within one year of the entry of the judgment and order in
20 these proceedings, he will notify the State Bar of his intentions and will submit to
21 Members Assistance Program (MAP) and a Law Office Management Assistance
22 Program (LOMAP) assessments. Respondent has also agreed as a term of probation
23 to abide by any conditions recommended by the MAP and LOMAP programs to be
24
25

1 imposed upon his practice to insure that the public, the profession and the system of
2 justice will be protected.

3 II. PROPORTIONALITY ANALYSIS:

4 *Matter of Rubi*, 133 Ariz. 491, 652 P.2d 1014 (1982). Rubi deposited client
5 funds into his personal checking account instead of his trust account and the balance
6 later dipped below the amount he was to have held in trust. Rubi also failed to
7 maintain complete records of the handling, maintenance and disposition of the funds
8 in accordance with trust account requirements and made false statements to the State
9 Bar. Rubi was suspended for one-year for violating DR 1-102(A)(4), DR 7-
10 102(A)(3) and DR 9-102(A)(1) and (2).

11 *Matter of Retter*, 180 Ariz. 515, 885 P.2d 1080 (1994). Retter commingled
12 personal funds with those of his clients' in his trust account to avoid a tax lien on his
13 business account and failed to maintain complete trust account records resulting in
14 an overdraft when he withdrew what he thought were his own funds from the trust
15 account. Retter entered into an agreement for discipline by consent for a 120-day
16 suspension and probation for violating Rules 43(a) and 44(a) Ariz.R.S.Ct.. There
17 were numerous mitigating factors present.

18 In *Matter of Murray*, SB-00-0013-D, 2000 Ariz. LEXIS 21, (2000), Murray
19 deposited client funds into his business account, failed to make timely payments on
20 behalf of his client to a third party, and later made the payment out of personal
21

1 funds. Additionally, Murray kept certain client funds for himself, which resulted in
2 insufficient trust account funds when he issued a check for payment to his client.
3
4 Murray also failed to maintain individual client ledgers or appropriate trust account
5 reconciliation records. He cooperated with the State Bar and accepted an agreement
6 for a six-month suspension and upon reinstatement, two-years of probation
7 (LOMAP and EEP) for violating ER 1.15 and SCR's 43 and 44. In aggravation were
8 factors 9.22(a), (c) and (i) and in mitigation were factors 9.32(c), (d), (e) and (m).
9
10 Murray involved a knowing mental state.

11 In *In re Cord*, SB-01-0042 (2001), the respondent was suspended for three
12 months and placed on probation for using his trust account as a general account, co-
13 mingling personal funds with client funds, paying personal expenses from his trust
14 account, allowing his trust account to incur overdrafts and delaying cooperation
15 with the State Bar. There were four factors present in mitigation and no factors in
16 aggravation.
17
18

19 III. CONCLUSION

20 The ABA Standards for Imposing Lawyer Sanctions suggest that
21 suspension is the appropriate presumptive sanction. Moreover, the case law
22 suggests that suspension is appropriate. It is therefore the position of the State
23 Bar and Respondent that a ninety (90) day suspension, followed by a one year
24 term of probation, and costs and expenses, is appropriate.
25

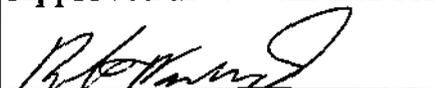
1 DATED this 25TH day of JUNE, 2003.

2
3
4 
5 _____
6 Patrick J. Geare
7 Respondent

8 DATED this 25th day of June, 2003.

9
10
11 
12 _____
13 Loren J. Braud
14 Deputy Chief Bar Counsel

15 Approved as to form and content:

16 
17 _____
18 Robert Van Wyck
19 Chief Bar Counsel

20 Original filed this 26 day of
21 June 2003, with :

22 Disciplinary Clerk of the Supreme Court
23 Certification and Licensing Division
24 1501 W. Washington, #104
25 Phoenix, Arizona 85007-3329

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by: Cathy A. McJeel
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