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7 Gary W. Kazragis
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10 Sedona, AZ 86336-3996
11 Telephone (928) 282-3645
12 Respondent

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

15 **IN THE MATTER OF A MEMBER**
16 **OF THE STATE BAR OF ARIZONA**

17 **GARY W. KAZRAGIS**
18 **Bar No. 012215,**

19 **Respondent.**

20 File No. 02-0157

21 **TENDER OF ADMISSIONS**
22 **AND AGREEMENT FOR**
23 **DISCIPLINE BY CONSENT**

24 This agreement is entered into between the State Bar of Arizona and
25 respondent Gary W. Kazragis, who is not represented, and is submitted
26 pursuant to Rule 56(a), Ariz.R. S. Ct. and the guidelines for discipline by
27 consent issued by the Disciplinary Commission of the Supreme Court of
28 Arizona. Respondent's admissions to the charges are being tendered in

1 exchange for the form of discipline stated herein, subject to review and
2 acceptance by the Disciplinary Commission.

3 Respondent failed to safeguard client funds on deposit in his trust
4 account and failed to maintain his trust account in accordance with the Rules
5 of Professional Conduct. Respondent will receive a censure for his conduct
6 and be placed on one year's probation.
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9 This agreement serves the purposes of discipline in that it protects the
10 public and will deter other lawyers from engaging in similar misconduct.
11 Restitution is not applicable in this matter. Respondent shall pay all costs and
12 expenses incurred in these discipline matters. The Joint Memorandum in
13 Support of Agreement by Consent is filed contemporaneously herewith.
14

15 FACTS

- 16 1. Respondent was admitted to practice law in Arizona on October 21, 1988.
- 17 2. A probable cause order was entered in this matter on December 3, 2002
18 (Exhibit A). A formal complaint has not been filed.
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- 20 3. On January 23, 2002, the State Bar received an overdraft notice regarding
21 respondent's trust account. The notice indicated that on January 11, 2002,
22 a \$3,502.56 item attempted to pay against the trust account when the
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1 balance was only \$2,653.57. The bank paid the \$3,502.56.00 item and
2 charged a \$25.00 overdraft fee.

3 4. On January 23, 2002, the State Bar received an overdraft notice regarding
4 respondent's trust account. The notice indicated that on January 14, 2002,
5 a \$171.00 item attempted to pay against the trust account when the balance
6 was only \$151.01. The bank paid the \$171.00 item and charged a \$25.00
7 overdraft fee.
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10 5. On January 23, 2002, the State Bar of Arizona received an overdraft notice
11 regarding respondent's trust account. The notice indicated that on January
12 15, 2002, a \$171.00 item and a \$30.00 attempted to pay against the trust
13 account when the balance was a negative \$44.99. The bank paid the
14 \$171.00 item and the \$30.00 and charged a \$50.00 overdraft fee.
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17 6. Alerted by the banks notifications that respondent's trust account had been
18 overdrawn, the State Bar's staff investigator conducted an investigation.
19
20 The investigation resulted in the following findings:

21 a On June 29, 2001 the client funds balance in the trust account should
22 have been \$29,565.68. The trust account bank statement, however,
23 indicated a balance in the trust account of only \$1,082.73, reflecting a
24 deficit in the trust account of \$28,482.95. During that time period,
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1 respondent was not monitoring the actual disbursements from the trust
2 account. Each disbursement was not checked and recorded on
3 individual client ledgers. Respondent relied upon the fact that the work
4 being done for the clients would be timely completed and that all funds
5 would be earned. Respondent realizes this was wrong and has changed
6 procedures to comply with the rules.
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9 b On January 15, 2002 the client funds balance in the trust account should
10 have been \$13,672.53. The trust account bank statement, however,
11 indicated a negative \$245.99 balance in the trust account, reflecting a
12 deficit in trust account of \$13,918.52. Again, this was due to
13 respondent's failure to monitor the trust disbursements. But the funds
14 were all accounted for as shown by the attached letter detailing each
15 account (Exhibit B).
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18 c Virtually all of the disbursements from the trust account payable to
19 respondent were unable to be correlated to specific client(s).
20 Respondent now realizes that he failed to properly identify
21 disbursements and has changed this procedure.
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24 d Numerous disbursements from the trust account were referenced as
25 client trust balance refunds. The total of these refunds was \$5,016.34;
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1 however, the balance in the trust account on June 29, 2001 to offset
2 these refunds was only \$1,082.73. Again, by failing to actually balance
3 the client ledgers, respondent recognizes he did not safeguard client
4 funds.

5
6 e Respondent failed to keep his funds separate from his clients' funds.
7 Respondent received advanced fees from clients on credit cards that
8 were deposited into his operating account and then transferred to the
9 trust account. Although the funds were transferred later, there was a
10 commingling of client and attorney funds. This was corrected with the
11 assistance of Diane Ellis and a review of ethics opinions and trust
12 account procedures. Respondent now participates in Bank One's
13 business fax program. Each workday, a fax comes from the bank
14 showing the trust account transactions including credit card
15 transactions. These transactions are reviewed to ensure that funds are
16 being placed in the correct account.

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21 f Respondent failed to maintain complete trust account records and to
22 exercise due professional care. Respondent did maintain client ledgers,
23 but failed to properly maintain those ledgers by matching them to
24 disbursements from the trust account. Again, this is reflective of the
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1 fact that respondent did not properly review the records as required by
2 the rules. But with the use of the Business Fax program, Quicken and
3 other procedural changes, those issues have been resolved.

4 g Respondent failed to maintain a general ledger at his office, which
5 reflected the ongoing balance in the trust account. Respondent failed to
6 conduct monthly account reconciliation, although respondent's outside
7 accountant did balance the trust account to the bank statements (though
8 not the client ledgers). Respondent now maintains a general ledger and
9 client ledgers that are reconciled with the bank statements.

10 h Respondent failed to record all transactions to the trust account
11 promptly and completely, including the credit card deposits.
12 Respondent failed to deposit funds intact into his trust account. Using
13 the Business Fax program, Quicken and other procedural changes, those
14 issues have been resolved.
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20 CONDITIONAL ADMISSIONS

21 Respondent conditionally admits that his conduct as described above
22 violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.15 and Rules 43 and 44.
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SANCTION

1 Respondent and the State Bar agree that on the basis of the conditional
2 admissions contained herein, the appropriate disciplinary sanction is as
3 follows:
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6 1. Respondent shall receive a censure for violating Rule 42 Ariz. R. S. Ct.,
7 specifically ER 1.15, and Rules 43 and 44.
8
- 9 2. Respondent shall be placed on probation for a period of one year and
10 shall comply with the recommendations of the LOMAP Director, Diane
11 Ellis, or her designee, regarding his trust account.
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- 13 3. Respondent shall be assessed the costs and expenses incurred in these
14 disciplinary matters, pursuant to Rule 52(a)(8), Ariz. R. S. Ct. A
15 statement of costs and expenses is attached hereto (Exhibit C).
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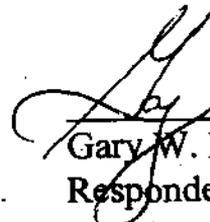
17 Respondent, by entering into this agreement, waives his right to a
18 formal disciplinary hearing that he would otherwise be entitled to pursuant to
19 Rule 53(c)6, Ariz.R.S.Ct., and the right to testify or present witnesses on his
20 behalf at a hearing. Respondent further waives all motions, defenses,
21 objections, or requests which he has made or raised, or could assert hereafter,
22 if the conditional admissions and stated form of discipline are approved.
23 Respondent does not have the assistance of counsel in these proceedings.
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1 Respondent acknowledges that he has read this agreement and received a copy
2 of it.

3 This tender of admissions and agreement for discipline by consent will
4 be submitted to the Disciplinary Commission for approval. Respondent
5 realizes that the Commission may request his presence at a hearing for
6 presentation of evidence and/or oral argument in support of this agreement.
7 He further recognizes that the Commission may recommend rejection of this
8 agreement, and that the Arizona Supreme Court may accept or reject the
9 Commission's recommendation. If the Arizona Supreme Court or the
10 Disciplinary Commission rejects this agreement, respondent's conditional
11 admissions are withdrawn.
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16 **This agreement, with conditional admissions, is submitted freely and**
17 **voluntarily and not under coercion or intimidation. I am aware of the**
18 **Rules of the Supreme Court with respect to discipline and reinstatement.**

19 DATED this 21 day of April, 2003.

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23 Gary W. Kazragis
24 Respondent
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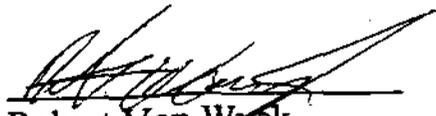
DATED this 24th day of April, 2003.

STATE BAR OF ARIZONA



Shauna R. Miller
Senior Bar Counsel

Approved as to form and content:



Robert Van Wyck
Chief Bar Counsel

Original filed this 24 day
of April, 2003, with:

Disciplinary Clerk's Office
Supreme Court of Arizona
Certification and Licensing Division
1501 W. Washington #104
Phoenix, AZ 85007-3329

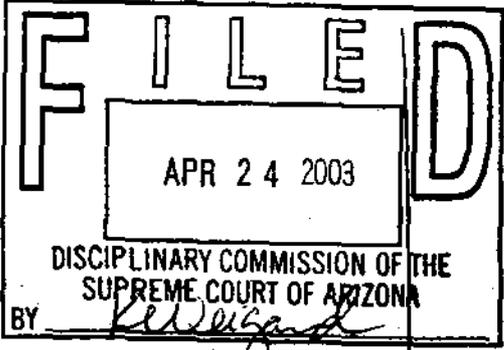
Copy of the foregoing hand delivered
this 24 day of April, 2003, to:

Dee Steadman
Lawyer Regulation Records Manager
111 West Monroe St., Suite 1800
Phoenix, AZ 85003

1 Copy of the foregoing mailed
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2 Gary W. Kazragis
3 Attorney at Law
4 2030 W. Highway 89-A, Suite A1
5 Sedona, AZ 86336-3996
6 Respondent

7 by: SRM
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**BEFORE THE DISCIPLINARY COMMISSION
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**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA**

GARY W. KAZRAGIS
Bar No. 012215,

Respondent.

File No. 02-0157

**JOINT MEMORANDUM IN
SUPPORT OF AGREEMENT
FOR DISCIPLINE BY
CONSENT**

The State Bar of Arizona and respondent Gary W. Kazragis, who is not represented, hereby submit their Joint Memorandum in Support of the Agreement for Discipline by Consent. Respondent failed to safeguard client funds on deposit in his trust account and failed to maintain his trust account in accordance with the Rules of Professional Conduct. Respondent will receive a censure for his conduct and be placed on one year's probation. This

1 agreement serves the purposes of discipline in that it protects the public and
2 will deter other lawyers from engaging in similar misconduct. Restitution is
3 not applicable in this matter. Respondent shall pay all costs and expenses
4 incurred in these discipline matters. The Tender of Admission and Agreement
5 for Discipline by Consent is filed contemporaneously herewith.
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7 In arriving at the agreed upon sanctions, consideration was given to the
8 ABA *Standards for Imposing Lawyer Sanctions* ("ABA Standards"), Rule
9 52(a)(11), Ariz. R. S. Ct., and Arizona case law.
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11 ABA STANDARDS

12 The ABA *Standards* are designed to promote consistency in the
13 imposition of sanctions by identifying relevant factors that courts should
14 consider and then applying these factors to situations where lawyers have
15 engaged in various types of misconduct. ABA *Standard* 1.3, Commentary.
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18 In this matter, consideration was given to ABA *Standard* 4.13. Briefly,
19 censure is generally appropriate when a lawyer is negligent in dealing with
20 client property and causes injury or potential injury to a client.
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23 In January of 2000, respondent began solo law practice in Sedona.
24 Respondent opened a trust account and an operating account at Bank One in
25 Sedona. Respondent implemented office procedures to make sure that he
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1 complied with the ethical rules. Respondent utilized the Time Slips billing
2 system and individual client ledgers were created by hand and maintained by
3 the sole office employee.

4 After Respondent began his solo practice, he did not pay attention to the
5 systems he had implemented. Respondent falsely believed that he could
6 maintain the trust account by periodically reviewing individual client ledgers
7 and the trust account balance. Respondent now recognizes that was a mistake
8 and a breach of his duty toward those clients.
9

10 The bar investigation revealed that respondent did not maintain
11 adequate records to insure that client funds were being properly maintained.
12 Although billing records and client ledgers were kept, they were not being
13 utilized on a regular basis to make sure that each client account was reconciled
14 each month and that the balances were being maintained independently for
15 each client. Additionally, respondent did not properly maintain a running
16 balance of the funds in the trust account and instead relied upon his
17 accountant's monthly trust account reconciliation. Once respondent became
18 aware of the trust account problems, he took immediate action.
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24 Respondent worked with LOMAP director Diane Ellis during the
25 investigation to identify the problems with his trust account and to establish
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1 correct trust account procedures and records maintenance. Respondent is now
2 maintaining proper client ledgers and conducting a monthly reconciliation.
3 Respondent has implemented new accounting software and procedures to
4 ensure the safeguarding of client funds and his trust account is in compliance
5 with Supreme Court Rules and the trust account guidelines.
6

7 In determining an appropriate sanction, both the Court and the
8 Commission consider the duty violated, the lawyer's mental state, the actual or
9 potential injury caused by the misconduct, and the existence of aggravating
10 and mitigating factors. *Matter of Tarletz, 163 Ariz. 548, 789 P.2d 1049*
11 *(1990); ABA Standard 3.0.* Although respondent violated his duty to his
12 clients, it was not intentional. Rather, respondent's conduct was negligent and
13 no clients were harmed due to respondent's failure to properly maintain his
14 client trust account.
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19 In deciding what sanction to impose the following aggravating and
20 mitigating circumstances should be considered.

21 In aggravation:

22 Standard 9.22(i) substantial experience in the practice of law.
23 Respondent has been in practice fourteen years in the State of Arizona and
24 twelve years in the State of Iowa.
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1 In *Matter of Randall*, SB- 02-0146-D (November 2002), Randall failed
2 to conduct a proper monthly reconciliation. He used numerous counter checks
3 to withdraw money from his trust account instead of using pre-numbered
4 checks as required by the Guidelines. He also deposited and commingled his
5 own separate funds, including earned fees, with client funds in his trust
6 account. Randall failed to maintain adequate funds in the trust account
7 resulting in the account being overdrawn on two occasions. He failed to
8 establish adequate internal controls to safeguard client funds. The hearing
9 officer recommended that Randall receive a censure for his misconduct, which
10 was accepted by the Disciplinary Commission and the Arizona Supreme
11 Court. Randall was not placed on probation, presumably because he was no
12 longer working as a sole practitioner and was employed by a medium size firm
13 where he was not in charge of any accounting procedures.
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19 In *Matter of Hall*, SB-02-0122-D (September 2002), Hall advance funds
20 from his firm's operating account and placed those funds into the trust account
21 to cover client costs. The State Bar received four overdraft notices from Bank
22 One. Subsequently, records obtained by the State Bar revealed that Hall's
23 trust account records were deficient for individual client accounts. The trust
24 account records reflected negative balances during this period for a total of
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1 twelve clients. Hall failed to adequately monitor his clients' funds, which were
2 on deposit in his trust account and as a result of this failure, overdrafts
3 occurred on the account. He failed to establish sufficient internal controls in
4 order to properly monitor his client's funds. Hall was censured and placed on
5 one-year probation by a hearing officer, which was accepted by the
6 Disciplinary Commission and the Arizona Supreme Court
7

8
9 In *Matter of Inserra*, SB-02-0144-D (October 2002), Inserra failed to
10 keep his earned fees separate from that of his client funds held in the trust
11 account, failed to transfer fees from the trust account when earned, and
12 commingled his own funds with those of his clients. Inserra also failed to
13 maintain complete trust account records for a period of five years, failed to
14 exercise due professional care in the maintenance of his trust account, failed to
15 only disburse from his trust account with pre-numbered checks, and failed to
16 conduct a monthly reconciliation of his trust account. Inserra and the State
17 Bar submitted a consent agreement, agreeing that a censure, two years
18 probation and costs were the appropriate sanction. The Disciplinary
19 Commission unanimously recommended accepting the agreement and the
20 Arizona Supreme Court accepted the recommendation of the Disciplinary
21 Commission without discretionary review.
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1 In this case, respondent failed to correlate disbursements made to
2 himself from the trust account to specific clients. Because of the failure to
3 maintain adequate internal controls, other client funds were used in paying
4 some client refunds. Respondent failed to keep his funds separate from his
5 clients' funds. Respondent failed to maintain complete trust account records
6 and to exercise due professional care. Respondent failed to correlate every
7 disbursement from the trust account to a particular client, failed to maintain a
8 general ledger at his office that reflected the ongoing balance in the trust
9 account, and failed to conduct monthly account reconciliations. Respondent
10 failed to record all transactions to the trust account promptly and completely,
11 and failed to deposit funds intact into his trust account.
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16 Based on the aforementioned, the State Bar and respondent agree that
17 respondent's conduct in this matter warrants a censure, one year probation, and
18 the costs and expenses incurred in these disciplinary matters and respectfully
19 request the imposition of same herein.
20

21 CONCLUSION

22
23 Recognizing that it is the prerogative of the Disciplinary Commission to
24 determine the appropriate sanction, it is nevertheless the belief of the State Bar
25 and respondent that the objectives of discipline will be met by the imposition
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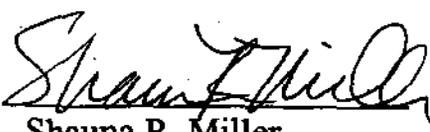
1 of a censure, one-year probation, and the costs and expenses of these
2 proceedings.

3 DATED this 21 day of April, 2003.

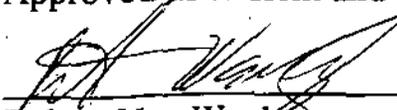
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7 Gary W. Kazragis
8 Respondent

9 DATED this 24th day of April, 2003.

10 STATE BAR OF ARIZONA

11 
12 Shauna R. Miller
13 Senior Bar Counsel

14 Approved as to form and content:

15 
16 Robert Van Wyck
17 Chief Bar Counsel

18
19 Original filed this 24 day
20 of April, 2003, with:

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22 Supreme Court of Arizona
23 Certification and Licensing Division
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12 by: SM
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