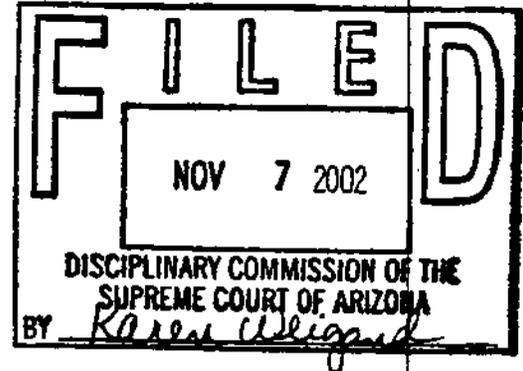


1 Maret Vessella, Bar No. 019350  
2 Senior Bar Counsel  
3 State Bar of Arizona  
4 111 West Monroe, Suite 1800  
5 Phoenix, AZ 85003-1742  
6 Telephone: (602) 340-7272



7 **BEFORE THE DISCIPLINARY COMMISSION**

8 IN THE MATTER OF A MEMBER OF ) No. 98-2215  
9 THE STATE BAR OF ARIZONA, )  
10 **ANTHONY R. LOPEZ, JR.** )  
11 **Bar No. 015880** ) **TENDER OF ADMISSIONS AND**  
12 **Respondent** ) **AGREEMENT FOR DISCIPLINE**  
 ) **BY CONSENT**

13 This Agreement is entered into between the State Bar of Arizona, through  
14 undersigned counsel and Respondent, Anthony R. Lopez, Jr., represented by  
15 Mark I. Harrison, Esq. It is submitted pursuant to Rule 56(a), Ariz.R.S.Ct., and  
16 the Guidelines for Discipline by Consent issued by the Disciplinary Commission  
17 of the Supreme Court of Arizona. Respondent agrees to the imposition of a  
18 censure, probation and the assessment of costs as stated herein. There were no  
19 issues of restitution raised in this matter. This agreement is subject to review and  
20 acceptance by the Disciplinary Commission and the Supreme Court of Arizona.  
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FACTS

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on December 20, 1994.
2. An Order of Probable Cause was issued in this matter on November 20, 2001. The parties reached the agreement set forth herein prior to the filing of a formal complaint.
3. In or about October 1998, the State Bar of Arizona received an overdraft notification from Wells Fargo Bank in relation to Respondent's trust account.<sup>1</sup>
4. On November 18, 1999, Respondent advised the State Bar that due to a miscommunication with office staff, funds were inadvertently transferred telephonically from the trust account and deposited into the operating account thereby overdrawing the trust account. Respondent's response in this matter was untimely.
5. The State Bar requested trust account records from Respondent. Over a period of time, Respondent submitted the only existing trust account records he maintained. Respondent did not produce nor maintain all of

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<sup>1</sup> The procedural history of this matter is lengthy and complex. The history has been fully set forth in the joint memorandum which has been filed contemporaneously with this document.

1 the records required by the Supreme Court Rules and Trust Account  
2 Guidelines. Upon review, the State Bar ultimately concluded that  
3 Respondent violated various rules concerning the maintenance and  
4 operation of his trust account.  
5

6 6. In or about 1998, Respondent received funds in the amount of \$4,700.00  
7 on behalf of his client, Judy Brown. On October 7, 1998, Respondent  
8 paid Ms. Brown \$1,000.00, which represented her proceeds from a  
9 personal injury settlement. On October 19, 1998, Respondent paid  
10 \$1,566.00 to Alyesh Chiropractic for medical services performed on  
11 behalf of Ms. Brown. The minimum balance in Respondent's trust  
12 account prior to October 7, 1998 should have been \$2,566.00, an  
13 amount which represented funds belonging to Ms. Brown and the  
14 medical provider. Respondent's trust account balance on October 1,  
15 1998 was \$538.85. Respondent failed to properly safeguard client  
16 property and property belonging to a third party. (Attached hereto as  
17 "Exhibit A" is a copy of the Staff Examiner's Report)  
18  
19  
20

21 7. Records provided by Respondent further indicated that the ending  
22 balance in Respondent's trust account on October 31, 1998, was  
23 significantly less than the amounts which should have been on deposit  
24 based on client settlement statements. (See Exhibit A, Findings 1(b))  
25

1 8. Records revealed that Respondent failed to maintain trust account  
2 records in accordance with Supreme Court Rules and Trust Account  
3 Guidelines. Specifically, Respondent was asked to produce a check  
4 register or its equivalent corresponding to the trust account for the time  
5 period surrounding the overdraft. Respondent did not maintain a check  
6 register or its equivalent. Respondent was also asked to produce  
7 individual client ledgers or their equivalent corresponding to the  
8 transactions during the time period involving the overdraft. Respondent  
9 did not maintain individual ledgers or an equivalent.  
10  
11

12 9. Respondent did not make all disbursements from his trust account by  
13 pre-numbered check.  
14

15 10. Respondent failed to reconcile his trust account on a monthly basis.

16 11. Respondent failed to consistently record all transactions promptly and  
17 completely.  
18

19 12. Respondent's failure to maintain the proper records and his failure to  
20 perform a monthly reconciliation allowed the trust account to  
21 experience a deficit situation, causing client funds to be compromised.  
22

23 13. In March 2000, Respondent closed his law office in Arizona and  
24 discontinued the practice of law in Arizona.  
25

1 14. Respondent has previously been sanctioned for violations of the Rules  
2 of Professional Conduct; specifically, in file number 98-0442,  
3 Respondent received an Informal Reprimand by order filed on July 12,  
4 2001, for violation of Rule 42, Ariz.R.S.Ct., specifically, ER 8.1, Rule  
5 51 (h) and (i), Ariz.R.S.Ct.  
6  
7  
8

9 **CONDITIONAL ADMISSIONS**

10 15. Respondent conditionally admits that his conduct, as set forth above,  
11 violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.15 and Rules 43, 44  
12 and 51(h), Ariz.R.S.Ct.  
13

14 16. Respondent's admissions are being tendered in exchange for the form of  
15 discipline stated below.

16 17. The State Bar could not prove by clear and convincing evidence that  
17 there was intentional misappropriation of client funds. However, that  
18 conclusion is based on the fact that various records were not maintained  
19 which would allow for such an analysis. Moreover, various deposits  
20 were made into the trust account wherein the source of those funds  
21 could not be identified.  
22  
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25



1 4. Respondent shall pay all costs and expenses incurred by the Hearing  
2 Officer; the Disciplinary Commission; the Supreme Court, and the  
3 Disciplinary Clerk's Office in this matter.

4  
5 5. This matter raised no issues of restitution.

6 6. In the event Respondent fails to comply with any of the foregoing  
7 terms, and information thereof is received by the State Bar of  
8 Arizona, Bar Counsel shall file a Notice of Noncompliance with the  
9 imposing entity pursuant to Rule 52(a)(6)(C), Ariz.R.S.Ct. The  
10 matter may be referred to a hearing officer to conduct a hearing at  
11 the earliest practical date, but in no event less than thirty (30) days  
12 following receipt of said Notice. If the matter is referred to a hearing  
13 officer, the hearing officer shall determine whether the terms of  
14 probation have been breached and, if so, to recommend appropriate  
15 action and response to such breach. If there is an allegation that  
16 Respondent failed to comply with any of the foregoing terms, the  
17 burden of proof shall be on the State Bar of Arizona to prove  
18 noncompliance by a preponderance of the evidence.  
19  
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23 Respondent is represented by counsel in this matter. Respondent, by  
24 entering into this Agreement, waives his right to a formal disciplinary hearing that  
25 he would otherwise be entitled to pursuant to Rule 53(c)(6), Ariz.R.S.Ct., and the

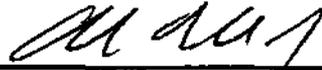
1 right to testify or present witnesses on his behalf at a hearing. Respondent further  
2 waives all motions, defenses, objections, or requests which he has made or raised,  
3 or could assert hereinafter, if the conditional admissions and stated form of  
4 discipline are approved. Respondent acknowledges that he has read this  
5 Agreement and has received a copy of it.  
6

7 This Tender of Admissions and Agreement for Discipline by Consent will  
8 be submitted to the Disciplinary Commission for approval. Respondent realizes  
9 that the Disciplinary Commission may order a hearing officer to conduct an  
10 evidentiary hearing, if necessary. Respondent further recognizes that the  
11 Disciplinary Commission may recommend rejection of this Agreement or may  
12 propose modifications. Respondent further understands the Disciplinary  
13 Commission must approve this Agreement and that this matter will become final  
14 upon judgment and order of the Supreme Court of Arizona. If the Agreement is  
15 rejected, the parties conditional admissions are withdrawn.  
16  
17  
18

19  
20 DATED this 7<sup>th</sup> day of ~~October~~<sup>November</sup>, 2002.

21 STATE BAR OF ARIZONA  
22  
23 Maret Vessella  
24 Maret Vessella  
25 Senior Bar Counsel

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

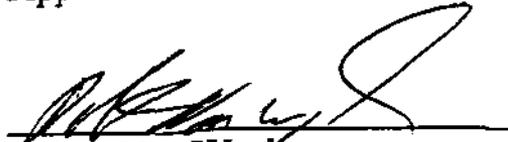
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5 Anthony R. Lopez, Jr.  
6 Respondent

7 

8 Mark I. Harrison  
9 Respondent's Counsel

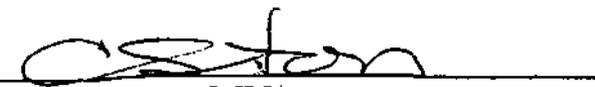
10 Approved as to form and content:

11 

12 Robert Van Wyk  
13 Chief Bar Counsel  
14 State Bar of Arizona

15  
16 Original filed with the Disciplinary Clerk of  
17 the Supreme Court this 7 day of  
18 November, 2002, at:

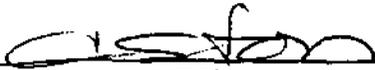
19 Disciplinary Clerk  
20 Certification and Licensing Division  
21 Supreme Court of Arizona  
22 1501 West Washington Street, Suite 104  
23 Phoenix, AZ 85007-3329

24 by:   
25 MV/

26 Copy of the foregoing mailed/hand-delivered\* this  
27 7 day of November, 2002, to:

1 Mark I. Harrison  
2 Bryan Cave, L.L.P.  
3 Two North Central Avenue  
4 Suite 2200  
5 Phoenix, AZ 85004-4406  
6 Respondent's Counsel

7 Linda Perkins\*  
8 Lawyer Regulation Records Manager  
9 State Bar of Arizona  
10 111 West Monroe Street, Suite 1800  
11 Phoenix, AZ 85003-1742

12 by:   
13 MV/

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**EXHIBIT A**



STATE BAR  
of ARIZONA

TO: Maret Vessella FROM: Leigh Ann Shank DATE: August 9, 2000 RE: File #98-2215; Respondent, Anthony R. Lopez, Jr.

I have completed a review of Respondent's response and supporting documentation in regards to October 7, 1998 overdraft on his client trust account. Wells Fargo reported that on October 7, 1998, a check in the amount of \$1,000 and a \$500 telephonic transfer paid against the trust account resulting in a negative \$261.15 balance. The bank charged an \$18.00 overdraft fee subsequently reducing the balance in the trust account to negative \$279.15. In addition, on December 4, 1998, a check in the amount of \$1,600 and a \$600 bank originated entry paid against the trust account resulting in a negative \$307.00 balance. The bank charged an \$18.00 overdraft fee subsequently reducing the balance in the trust account to negative \$325.00.

Respondent failed to respond to the State Bar of Arizona request for explanation as to the circumstances, which resulted in the overdrafts on his trust account. On May 21, 1999, a Probable Cause order was issued in this matter. On October 26, 1999, a subpoena was issued to Respondent requesting that he provide copies of his trust account bank statements, cancelled checks, duplicate deposit slips, and client ledgers covering the period of 09/01/98 through 02/28/99. On November 18, 1999, Respondent submitted correspondence in which he provided an explanation as to the cause for the October 7, 1998 overdraft on his client trust account. In that response Respondent advised that due to a miscommunication in his office \$500 was mistakenly transferred from his trust account to his operating account, thus resulting in the deficit in the account when the \$1,000 check paid against the account. Respondent reported that on October 8, 1998, the \$500 was deposited back into the trust account. Respondent provided copies of the October 1998 trust account bank statement with the corresponding cancelled checks.

Respondent never provided any explanation as to the overdraft on his trust account that occurred on December 4, 1998.

In the process of facilitating a resolution of this matter Respondent was asked to submit trust account records, which were only relevant to the October 7, 1998 overdraft; subsequently due to an oversight no records related to December 4, 1998 overdraft were requested.

By correspondence dated May 24, 2000, Respondent was asked to provide copies of the individual client ledgers and duplicate deposit slips relevant to the October 1998 trust account. On June 15, 2000, Respondent provided copies of deposit receipts, which failed to indicate the corresponding client(s) in which funds were deposited into the trust account for; in addition, Respondent only provided copies of client settlement statements. Review of the submitted settlement statements determined that they failed to provide sufficient information to meet the standard in which they could be considered as individual client ledger or an equivalent.

By correspondence dated July 11, 2000, Respondent was asked to provide the following information for review:

1. Copies of the settlement statement and any other records relevant to the *Judy Brown* matter, which indicate when the settlement funds were deposited into Respondent's trust account and all the corresponding disbursements that were paid from the Brown funds on deposit in the trust account. Be sure to include copies of the relevant cancelled checks and bank statements.
2. Please provide an accounting of the beginning balance of \$538.85 as indicated on the October 1998 trust account bank statement. Specifically, please account for any client funds and any earned firm funds.
3. Please explain the \$100 disbursement (Check #1013) from the trust account payable to *Gloria Gutierrez*, labeled as, "advancement."
4. Copies of all thirteen (13) deposits transactions with the offsets that correspond to the October 1998 trust account bank statement. These records will have to be ordered from Wells Fargo.
5. Please provide the trust account check numbers that correspond to the disbursements that were indicated on the previously submitted settlement statements for clients; *Ha An Dang, Brandi Phan, Eduardo Rascon, Socorro Rascon, Alvaro Rascon, Martin Rascon, and Carlos Perez*.

On August 4, 2000, Respondent provided partial responses to the requested information. To the first (1) inquiry Respondent indicated that he settled the *Judy Brown* matter for \$4,700 and provided a copy of the settlement check. Respondent advised that he paid the client \$1,000, the medical provider \$1,566, and the attorney's fees and costs were \$2,134. Respondent failed to indicate when the settlement funds were deposited into his trust account. However, it can be speculated based on the date on the check and the deposits in October that the \$4,700 was deposited into the trust account prior to October 1, 1998.

To the second (2) inquiry Respondent explained that he could not account for the \$538.85 beginning balance as indicated on the October 1998 trust account bank statement.

In reply to the third (3) inquiry Respondent reported that the word "advancement" as indicated on check numbered 1013 was a mistake and that, "It should have read "reimbursement" for a non-personal injury matter, which was reimbursed to the client."

In response to the fourth (4) inquiry Respondent did not directly respond but in his response indicates that he is currently in the process of obtaining requested information from Wells Fargo bank.

In response to the fifth (5) request Respondent provided the following information for the corresponding check numbers on the previously submitted client settlement sheets:

Carlos Perez	Checks 1036 and 1070
Dang Ha & Brandi Phan	Checks 1132, 1133, 1185 & 1260

Martin Rascon	Check 1022
Eduardo Rascon	Check 1021
Socorro Bustellos	Check 1023
Alvaro Rascon	Check 1107

It appears that Respondent failed to identify the checks that were used to disburse the attorney's fees and costs from the trust account relevant to the client settlements.

**Findings:**

1. It appears that Respondent failed to properly safeguard client property in addition to the property of an entitled third parties in accordance with Supreme Court Rules.
  - a. Based on the records provided it appears that sometime prior to 10/01/98, the \$4,700 Judy Brown settlement was deposited into Respondent's trust account. On 10/07/98, it appears that check #1011 in the amount of \$1,000 payable to Judy Brown paid against the trust account. Respondent confirms that the \$1,000 check represents Ms. Brown's proceeds of her personal injury settlement. It appears that on 10/19/98, check #1017 in the amount of \$1,566 payable to Alyesh Chiropractic paid against the trust account. Respondent confirms that the \$1,566 payment is Alyesh Chiropractic portion of the Brown settlement proceeds for medical services rendered. Therefore, the balance in the trust account prior to 10/07/98 should be at a minimum of \$2,566 (\$1,000 + \$1,566); however, on 10/01/98 the balance in the trust account is only \$538.85 for a difference of \$2,027.15. See **Daily Balance Table**.

The records indicate that on 10/02/98, an unknown deposit of \$700 is credited to the trust account raising the balance to \$1,238.85. On 10/07/98, the \$1,000 check payable to Judy Brown and the erroneous \$500 transfer debited the trust account resulting in the negative \$261.15 balance. Therefore, it appears that the unknown \$700 deposit is used to offset the \$1,000 disbursement to Judy Brown, when the funds should have been on deposit in the account. On 10/08/98 a \$500 deposit is credited to the trust account, as Respondent indicated was to correct the erroneous telephonic transfer. Therefore, the balance in the trust account from 10/07/98 through 10/19/98 should be at a minimum of \$1,566 (the payment to Alyesh Chiropractic); however, on 10/08/98 the balance in the trust account is only \$120.85. See **Daily Balance Table**. It appears that on October 19, 1998, when the Alyesh Chiropractic payment debits the trust account, other client funds are converted to cover the disbursement. See **Daily Balance Table**.

- b. In addition, based on the records provided it appears that the ending balance in Respondent's client trust account on 10/31/98 is significantly less than what the client settlement statements indicate as should be on deposit in the trust account for the same time period. See **Table 1**. The following table indicates the clients, as of 10/31/98, that had balances in the trust account.

**Table 1**

<b>Client</b>	<b>Client/third party balance in trust per bank statement and client settlement statements</b>	<b>Breakdown</b>
Carol Perez	\$3,600.00	\$1,800 client proceeds (ck 1070) + \$1,800 doctor proceeds (ck 1036)
Dang Ha & Brandi Phan	\$4,599.50	\$2,965.50 client proceeds (ck 1132 & ck 1133) + \$3,620 doctor proceeds (ck 1185 & ck 1260) less \$1,986 med pay deposit unknown as to when deposited into trust account
Martin Rascon	\$3,944.00	\$1,800 client proceeds (ck 1022) + \$2,144 doctor proceeds (ck unknown)
Eduardo Rascon	\$1,950.00	Doctor proceeds only (ck unknown)
Socorro Bustellos	\$1,876.00	Doctor proceeds only (ck unknown)
Alvaro Rascon	\$3,795.00	\$1,800 client proceeds (ck 1107) + \$1,995 doctor proceeds (ck unknown)
<b>Total</b>	<b>\$19,764.50</b>	
<b>Bank Statement ending balance of 10/31/98</b>	<b>\$14,851.85</b>	
<b>Difference of</b>	<b>\$4,912.65</b>	

2. It appears that Respondent failed to maintain proper trust account records in accordance with Supreme Court Rules and The State Bar of Arizona Trust Account Guidelines.
  - a. Rule 43, State Bar of Arizona Trust Account Guideline, 2(b) All receipt of funds shall be deposited intact in an account designated as a trust account. A duplicate deposit slip or the equivalent shall be retained for each such deposit, which shall be sufficiently detailed to identify each item.
  - b. Rule 43, State Bar of Arizona Trust Account Guideline, 2(c) All trust account disbursements shall be made by pre-numbered check.
  - c. Rule 43, State Bar of Arizona Trust Account Guideline, 2(d) An account ledger or the equivalent shall be maintained for each person or entity for whom monies have been received in trust, showing the date of receipt, the amount received, the date of any disbursements, the amount disbursed, and any unexpended balance.
  - d. Rule 43, State Bar of Arizona Trust Account Guideline, 2(e) A monthly reconciliation of the trust account records and the bank statement shall be made.

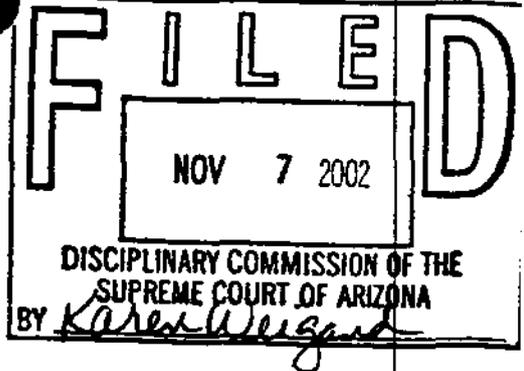
e. Rule 43, Rule 43, State Bar of Arizona Trust Account Guideline, 2(f) All trust account statements, cancelled pre-numbered checks (unless recorded on micro film by the bank or other financial institution), duplicate deposit slips, account ledgers, or the equivalent, and reports to clients shall be retained in accordance with paragraph 1(e) above.

i. Rule 43, State Bar of Arizona Trust Account Guideline, 1(e) Every lawyer engaged in the private practice of law in the State of Arizona must maintain, on a current basis, records complying with ER 1.15 and these guidelines, and such records shall be preserved for at least five years following completion of the lawyer's fiduciary obligation.

### Daily Balance

Date	Debit	Credit	Balance	Check #	Description	Client Reference
10/01/98			\$538.85			
10/02/98		\$700.00	\$1,238.85	Deposit		
10/07/98	\$500.00		\$738.85	Telephonic transfer		
10/07/98	\$1,000.00		(\$261.15)	Check #1011	Judy Brown	settlement
10/08/98		\$500.00	\$238.85	Deposit		
10/08/98	\$18.00		\$220.85	Overdraft check charge		
10/08/98	\$100.00		\$120.85	Check #1013	Gloria Gutierrez	advancement
10/15/98		\$245.00	\$365.85	Deposit		
10/15/98		\$5,500.00	\$5,865.85	Deposit		Rascon, Socorro
10/15/98		\$5,692.00	\$11,557.85	Deposit		Rascon, Alvaro
10/15/98		\$5,859.00	\$17,416.85	Deposit		Rascon, Eduardo
10/15/98		\$5,916.00	\$23,332.85	Deposit		Rascon, Martin
10/15/98		\$11,000.00	\$34,332.85	Deposit		
10/15/98	\$2,000.00		\$32,332.85	Check #1014	Valero & Lopez Payroll	374417764
10/15/98	\$1,200.00		\$31,132.85	Check #1015	Valero & Lopez	743435703
10/15/98	\$4,000.00		\$27,132.85	Check #1016	Gelly Valero	438776924
10/16/98	\$2,500.00		\$24,632.85	Check #1018	Ahmed Shamesa	settlement
10/16/98	\$6,000.00		\$18,632.85	Check #1024	Gelly Valero	438776924
10/16/98	\$1,500.00		\$17,132.85	Check #1025	Gelly Valero	904314879
10/19/98	\$1,566.00		\$15,566.85	Check #1017	Alyesh Chiropractic	Judy Brown
10/19/98	\$500.00		\$15,066.85	Check #1026	Valero & Lopez	74345703
10/20/98	\$1,500.00		\$13,566.85	Check #1019	Edward Parker	settlement
10/23/98	\$1,800.00		\$11,766.85	Check #1021	Eduardo Rascon	settlement
10/23/98	\$1,800.00		\$9,966.85	Check #1023	Socorro Bustellos	settlement
10/23/98	\$1,300.00		\$8,666.85	Check #1027	Valero & Lopez	743435703
10/27/98		\$691.00	\$9,357.85	Deposit		
10/27/98		\$938.00	\$10,295.85	Deposit		
10/27/98	\$1,500.00		\$8,795.85	Check #1030	Valero & Lopez	743435703

10/29/98		\$6,000.00	\$14,795.85	Deposit		Perez, Carlos
10/29/98	\$2,684.00		\$12,111.85	Check #1029	Jose Negrete	settlement
10/30/98		\$1,250.00	\$13,361.85	Deposit		Phan, Brandi
10/30/98		\$6,800.00	\$19,961.85	Deposit		Dang, Ha An
10/30/98	\$1,600.00		\$18,361.85	withdrawal		
10/30/98	\$1,860.00		\$16,501.85	Check #1033	Valero & Lopez Payroll	374417764
10/30/98	\$1,650.00		\$14,851.85	Check #1034	Valero & Lopez	743435703
			\$14,851.85			
			\$14,851.85			
			\$14,851.85			
			\$14,851.85			



1 Maret Vessella, Senior Bar Counsel  
2 Attorney I.D. No. 019350  
3 State Bar of Arizona  
4 111 West Monroe, Suite 1800  
5 Phoenix, AZ 85003-1742  
6 Telephone: (602) 340-7272

7 **BEFORE THE DISCIPLINARY COMMISSION**

8 IN THE MATTER OF A MEMBER OF ) No. 98-2215  
9 THE STATE BAR OF ARIZONA, )  
10 ANTHONY R. LOPEZ, JR. ) **JOINT MEMORANDUM IN**  
11 Bar No. 015880 ) **SUPPORT OF AGREEMENT**  
12 Respondent ) **FOR DISCIPLINE BY CONSENT**

13 The State Bar of Arizona and Respondent, Anthony R. Lopez, Jr., through  
14 counsel, Mark I. Harrison, Esq., hereby submit their Joint Memorandum in Support  
15 of the Agreement for Discipline by Consent filed contemporaneously herewith.

17 The sanctions agreed upon by the State Bar of Arizona and Respondent are the  
18 imposition of a censure, probation, and the payment of costs incurred in the  
19 disciplinary proceedings. There was no issue of restitution raised in this matter.

21 In arriving at the agreed-upon sanctions, consideration was given to the  
22 ABA Standards for Imposing Lawyer Sanctions (Standards), particularly Standard  
23 4.1. Suspension is generally appropriate when a lawyer knows or should know that  
24 he is dealing improperly with client property and causes injury or potential injury  
25 to a client. Standard 4.12. Reprimand (Censure in Arizona) is generally

1 appropriate when a lawyer is negligent in dealing with client property and causes  
2 injury or potential injury to a client. Standard 4.13.

3  
4 Standard 4.12 indicates that a suspension is the presumptive sanction for the  
5 cited misconduct. Standard 9.2 enumerates various aggravating and mitigating  
6 factors which are considered to justify an increase or decrease in the presumptive  
7 sanction. Standard 9.22 states the factors which are considered in aggravation of the  
8 conduct. The applicable aggravating factors in this matter are Respondent's prior  
9 disciplinary record and a pattern of misconduct. Standard 9.32(a) and (c). The  
10 pattern of misconduct is limited to Respondent's initial failure to respond to the State  
11 Bar's inquiry into the circumstances surrounding the overdraft in his trust account.  
12 Previously, Respondent received an informal reprimand by order of July 12, 2001,  
13 for his failure to respond to an inquiry made by the State Bar in a separate  
14 disciplinary matter.  
15  
16

17 This case also presents mitigating factors which should be considered.  
18 Pursuant to the Standard 9.32(j), delay in disciplinary proceedings is considered a  
19 mitigating factor. In this case that factor is appropriately given considerable weight  
20 in mitigation of the misconduct. The prosecution of this disciplinary matter was  
21 significantly delayed through various stages. Although it is agreed that this is a  
22 mitigating factor, neither party was entirely responsible for the delay in this matter.  
23  
24 In order to adequately address this factor, it is important to set forth the procedural  
25

1 history of this case. In so doing, the chronology of events summarized in the Tender  
2 are provided greater context.

3  
4 In or about October 1998, the State Bar initiated a screening investigation into  
5 the potential violations of the Rules of Professional Conduct. On May 18, 1999, the  
6 Probable Cause Panelist entered an Order of Probable Cause for trust account  
7 violations and for a failure to respond to the State Bar's inquiries into the matter. On  
8 or about October 26, 1999, a subpoena duces tecum was issued to Respondent for the  
9 production of various trust account records.  
10

11 By letter dated November 18, 1999, Respondent advised the State Bar that  
12 he had mistakenly believed that he previously responded to the inquiry. At that  
13 time he provided an explanation concerning the circumstances surrounding the  
14 cause of the overdraft in the trust account and some limited documentation.  
15 Respondent indicated that due to a miscommunication with office staff, funds were  
16 inadvertently transferred from the trust account and deposited into the operating  
17 account thereby overdrawing the trust account.  
18  
19

20 Based on the explanation and the limited documentation, the State Bar could  
21 not determine if the problem with the operation and maintenance of Respondent's  
22 trust account was merely due to a lack of knowledge about how to properly  
23 maintain a trust account or a product of misuse. However, the probable cause  
24 order was vacated and a decision made that the State Bar would recommend an  
25

1 informal reprimand and probation to include a Law Office Management audit  
2 based on the information then known to the Bar.

3  
4 Prior to the State Bar's hiring a staff examiner in April 1999, cases which  
5 demonstrated potential problems with the operation and maintenance of the trust  
6 account would be referred for a LOMAP audit. If the LOMAP audit uncovered  
7 misuse of the trust account, i.e., misappropriation/conversion, the matter would be  
8 referred back to discipline for the issuance of a probable cause order. In this  
9 particular matter Respondent was issued an informal reprimand and was required  
10 to submit to a LOMAP audit.

11  
12 On January 12, 2000, the probable cause panelist issued an order of informal  
13 reprimand and probation. Thereafter, Respondent's prior counsel contacted the  
14 State Bar and advised that Respondent had no significant practice in Arizona and  
15 intended to cease his practice here altogether. Therefore, counsel requested on  
16 behalf of Respondent that there be an alternative to submitting to a LOMAP  
17 audit. At that time, Respondent was advised that if he produced specific trust  
18 account records covering an identified period of time, the State Bar would take  
19 steps to modify the existing order of probation to eliminate the required LOMAP  
20 audit. Thereafter, over a period of months, Respondent, through new counsel,  
21 provided portions of the requested records and documentation. Those records were  
22 reviewed by the staff examiner. Following review of the records, it became  
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25

1 apparent that there were numerous violations of the trust accounting rules and  
2 guidelines which precluded the possibility of allowing this matter to remain  
3 resolved with the imposition of an informal reprimand. As such, on November 20,  
4 2001, the probable cause panelist issued an order vacating the order of informal  
5 reprimand and probation and issued an order of probable cause. The parties then  
6 agreed to this resolution prior to the filing of a formal complaint.  
7

8  
9 There are several other mitigating factors which warrant consideration in  
10 this matter. Respondent's conduct was not the result of a selfish or dishonest  
11 motive. Standard 9.32(a) Respondent has been cooperative toward the  
12 proceedings. Standard 9.32(e) Respondent has attempted to provide information  
13 and has accepted his responsibility in this matter. Respondent has also  
14 demonstrated remorse for his actions as evidenced by his letter to the Disciplinary  
15 Commission attached hereto as "Exhibit A". Standard 9.32(l) Respondent's  
16 reputation among those in the community is also favorable. Standard 9.32(g)  
17 Attached hereto as "Exhibit B" is a letter from Lisa Mitchell, founder and director  
18 of Let it Shine Ministries, for whom Respondent has provided some free legal  
19 services since 1997. Respondent has also suffered personal and emotional  
20 problems over the past few years which in turn has caused some depression for  
21 which he has received psychotherapy and was placed on anti-depressants.  
22  
23  
24  
25

1 Standard 9.32(c) A letter from Respondent's therapist is attached hereto as  
2 "Exhibit C".  
3  
4

### 5 PROPORTIONALITY ANALYSIS

6 There are several cases which consider conduct similar in nature to the facts  
7 presented herein. In *In re Robert Finn*, Comm. No. 97-1248 (2000), the attorney  
8 was found to have commingled funds with his clients' funds over the course of  
9 many years. The attorney placed client funds at risk based on his failure to comply  
10 with the trust account rules. The attorney did not maintain client ledgers  
11 appropriately and did not conduct a monthly reconciliation. The attorney was  
12 found to have violated ER 1.15 and Rules 43 and 44, Ariz.R.S.Ct. The  
13 Commission determined that two aggravating factors existed: a prior disciplinary  
14 record and substantial experience in the practice of law. Five mitigating factors  
15 were also considered: absence of dishonest or selfish motive; personal and  
16 emotional problems; full and free disclosure to the Disciplinary Board; remorse;  
17 and, remoteness of prior offense. The attorney received a thirty-day suspension, a  
18 two-year term of probation, and costs.  
19  
20  
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22

23 Much like *Finn*, Respondent did not maintain client ledgers or a check  
24 register and did not employ generally accepted accounting procedures in the  
25 operation and maintenance of the trust account. Respondent's violations are

1 similar in nature to *Finns'* and in both instances the non-compliance with the trust  
2 accounting Rules and Guidelines as well as the inadequacies in procedures created  
3 the potential for client harm.

4  
5 In *In Matter of Cord*, Comm. No. 98-1579 (2000), the attorney, over a two-  
6 year period, misused his trust account. The attorney used his trust account as his  
7 general account and commingled personal funds with client funds. The attorney  
8 paid personal expenses from his trust account and did not keep adequate records to  
9 demonstrate that the funds being used were funds which belonged to him. The  
10 attorney initially delayed but ultimately cooperated with the State Bar. The  
11 attorney received a three-month suspension and a two-year term of probation.  
12

13  
14 In, *In Re VanBaalén*, SB-01-0160-D (2001), the lawyer failed to properly  
15 safeguard client property by allowing a deficit to occur in his trust account and he  
16 failed to consistently reconcile his trust account on a monthly basis. Van Baalen  
17 failed to record all transactions promptly and completely; failed to maintain  
18 accurate client ledgers or their equivalent; and maintained some records but did not  
19 maintain all records required by the Rules of Professional Conduct. There were  
20 two aggravating factors found: prior disciplinary offense and substantial  
21 experience in the practice of law. There were five mitigating factors: absence of  
22 selfish or dishonest motive, timely good faith effort to make restitution or rectify  
23 consequence of misconduct, full and free disclosure to disciplinary board and  
24  
25

1 cooperative attitude toward proceeding, remorse and remoteness of prior offense.

2 Van Baalen was censured and placed on probation.

3  
4 There are several cases which demonstrate similar conduct which resulted in  
5 sanctions ranging from a censure to a short-term suspension based on the very  
6 specific facts presented by each. Based on the above-cited cases, it appears that a  
7 censure is within the range of appropriate sanctions for the demonstrated conduct.

8  
9 The applicable case law would support a censure as an appropriate sanction  
10 under the circumstances of this case. The sanction would further serve to instill  
11 confidence in the public and maintain the integrity of the Bar. Moreover, the  
12 Consent Agreement, by its terms, affords assurance that the public is protected  
13 especially in light of the fact that Respondent closed his law office in Arizona in  
14 March 2000 and does not currently have a practice in Arizona. Should Respondent  
15 resume the practice of law in Arizona the terms of the agreement adequately  
16 address the concerns raised in this matter so as to provide ongoing protection of the  
17 public.  
18  
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20

### 21 CONCLUSION

22 The objective of lawyer discipline is not to punish the lawyer, but to protect  
23 the public, the profession, and the administration of justice. *In re Neville*, 147 Ariz.  
24 106, 708 P.2d 1297 (1985). Recognizing that it is the prerogative of the Disciplinary  
25 Commission to determine the appropriate sanction, it is nevertheless the belief of the

1 State Bar of Arizona and Respondent that the objectives of discipline will be met by  
2 the imposition of the proposed sanction.

3 DATED this 7<sup>th</sup> <sup>November</sup> day of ~~October~~, 2002.

4  
5 STATE BAR OF ARIZONA

6 Maret Vessella  
7 Maret Vessella  
8 Senior Bar Counsel

9 DATED this 27 day of October, 2002.

10  
11  
12 Anthony R. Lopez, Jr.  
13 Anthony R. Lopez, Jr.  
14 Respondent

15 Mark I. Harrison  
16 Mark I. Harrison  
17 Respondent's Counsel

18  
19  
20 Approved as to form and content:

21 Robert VanWyck  
22 Robert VanWyck  
23 Chief Bar Counsel  
24 State Bar of Arizona