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3 State Bar of Arizona
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FILED
JUL - 3 2003
DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *Marybeth Beck*

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

9 IN THE MATTER OF A MEMBER) File Nos. 94-0437, 94-2381
10 OF THE STATE BAR OF ARIZONA,) and 95-0020
11)
12 **PHIL J. ROGERS,**) **TENDER OF ADMISSIONS**
13 **Bar No. 012333**) **AND AGREEMENT FOR**
14) **DISCIPLINE BY CONSENT**
15 **Respondent.**)

16 The State Bar of Arizona and Respondent, Phil J. Rogers, who is not
17 represented by counsel, submit this Agreement pursuant to Rule 56(a).
18 Ariz.R.S.Ct., and the guidelines for discipline by consent issued by the
19 Disciplinary Commission of the Supreme Court of Arizona.

20 Respondent conditionally admits failing to diligently represent several
21 clients, and failing to adequately communicate with them. Respondent also
22 conditionally admits failing to properly manage his client trust account.
23 Respondent conditionally admits violating ERs 1.3, 1.4, 1.5, 1.15, 3.4 and 8.4(d)
24 and Rules 43 and 44, Ariz.R.S.Ct. The parties agree that a censure and costs, as
25 more fully set forth herein, is the appropriate sanction, subject to review and

1 acceptance by the Disciplinary Commission. Restitution is not appropriate in
2 this case, for the reasons discussed herein. The parties agree that a probationary
3 term is not necessary in this case, for the reasons set forth herein.
4

5 **FACTS**

- 6 1. Respondent is, and was at all times relevant hereto, a member of the State Bar
7 of Arizona, having been admitted to practice law in Arizona on October 21,
8 1988.
9
10 2. On July 15, 1995, Respondent was placed on disability inactive status due to a
11 serious stroke. Respondent was reinstated to active status on May 31, 2001.

12 **COUNT ONE (94-0437)**

- 13 3. Gerald Johnson retained Respondent in February 1994 to prepare and record a
14 quitclaim deed.
15
16 4. Mr. Johnson paid Respondent \$50.00 plus \$11.00 for recording the deed.
17
18 5. Respondent failed to prepare and record the quit claim deed.
19
20 6. Respondent was originally referred to Law Office Management Assistant
21 Program for diversion in file no. 94-0437.
22
23 7. The audit of Respondent's office practices revealed that Respondent was
24 improperly using his trust account as follows:
25
a. Respondent failed to maintain client ledgers.

1 b. Respondent was not withdrawing earned fees from his trust account
2 and placing them into his general operating account.

3 c. Respondent failed to ensure that adequate internal controls within his
4 office were in place to safeguard client funds.

5 d. Respondent failed to record all transactions completely and promptly.

6 e. Respondent failed to maintain proper records regarding his trust
7 account.
8

9
10 8. Respondent returned Mr. Johnson's retainer, plus interest, in 1996.

11 **COUNT TWO (94-2381)**

12 9. In 1993, Deborah Wise retained Respondent to collect money for her that was
13 being garnished from J. L. Wagoner at Southwest Airlines.

14
15 10. Respondent was supposed to send a check on a bi-monthly basis to Ms. Wise
16 for the funds collected.

17 11. Respondent sent three checks from his client trust account made payable to
18 Ms. Wise that were returned for insufficient funds.

19
20 12. Ms. Wise received no checks from Respondent from March 29 through June
21 9, 1994.

22 13. Ms. Wise requested that Respondent send her an accounting of the funds
23 along with copies of the check stubs from Southwest Airlines.

24
25 14. Respondent failed to provide an accounting as requested by Ms. Wise.

COUNT THREE (95-0020)

1
2 15. In 1994, attorney Paul Faith, Esq. represented a client in a collection action
3 against Respondent and his then-wife.
4

5 16. Respondent was served with an order to appear for a judgment debtor's
6 examination on October 19, 1994.

7 17. Respondent failed to appear, but cashed the witness fee check sent to him.

8
9 18. An arrest warrant was issued for Respondent's failure to appear at the
10 judgment debtor's examination.

11 19. Respondent met with Mr. Faith and the deputy sent to enforce the warrant
12 and, as a result, the warrant was quashed. Respondent's then-wife appeared at
13 the judgment debtor's examination.
14

15 20. Respondent subsequently declared bankruptcy and the debt was discharged.

16 **CONDITIONAL ADMISSIONS**

17 Count One: Respondent conditionally admits his conduct violates Rule 42,
18 Ariz.R.S.Ct., specifically ER 1.3, ER 1.4 and ER 1.15 and Rules 43 and 44,
19 Ariz.R.S.Ct.
20

21 Count Two: Respondent conditionally admits his conduct violates Rule 42,
22 Ariz.R.S.Ct., specifically ER 1.3, 1.4 and ER 1.15 and Rules 43 and 44, Ariz.R.S.Ct.
23

24 Count Three: Respondent conditionally admits his conduct violates Rule 42,
25 Ariz.R.S.Ct., specifically ER 3.4 and ER 8.4(d) and Rule 51(e), Ariz.R.S.Ct.

1 continuing legal education, and to have a practice monitor. Respondent has
2 successfully completed the requirements of his probation. Since the time of his
3 reinstatement, Respondent has worked as an associate with a law firm, and is
4 currently a judge pro tem with various county and municipal courts. The State Bar
5 has not received any additional complaints concerning Respondent's conduct since
6 he was reinstated. Respondent desires to continue in this area of employment, and
7 has no plans to resume the private practice of law, or to supervise a trust account.
8
9 For these reasons, the parties agree that probation is not necessary in this case.
10

11 Respondent conditionally admits that he has engaged in the conduct set
12 forth above and the rule violations indicated, in exchange for the form of
13 discipline as set forth above.
14

15 Respondent, by entering into this agreement, waives his right to a formal
16 disciplinary hearing that he would otherwise be entitled to pursuant to Rule 53 (c) 6,
17 Ariz.R.S.Ct., and the right to testify or present witnesses on his behalf at a hearing.
18

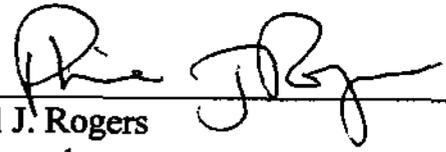
19 Respondent further waives all motions, defenses, objections, or requests
20 which he has made or raised, or could assert hereinafter, if the conditional
21 admissions and stated form of discipline are approved. Respondent is not
22 represented by counsel in these proceedings.
23

24 This Tender of Admissions and Agreement for Discipline by Consent will be
25 submitted to the Disciplinary Commission for review. Respondent realizes that the

1 Disciplinary Commission may request his presence at a hearing for presentation of
2 evidence and/or argument in support of this agreement. Respondent further
3 recognizes that the Disciplinary Commission may reject this agreement and the
4 Arizona Supreme Court may accept or reject the Disciplinary Commission's
5 recommendations. If the agreement is rejected at any time, Respondent's
6 conditional admissions are withdrawn.
7

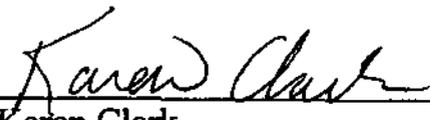
8
9 **This agreement, with conditional admissions, is submitted freely and**
10 **voluntarily and not under coercion or intimidation. I am aware of the Rules**
11 **of the Supreme Court with respect to discipline and reinstatement.**

12 DATED this 1 day of July, 2003.

14 

16 Phil J. Rogers
Respondent

17 DATED this 20th day of June, 2003.

19 

21 Karen Clark
Senior Bar Counsel

22 Approved as to form and content:

23 

25 Robert Van Wyck
Chief Bar Counsel

1 Original filed this 3 day of
2 July, 2003 with:

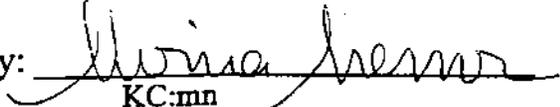
3 Disciplinary Clerk of the Supreme Court
4 Certification and Licensing Division
5 1501 W. Washington, #104
6 Phoenix, Arizona 85007-3329

6 Copy of the foregoing mailed this
7 3 day of July, 2003 to:

8 Phil J. Rogers
9 4160 East Camino Street
10 Mesa, Arizona 85205-0001
11 Respondent

11 Copy of the foregoing hand delivered this
12 3 day of July, 2003 to:

13 Dee Steadman
14 Lawyer Regulation Records Manager
15 State Bar of Arizona
16 111 West Monroe Street, Suite 1800
17 Phoenix, Arizona 85003

17 by: 
18 KC:mn

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24
25

FILED
JAN 21 2003
STATE BAR OF ARIZONA
BY *James Paris*

BEFORE THE PROBABLE CAUSE PANELIST
OF THE STATE BAR OF ARIZONA

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
PHIL J. ROGERS)
Bar No 012333)
)
Respondent.)
_____)

No. 94-0437

PROBABLE CAUSE ORDER

The Probable Cause Panelist of the State Bar, having reviewed this matter pursuant to Rule 53(b), Ariz.R.S.Ct., finds that probable cause exists to issue a complaint against respondent for violations of Rule 42, Ariz.R.S.Ct., including but not limited to ERs 1.3, 1.4, 1.15 and Rules 43 and 44, Ariz.R.S.Ct.

IT IS THEREFORE ORDERED that the State Bar prepare and file a complaint with the Disciplinary Clerk.

DATED this 20th day of January, 2002.³

Charles W. Wirken

Charles W. Wirken
Probable Cause Panelist
State Bar of Arizona

.....
.....

Copies mailed/hand-delivered this 27 day of
January, 2003 to:

Phil J. Roger
Respondent
456 W. Main Street, Suite I
Mesa, AZ 85201

Lawyer Regulation Records Manager
State Bar of Arizona
111 West Monroe, Suite 1800
Phoenix, Arizona 85003

by: Maria Hemr
KC:mn

1 Karen Clark, Bar No. 012665
2 Senior Bar Counsel
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JUL - 3 2003
DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *W. J. ...*

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

9 IN THE MATTER OF A MEMBER)
10 OF THE STATE BAR OF ARIZONA,))
11)
12 **PHIL J. ROGERS,**)
13 Bar No. 012333)
14 Respondent.)

File Nos. 94-0437, 94-2381
and 95-0020

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

15 The State Bar of Arizona and Respondent, Phil J. Rogers, who is not
16 represented by counsel, submit this Joint Memorandum in support of the
17 Agreement for Discipline by Consent filed contemporaneously herewith.

18 As reflected in the Tender of Admissions and Agreement for Discipline by
19 consent, Respondent violated the Rules of Professional Conduct by failing to
20 diligently represent two clients, and failing to adequately communicate with
21 them. Respondent also failed to properly manage his client trust account.
22 Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.3, 1.4, 1.5, 1.15, 3.4
23 and 8.4(d) and Rules 43 and 44, Ariz.R.S.Ct.
24
25

1 Respondent has agreed to accept a censure and costs, subject to review and
2 acceptance by the Disciplinary Commission. Restitution is not required in this
3 case. The parties agree that a probationary term is not necessary in this case.
4

5 Respondent was admitted to the Bar in 1988. In May 1995, Respondent
6 suffered a severe stroke that initially caused complete paralysis and on July 15,
7 1995, Respondent was transferred to disability inactive status by consent.¹
8

9 Respondent worked as a preferred justice of the peace *pro tem* from July
10 1997 until January 21, 2000, when he was removed from the list due to the stayed
11 disciplinary matters and his suspension for non-payment of dues. While working
12 as a justice of the peace *pro tem* Respondent's work was exemplary.
13

14 Respondent was reinstated to active status by Order dated May 31, 2001
15 and placed on an eighteen-month probation that required Respondent complete 15
16 hours of continuing legal education. Respondent has successfully completed all
17 of the requirements of his probation.
18
19
20
21

22
23 ¹ On June 12, 1995, Respondent was suspended for non-payment of dues. This
24 was an error by the State Bar, as Respondent was on disability inactive status at the
25 time, and not required to pay dues. Respondent was unaware he had been
suspended for non-payment of dues, and learned of it only when he was reinstated.
Respondent's suspension for non-payment of dues has since been expunged by the
State Bar.

1 is generally appropriate when a lawyer negligently fails to provide a client with
2 accurate or complete information, and causes injury or potential injury to the client.

3
4 In the present case, Respondent was negligent in administering his trust
5 account. He failed to provide his client, Ms. Wise, with an accounting of the
6 garnishment funds paid to Respondent. In addition, Respondent failed to return
7 funds to his client, Mr. Johnson, in a timely manner. Respondent did not
8 knowingly mishandle his trust account. Therefore, the sanction of censure is
9 appropriate under the circumstances.
10

11 Respondent also engaged in a pattern of neglect in representing his clients.
12 *Standard 4.43* applies in such cases, and states that reprimand is generally
13 appropriate when a lawyer is negligent and does not act with reasonable
14 diligence in representing a client, and causes injury or potential injury to a client.
15 Respondent did not diligently communicate with two of his clients. Respondent
16 did not respond to the efforts of Mr. Johnson to communicate with him.
17 Respondent did not communicate with Ms. Wise regarding how he accounted for
18 the garnishment funds collected by him for Ms. Wise. Again, Respondent did not
19 knowingly engage in this misconduct. Rather, his conduct was negligent, and the
20 sanction of censure is appropriate under these circumstances.
21
22

23
24 *Standard 6.23* applies to the conduct in Count Three. It states that
25 reprimand is generally appropriate when a lawyer negligently fails to comply

1 with a court order or rule, and causes injury or potential injury to a client or other
2 party, or causes interference or potential interference with a legal proceeding.

3
4 In the present case, Respondent failed to appear for a judgment debtor's
5 examination. However, after discussing the matter with the creditor's counsel,
6 Respondent was able to have his then-wife attend the judgment debtor's
7 examination in his place. The sanction of censure is appropriate under all of the
8 present circumstances.

9
10 Next, the *Standards* indicate aggravating and mitigating circumstances be
11 considered in determining the appropriate sanction. An analysis of the
12 aggravation/mitigation factors support the imposition of a censure in this matter.

13
14 Aggravating Factors:

15 *Standard 9.22(c)* - pattern of misconduct. The present cases show a pattern
16 of negligently failing to diligently pursue the client's cases and failing to
17 communicate with clients.

18
19 *Standard 9.22(d)* - multiple offenses. The present case involves
20 representation of three different clients.

21 *Standard 9.22(g)* - character or reputation. Respondent is respected by his
22 peers and has demonstrated service to the bar and legal community as a member of
23 the board of directors of the East Valley Bar Association, including one year as
24 president of that organization. Respondent has also been a member ex officio of the
25

1 Maricopa County Bar Board of Directors. Evidence in support of this mitigating
2 factor is attached as Exhibit 1.

3
4 *Standard 9.22(i)* - substantial experience in the practice of law. Respondent
5 was admitted to practice law in Arizona in 1988.

6 Mitigating Factors:

7 *Standard 9.32(a)* - absence of a prior disciplinary record. Respondent has no
8 discipline history in the 15 years he has been an attorney.
9

10 *Standard 9.32(b)* - absence of a dishonest or selfish motive. There is no
11 evidence that Respondent acted selfishly or dishonestly and Respondent did not
12 personally gain from his actions.

13
14 *Standard 9.32(c)* - personal or emotional problems. During the time of
15 Respondent's conduct, he was treating for serious depression, resulting from a
16 difficult divorce proceeding he was going through at the time. He was also in
17 serious financial difficulty, which eventually led him to file for bankruptcy.²
18

19 *Standard 9.32(d)* - timely good faith effort to make restitution or rectify
20 consequences of misconduct. Respondent refunded Mr. Johnson the money Mr.
21 Johnson had advanced for preparing and recording the quitclaim deed that
22 Respondent failed to prepare or record.
23

24
25 ² Respondent asks leave to submit documentation in support of this mitigating
factor following submission of this memorandum.

1 appropriate. Probation is unnecessary as Respondent was placed on eighteen-
2 month's probation from May 31, 2001, when he was reinstated to the practice of
3 law.
4

5 In *Matter of Augenstein*, 177 Ariz. 581, 870 P.2d 399 (1994), Augenstein
6 violated ER 1.2, ER 1.3, ER 1.4 and ER 1.15 by failing to abide by his client's
7 wishes, failing to act with reasonable diligence and failing to adequately
8 communicate with clients. For his conduct, Augenstein was censured and placed
9 on two years probation, including participation in the LOMAP program.
10

11 In the present case, Respondent failed to perform services for Mr. Johnson,
12 failed to provide an accounting to Ms. Wise and failed to communicate with both
13 Ms. Wise and Mr. Johnson. Therefore, in this case, the sanction of a censure and
14 costs is also appropriate.
15

16 In *Matter of Gamble*, 180 Ariz. 145, 882 P.2d 1271 (1994), Gamble violated
17 ER 1.3 and ER 1.4. Gamble was censured and placed on probation for two years,
18 including LOMAP. Here, Respondent engaged in similar conduct as in *Gamble*.
19 Therefore, a similar sanction should be imposed. Respondent should be censured
20 and be required to pay costs.
21

22 In *Matter of Goff*, SB-01-0152-D, (September 12, 2001) Goff violated ER
23 1.15 and Rules 43 and 44, Ariz.R.S.Ct. by failing to properly identify his trust
24 account, failing to keep a correct running balance on the register, failing to
25

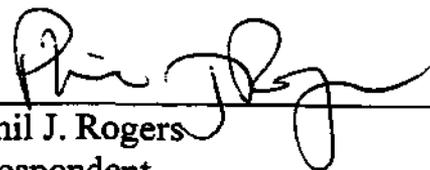
1 maintain individual client ledgers and paying personal expenses from his trust
2 account. Goff was censured and given two years' probation to include Trust
3 Account Ethics Enhancement Program along with the Law Office Management
4 Program and a practice monitor.
5

6 In the case at bar, Respondent was found to have engaged in similar conduct
7 as that in *Goff*, when his law office management audit revealed the same problems
8 in Respondent's trust account. Respondent should therefore also receive a censure
9 for the misuse of his trust account.
10

11 12 CONCLUSION

13 The objective of lawyer discipline is not to punish the lawyer, but to protect
14 the public, the profession, and the administration of justice. *In re Neville*, 147 Ariz.
15 106, 708 P.2d 1297 (1985). Recognizing it is the prerogative of the Disciplinary
16 Commission to determine the appropriate sanction, the State Bar and Respondent
17 assert the objectives of discipline will be met by the imposition of the proposed
18 sanction of a censure and costs.
19

20
21 DATED this 1 day of JULY, 2003.

22
23 
24 Phil J. Rogers
25 Respondent

1 DATED this 26th day of June, 2003.

2
3
4 Karen Clark
5 Karen Clark
6 Senior Bar Counsel
7

8 Approved as to form and content:

9 R. B. L. Deputy Chief Bar Counsel

10 Robert Van Wyck
11 Chief Bar Counsel
12

13 Original filed this 3 day of
14 July, 2003 with:

15 Disciplinary Clerk of the Supreme Court
16 Certification and Licensing Division
17 1501 W. Washington, #104
18 Phoenix, Arizona 85007-3329

19 Copy of the foregoing mailed this
20 3 day of July, 2003 to:

21 Phil J. Rogers
22 4160 East Camino Street
23 Mesa, Arizona 85205-0001
24 Respondent
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Copy of the foregoing hand-delivered this
3 day of July, 2003 to:

Dee Steadman
Lawyer Regulation Records Manager
State Bar of Arizona
111 West Monroe Street, Suite 1800
Phoenix, Arizona 85003

by: Monia Jemr
KC:mn