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**BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA**

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**IN THE MATTER OF A MEMBER OF  
THE STATE BAR OF ARIZONA,**

7

**CARROLL A. CLARK**

8

**Bar No. 006563**

9

Respondent.

Nos. 02-0488, 02-1031, 02-2263

**HEARING OFFICER'S  
REPORT AND  
RECOMMENDATION**

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**PROCEDURAL HISTORY**

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Probable Cause Orders were filed on July 25, 2002, November 8, 2002, and January 20, 2003. The State Bar of Arizona filed a four-count complaint on August 26, 2003. A Notice of Default was filed on September 22, 2003. Respondent filed his Answer on October 3, 2003.

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On October 3, 2003, Respondent filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. The State Bar filed its response on October 10, 2003. Respondent filed a reply on October 17, 2003. By order dated October 21, 2003, the Hearing Officer denied Respondent's motion in its entirety. A telephonic scheduling conference was held on October 31, 2003, after which the Hearing Officer filed a Case Management Order setting forth the discovery and hearing dates in this matter.

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A settlement conference was held on November 25, 2003. The parties were ultimately unable to settle this matter.

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On December 12, 2003, the State Bar filed a Motion to Compel Respondent's disclosure statement. Respondent did not respond to the motion,

1 and did not submit a disclosure statement to the State Bar. A telephonic pre-  
2 hearing conference was held on January 5, 2004. At that time, the Hearing  
3 Officer granted the State Bar's Motion to Compel, and precluded Respondent  
4 from presenting any evidence at hearing that had not been previously disclosed to  
5 the State Bar.

6 A hearing was held on January 8, 2004. Amy Rehm appeared on behalf of  
7 the State Bar. Respondent appeared pro per. At the conclusion of the hearing,  
8 both parties were ordered to file proposed findings of fact and conclusions of law,  
9 along with optional post-hearing memoranda, within ten calendar days of the date  
10 on which the hearing transcript was filed. The transcript was filed on January 21,  
11 2004. The State Bar filed its proposed findings on January 30, 2004. Respondent  
12 did not file any proposed findings.

### 13 **FINDINGS OF FACT**

14 1. At all times relevant hereto, Respondent was an attorney licensed to  
15 practice law in the State of Arizona, having been admitted to practice in Arizona  
16 on October 4, 1980. (Answer, para. 1)

#### 17 **Count One (File No. 02-0488, Frisby)**

18 2. In or about October 2001, Jose Ruben Frisby Vega consulted with  
19 Respondent concerning a naturalization matter. At that time, Mr. Frisby was  
20 interested in becoming a naturalized citizen, and had already received an adverse  
21 decision from INS concerning his case. (Answer, para. 2; TR 9-10; ex. 1)

22 3. Mr. Frisby decided to appeal the INS decision, and requested a  
23 review hearing of the adverse decision. Mr. Frisby paid the \$170 review fee to  
24 Respondent, who submitted it on Mr. Frisby's behalf to INS. (TR12)

25 4. Mr. Frisby retained Respondent to represent him at the INS review  
26 hearing. (TR 13) At the time Mr. Frisby retained Respondent, no hearing date

1 had yet been set for the review hearing. (TR 13).

2 5. Mr. Frisby agreed to pay Respondent's fees in the amount of \$500.  
3 (TR 11) On December 14, 2001, Mr. Frisby paid the \$500 to Respondent. (TR  
4 12; ex. 4) On that date, Mr. Frisby spoke to Respondent directly. Respondent  
5 did not inform him that he would not appear at the hearing unless he received  
6 more money. (TR 12)

7 6. Toward the end of December, Mr. Frisby received notice from the  
8 INS that his review hearing was set for January 3, 2002. (TR 14)

9 7. After receiving the notice, Mr. Frisby faxed a copy of it to  
10 Respondent's office, and also spoke to Respondent's secretary about the hearing  
11 date. (TR 15)

12 8. Respondent did not appear for the January 3, 2002 hearing. (TR 15)  
13 Mr. Frisby appeared by himself at the hearing. (TR 15) The outcome of the  
14 hearing was that Mr. Frisby's request was denied. (TR 15)

15 9. Prior to the hearing, Respondent did not inform Mr. Frisby that he  
16 would not appear for the hearing. (TR 15) Respondent testified that he  
17 attempted to telephone Mr. Frisby. (TR 107) However, Respondent did not send  
18 Mr. Frisby a letter, and did not leave him a message at his place of employment,  
19 or at the hearing location. (TR 32-33)

20 10. After the hearing, Respondent telephoned Mr. Frisby and asked him  
21 how the hearing went. (TR 15; Answer para. 10) Respondent informed Mr.  
22 Frisby that he had not attended the hearing because he was on vacation. (TR 16)  
23 At the hearing, he testified that he was scheduled to appear in a bankruptcy  
24 matter at the same time. (TR 107)

25 11. When Mr. Frisby later met with Respondent, Mr. Frisby requested a  
26 refund. (TR 16) Respondent agreed to provide the refund. (TR 16)

1           12. Respondent provided Mr. Frisby with a refund check in the amount  
2 of \$700 dated February 18, 2002. (TR 17, ex. 3) (Although Respondent testified  
3 that the check was not a refund but a professional courtesy, the check was  
4 marked "reimbursement"). However, when Mr. Frisby attempted to deposit the  
5 check, it was returned for insufficient funds. (TR 17, ex. 4)

6           13. Thereafter, Mr. Frisby made attempts to contact Respondent about  
7 the check. Mr. Frisby left messages for Respondent, but Respondent did not  
8 return the messages. (TR 17-18) As of the hearing date, Respondent had not  
9 provided a refund to Mr. Frisby. (TR 18)

10          14. Respondent testified that he had sent Mr. Frisby a replacement  
11 check. (TR 108) Respondent also testified that he assumed Mr. Frisby had  
12 cashed the second check. (TR 108) Respondent then changed his testimony and  
13 stated that he paid Mr. Frisby cash. (TR 109) Mr. Frisby denied receiving any  
14 refund. Respondent did not produce any records that would support his  
15 allegation that a refund was paid and I conclude that it was not.

16          15. In March 2002, Mr. Frisby submitted a written bar charge to the  
17 State Bar. (TR 18, ex. 1)

18          16. The bar charge was forwarded to Respondent by letter on April 3,  
19 2002, with a request that he provide a written response within 20 days. (ex. 6,  
20 ex. 29) A second letter, dated May 8, 2002 was sent to Respondent again  
21 requesting a response. (ex. 7, ex. 29)

22          17. On July 15, 2002, Respondent submitted a written response to the  
23 bar charge. (ex 8). Respondent admits that his response was not timely. (TR  
24 111)

25                           **Count Two (File No. 02-1031, Flores)**

26          18. In early 2002, Sigfried Flores contacted Respondent to inquire about

1 representing his brother Wuilber Flores in a deportation matter. (TR 40-41) At  
2 that time, Wuilber Flores was being detained in Eloy, Arizona. (TR 40)

3 19. Sigfried Flores sent Respondent \$500 for Respondent to visit  
4 Wuilber Flores in the detention center to assess his case. (TR 41)

5 20. After meeting with Wuilber Flores, Respondent informed Sigfried  
6 Flores that he would represent Wuilber for a fee of \$3500. (TR 41-42)

7 21. On April 6, 2002, Sigfried Flores met with Respondent, signed a fee  
8 agreement to be the third-party payor of Wuilber's fees, and gave Respondent the  
9 \$3500. (TR 42, ex. 10)

10 22. Both Sigfried Flores and Wuilber Flores requested that Respondent  
11 communicate about the case with Sigfried as it was often difficult to reach  
12 Wuilber Flores due to his detention. (TR 46-47, TR 71)

13 23. At the onset of the representation, Sigfried Flores on behalf of his  
14 brother Wuilber Flores requested that Respondent appear in person for the  
15 hearings in the matter. (TR 44, TR 59)

16 24. Wuilber Flores' immigration/deportation hearing was held on April  
17 24, 2002. (TR 44) Although Respondent appeared in person for an earlier bond  
18 review hearing, Respondent did not appear in person for the  
19 immigration/deportation hearing. (TR 66, 81) Rather, Respondent appeared by  
20 telephone. Wuilber Flores did not give Respondent permission to appear by  
21 telephone. (TR 68) At the conclusion of the hearing, the court ordered Wuilber  
22 Flores to be deported. (TR 71)

23 25. Sigfried Flores telephoned Respondent the day after the hearing to  
24 inquire as to why Respondent had not appeared in person as agreed. (TR 45)  
25 Respondent told Sigfried Flores that he would telephone him the next day. (TR  
26 45) Respondent did not call back as promised. (TR 46) When Sigfried Flores

1 reached Respondent several days later, Sigfried attempted to terminated  
2 Respondent's services. (TR 47) Respondent told Sigfried Flores that the  
3 instruction needed to be from Wuilber Flores (TR 47)

4 26. Thereafter, Sigfried Flores and Wuilber Flores telephoned  
5 Respondent on a three-way call. (TR 48) At that time, Wuilber Flores informed  
6 Respondent that he was terminating his services, and requested the return of his  
7 files, and an accounting of the work performed on the case. (TR 48, 72)  
8 Wuilber Flores told Respondent to provide the paperwork to Sigfried Flores.  
9 (TR 48, 72)

10 27. After Respondent asked for the direction in writing, Wuilber Flores  
11 wrote a letter to Respondent dated May 14, 2002 requesting an accounting and  
12 refund be provided to Sigfried Flores. (TR 48-49, ex. 11) Sigfried Flores faxed  
13 the letter to Respondent on May 16, 2002, and telephoned Respondent's office to  
14 confirm that he had received the fax. (ex. 11; TR 49)

15 28. Respondent did not provide an accounting or summary of tasks  
16 performed on the case to either Sigfried Flores or Wuilber Flores. (TR 50, 73)  
17 Respondent did not return Wuilber Flores' file to him. (TR 73, 85-86)

18 29. In or about May 2002, Sigfried and Wuilber Flores submitted a bar  
19 charge against Respondent. (ex. 9)

20 30. The bar charge was forwarded to Respondent by letter dated June 7,  
21 2002 with a request for a written response within 20 days. (ex. 12, ex. 30) A  
22 second letter dated July 11, 2002 was sent to Respondent again requesting a  
23 written response. (ex. 13, ex. 30)

24 31. Respondent submitted a written response, dated July 16, 2002. (ex.  
25 15) The response did not substantively address the allegations, and contains  
26 Respondent's written statement that he would submit a more complete response

1 within two weeks. (ex. 15) Respondent did not submit any further response.  
2 (TR 112-113) Respondent admits that his response was not timely. (TR 112)

3 **Count Three (File No. 02-2263, Derosier)**

4 32. In April 2002, Scott Derosier retained Respondent to represent him  
5 in a Chapter 7 bankruptcy case. (Answer para. 35, TR 90) Mr. Derosier agreed  
6 to pay Respondent a \$500 retainer and \$200 filing fee to begin the case. (TR 90)  
7 At the outset of the representation, Respondent agreed to file a motion to reaffirm  
8 Mr. Derosier's vehicle as part of the bankruptcy case. (TR 98)

9 33. On or about April 20, 2002, Mr. Derosier paid Respondent the \$500  
10 fee and \$200 filing fee. (TR 91)

11 34. Respondent filed Mr. Derosier's bankruptcy petition on May 31,  
12 2002. (TR 91, ex. 25)

13 35. On or about June 3, 2002, Mr. Derosier received notice directly  
14 from the court that the \$200 filing fee had not been paid, and that the bankruptcy  
15 would be dismissed if it were not paid within ten days. (TR 92)

16 36. After receiving the notice, Mr. Derosier contacted Respondent by  
17 telephone and informed him of the notice. (TR 92-93) Respondent told Mr.  
18 Derosier not to worry about it. (TR 92)

19 37. On or about July 10, 2002, Mr. Derosier received notice from the  
20 bankruptcy court that his case had been dismissed because the filing fee had not  
21 been paid. (TR 93-94, ex. 26) Although Respondent's office had also received  
22 the dismissal notice, Respondent did not contact Mr. Derosier concerning the  
23 matter. (TR 94) After receiving the notice, Mr. Derosier made numerous  
24 attempts to contact Respondent over a two-week period, and left messages for  
25 him. Respondent did not return his calls. (TR 94)

26 38. Mr. Derosier then contacted the court directly to find out if the filing

1 fee had been paid, and what he should do about it. On the clerk's advice, Mr.  
2 Derosier paid the filing fee himself directly to the court, and submitted a motion  
3 to reinstate the case. (TR 95)

4 39. Prior to paying the filing fee himself, Mr. Derosier left a voicemail  
5 message for Respondent stating that he wanted a refund of his \$200 because he  
6 was going to pay the fee directly to the court. (TR 96)

7 40. The court reinstated the case on July 30, 2002. (ex. 21)

8 41. Respondent re-submitted the filing fee on July 30, 2002, along with  
9 a Motion to Reinstate the Case. (ex. 18) However, the fee was returned to him  
10 by the clerk as it had already been paid by Mr. Derosier. (ex. 20)

11 42. After Mr. Derosier's case was reinstated, he had no further contact  
12 with Respondent until the discharge. (TR 96)

13 43. On November 19, 2002, Mr. Derosier submitted a bar charge to the  
14 State Bar. (TR 96, ex. 16) The bar charge was sent to Respondent on  
15 November 26, 2002 with a request for a written response within 20 days. (ex.  
16 17) Respondent submitted his written response on April 24, 2003. (ex. 18)  
17 Respondent admits that his response was not timely. (TR 115)

18 44. On November 25, 2002, Mr. Derosier filed another motion on his  
19 own behalf. That motion indicated that Respondent failed to return his cost  
20 monies to him, and that Respondent failed to file a motion to reaffirm his  
21 vehicle. (TR 97; ex 27) A hearing was held on January 21, 2003 on the motion.  
22 (TR 98) Both Mr. Derosier and Respondent attended the hearing. (TR 98)

23 45. At the hearing, Respondent informed Judge Baum that he had  
24 mailed the refund check to Mr. Derosier the week before the hearing. (TR 99,  
25 ex. 28) However, Respondent had not mailed the check. (ex. 24)

26 46. Mr. Derosier contacted the court two weeks after the hearing, and

1 informed the clerk that he had still not received a refund check from Respondent.  
2 (TR 99) Mr. Derosier testified that the clerk then contacted Respondent  
3 concerning the payment. (TR 99)

4 47. Mr. Derosier received the refund payment on February 4, 2003.  
5 (TR 99-100) Respondent sent the check to Mr. Derosier by Fed-Ex airmail on  
6 February 4, 2003. (ex. 24)

## 7 CONCLUSIONS OF LAW

### 8 Count One (File No. 02-0488, Frisby)

9 1. The State Bar has proven by clear and convincing evidence  
10 violations of ERs 1.2 (scope of representation), 1.3 (diligence), 1.4  
11 (communication), 1.15 (safekeeping property), 1.16(d) (declining or terminating  
12 representation), and 8.4(d) (conduct prejudicial to the administration of justice)  
13 in regard to Respondent's representation of Mr. Frisby. The evidence established  
14 that Respondent was retained to represent Mr. Frisby in his appeal/review  
15 hearing. Respondent performed no services of any value to Mr. Frisby in that  
16 regard. Respondent failed to appear for the review hearing, and failed to take  
17 reasonable steps to communicate with Mr. Frisby about his non-appearance.  
18 Thereafter, Respondent failed to timely refund Mr. Frisby's money pursuant to  
19 ER 1.15(b) and ER 1.16(d), or to communicate with him about that issue.

20 2. The State Bar has also proven by clear and convincing evidence a  
21 violation of Rule 51(h), requiring a prompt and thorough response in a  
22 disciplinary investigation.

### 23 Count Two (File No. 02-1031, Flores)

24 3. The State Bar has proven by clear and convincing evidence  
25 violations of ERs 1.2 (scope of representation), 1.4 (communication), 1.15  
26 safekeeping property), 1.16(d) (declining or terminating representation), and

1 8.4(d) (conduct prejudicial to the administration of justice). The evidence  
2 established that Respondent failed to appear in person for the main deportation  
3 hearing in the matter. Respondent failed to consult with the client prior to not  
4 appearing in person, despite the fact he had been informed by Sigfried Flores, on  
5 behalf of the client, that they wished him to appear in person. In addition, at the  
6 conclusion of the representation, Respondent failed to return the client file to  
7 Wuilber Flores.

8 Respondent also failed to provide an accounting to Sigfried or Wuilber  
9 Flores. Pursuant to ER 1.15(d), a lawyer is required to provide an accounting  
10 regarding how property was spent to a client or to a third party who paid on  
11 behalf of the client.

12 4. The State Bar has also proven by clear and convincing evidence a  
13 violation of Rule 51(h), requiring a prompt and thorough response in a  
14 disciplinary investigation.

15 **Count Three (File No. 02-2263, Derosier)**

16 5. The State Bar has proven by clear and convincing evidence  
17 violations of ERs 1.2 (scope of representation), 1.3 (diligence), 1.4  
18 (communication), 1.15 (safekeeping property), 1.16(d) (declining or terminating  
19 representation) and 8.4(d) (conduct prejudicial to the administration of justice).  
20 When Respondent first learned that the filing fee was returned by the Court, he  
21 failed to timely resubmit the fee causing the dismissal of Mr. Derosier's case.  
22 Thereafter, Respondent took no action to correct the dismissal for several weeks.  
23 Respondent did not communicate with Mr. Derosier regarding the matter, and  
24 did not respond to Mr. Derosier's attempts to contact him. Thereafter,  
25 Respondent failed to refund Mr. Derosier's filing fee for approximately seven  
26 months. Respondent only refunded the fee after ordered to do so by the Court.



1 dealing improperly with client property. In Mr. Frisby's matter, he was well-  
2 aware that Mr. Frisby's check had been returned for insufficient funds. Also, in  
3 Mr. Derosier's matter, Respondent was well-aware that the cost check had been  
4 returned to him. It is significant to note that Respondent failed to refund Mr.  
5 Derosier's money until ordered to do so by the court. Also, to date, Respondent  
6 had failed to refund Mr. Frisby's money. Finally, as to the Flores', Respondent  
7 knowingly failed to provide an accounting. Respondent's misconduct resulted in  
8 actual injury to the clients in that they were deprived of the use of their money.  
9 As to Mr. Flores, Respondent's failure to provide an accounting makes it difficult  
10 for Mr. Flores to challenge the reasonableness of Respondent's fees.

11 Standard 4.42, applicable to Counts One and Three, provides: "Suspension  
12 is generally appropriate when: . . . (b) a lawyer engages in a pattern of neglect  
13 and causes injury or potential injury to a client." In Counts One and Three,  
14 Respondent persisted in a pattern of neglect. As to Mr. Frisby, Respondent failed  
15 to appear for his hearing, or to obtain a continuance. Certainly such conduct  
16 resulted in potential injury to the client. As to Mr. Derosier, Respondent failed to  
17 file a motion that he had told Mr. Derosier he would file, and failed to timely pay  
18 the fee, resulting in a dismissal of the bankruptcy.

19 Finally, Standard 7.2, applicable to Respondent's violations of Rule 51(h)  
20 and ER 1.16(d), states: "Suspension is generally appropriate when a lawyer  
21 knowingly engages in conduct that is a violation of a duty owed to the profession,  
22 and causes injury or potential injury to a client, the public, or the legal system."  
23 Respondent's misconduct was knowing. Thus, pursuant to the Standards,  
24 suspension is the presumptive sanction in this matter.

25 The next step under the Standards is consideration of aggravating and  
26 mitigating factors. Standard 9.1. An analysis of the aggravating and mitigating

1 factors further supports the imposition of a suspension in this matter.

2 A review of Standard 9.22 indicates the following aggravating factors are  
3 present:

4 1. 9.22(a) prior disciplinary offenses: In file number 99-2285,  
5 Respondent received a censure for violations of ER 1.7, ER 8.1, ER 8.4(c)  
6 and (d), Ariz.R.S.Ct, by judgment and order dated February 13, 2002. In  
7 file nos. 00-1976, 01-1187, and 01-2308, Respondent received a sixty-day  
8 suspension for violations of ER 1.3, ER 1.15, ER 1.16(d), ER 8.1(b) and  
9 Rule 51(e), (h), (i), and (k), Ariz.R.S.Ct., by judgment and order dated  
10 November 19, 2003.

11 2. 9.22 (c) and (d) pattern of misconduct and multiple offenses:  
12 This factor is applicable as Respondent's misconduct consists similar  
13 misdeeds in three different files.

14 3. 9.22(e) failure to cooperate with the screening investigation:  
15 In each of the three files, Respondent failed to submit timely responses  
16 during the screening investigations. Respondent also failed to submit a  
17 disclosure statement during the formal proceedings, and failed to respond  
18 to other discovery requests by bar counsel.

19 4. 9.22(i) substantial experience in the practice of law:  
20 Respondent has been a practicing attorney for twenty-three (23) years,  
21 having been admitted to practice in Arizona in 1980.

22 5. 9.22(j) indifference to making restitution: In Count One,  
23 Respondent has not, to date, repaid Mr. Frisby. In Count Three,  
24 Respondent repaid Mr. Derosier only after the bar charge had been filed,  
25 and the court ordered him to do so.

26 The Record does not reflect the existence of any of the mitigating factors

1 listed in Standard 9.3.

## 2 PROPORTIONALITY

3 To have an effective system of professional sanctions, there must be  
4 internal consistency and it is therefore appropriate to examine sanctions imposed  
5 in cases that are factually similar: *In re Shannon*, 179 Ariz. 52 (1994) (quoting *In*  
6 *re Wines*, 135 Ariz. 203 (1983)), *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161  
7 (1988). However, the discipline in each situation must be tailored to the  
8 individual case, as neither perfection nor absolute uniformity can be achieved.

9 There are a number of prior cases that involve similar misconduct.  
10 However, none of the cases are exactly on point as they involve other violations,  
11 and different aggravation and mitigation. Nonetheless, the following cases are  
12 instructive in providing an appropriate range of discipline:

13 In *Matter of Odneal*, SB 01-0108-D (2001), the attorney was censured and  
14 placed on probation for misconduct in three matters, including violations of ERs  
15 1.15 and 1.16(d) for failing to promptly return client funds. The attorney had no  
16 prior discipline history.

17 In *Matter of Herbert*, SB-00-0014-D (2000), the attorney received a thirty-  
18 day suspension for misconduct in one matter involving violation of ERs 1.15 and  
19 1.16(d). In determining that suspension was appropriate, the Court applied ABA  
20 Standard 4.12. Mr. Herbert had been disciplined previously approximately four  
21 years prior to that case.

22 In *Matter of Weisling*, SB-01-0038-D (2001), the attorney received a two-  
23 year suspension for misconduct in three matters, including violations of ERs 1.15,  
24 1.16(d), and Rule 51(h). It should be noted that *Weisling* also involved several  
25 other violations, and the attorney had a prior suspension.

26 In *Matter of Sodikoff*, SB-01-0109 (2001), the attorney received a censure

1 for misconduct in two matters including violations of ER 1.15(b) for failure to  
2 provide an accounting, and violation of Rule 51(h). The attorney had a prior  
3 discipline history.

4 In addition to cases involving client property issues, cases involving the other  
5 violations also support a suspension. In *Matter of Bayless*, SB-02-0038-D (2002),  
6 the respondent was suspended for 30 days for violation of diligence and  
7 communication rules in his handling of a client matter in one case. The misconduct  
8 included failing to adequately communicate with his client in that matter, and  
9 failing to timely file pleadings and responses on her behalf. The commission found  
10 that a suspension was warranted based on the facts of the case, and the respondent's  
11 prior discipline.

12 In this case, Respondent's multiple violations and pattern of misconduct  
13 must be considered. In addition, Respondent failed to cooperate with the State  
14 Bar's investigations in all three counts. Respondent's prior censure and prior  
15 suspension also included failing to cooperate charges.

16 Based on the foregoing, particularly in light of Respondent's prior  
17 discipline history that involves similar violations as well as the other aggravating  
18 factors in this case, the State Bar argues that a suspension of less than six months  
19 and one day, along with probation, is appropriate. I agree. Given Respondent's  
20 past discipline and the pattern of misconduct evidence in this case, I recommend  
21 that Respondent be given a six month suspension, be required to participate in the  
22 LOMAP program as a term of probation and obtain a practice monitor.

23 Respondent should also be required to pay restitution as follows: In Count  
24 One, Respondent should pay restitution to Ruben Frisby in the amount of \$670  
25 (\$500 fee plus the \$170 filing fee for the review hearing). In Count Two,  
26 Respondent should be ordered to participate in binding fee arbitration with

1 Sigfried and/or Wuilber Flores. As no accounting has ever been provided and the  
2 Flores claim that they have been overcharged, a full fee arbitration hearing will  
3 determine the refund amount, if any, due. No restitution is required in Count  
4 Three (Derosier) as Mr. Derosier received his \$200 cost refund, albeit late and the  
5 lost interest would be *de minimus*.

#### 6 RECOMMENDATION

7 Upon consideration of the facts, application of the *Standards*, including  
8 aggravating and mitigation factors, and a proportionally analysis, this Hearing  
9 Officer recommends the following:

10  
11 1. Respondent shall be suspended for a period of six months.

12 2. Respondent shall be placed on probation for a period of two years,  
13 with the following terms and conditions:

14  
15 a.) Respondent shall submit to a law office audit by the State Bar's  
16 Law Office Management Assistance Program (LOMAP) director or her  
17 designee, and shall comply with all recommendations of the LOMAP director  
18 or her designee; and

19  
20 b.) Respondent shall find a qualified Practice Monitor approved by  
21 the LOMAP director.

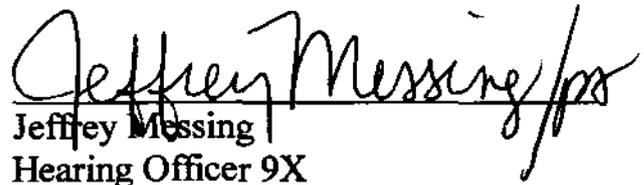
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23 c.) In the event that Respondent fails to comply with any of the  
24 foregoing conditions, and the State Bar receives information, bar counsel shall  
25 file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule  
26

1 60(a)5. The Hearing Officer shall conduct a hearing at the earliest practicable  
2 date, but in no event later than thirty days after receipt of said notice, to determine  
3 whether a condition of probation has been breached and, if so, to recommend an  
4 appropriate sanction. In the event there is an allegation that any of these terms  
5 have been breached, the burden of proof shall be on the State Bar of Arizona to  
6 prove non-compliance by clear and convincing evidence.  
7

8  
9 3. Respondent shall pay restitution to Mr. Frisby in the amount of \$670.00.

10 4. Respondent shall participate in binding fee arbitration with Sigfried  
11 and/or Wilbur Flores.  
12

13 DATED this 9<sup>th</sup> day of February 2004.

14  
15   
16 Jeffrey Messing  
17 Hearing Officer 9X

18 Original filed with the Disciplinary  
19 Clerk of the Supreme Court of Arizona  
20 this 9<sup>th</sup> day of February 2004.

21 Copy of the foregoing mailed  
22 this 9<sup>th</sup> day of February 2004, to:

23  
24 Carroll A. Clark  
25 Respondent  
26 1630 S. Stapley, Suite 231  
Mesa, Arizona 85204-2253

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