

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

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
RICHARD T. FULLER,)
Bar No. 004835)
)
RESPONDENT.)
_____)

No. 02-0390

**HEARING OFFICER'S REPORT
AND RECOMMENDATION**

PROCEDURAL HISTORY

A Probable Cause Order was filed on September 4, 2003. A Complaint was filed on December 1, 2003. Respondent filed an Answer on January 16, 2004. A settlement conference was held on February 20, 2004 and the parties were unable to reach a settlement. A Joint Pre-Hearing Statement was filed March 22, 2004. Respondent also filed a separate Pre-Hearing Statement on April 15, 2004. A hearing was held on April 15, 2004, Bar Counsel and Respondent were present.

FINDINGS OF FACT

At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted on April 30, 1977. The Supreme Court of Arizona censured Respondent on August 12, 1997.

1. Respondent's client trust account suffered two overdrafts, one in February 2002 and another in March 2002. (Pre-Hearing Statement's and TR p. 26, l. 13).

1 2. Respondent was call out-of-state, from February 4 through February 19, 2002, when his
2 mother became terminally ill and died. (Joint Pre-Hearing Statement's, TR p. 26, L. 13 and
3 TR, Page 101, l. 7).

4 3. On the day he left to travel out-of-state, Respondent had client checks for \$750.00 and
5 \$340.00 in his desk for deposit into his trust account. The check inadvertently did not get
6 deposited until February 22, 2002. (Pre-Hearing Statement's, TR 26, l. 13)

7 4. The March 2002, overdraft resulted when Respondent failed to compensate for the
8 bank's overdraft charges from the February 2002 overdrafts. (Pre-Hearing Statement's, TR
9 26, p. 27, l. 7)

10 5. Some of Respondent's trust account deposits in January, February, and March 2002, did
11 not match entries on his client ledgers. (Pre-Hearing Statement's, TR p. 22, l. 3)

12 6. In response to a request from the State Bar of Arizona, Respondent provided to the State
13 Bar copies of 10 trust account checks written during January, February, and March 2002. The
14 checks originally had been made payable to Cheryl A. Fuller, his wife. When Respondent
15 provided copies of those checks to the State Bar, he substituted his name for that of Cheryl A.
16 Fuller. (Pre-Hearing Statement's, TR 28, l. 7 and Exhibit 18 & 20).

17 7. Had Respondent timely deposited the checks that had inadvertently not been deposited
18 in February 2002, his trust account would not have become overdrawn. (Pre-Hearing
19 Statement's, TR 101, l. 20)

20 8. On February 25, 2002, the State Bar of Arizona received a non-sufficient funds notice
21 on Respondent's Wells Fargo Arizona client trust account. The notice indicated that on
22 February 21, 2002, check no. 7325 for \$500.00 and check no. 7323 for \$200.00 attempted to
23 pay against the account when the balance was overdrawn by \$199.95 (Exhibit 2).
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1 9. The bank paid the two checks, charging a \$58.00 overdraft fee, thereby causing
2 Respondent's client trust account to be overdrawn by a total of \$957.95 (Exhibit 1 and 27).

3 10. On March 15, 2002, the State Bar received a second non-sufficient funds notice on
4 Respondent's Wells Fargo Arizona client trust account (Exhibit 4).

5 11. On March 14, 2002, check no. 7347 for \$24.00 had attempted to pay against the account
6 when the balance was \$6.64. The bank paid check no. 7347, charging a \$59.00 overdraft fee,
7 thereby causing Respondent's client trust account to be overdrawn by \$46.36 (Exhibit 1 and
8 27).

9 12. The February 2002 overdrafts resulted when Respondent had to leave the state on a
10 family emergency. Checks that should have been deposited into the account before he left were
11 not deposited until February 22, 2002. (Pre-Hearing Statement's, TR 34, l. 13)

12 13. Respondent wrote trust account checks on funds before his trust account contained the
13 funds on which the checks were drawn (Exhibit 1 & 27).

14 14. The March 2002, overdrafts resulted when he failed to reconcile his trust account and
15 thus did not take into account the overdraft fees charged in February 2002. (Joint Pre-Hearing
16 Statement, TR 27, L. 4 and l. 15)

17 15. On April 1, 2002, the State Bar sent Respondent a letter asking for client trust account
18 statements covering February, 2002, and March, 2002; individual client ledgers or their
19 equivalents corresponding to those statements; cancelled checks and duplicate deposit slips
20 corresponding to those statements; and check registers or account ledgers corresponding to
21 those statements. On April 30, 2002, Respondent provided copies of the requested documents
22 (Exhibit 7).
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1 16. Pursuant to a subpoena duces tecum filed August 16, 2002, the State Bar requested and
2 obtained certain records of Respondent's client trust account from Wells Fargo Arizona (Exhibit
3 10 and 20-A).

4 17. The documents related to Respondent's client trust account supplied by Wells Fargo
5 Arizona included copies of 10 cancelled checks, all written on the client trust account (Exhibit
6 20-A).

7 18. The copies of the 10 checks showed a different payee than the copies of the same-
8 numbered checks Respondent had provided to the State Bar.

9 19. The payee on the copies of checks provided by Wells Fargo was Cheryl Fuller, whereas
10 the payee on the copies provided to the State Bar by Respondent was Respondent (Exhibit 18).

11 20. The documents provided on April 30, 2002, showed that Respondent deposited
12 \$2,710.00 on February 22, 2002, to his client trust account (Exhibit 1, Joint Pre-Hearing
13 Statement and TR 25, l. 11).

14 21. The documents provided by Wells Fargo Arizona showed that Respondent's February
15 22, 2002, deposit did not match his client ledgers. Respondent's client ledgers showed he
16 deposited on February 22, 2002, the following amounts for client: \$200.00 for Akin; \$18.00 for
17 Gathar; \$20.00 for Lathan; \$191.00 for Pitts; \$970.90 for Reed; \$231.00 for Ritter; \$750.00 for
18 Reinmann; and \$334.10 for Western Pacific Bfts. (Exhibit's 1, 27, 20-A and TR p.'s 51 and
19 52).

20 22. In contrast, according to bank records, the February 22, 2002, deposit actually consisted
21 of the following checks: \$450.00 for Akin; \$50.00 for Reinmann and \$340.00 for Western
22 Pacific Bfts. Only two of the eight clients who money was involved in the February 22, 2002,
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1 deposit had the correct amount recorded in Respondent's client ledgers. (Exhibit 1 and TR p.
2 49, l. 14).

3 23. The individual client ledgers that Respondent provided to the State Bar showed a variety
4 of other discrepancies. In addition to the discrepancies noted above, Respondent's client
5 ledgers also showed discrepancies including but not limited to the following: (Exhibit 1, 27 and
6 TR p. 53, & 118).

- 7 a. The client ledger for Blair, B., indicates a December 31, 2002, deposit of \$299.00
8 to Respondent's client trusts account. Bank records reflect an actual deposit of
9 \$799.00, for this client.
- 10 b. The client ledge for Blair, B., indicates a January 4, 2001, disbursal from the
11 client trust account, via check no. 7274, for \$150.00 for earned fees. Bank
12 records reflect that check no. 7274 was written for \$350.00.
- 13 c. The client ledger for Bates, Ron, indicates a January 11, 2002, deposit to
14 Respondent's client trust account of \$1,200.00 for fees and costs. Bank records
15 reflect an actual deposit of \$2,000.00 for this client.
- 16 d. The client ledge for Eastlick indicates a March 25, 2002, deposit of \$185.00 to
17 Respondent's trust account. Bank records do not reflect any deposit for this
18 client.
- 19 e. The client ledger for Derrow, W., indicates a January 28, 2002, deposit to
20 Respondent's client trust account of \$950.00, for fees and costs. Bank records
21 reflect an actual deposit of \$1,500.00 for this client.
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- 1 f. The client ledger for Hinton, D., indicates a February 25, 2002, deposit to
2 Respondent's client trust account of \$612.59 for fees and costs. Bank records
3 reflect an actual deposit of \$900.00 for this client.
- 4 g. The client ledger for Jones, T., indicates a January 28, 2002, deposit to
5 Respondent's client trust account of \$255.00 for costs. Bank records do not
6 reflect a \$255.00 deposit to Respondent's client trust account on or around
7 January 28, 2002.
- 8 h. The client ledger for Jenkins, E., indicates a March 15, 2002, deposit to
9 Respondent's client trust account of \$1,476.00 for fees and costs. Bank records
10 reflect an actual deposit of \$1,500.00 for this client.
- 11 i. The client ledger for Ketelhut, M., indicates a March 1, 2002, deposit to
12 Respondent's client trust account of \$24.10. Bank records do not reflect a
13 \$24.10 deposit to the trust account on or around March 1, 2002, for this client.
- 14 j. The client ledger for Kirtz, R., indicates a March 25, 2002, deposit to
15 Respondent's client trust account of \$587.50 for settlement. Bank records
16 reflect only a deposit of \$87.50 on March 26, 2002, to the trust account for this
17 client.
- 18 k. The client ledger for Lathan indicates a January 22, 2002, deposit to
19 Respondent's client trust account of \$400.00 in fees and costs. Bank records
20 reflect an actual deposit of \$450.00 on January 22, 2002 for this client.
- 21 l. The client ledger for Lofgreen indicates a January 23, 2002, deposit to
22 Respondent's client trust account of \$385.00 in fees and costs. Bank records
23 reflect an actual deposit of \$460.00 on January 23, 2002, for this client.
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- 1 m. The client ledger for Monasterior, M., indicates a February 9, 2002, deposit to
2 Respondent's client trust account of \$24.00 in costs. Bank records do not reflect
3 a \$24.00 deposit to Respondent's client trust account on or around February 19,
4 2002, for this client.
- 5 n. The client ledger for Phipps, S., indicates a January 22, 2002, deposit to
6 Respondent's client trust account of \$230.00 in costs. Bank records reflect an
7 actual deposit of \$180.00 on January 22, 2002, for this client.
- 8 o. The client ledger for Phipps, S., does not reflect check no. 7312 for \$20.00
9 payable to the Clerk, U.S. Bankruptcy Court. Bank records reflect check no.
10 7312 for \$20.00 payable to Clerk, U.S. Bankruptcy Court memorialized as being
11 for Phipps, S., Filing Fee Auto Schedule F.
- 12 p. The client ledger for Pitts, T., indicates a January 11, 2002, deposit to
13 Respondent's client trust account of \$200.00 for advanced costs. Bank records
14 do not reflect a \$200.00 deposit on or around January 11, 2002, for this client.
- 15 q. The client ledger for Salamone, A., indicates a February 25, 2002, deposit to
16 Respondent's client trust account for \$200.00 for advanced costs. Bank records
17 do not reflect a \$200.00 deposit on or around February 25, 2002, for this client.
- 18 r. The client ledger for Stone, B., indicates a January 11, 2002, deposit to
19 Respondent's client trust account of \$200.00 for advanced costs. Bank records
20 do not reflect a \$200.00 deposit on or around January 11, 2002, for this client.
- 21 s. The client ledger for Thomas, D., indicates a March 1, 2002, deposit to
22 Respondent's client trust account of \$30.00 for advanced costs. Bank records
23 reflect an actual deposit of \$125.00 on March 6, 2002, for this client.
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1 t. The client ledger for Yancy, C., indicates a January 28, 2002, deposit to
2 Respondent's client trust account of \$295.52 for advanced costs. Bank records
3 do not reflect a \$295.52 deposit on or around January 28, 2002, for this client.

4 u. The client ledger for Whittle indicates a March 25, 2002, deposit to
5 Respondent's client trust account of \$450.00 for advanced fees and costs. Bank
6 records reflect an actual deposit of \$1,551.00 on March 26, 2002, for this client.

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8 24. The discrepancy between the bank records and Respondent's client ledgers as detailed
9 above results from Respondent's practice of "reallocating" his portion of earned client fees.
10 Instead of removing his earned fees from his trust account, Respondent advanced fees to clients
11 via these "reallocated" earned fees (Exhibit 22, 23, 24 and 25; Joint Pre-Hearing Statement TR
12 p. 90, l. 25).

13 25. Respondent admitted that he had not been performing a monthly three-way
14 reconciliation of his trust account, as required by Rule 43 (d), Guideline 2(e), Ariz. R.S. Ct.
15 (Exhibit 1, and TR p's 66, l. 24 and 107, l. 10).

16 26. On March 18, 2002, the State Bar sent Respondent a letter asking him to explain the
17 March 2002, overdraft of his client trust account (Exhibit 5).

18 27. In a letter received by the State Bar on March 25, 2002, Respondent explained the
19 February 2002 overdrafts (Exhibit 3).

20 28. He did not, however, promptly submit an explanation for the March 2002 overdrafts
21 (TR p. 130, l. 3).

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23 29. By letter dated August 20, 2002, the State Bar asked Respondent for additional
24 information regarding six disbursements from his client trust account during February, 2002 and
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1 March, 2002, and also once again asked him to explain the circumstances that resulted in the
2 March, 2002, overdraft of his client trust account (Exhibit 11).

3 30. In an August 30, 2002, letter, Respondent provided the requested information (Exhibit
4 12).

5 31. On January 16, 2003, the State Bar sent Respondent a letter requesting an explanation as
6 to why the copies of the cancelled trust account checks he submitted contained different payees
7 than the copies of the same checks receive from Wells Fargo Arizona (Exhibit 13).

8 32. When Respondent failed to respond, the State Bar's staff examiner, Leigh Ann Mauger,
9 contacted Respondent and set up a meeting for February 3, 2003 (TR p. 55, l. 15, p. 56, l. 6).

10 33. At that meeting, Ms. Mauger asked Respondent to, within 30 days, provide additional
11 information, including client ledgers from January, 2002 and April, 2002; copies of his Wells
12 Fargo Arizona operating account statements covering January, February, March and April,
13 2002; copies of statements from a Bank One account covering the same period; and a listing of
14 client whose money comprised his trust account balance of \$4,100.09 as of January 1, 2002 (TR
15 56, l. 13)

16 34. Respondent failed to provide the information as requested (TR p. 57).

17 35. On March 25, 2003, the State Bar of Arizona sent Respondent a letter again requesting
18 the information. (Exhibit 14)

19 36. On April 16, 2003, Respondent sent a fax requesting an extension within which to
20 respond to Ms. Mauger's February 3, 2003, request. He specifically asked for an extension to
21 April 28, 2003. (Exhibit 15)

22 37. On May 13, 2003, the State Bar sent Respondent a letter asking for information about
23 the disbursements to Cheryl Fuller and documentation that the disbursements consisted of
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1 earned fees. In that same letter, the State Bar also requested that Respondent provide the names
2 of the clients associated with check no. 7339 and check no. 7334. Respondent failed to respond
3 in writing to the May 13, 2003, letter (Exhibit 18).

4 38. On June 12, 2003, the State Bar sent Respondent another letter asking that he respond to
5 the May 13, 2003, letter. (Exhibit 19)

6 39. Respondent never responded in writing to the June 12, 2003, letter or the earlier May 13,
7 2003, letter (Joint Pre-Hearing Statement and TR p. 129, l. 1).

8 40. On July 14, 2003, Ms. Mauger telephoned Respondent. During that telephone
9 conversation, Respondent identified Cheryl Fuller as his wife and admitted that he had altered
10 the copies of the checks he submitted to the State Bar to substitute his name for that of Cheryl
11 Fuller as the payee. (Joint Pre-Trial Statement and TR 134, l. 7)

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13 **CONCLUSIONS OF LAW**

14 This Hearing Officer finds that there is clear and convincing evidence that Respondent
15 violated Rule 42, Ariz. R. S. Ct., specifically:

16 Respondent violated ER 8.1(a) and ER 8.4(c), by submitting altered documents to the
17 State Bar during a disciplinary proceeding.

18 Respondent failed to respond to the State Bar's requests for information in violation of
19 ER 8.1(b), and Rule 51(h) and (i), Ariz. R.S.Ct.

20 Respondent failed to safeguard client funds in violation of ER 1.15(a) and Rules 43 and
21 44, Ariz. R.S.Ct.

22 Respondent failed to keep complete records of his trust account funds, thus violating ER
23 1.15(a), and Rule 43, Ariz. R.S. Ct.
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1 Respondent failed to conduct a monthly reconciliation of his trust account, thus
2 violating Rule 43, Ariz. R.S. Ct.

3 ABA STANDARDS

4 ABA *Standard* 3.0 provides that four criteria should be considered: (1) the duty
5 violated; (2) the lawyer's mental state and (3) the actual or potential injury caused by the
6 lawyer's misconduct; and (4) the existence of aggravating or mitigating factors.

7 Under the American Bar Association Standard's For Imposing Lawyer Sanctions,
8 Standards 9.22 and 9.32 were considered in aggravation and mitigation. These factors are to be
9 considered "to determine whether and to what extent they should affect the ultimate sanctions
10 imposed," *in re: Augestein*, 178 Ariz. 133, 871 P. 2nd 254 (1994). In this particular case there
11 are six aggravating factors present:
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- 13 a. Prior disciplinary offenses. The Respondent has had seven prior disciplinary
14 matters. The first was an Arizona Supreme Court judgment order imposing
15 censure dated August 12, 1997 in SB File #97-0065-D. The second was a
16 probable cause panel order of informal reprimand dated May 17, 1995 in SB
17 File #94-1617. The third was a probable cause panel of order of informal
18 reprimand dated September 11, 1992 in SB File #92-0365. The fourth was a
19 probable cause panel of order of informal reprimand dated July 20, 1992 in
20 SB File #91-1912. The fifth was a probable cause panel order of informal
21 reprimand dated July 29, 1991 in SB File #90-2152. The sixth was a
22 probable cause panel of order of informal reprimand dated February 14, 1991
23 in SB File #90-1483. The seventh was a probable cause panel order of
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1 informal reprimand dated May 20, 1991 in SB File #90-0702. The prior
2 disciplinary matters have been over a period of ten years.

3 Those various disciplinary matters dealt with failure to respond to State Bar
4 investigations, failure to maintain regular communications with clients and
5 failure to promptly return files to a client. All of the disciplinary matters deal
6 with a failure to respond to the State Bar during an investigation. The same
7 holds true in this particular matter.

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- 9 c. Pattern of misconduct. This is a pattern of behavior that has been ongoing
10 since 1991. The behavior continues into 2002.
 - 11 e. Bad faith obstruction of the disciplinary proceeding by intentionally failing to
12 comply with rules or orders of the disciplinary agency;
 - 13 f. Submission of false evidence, false statements, or other deceptive practices
14 during the disciplinary process;
 - 15 g. Refusal to acknowledge wrongful nature of conduct and;
 - 16 i. Substantial experience in the practice of law.

17 In mitigation, Standard 9.32, the factors are (b) absence of a dishonest or selfish motive,
18 and (c) personal or emotional problems. No other aggravating or mitigating factors are found.

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20 Given the conduct by the Respondent in this matter, it is also appropriate to consider
21 ABA Standard 7.0; suspension is generally appropriate where an attorney knowingly
22 engages in conduct that is false or misleading as in this case.

23 ABA *Standard 7.2* is also applicable in that the Respondent admitted that he
24 knowingly altered a document to support his position to the complaint.

1 This type of conduct diminishes the integrity of the profession, which is one of the
2 duties owed as a professional, ABA *Standard 5*.

3 The Supreme Court expects and demands candor in disciplinary proceedings, in *re:*
4 *Varbel*, 182 Ariz. 451, 897 P. 2nd 1337 (1995). Candor was absent in this case.

5 Factors considered in mitigation pursuant to the American Bar Association Standards
6 of Practice 9.32, was the personal or emotional problems of the Respondent.

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8 The mental state of the Respondent was carefully considered. Submission of false
9 evidence or other deceptive practices during the disciplinary process is unconscionable. The
10 Respondent with this many years of experience in not only the practice of law but the
11 disciplinary process should know the ramifications of not only submitting false evidence but,
12 but consciously altering evidence presented to the State Bar. The Respondent's mental
13 health in no way explains the submission of altered and false evidence to the State Bar but
14 the undersigned hearing officer has a great concern for the emotional health of the
15 Respondent. During the hearing, he was unfocused, he seldom made eye contact, his
16 presentation was rambling, confusing and distracting. The state of his mental health may
17 make it very difficult for him to function as an attorney.

18 **PROPORTIONALITY REVIEW**

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20 The Supreme Court has held in order to achieve proportionality when imposing
21 discipline; the discipline in each situation must be tailored to the individual facts of the case
22 in order to achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454
23 (1983) and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993).

24 The purpose of lawyer discipline is not to punish the lawyer, but to protect the public
25 and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320

1 (1993). It is also the objective of lawyer discipline to protect the public, the profession and
2 the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet
3 another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180
4 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

5 In imposing discipline, it is appropriate to consider the facts of the case, the
6 American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") and
7 the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz.
8 283, 286, 872 P.2d 1235, 1238 (1994).

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10 In the *Matter of Carrager*, 157 Ariz. 219, 1998, the Supreme Court found that failure
11 to maintain adequate records of funds of a client, failure to deposit client's funds in an
12 identifiable account was sufficient for a six (6) month suspension.

13 In the *Matter of Carrasco*, Comm. 94-1804, 95-0996, and 95-2025, the Disciplinary
14 Commission found that a six (6) month suspension was appropriate for failure to maintain
15 individual client ledgers and failure to maintain proper trust account records for a period of
16 five (5) years.

17 As stated in the *Matter of Rubi*, 133 Ariz. 491, 652 P. 2nd 1014, 1982, every isolated
18 instance of trust account violations must be deterred. The sanction imposed for misconduct
19 should be for the purpose of deterring the Respondent and other attorneys from engaging in
20 similar conduct, *in re: Kleindiest*, 132 Ariz. 95, 644 P. 2nd 249 (1982).

22 RECOMMENDATION

23 Upon consideration of the testimony and exhibits and upon consideration of the facts
24 in this particular matter application of the *Standards*, which include aggravating and
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1 mitigation factors, and a proportionally analysis, this Hearing Officer recommends the
2 following:

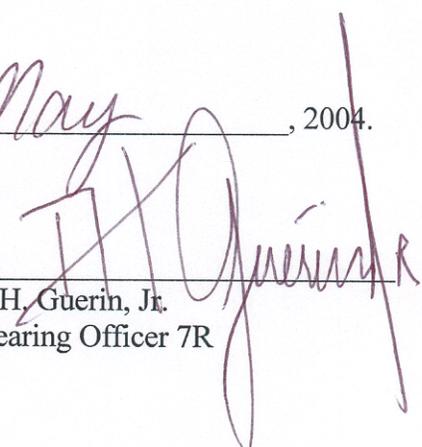
- 3 1. That the Respondent be suspended from the practice of law for a period of six
4 (6) months;
- 5 2. That the Respondent be placed on probation for a period of two (2) years,
6 upon reinstatement, with the following terms and conditions;
 - 7 a. Respondent shall submit to a law office audit by the State Bar's Law
8 Office Management Assistance Program director or designee and he
9 will comply with all recommendations of the LOMAP director or
10 designee. Respondent shall comply with all orders of the State Bar
11 LOMAP director or his/her designee.
 - 12 b. Respondent shall obtain within 30 days of the effective date of
13 probation and maintain contact with a practice monitor (PM) as
14 approved by the State Bar for the term of his probation. Respondent
15 shall meet with the PM no less than monthly and shall have weekly
16 telephone contact with the PM during the terms of probation.
 - 17 c. The Respondent shall contact the director of MAP, or designee, and
18 engage in a therapeutic program for a period of two years.
 - 19 d. Respondent shall meet with the director or designee of MAP, who
20 will conduct an assessment. Respondent thereafter will enter into a
21 MAP contact based upon recommendation made by the director of
22 MAP or designee.
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1 e. In the event that Respondent fails to comply with any of the foregoing
2 conditions, and the State Bar receives information, bar counsel shall
3 file with the Hearing Officer a Notice of Non-Compliance, pursuant
4 to Rule 60 (a) 5, Ariz. R.S. Ct. The Hearing Officer shall conduct a
5 hearing within thirty (30) days after receipt of said notice, to
6 determine whether the terms of probation have been violated and if an
7 additional sanction should be imposed. In the event there is an
8 allegation that any of these terms has been violated, the burden of
9 proof shall be on the State Bar of Arizona to prove non-compliance
10 by clear and convincing evidence.
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12 3. That the Respondent shall pay costs and expenses incurred in these
13 disciplinary proceedings.

14 4. Restitution is not appropriate.

15 DATED this 12 day of May, 2004.

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T.H. Guerin, Jr.
Hearing Officer 7R

Original filed with the Disciplinary Clerk
this 13th day of May, 2004.

Copy of the foregoing mailed
this 13th day of May, 2004, to:

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