

**FILED**

SEP 02 2004

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *Williams*

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

IN THE MATTER OF A MEMBER	)	No. 03-0642
OF THE STATE BAR OF ARIZONA,	)	
	)	
<b>JESUS R. ROMO VEJAR,</b>	)	
<b>Bar No. 011307</b>	)	
	)	<b>HEARING OFFICER'S REPORT</b>
<b>RESPONDENT.</b>	)	

**PROCEDURAL HISTORY**

A Probable Cause Order was filed on February 26, 2004. The State Bar filed a Complaint on April 30, 2004. The parties filed a Tender of Admissions and Agreement for Discipline by Consent and a Joint Memorandum in Support of Agreement for Discipline by Consent on May 20, 2004. No hearing has been held.

**FINDINGS OF FACT**

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 May 9, 1987.

2. Respondent represented Jose Garcia Dominguez in connection with a work-related injury that occurred on December 12, 1998.

1           3. There was a worker's compensation lien in the amount of \$15,806.75  
2 against any recovery.

3           4. In or about November of 2001, the parties reached a settlement  
4 agreement in the amount of \$50,000.

5           5. Respondent deposited the \$50,000 settlement check into his trust  
6 account on or about November 20, 2001.

7           6. Pursuant to the fee agreement, Respondent was due a one-third fee  
8 from the settlement, in the amount of \$16,650. Respondent withheld \$15,000 in  
9 order to satisfy the worker's compensation lien, and then issued a check to Mr.  
10 Dominguez for the remainder, in the amount of \$18,350.

11           7. Respondent initially left the \$15,000 for the lien in his trust account.  
12 Respondent informed Mr. Dominguez that he would attempt to negotiate a  
13 settlement of the lien amount.

14           8. Thereafter, Respondent made a few phone calls to the worker's  
15 compensation insurance office, and eventually to the insurance attorney  
16 regarding the lien.

17           9. Respondent did not thereafter diligently pursue the payment of the  
18 worker's compensation lien on behalf of Mr. Dominguez.

19           10. In or about January and March of 2003, the insurance company's  
20 attorney wrote letters to Respondent's office in an attempt to ascertain the status  
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1 of the lien monies. Respondent did not respond to these contacts. Respondent  
2 asserts that the letters were sent to his previous address, and that he did not  
3 receive them.  
4

5 11. By letter dated April 3, 2003, attorney Terrence Kurth, who represents  
6 the insurance company, submitted a bar charge relating to Respondent's failure  
7 to timely pay the lien.  
8

9 12. Upon receiving the charge, Respondent immediately sent checks to  
10 Mr. Kurth in the amount of \$15,806.75, as payment of the lien in full.  
11

12 13. Respondent was asked to provide trust account records to establish  
13 that the lien monies had been held in trust from the time of the initial deposit  
14 until the disbursement to Mr. Kurth.  
15

16 14. Respondent provided the requested trust account records.  
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18 15. The records revealed that the lien monies were not consistently held in  
19 the trust account during the time period in question.  
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21 16. A subsequent review of Respondent's trust account records, along  
22 with Respondent's responses, revealed that Respondent:  
23

- 24 a. Failed to safe-keep the property of a client or third party. The  
25 records indicate that, at times during the 14-month period in  
question, the lien monies were not in the trust account. On  
various occasions during the time period, portions of the lien  
funds were transferred to Respondent's operating account. The

1 records further indicate that a portion of the funds was utilized  
2 to repay another client. These transactions resulted in  
3 misappropriation of the third party funds.

4 b. Failed to keep his funds separate from that of client or third  
5 party funds. Respondent removed portions of the lien monies  
6 from his trust account into his operating account, and also  
7 placed earned and personal monies into his trust account to  
8 cover the check for the worker's compensation lien.

9 c. Failed to record all transactions to the trust account properly and  
10 completely by failing to update the client ledger cards.  
11 Specifically, the ledger card relating to Mr. Dominguez was not  
12 complete.

13 d. Failed to only disburse from his trust account with pre-  
14 numbered checks. Respondent's bank records indicate that he,  
15 at times during the time period in question, withdrew or  
16 transferred funds by telephone.

17 e. Failed to consistently conduct a monthly reconciliation of his  
18 trust account.

19 17. Respondent asserts that the trust account violations listed above were  
20 the result of negligence, and not intentional wrongdoing. Respondent admits  
21 that he relied on memory rather than referring to records in many of the  
22 transactions resulting in many errors. For purposes of this agreement, the State  
23 Bar does not dispute these assertions. Respondent further states that he has  
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1 changed his office procedures to prevent similar violations, and has enrolled in  
2 CLE classes regarding proper trust accounting procedures.

### 4 CONDITIONAL ADMISSIONS

5 Respondent, in exchange for the stated form of discipline, conditionally  
6 admits that his conduct, as set forth herein, violated the following Rules of  
7 Professional Conduct and Rules of the Supreme Court: Rule 42, specifically  
8 ERs 1.3 and 1.15, Rule 43 and Rule 44, Ariz. R. S. Ct.

### 10 ABA STANDARDS

11 The *ABA Standards* list the following factors to consider in imposing the  
12 appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the  
13 actual or potential injury caused by the lawyer's misconduct, and (4) the  
14 existence of aggravating or mitigating circumstances. *ABA Standard 3.0*.

16 The *Standards* are designed to promote consistency in the imposition of  
17 sanctions by identifying relevant factors that courts should consider and then  
18 applying these factors to situations where lawyers have engaged in various types  
19 of misconduct. *Standards 1.3, Commentary*. The *Standards* provide guidance  
20 with respect to an appropriate sanction in this matter. The court and commission  
21 consider the *Standards* a suitable guideline. *In re Rivkind*, 164 Ariz. 154, 157,  
22 791 P.2d 1037, 1040 (1990); *In re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274,  
23 276 (1994).

1           Given the conduct in this matter, the most applicable Standard is 4.1  
2 regarding failure to preserve the client's property. Specifically, Standard 4.13  
3 provides: "[Censure] is generally appropriate when a lawyer is negligent in  
4 dealing with client property and causes injury or potential injury to a client."  
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6           In this matter, Respondent has asserted, and the State Bar has agreed to  
7 accept, that his misconduct with his trust account was negligent. Respondent  
8 acknowledges that Mr. Dominguez suffered at least potential harm by the  
9 negligent misappropriation of the lien monies in that he could have been held  
10 liable for the lien payment during the time period in question. However, as set  
11 forth in the Tender, the lien has now been paid in full.  
12

13  
14                           **AGGRAVATING AND MITIGATING FACTORS**

15           This Hearing Officer then considered aggravating and mitigating factors in  
16 this case, pursuant to *Standards* 9.22 and 9.32, respectively. This Hearing Officer  
17 agrees with the parties that one aggravating factor applies and should be  
18 considered in this matter: (i) - substantial experience in the practice of law:  
19 Respondent has been a lawyer in Arizona for over 17 years.  
20

21           This Hearing Officer agrees with the parties that four factors are present in  
22 mitigation: (a) - absence of a prior disciplinary record: Respondent has no prior  
23 discipline with the State Bar. (b) absence of a dishonest or selfish motive -  
24 Respondent's conduct was negligent. There is no evidence indicating that he  
25

1 intended to misappropriate his client's funds. (d) timely good faith effort to make  
2 restitution or to rectify consequences of misconduct - Upon receiving the charge  
3 from the State Bar of Arizona, Respondent promptly paid the full amount due to the  
4 third party lien holder. Respondent contends that the bar charge was the first he  
5 realized that the lien had not been timely paid. (e) full and free disclosure to  
6 disciplinary board or cooperative attitude toward proceedings - Respondent was  
7 forthcoming and cooperative throughout the investigative stage of these  
8 proceedings and continued to be cooperative after the filing of a formal complaint.  
9 In addition, Respondent timely provided all trust account records requested during  
10 the investigation.  
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### 13 PROPORTIONALITY REVIEW

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15 To have an effective system of professional sanctions, there must be  
16 internal consistency, and it is appropriate to examine sanctions imposed in cases  
17 that are factually similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567  
18 (1994) (quoting *In re Wines*, 135, Ariz. 203, 207 (1983)). However, the  
19 discipline in each case must be tailored to the individual case, as neither  
20 perfection nor absolute uniformity can be achieved. *Matter of Riley*, 142 Ariz.  
21 604, 615 (1984).  
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24 In terms of proportionality, the following cases are instructive: In *Matter*  
25 *of Vingelli*, SB-03-0161-D (January 13, 2004), Mr. Vingelli represented a client,

1 who at the time was a minor, in a personal injury matter. After the matter settled,  
2 Mr. Vingelli agreed to contest the claim by the parents' insurer for  
3 reimbursement. Mr. Vingelli notified the insurer that the client was contesting  
4 the claim and that the disputed money would be held in his client trust account  
5 until the matter was resolved. The dispute went on for almost three years. The  
6 disputed funds did not always remain in the trust account and the balance dipped  
7 below the disputed amount on some occasions. Mr. Vingelli did not resolve the  
8 dispute in a timely manner as he received the funds in May 1997 but did not file  
9 an interpleader action with the court until September 2002. Mr. Vingelli also  
10 did not have all of the trust account records he was required to maintain. Mr.  
11 Vingelli was found to have violated ER 1.15(a), (b) and (c), Rule 42,  
12 Ariz.R.S.Ct., and Rules 43 and 44, Ariz.R.S.Ct., and was censured by consent  
13 and placed on two years of probation, including participation in the Law Office  
14 Member Assistance Program.  
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19 Similarly, in *Matter of Delozier*, SB 04-0034-D, (March 25, 2004), Mr.  
20 Delozier received a censure and probation for trust account violations. In that  
21 matter, Mr. Delozier failed to safeguard client funds, and commingled personal  
22 funds with client funds. He also failed to conduct monthly reconciliations, and  
23 failed to maintain complete records.  
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1 Other recent trust account cases also support the imposition of a censure  
2 and probation in this matter. See *Matter of Randall*, SB-02-0146-D (November  
3 2002); *Matter of Hall*, SB 02-0122-D (September 2002); and *Matter of Inserra*,  
4 SB 02-0144 (October 2002).

6 This agreement provides for a sanction that meets the goals of the  
7 disciplinary system. A public censure with probation and costs will serve to  
8 protect the public, instill confidence in the public, deter other lawyers from  
9 similar misconduct, and maintain the integrity of the bar.

#### 11 RECOMMENDATION

12 The purpose of lawyer discipline is not to punish the lawyer, but to protect  
13 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859  
14 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the  
15 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.  
16 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in  
17 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361  
18 (1994).

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

1           Upon consideration of the facts, application of the *Standards*, including  
2 aggravating and mitigating factors, and a proportionally analysis, this Hearing  
3 Officer recommends acceptance of the Tender of Admissions and Agreement for  
4 Discipline by Consent and the Joint Memorandum in Support of Agreement for  
5 Discipline by Consent providing for the following:  
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7           1. Respondent shall receive a censure for violating Rule 42, Ariz. R. S.  
8 Ct., specifically ER 1.3 and ER 1.15, and Rules 43 and 44.  
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10           2. Respondent shall be placed on probation for a period of one year. The  
11 probation period will begin to run when all parties have signed the probation  
12 contract. The terms and conditions of probation are as follows:  
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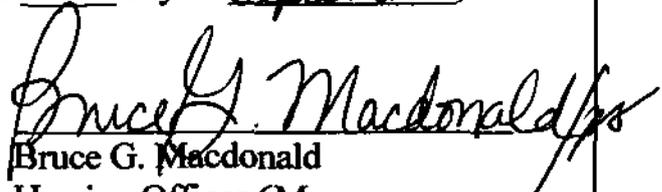
14           a. Respondent shall contact the director of the State Bar's Law Office  
15 Management Assistance Program (LOMAP) within 30 days of the date of the  
16 final judgment and order. Respondent shall submit to a LOMAP audit of his  
17 office's trust account procedures and calendaring procedures. The Director of  
18 LOMAP shall develop a probation contract, and its terms shall be incorporated  
19 herein by reference.  
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21           b. Respondent shall refrain from engaging in any conduct that would  
22 violate the Rules of Professional Conduct or other rules of the Supreme Court of  
23 Arizona.  
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1 c. In the event that Respondent fails to comply with any of the  
2 foregoing conditions, and the State Bar receives information, bar counsel shall  
3 file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule  
4 60(a)5, Ariz. R. S. Ct. The Hearing Officer shall conduct a hearing within thirty  
5 days after receipt of said notice, to determine whether the terms of probation  
6 have been violated and if an additional sanction should be imposed. In the event  
7 there is an allegation that any of these terms have been violated, the burden of  
8 proof shall be on the State Bar of Arizona to prove non-compliance by clear and  
9 convincing evidence.  
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11  
12 3. Respondent shall pay the costs and expenses incurred in this  
13 disciplinary proceeding.  
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15 DATED this 2<sup>nd</sup> day of September 2004.

16  
17   
18 Bruce G. Macdonald  
Hearing Officer 6M

19 Original filed with the Disciplinary Clerk  
20 this 2<sup>nd</sup> day of September, 2004.

21 Copy of the foregoing was mailed  
22 this 2<sup>nd</sup> day of September, 2004, to:

23 Thomas A. Zlaket  
24 Respondent's Counsel  
25 310 South Williams Blvd., Suite 170  
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1 Amy K. Rehm  
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by: Patti Williams