

FILED

JUN 23 2006

BEFORE A HEARING OFFICER HEARING OFFICER OF THE
OF THE SUPREME COURT OF ARIZONA SUPREME COURT OF ARIZONA
BY C. G. C. C.

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3 IN THE MATTER OF A MEMBER) No. 05-0098
4 OF THE STATE BAR OF ARIZONA,)

5)
6 **TROY L. BROWN,**)
7 **Bar No. 016400**)

8 **RESPONDENT.**)
9)

**HEARING OFFICER'S REPORT
AND RECOMMENDATION**

PROCEDURAL HISTORY

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11 A probable cause order in this matter was filed on September 6, 2005.

12 The initial complaint was filed on September 30, 2005. On August 27, 2005 the
13 Respondent filed his initial answer. On October 31, 2005 a settlement officer
14 was assigned to the case. On December 20th, 2005 a settlement conference was
15 held. The parties were unable to reach an agreement.
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18 On January 4, 2006 the State Bar filed a motion to compel production of
19 documents, to wit: 1) The client ledger for Susan DeZonia; 2) The general ledger
20 for the Respondent's trust account for the period of November 1, 2003 through
21 October 31, 2004; and 3) The Respondent's trust account bank statements for the
22 same period.
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25 On February 2, 2006, Respondent filed his Response to the State Bar's
26 Motion to Compel. On February 7, 2006 this hearing officer granted State Bar's

1 Motion to Compel and ordered that all requested items be produced on or before
2 Tuesday, February 21, 2006.

3 On March 20, 2006 Respondent filed his answer to the Amended
4 Complaint. On March 24, 2006 a hearing was held at the Supreme Court of
5 Arizona, Certification and Licensing Division.
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7 FINDINGS OF FACT

- 8 1. At all times relevant hereto, Respondent was an attorney licensed to
9 practice law in the State of Arizona, having been admitted to practice on
10 October 21, 1995. *Joint Pre-Hearing Statement* (hereafter, *JPS*), ¶ 1.
11
- 12 2. On April 7, 2003 Respondent and Susan M. DeZonia (Ms. DeZonia)
13 entered into a written attorney-client fee agreement wherein Ms DeZonia
14 retained the legal services of Respondent. *Reporter's Transcript of*
15 *Proceedings for March 24, 2006* (hereafter, *RTP*), 93:20-95:5¹ ; *Exhibit*
16 *A*.
17
- 18 3. The attorney-client fee agreement (*Exhibit A*) directed that “[a]ll sums due
19 ATTORNEY shall be paid by CLIENT upon presentation of statements of
20 bills, and shall be due upon receipt, unless the CLIENT is current with
21 bills, and shall be due upon receipt, unless the CLIENT is current with
22 monthly payments as required above.” *Exhibit A, Page 2*.
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¹ Page numbers are to the right of the colon; line numbers are to the left of the colon.

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4. Respondent represented Ms. DeZonia in dissolution proceedings in Maricopa County's Superior Court. *JPS*, ¶ 2.
 5. During the course of the dissolution proceedings, Ms. DeZonia's ex-husband, Don DeZonia, filed a complaint with the State Bar alleging that Respondent had engaged in misconduct. The information was received from Mr. DeZonia on July 26, 2004, and closed without a screening investigation on September 14, 2004. *JPS*, ¶ 3.
 6. In the billing statement dated November 17, 2004, Respondent billed Ms. DeZonia for two hours spent preparing his response to Mr. DeZonia's complaint to the State Bar. *JPS*, ¶ 4.
 7. The bar complaint filed by Mr. DeZonia involved the divorce litigation between Mr. and Ms. DeZonia. *See* Exhibit E, page 8, ¶ 6; Exhibit K, page 6-10; *RTP*, 159:1-4.
 8. Respondent intended to recoup the \$400 cost of answering the bar complaint filed by Mr. DeZonia at the later trial on the divorce case. *RTP*, 158:12-15.
 9. Ms. DeZonia was refunded the \$400 charged to her by Respondent to answer the bar complaint filed by Mr. DeZonia. *RTP*, 91:6-9; 157:19-23.

10. During the course of the dissolution proceedings, Respondent accepted several pieces of furniture from Ms. DeZonia and in exchange wrote off \$5,000 of her outstanding balance for legal services. *JPS*, ¶ 5.
11. There was a conflict as to the value of the DeZonia furniture taken by the Respondent. Ms. DeZonia estimated the retail value for the furniture was \$7,900.00. *RTP*, 61:4-14.
12. An independent appraisal of the furniture was never obtained. *JPS*, ¶ 6.
13. Respondent did not advise Ms. DeZonia in writing of the desirability of obtaining independent legal counsel regarding the transaction. *JPS*, ¶ 7.
14. Ms. DeZonia did not give informed consent in a signed writing to the essential terms of the transaction. *JPS*, ¶ 8.
15. In selling the furniture, Ms. DeZonia's first preference was to obtain immediate cash to live on. *RTP*, 57:15-24.
16. Respondent assured Ms. DeZonia that her ex-husband would be ordered to pay attorney's fees at the end of the trial. *RTP*, 57:1-58:2; 61:15-62:18.
17. During the course of the dissolution proceedings the DeZonia marital home was sold. The proceeds from the sale were \$19,009.40. The money was deposited into Respondent's client trust account. *JPS*, ¶ 9.
18. In a letter dated December 8, 2004 (Exhibit 1), Respondent advised Ms. DeZonia and Mr. DeZonia, through counsel, of his intention to remove

1 \$4,923.64 from the trust account for payment of Ms. DeZonia's
2 outstanding legal fees. Said letter indicated that he would take this action
3 to remove the funds if he did not hear back from Ms. DeZonia by
4 December 23, 2004. *JPS*, ¶ 10; Exhibit 1.

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6 19. On December 10, 2004, Respondent, without waiting to hear, from either
7 Ms. DeZonia or Mr. DeZonia's counsel, removed \$5,000 from his trust
8 account to pay himself his outstanding legal fees. *RTP*, 121:5-123:9;
9 Exhibits 25 and 26.

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11 20. On December 10, 2004 Ms. DeZonia in a letter to Respondent objected to
12 Respondent paying himself from the proceeds of the sale of the home. Ms.
13 DeZonia requested that Respondent release the \$19,009.40 from his trust
14 account to her once she had established a new account to hold the funds.
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16 *JPS*, ¶ 11.

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18 21. On December 13, 2004 Ms. DeZonia sent a second letter to Respondent
19 (Exhibit 29) again telling Respondent that she wanted the proceeds from
20 the sale of the home to remain intact until the divorce was final. *JPS*, ¶ 12.

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22 22. In a letter dated January 10, 2005 (Exhibit 2) Respondent advised Ms.
23 DeZonia that he would immediately withdraw as her counsel because of
24 her request that he not pay himself from the proceeds of the sale of the
25 home. *Id.*
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23. Respondent told Ms. DeZonia that he had already transferred the funds owed to his office from the trust account to his business account as earned fees. *JPS*, ¶ 13; Exhibit 2.
 24. Respondent advised Ms. DeZonia that the remaining \$14,085.40 would be held in his trust account until he received further direction from both her and Mr. DeZonia's counsel, Mr. Rolle. *JPS*, ¶ 14; Exhibit 2.
 25. On January 25, 2005, Respondent filed a motion to withdraw as counsel for Ms. DeZonia. See, Exhibit 2 at p. 18; *JPS*, ¶ 15. Therein, Respondent stated that Ms. DeZonia "cannot afford to pay for the attorney's fees and costs for undersigned counsel." *Id.*
 26. By the time Respondent filed the motion to withdraw on January 25, 2005, Respondent had received a total of \$14,299.33 in cash and property for services rendered prior to that time: \$4,375.69 in cash between April 30, 2003 and October 15, 2004; home furnishings for which he gave Ms. DeZonia \$5,000 in credit; and \$4,923.64 he had taken from the client trust account over Ms. DeZonia's objections. As a result of these payments and credits, Ms. DeZonia owed Respondent no outstanding fees. *JPS*, ¶ 16.
 27. On November 10, 2005 State Bar filed its first request for production of documents. *JPS*, ¶ 17.

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28. Respondent did not provide all of the requested documents as the parties were engaged in settlement negotiations that were progressing toward a resolution that would have made compliance moot. *JPS*, ¶ 18.

29. The parties failed to reach a settlement and on January 4, 2006, the State Bar filed a motion to compel production of the following documents:

- a) Susan DeZonia's client ledger,
- b) Respondent's general client trust account ledger for the period of November 1, 2004 through October 31, 2005, and
- c) Respondent's trust account bank statements for the period of November 1, 2004 through October 31, 2005. *JPS*, ¶ 19.

30. The State Bar's Motion to Compel was granted on February 7, 2006. The Respondent was ordered to comply with the request for Production of Documents on or before February 21, 2006.

31. The State Bar, through its investigator, in a letter sent March 3, 2006 requested that the Respondent also provide any bank statements, canceled checks, billing statements, disbursement statements, general register, client register, and deposit slips pertaining to the representation and account of Ms. DeZonia. *RTP* 19:21-20:17.

32. Respondent did not produce a client account ledger as requested in the

1 motion to compel, but eventually produced the monthly statements and
2 bank statements as requested. *JPS*, ¶ 21.

3 33. The Respondent did not provide the State Bar any of the requested
4 duplicate deposit slips pertaining to Ms. DeZonia. *RTP* 27:9-15; 39:6-16.

5 34. After the Respondent deducted the \$4,923.64 from Ms. DeZonia's trust
6 account funds, Ms. DeZonia should have had a credit of \$14,085.40 in her
7 trust account ledger Exhibit 1, Exhibit 2, and *JPS*, ¶ 14.

8 35. Due to the Respondent's inadequate records, there existed a possibility that
9 Ms. DeZonia was double credited with a payment of \$770.69. *RTP* 26:14-
10 27:16.

11 36. In giving every benefit of the doubt to the Respondent, the Respondent's
12 trust account balance payable to Ms. DeZonia and/or her husband should
13 not have fallen below \$13,315.00. *RTP* 31:5-32:23.

14 37. On the following dates in 2005, the amount in Respondent's trust account
15 fell below the \$13,315.00 due to Ms. DeZonia and/or her husband:
16 February 2, 2005 through February 13, 2005 and April 26, 2005 through
17 June 21, 2005. *RTP* 32:22-33:13.

ISSUES

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2 In summary, there are six primary issues in this matter; they are:

- 3 **A. Charging Ms. DeZonia for the Bar Complaint Filed by Mr.**
4 **DeZonia.** It is alleged that the Respondent charged an unreasonable
5 fee in violation of ER1.5(a), Rule 42, Ariz.R.S.Ct. by charging Ms.
6 DeZonia for the time spent in answering the bar complaint filed by
7 her husband.
8
- 9 **B. Trade of Furniture for Services.** Did the Respondent violate
10 ER1.8(a), Rule 42, Ariz.R.S.Ct., by accepting furniture in trade for
11 his legal services without transmitting the terms of the transaction to
12 Ms. DeZonia in writing, without advising Ms. DeZonia to obtain
13 independent legal advice in writing, and without obtaining Ms.
14 DeZonia's informed consent to the transaction in writing?
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- 16 **C. Trust Account Balance Falling Below \$13,315.00.** Did the
17 Respondent violate ER1.15(a), Rule 42, Ariz.R.S.Ct., and thus
18 misappropriate client or third party funds by allowing the client trust
19 account to fall below \$13,315.00?
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- 21 **D. Trust Account Records.** Did the Respondent violate ER1.15(a)
22 and Rule 43(a) and (d) Ariz.R.S.Ct., by failing to maintain the
23 required trust account records?
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E. Respondent's Removal of Trust Account Funds Without Permission of Client. Did the Respondent violate ER1.15(e) Rule 42, Ariz.R.S.Ct., by removing funds from the client trust account without the authority or permission of the client and contrary to her instructions.

F. Respondent's Motion to Withdraw. Did the Respondent knowingly make a false statement of fact to a tribunal in violation of ERs3.3(a)(1),8.4(c) and 8.4(d), Rule 42 Ariz.R.S.Ct., by stating that Ms. DeZonia was unable to afford any further legal services?

**DISCUSSION
AND
CONCLUSIONS OF LAW**

Charging For Bar Complaint

In the course of representing Ms. DeZonia, the opposing litigant, Mr. DeZonia filed a bar complaint against the Respondent. The Respondent testified that the bar complaint was filed in an attempt to "derail" the Respondent's representation of Ms. DeZonia. *RTP*, 58:8-59:4. This view is substantiated by a review of Mr. DeZonia's Inquiry Form and attached letter. Exhibit K, page 6-10.

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As to defending the bar complaint, Ms. DeZonia and the Respondent were allied in their goal of defeating the complaint filed by Mr. DeZonia. A Review of Exhibits D and E show that the Respondent was engaged in a very zealous advocacy on behalf of Ms. DeZonia. It is understandable that Mr. DeZonia may have sought to defang his wife's attorney by filing the complaint with the State Bar of Arizona. The cases cited by the State Bar are not on point to the case at hand.

1. The State Bar has failed to prove by clear and convincing evidence that the Respondent violated ER1.5(a) Rule 42, Ariz.R.S.Ct., by charging Ms. DeZonia for the time spent answering the bar complaint filed by Mr. DeZonia.

Trading Furniture for Services

2. There is clear and convincing evidence that Respondent violated ER1.8(a), Rule 42, Ariz.R.S.Ct., by entering into a business transaction where he traded furniture for services with Ms. DeZonia.

ER1.8(a) directs that:

“A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing . . . ; (2) the client is advised in

1 writing of the desirability of seeking and is given a
2 reasonable opportunity to seek the advice of
3 independent legal counsel on the transactions; and (3)
4 the client gives informed consent, in writing signed by
5 the client . . . ”.

6 The Respondent did not comply with these requirements.

7 The Respondent defends his actions by arguing that his interests were not
8 “adverse” to Ms DeZonia. *Respondent’s Closing Memorandum*, page 12. This
9 argument uses an overly restrictive definition of the term “adverse”. Moreover,
10 it does not consider the purpose of the rule. This singular focus also ignores the
11 explanation provided in the Rule’s *Comment*.

12
13 A lawyer’s legal skill and training, together with the
14 relationship of trust and confidence between lawyer
15 and client, create the possibility of overreaching when
16 the lawyer participates in a business, property or
17 financial transaction with a client. . . . The
18 requirements of paragraph (a) must be met even when
19 the transaction is not closely related to the subject
20 matter of the representation, as when a lawyer drafting
21 a will for a client learns that the client needs money for
22 unrelated expenses and offers to make a loan to the
23 client. . . . It also applies to lawyers purchasing
24 property from estates they represent. It does not apply
25 to ordinary fee arrangements between client and
26 lawyer, which are governed by ER 1.5, although its

1 requirements must be met when the lawyer accepts an
2 interest in the client's business or other nonmonetary
3 property as payment of all or part of a fee. *Comment*
4 *1* to ER 1.8.

5 A lawyer does not need to benefit financially in a business transaction to
6 violate ER 1.8(a). It is also not necessary for a client to be economically
7 disadvantaged to provide a violation. *ABA/BNA Lawyer's Manual on*
8 *Professional Conduct ("Lawyers Manual")* 2003, at 51:504.

9 An application of this rule is seen in *In re Redondo*, 176 Ariz. 334, 336,
10 861 P.2d 619, 621 (1993). There an attorney purchased his client's wedding
11 rings. The Arizona Supreme Court found that this constituted a business
12 transaction. *Id.*, 336.

13 By accepting furniture in lieu of cash for his services without transmitting
14 the terms of the transaction to Ms. DeZonia in writing, without advising Ms.
15 DeZonia to obtain independent legal advice in writing, and without obtaining Ms.
16 DeZonia's informed consent to the transaction in writing, Respondent violated
17 ER 1.8(a).
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22 **Trust Account Balance Falling Below \$13,315.00**

23 There was some evidence in the record that Ms. DeZonia's remaining trust
24 account balance should have been \$14,085.40 after the Respondent had removed
25 the \$4,923.64 from the trust account. However, because of the Respondent's
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1 incomplete records, it became apparent that the \$14,085.40 figure could not be
2 completely relied upon. In any event, it was shown by clear and convincing
3 evidence that the Respondent trust account balance should not have fallen below
4 \$13,315.00.

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6 3. There is clear and convincing evidence that Respondent's conduct
7 violated ER 1.15(a), 042, Ariz.R.S.Ct., on February 2, 2005 through February 13,
8 2005 and again on April 26, 2005 through June 2005 when his trust account
9 balance fell below \$13,315.00.

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11 4. There is clear and convincing evidence that Respondent's conduct
12 in violating ER 1.15(a), 042, Ariz.R.S.Ct., was of a negligent nature.

13 **Trust Account Records**

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15 5. There is clear and convincing evidence that Respondent violated ER
16 1.15(a), and Rule 43(a) and (d), Ariz.R.S.Ct., by failing to maintain the required
17 trust account records.

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19 On cross-examination of the State Bar examiner, Respondent did a fine job
20 of obtaining concessions from the State Bar Examiner that the Respondent's
21 billing statements were the equivalent of "an individual client ledger". See,
22 *RTP:36:13-37:13*. Nevertheless, there were other important documents that
23 were never provided to the State Bar. These documents included the canceled
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1 checks, the withdrawal copies, and the copies of any deposit slips that were made
2 on behalf of the DeZonias. *RTP* 27:9-15; 39:6-16.

3 ER 1.15 directs that an attorney shall retain “complete records of such
4 account funds and other property” for a period of five years after termination of
5 the representation. (ER 1.15(a)). Rule 43 directs that “a duplicate deposit slip or
6 the equivalent shall be retained for each such deposit which shall be sufficiently
7 detailed to identify each item.” Rule 43(d)(2)(E) Ariz.R.S.Ct. These documents
8 had been requested both formally and informally by the State Bar investigator.
9 The Respondent had an affirmative obligation pursuant to Rule 53(f) Ariz.R.S.Ct.
10 to provide the trust account deposit slips and other documents requested. They
11 were not forthcoming. This was a clear violation of the record-keeping
12 requirement of the rules.
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17 **Respondent’s Removal of Funds from Trust Account** 18 **Without Permission of Client**

19 6. There is clear and convincing evidence that Respondent violated ER
20 1.15(e), Rule 42, Ariz.R.S.Ct., when he: 1) Removed trust account funds
21 without the permission of the DeZonias; and 2) Removed the funds in explicit
22 disregard of his client’s directive to not remove the funds.
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24 7. It is further found that the Respondent knew or should have known
25 that he was acting improperly by removing the trust account funds.
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1 The ethical requirement of 1.15(a) is straightforward. "When in the course
2 of representation a lawyer possesses property in which two or more persons (one
3 of whom may be the lawyer) claim interests, the property shall be kept separate
4 by the lawyer until the dispute is resolved."

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6 Generally, when a lawyer and his client disagree as to what amount of
7 funds held by the attorney should be applied to attorney's fees, the funds need to
8 be kept in the client trust account until agreement is reached. *Lawyers' Manual*,
9 at 45:1114.

10
11 In this case, there were many problems with Respondent disbursing the
12 proceeds from the sale of the marital home to himself without Ms. DeZonia's or
13 Mr. DeZonia's consent. At the time of the disbursement, it had not been legally
14 determined what portion of the funds would be awarded to Ms. DeZonia or to
15 Mr. DeZonia. *RTP*, 49:21-25. Ms. DeZonia could have used the proceeds from
16 the sale to live on and if it was legal to distribute the funds, she wanted them to
17 be distributed to her. *RTP*, 51:10-14. Although Ms DeZonia's fee agreement
18 said otherwise, Ms. DeZonia's understanding of her fee arrangement with
19 Respondent was that, other than the initial retainer and money paid to
20 Respondent by Mr. DeZonia, Respondent would get paid at the end of the trial.
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26 *RTP*, 62:10-14; 94:14-21; 102:14-21.

1 By disbursing the \$4,923.44 to his operating account from his client trust
2 account, Respondent failed to keep separate the property in dispute in violation of
3 ER 1.15(e).

4 **Respondent's Motion to Withdraw**

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6 8. The State Bar failed to prove by clear and convincing evidence that the
7 Respondent violated ERs 3.3(a)(1), 8.4(c) and 8.4(d), Rule 42 Ariz.R.S.Ct., by
8 stating that Ms. DeZonia was unable to afford any further legal services in his
9 motion to withdraw as counsel.
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11 There was evidence that Ms DeZonia was current with her account. (*RTP*,
12 59:10-17). Nevertheless, there were also valid reasons to believe that Ms
13 DeZonia could not fulfill her contractual obligations as defined in *Exhibit A*. See,
14 *RTP*, 50:6 - 51:6. Moreover, Ms DeZonia had made clear that she would not
15 sanction any use of the house proceeds to pay additional attorney fees. *JPS*, ¶¶
16 11, 12. The assertion that Ms DeZonia could not afford any further legal fees
17 was a judgment call that the Respondent could reasonably make. The statement
18 that Ms DeZonia was unable to afford any further legal services was not clearly
19 false. The allegation was not proven.
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23 **ABA STANDARDS**

24 The *ABA Standards for Imposing Lawyer Sanctions* are designed to
25 promote consistency in the imposition of sanctions by identifying relevant factors
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1 that courts should consider and then applying these factors to situations where
2 lawyers have engaged in various types of misconduct. ABA *Standard* 1.3,
3 Commentary. The court and commission consider the *Standards* a suitable
4 guideline. *In re Peasley*, 427 Ariz. Adv. Rep. 23, 90 P.3d 764, §§ 23, 33 (2004);
5 *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).
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7 The ABA *Standards* list the following factors to consider in imposing
8 the appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3)
9 the actual or potential injury caused by the lawyer's misconduct, and (4) the
10 existence of aggravating or mitigating circumstances. ABA *Standard* 3.0.
11

12 The trust account violations (trust account balance falling below
13 \$13,315.00; failure to maintain proper records) and the removal of client funds
14 from the trust account without the client's authority require the application of
15 *Standard* 4.1, (Failure to Preserve the Client's Property).
16

17 Standard 4.12 provides:

18 *Suspension is generally appropriate when a lawyer knows or should know*
19 *that he is dealing improperly with client property and causes injury or*
20 *potential injury to a client.*

21 Standard 4.13 provides:

22 *Reprimand [censure in Arizona] is generally appropriate when a lawyer*
23 *is negligent in dealing with client property and causes injury or potential*
24 *injury to a client.*

1 The furniture transaction implicates *Standard 4.3*, (Failure to Avoid
Conflicts of Interest).

2 *Standard 4:32 provides:*

3 *Suspension is generally appropriate when a lawyer knows of a conflict*
4 *of interest and does not fully disclose to a client the possible effect of*
5 *that conflict, and causes injury or potential injury to a client.*

6 *Standard 4:33 provides:*

7 *Reprimand [censure in Arizona] is generally appropriate when a*
8 *lawyer is negligent in determining whether the representation of a client*
9 *may be materially affected by the lawyer's own interests, or whether the*
10 *representation will adversely affect another client, and causes injury or*
11 *potential injury to a client.*

12 The most serious violation is Respondent's removal of the funds held in
13 trust over the objection of his client's directive and prior to authorization by Mr.
14 DeZonia. This violation would call for suspension under *Standard 4.12*.

15 Respondent's negligent actions in failing to maintain adequate trust
16 account records would require a censure under *Standard 4.13*. The failure to
17 maintain the proper trust account balance would arguably require the application
18 of *Standard 4.12*. However, because the record-keeping practice was so
19 inadequate, the failure points to a negligent violation. Accordingly, *Standard*
20 *4.13* appears to be more appropriate.

21 The Respondent's furniture transaction clearly implicates *Standard 4.32*.
22 The Respondent was aware of the conflict of interest. Nevertheless he elected to
23 ignore the prophylactic measures of ER 1.8. In so doing the Respondent chose to
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1 not fully disclose to his client the possible effects of the conflict. *Standard 4.32*
2 would call for a suspension in this matter.

3 The ABA *Standards* indicate that the "ultimate sanction imposed should at
4 least be consistent with the sanction for the most serious instance of misconduct
5 among a number of violations; it might well be and generally should be greater
6 than the sanction for the most serious." *Matter of Taylor*, 180 Ariz. 290, 292,
7 883 P.2d 1046 (1994).
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9 10 **AGGRAVATING AND MITIGATING FACTORS**

11 In deciding an appropriate sanction, the aggravating and mitigating
12 circumstances noted in *Standards 9.22* and *9.32*, were considered.
13

14 This hearing officer finds the following aggravating factors present:
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16 *Standard 9.22(b)*, dishonest or selfish motive. Respondent had a selfish
17 motive in removing funds from the trust account.

18 *Standard 9.22(g)*, refusal to acknowledge wrongful nature of conduct.
19 Respondent still advocates that the removal of trust account funds over the
20 objection of the client is appropriate. Similarly, Respondent does not allow
21 himself to acknowledge his wrongful actions with the furniture transaction.
22

23 *Standard 9.22(j)* substantial experience in the practice of law. Respondent
24 was admitted October 1, 1995 and has been an Arizona attorney for 10 years.
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1 Mitigating Factors. This Hearing Officer finds the presence of one
2 mitigating factor, i.e., the absence of a prior disciplinary record. *Standard*
3 9.32(a).

4 Suspension is the presumptive sanction in this case. The aggravating
5 factors far outweigh the sole mitigating factor. The aggravating factors of selfish
6 motive and refusal to acknowledge his misdeeds are especially troubling.
7

8 This Respondent exhibits a keen intellect. Yet, he also possesses a blind
9 spot. In his practice, Respondent does not recognize that the law is first, a
10 profession, and second, a business. "Ours is a learned profession, not a mere
11 money-getting trade." ABA Comm. on Professional Ethics and Grievances,
12 Formal Op. 250 (1943).
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17 **PROPORTIONALITY REVIEW**

18 Sanctions against lawyers must have internal consistency to maintain an
19 effective and enforceable system; therefore, the court looks to cases that are
20 factually similar to the case before it. *In re Pappas*, 159 Ariz. 516, 526, 768 P.2d
21 1161, 1171, (1988).
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23 *In re Apker* SB-01-0126-D. Apker was hired by MCO Properties to hold
24 trustees' sales to foreclose against parcels of realty. Apker obtained two trustee
25 sale guarantee reports from TSC Title Agency for which he was billed. MCO
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1 paid respondent the money owed for the reports; however, Apker failed to
2 promptly notify TSC and failed to promptly deliver the funds to TSC. Apker was
3 suspended for six months and one day for violations of ER 1.15(b) [now ER
4 1.15(d)], 8.4(b), 8.4(d) and Rule 43(d). Apker failed to have internal controls to
5 safeguard funds held in trust and committed theft by using the funds to pay
6 himself and other creditors.
7

8 *Matter of Brooks*, 175 Ariz. 142,854 P.2d 776 (1993). Brooks represented
9 his clients in a condemnation matter. An agreement was reached and the clients
10 asked Brooks to hold \$4,517.00 in his trust account for them until they requested
11 the money. Brooks held the money in this trust account from 1984 until 1990.
12 Brook's trust account records from 1984 to 1990 indicated that, for nearly every
13 month in that period, the balance was far below \$4,517.00. "This can only mean
14 that the clients' money was being used for other purposes, was not being
15 segregated, and/or was not being accounted for. . . . Although the clients were
16 not injured in this instance, the potential for injury was great." *Id.* at 146.
17 Because of the unique circumstances and mitigating factors, Brooks only
18 received a 30-day suspension. "Were it not for those factors, the Commission
19 would be recommending a lengthy suspension or possibly disbarment.
20 Respondent took money out of his trust account and failed to maintain trust
21 account records." *Id.* at 146.
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1 *In re Redondo*, 176 Ariz. 334, P.2d 619 (1993). Based on the filing of a
2 twelve count complaint, Redondo was suspended for two years after he was
3 found to have violated ERs 1.3, 1.4, 1.8(a), 1.15(a), and multiple counts of 8.1(b)
4 and Rule 51(h). In one count, Redondo bought rings from a client and therefore
5 entered into a business transaction with her without providing the client with
6 opportunity and notice that she should seek independent legal counsel. He also
7 did not obtain her written consent to proceed with the transaction without such
8 advice.
9

10 Respondent's conduct is similar to *Apker* in that he used funds entrusted
11 to him for one purpose, to hold for the benefit of Ms. DeZonia the proceeds
12 from selling her house, and used it instead to pay his legal fees. Additionally,
13 he failed to return those funds to Ms. DeZonia. Respondent's conduct is
14 similar to *Brooks* in that he failed to hold \$14,085.40 of the sale proceeds in his
15 trust account for the entire time it was entrusted to him. And his conduct is
16 similar to *Redondo* in that he forgave \$5,000.00 of his attorney's fees in
17 exchange for certain pieces of Ms. DeZonia's household furnishings without
18 complying with ER 1.8(a).
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RECOMMENDATION

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2 The objective of lawyer discipline to protect the public, the profession and
3 the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985).
4 It is also yet another purpose is to instill public confidence in the bar's integrity.
5
6 *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

7 In imposing discipline, it is appropriate to consider the facts of the case,
8 the American Bar Association's *Standards for Imposing Lawyer Sanctions*
9 (*"Standards"*) and the proportionality of discipline imposed in analogous cases.
10
11 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

12 As noted above, the presumptive sanction under Standards 4.12 and 4.32 is
13 suspension. In addition, it is this hearing officer's view the aggravating factors
14 far outweigh the sole mitigating factor

15
16 Upon consideration of the facts, application of the *Standards*, including
17 aggravating and mitigating factors, and a proportionality analysis, this hearing
18 officer makes the following recommendation:
19

- 20 2. That Respondent should be suspended for five months.
- 21
- 22 3. That the Respondent pay restitution in the amount of \$4,923.64 with
23 interest at 10% per annum from December 10, 2004 until paid.
- 24
- 25 4. Respondent should be placed on probation for two years after
26 reinstatement and on the signing of a probation contract. The two-year

1 period of probation shall commence upon the date of the signing of the
2 probation contract by Respondent.

3 5. The two year period of probation should have the following terms:

4 a) Respondent shall undergo a Law Office Management Assistance
5 Program (LOMAP) assessment.

6
7 b) Respondent shall comply with all of the recommendations made
8 in the assessment.

9
10 c) Respondent shall be have a practice monitor (PM) assigned to
11 monitor his practice.

12 6. In the event that Respondent fails to comply with any of the foregoing
13 conditions, and the State Bar receives information, bar counsel shall
14 file with the Hearing Officer a Notice of Non-Compliance, pursuant to
15 Rule 60(a)5, Ariz. R. S. Ct.. The Hearing Officer shall conduct a
16 hearing within thirty days after receipt of said notice, to determine
17 whether the terms of probation were violated and if an additional
18 sanction should be imposed. In the event there is an allegation that any
19 of these terms have been violated, the burden of proof shall be on the
20 State Bar of Arizona to prove non-compliance by clear and convincing
21 evidence.
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7. Respondent shall pay the costs and expenses incurred in this disciplinary proceeding.

DATED this 23rd day of June 2006.

Neal C. Taylor /cs
Neal C. Taylor
Hearing Officer 8I

Original filed with the Disciplinary Clerk
this 23rd day of June, 2006.

Copy of the foregoing mailed
this 23rd day of June, 2006, to:

Troy L. Brown
Respondent
1757 East Baseline Road, Suite 130
Gilbert, AZ 85233-0001

Copy of the foregoing mailed
this 23rd day of June, 2006, to:

Shauna R. Miller
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: Christina Sato