

**FILED**

JUN 23 2006

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

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY CSob

1  
2 IN THE MATTER OF A MEMBER ) No. 04-0666  
3 OF THE STATE BAR OF ARIZONA, )  
4 **RONALD J. ELLETT,** ) **HEARING OFFICER'S REPORT**  
5 **Bar No. 012697** ) **ACCEPTING TENDER OF ADMISSIONS**  
6 ) **AND AGREEMENT FOR DISCIPLINE BY**  
7 ) **CONSENT**  
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**PROCEDURAL HISTORY**

On October 3, 2005, Edward F. Novak, Probable Cause panelist, reviewed this matter and found that probable cause existed to issue a complaint against Respondent. The State Bar filed a complaint on November 30, 2005. Respondent filed an Answer on January 18, 2006. The settlement conference set for March 3, 2006, was vacated as a result of the parties having reached a settlement. A Tender of Admissions and Agreement for Discipline by Consent ("Tender") and the Joint Memorandum in Support of Agreement for Discipline by Consent ("Joint Memorandum") were filed on April 14, 2006.

**FINDINGS OF FACT**

At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted on October 21, 1989. Mr. Ellett's conduct, as stated in the Tender and Joint Memorandum, violated Rule 42, Ariz.R.S.Ct., ERs 1.2, 1.3, 1.7, 1.15, and 1.16(d), based on his violation of his duties to his clients, the legal system and to the profession by failing to comply with the ethical rules.

Respondent conditionally admits that his conduct violated the aforementioned Rule and ERs. The State Bar conditionally admits that it cannot prove a violation of ER 1.4, Rule 42,

1 Ariz.R.S.Ct., by clear and convincing standards and thereby conditionally dismisses this  
charge.

2 Specifically, Respondent negligently failed to verify his belief that his client's  
3 objectives and instruction had changed with regard to certain client funds in his trust account;  
4 negligently failed to act with reasonable diligence and promptness in representing his clients to  
5 determine whether the objectives of the representation with regard to the funds in his control  
6 had changed; negligently failed to recognize a potential conflict of interest between clients;  
7 negligently transferred a portion of the clients' funds from his trust account to his operating  
8 account as payment for his legal fees before receiving authorization from his clients to do so;  
9 and negligently failed to take steps to the extent reasonably practicable to protect his clients  
10 interests upon termination of representation by returning all of the client funds in his possession  
11 in a timely manner.  
12

### 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: ER 1.2, 1.3, 1.7, 1.15 and 1.16(d).  
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### 17 ABA STANDARDS

18 ABA Standards for Imposing Lawyer Sanctions, *Standard* 3.0 provides that four  
19 criteria should be considered in imposing sanctions after a finding of lawyer misconduct: (1)  
20 the duty violated; (2) the lawyer's mental state (3) the potential or actual injury caused by the  
21 lawyer's misconduct; and (4) the existence of aggravating or mitigating factors.  
22

23 This Hearing Officer considered *Standards* 4.1 (Failure to Preserve the Client's  
24 Property), 4.4 (Lack of Diligence) and 4.6 (Lack of Candor) in determining the appropriate  
25 sanction warranted by Respondent's conduct.  
26

Specifically, *Standard 4.1 (Failure to Preserve the Client's Property)* provides that:  
1 "Reprimand (censure in Arizona) is generally appropriate when a lawyer is negligent in dealing  
2 with client property and causes injury or potential injury to a client."

3 *Standard 4.4 (Lack of Diligence)* provides that "Reprimand (censure in Arizona) is  
4 generally appropriate when a lawyer is negligent and does not act with reasonable diligence in  
5 representing a client, and causes injury or potential injury to a client."  
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7 *Standard 4.6 (Lack of Candor)* provides that "Reprimand (censure in Arizona) is  
8 generally appropriate when a lawyer negligently fails to provide a client with accurate or  
9 complete information, and causes injury or potential injury to the client."

10 This Hearing Officer then considered aggravating and mitigating factors in this case,  
11 pursuant to *Standards 9.22 and 9.32*, respectively. One (1) factor is present in aggravation:  
12 9.22(i) substantial experience in the practice of law. Respondent has been practicing law in the  
13 state of Arizona since October 21, 1989. There are three (3) factors in mitigation: 9.32(a)  
14 absence of a prior disciplinary record, (b) absence of a dishonest or selfish motive, and (e) full  
15 and free disclosure to disciplinary board or cooperative attitude toward proceedings.  
16 Respondent has been forthcoming and cooperative throughout the course of the investigation  
17 and formal process. No other aggravating or mitigating factors are found.  
18

#### 19 **PROPORTIONALITY REVIEW**

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 in  
22 order to achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983)  
23 and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993).  
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The most serious instance of misconduct in this case involves Respondent's failure to safeguard his clients' property and converting client funds to pay his legal fees. The following cases are instructive concerning these types of misconduct.

In *In re Brown*, SB-04-0084-D (224), Brown represented a client in her divorce and bankruptcy matters. The client's uncle, who was a long-time client, referred the client to Brown. The client's cousin paid the retainer fee for the client. Thereafter Brown sent the client paperwork to fill out which the client claimed she completed and returned and Brown claimed she never received. Brown did not timely initiate the divorce proceeding, or press the client to complete the necessary paper work, assuming that the client decided not to pursue the matter. When the client terminated the representation, Brown applied the balance of the client's retainer to the uncle's outstanding balance owed to her without the client's or the cousin's permission. Brown violated Rule 42, Ariz.R.S.Ct., specifically, ERs 1.3, 1.4, and 1.16. There was one (1) aggravating factor present in *Brown*: substantial experience in the practice of law. There were five (5) mitigating factors present: absence of prior disciplinary record; absence of a dishonest or selfish motive; personal or emotional problems; full and free disclosure to the disciplinary board or cooperative attitude toward proceedings; and remorse. Brown received a censure and two years of probation.

In *In re McVay*, SB-03-0018-D (2003), McVay represented three separate clients in different criminal matters. In one representation, McVay failed to act with reasonable diligence and failed to properly and adequately communicate with the client by failing to return several telephone messages left by the client. In another representation, McKay charged a \$5,000 flat fee for handling a matter, and then when the client pressed McVay on how the \$5,000 was spent, McVay failed to render an accounting of his fees. In a third representation, McVay

failed to provide documents to a client upon request at the end of the representation. McVay  
1 violated Rule 42 Ariz.R.S.Ct., specifically, ERs 1.3, 1.4, 1.15(b), 1.16(d), and 8.4(d). There  
2 were three (3) factors in aggravation present: prior disciplinary offenses, multiple offenses, and  
3 substantial experience in the practice of law. McVay received a censure and two years of  
4 probation.

5  
6 In *In re Sammons*, SB-03-0150-D (2003), Sammons failed to diligently represent and  
7 adequately communicate with his clients. In another matter, while acting as a conservator,  
8 Sammons failed to take appropriate steps to manage the financial affairs of a conservatorship  
9 and engaged in conduct prejudicial to the administration of justice. Sammons violated Rule 42  
10 Ariz.R.S.Ct., specifically, ERs 1.3, 1.4, 1.15, and 8.4(d) and Rule 51(k) Ariz.R.S.Ct. There  
11 were three (3) aggravating factors present: a pattern of misconduct, multiple offenses, and  
12 substantial experience in the practice of law. There were five (5) mitigating factors present:  
13 absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free  
14 disclosure to the disciplinary board or cooperative attitude toward proceedings, character or  
15 reputation, and remorse. Sammons received a censure and two years of probation.

16  
17 Here, Respondent's actions are most analogous to *Brown*. Respondent assumed that  
18 the clients' inaction indicated they were no longer interested in pursuing their originally stated  
19 objective – paying the arrearage on the mortgage. Respondent, like *Brown*, assumed that the  
20 clients did not want to pursue the clients' stated objective any longer. Respondent could have  
21 done more to follow up with the clients to determine whether the objective of the representation  
22 had changed. Additionally, Respondent applied funds, provided by the clients for a purpose  
23 other than to pay Respondent's legal fees, to satisfy the clients' allegedly outstanding legal bill  
24 without prior consent.  
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## RECOMMENDATION

1           The purpose of lawyer discipline is not to punish the lawyer, but to protect the public  
2 and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320  
3 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the  
4 administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another  
5 purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20,  
6 29, 881 P.2d 352, 361 (1994).  
7

8           In imposing discipline, it is appropriate to consider the facts of the case, the American  
9 Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") and the  
10 proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 286,  
11 872 P.2d 1235, 1238 (1994).  
12

13           Upon consideration of the facts, application of the *Standards*, including aggravating and  
14 mitigation factors, and a proportionally analysis, this Hearing Officer recommends the  
15 following:

16           1.       Respondent shall receive a censure and be placed on probation for one year for  
17 violating Rule 42, Ariz.R.S.Ct., specifically, ERs 1.2, 1.3, 1.7, 1.15, and 1.16(d)

18           2.       Respondent shall, within thirty days of the Supreme Court's final judgment and  
19 order, pay restitution to Michael and Susan Wade in the amount of \$1,975,00.  
20

21           3.       Respondent shall, within thirty days of Supreme Court's final judgment and  
22 order, contact the director the State Bar's Law Office Management Assistance Program  
23 (LOMAP) to schedule an audit of his law office. The LOMAP director or his/her designee will  
24 conduct an audit of Respondent's law office no later than sixty days thereafter. Following the  
25 audit, Respondent shall enter into a Memorandum of Understanding that will be effective for a  
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period of one year from the date upon which all parties have signed the Memorandum.

1 Respondent shall comply with all recommendations of the LOMAP director or his/her  
2 designee.

3 4. Respondent will follow all the Rules of Professional Conduct and all Trust  
4 Account Guidelines.

5 5. Respondent shall pay all costs incurred by the State Bar of Arizona in  
6 connection with these proceedings, including the assessment by LOMAP. A statement of costs  
7 and expenses incurred by the State Bar to date in this disciplinary proceeding is \$2,545.75.  
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9 6. In the event Respondent fails to comply with any of the foregoing terms, and  
10 the State Bar receives information about his failure, bar counsel will file a Notice of Non-  
11 Compliance with the disciplinary clerk. A hearing officer will conduct a hearing at the earliest  
12 practical date, but in no event not later than thirty days following receipt of the notice, to  
13 determine whether the probationary terms have been breached and, if so, will recommend  
14 appropriate action in response to the breach. The State Bar shall have the burden of proving  
15 non-compliance by clear and convincing evidence.  
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17  
18 DATED this 23<sup>rd</sup> day of June, 2006.

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21 Jo Ann Garcia  
22 Hearing Officer 8U  
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Clarence E. Matherson, Jr., Esq.

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