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MAR 10 2006

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA

BY *[Signature]*

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

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5 IN THE MATTER OF A MEMBER) Nos. 04-0735, 04-1048,
6 OF THE STATE BAR OF ARIZONA,) 04-1217, 05-0653
7)
8 **STEFANI J. GABROY,**) **HEARING OFFICER'S**
9 **Bar No. 004503**) **REPORT**
10)
11 **Respondent.**)
12)
13) **(Assigned to Hearing Officer 8A,**
14) **Kraig J. Marton)**

11 **I. PROCEDURAL HISTORY**

12
13 The State Bar filed its complaint in this matter on July 28, 2005.
14 Respondent filed a motion requesting an extension of time to file an answer on
15 August 23, 2005, which was granted. Although her answer was due
16 September 13, Respondent filed her answer, as an e-mail attachment, on
17 September 14, 2005.
18

19 On October 4, 2005, after a telephonic conference in which the Bar
20 Counsel and Respondent participated, a Case Management Order was issued.
21 Pursuant to the Case Management Order, Respondent's deadline for service of
22 her disclosure statement was extended until October 13, 2005 and this hearing
23 on the merits was scheduled to begin on Monday, December 5, 2005.
24
25

1 On October 20, 2005, Respondent filed a pleading in which she moved
2 for an extension of time to file her disclosure statement, to amend her answer,
3 to continue the settlement conference and to continue the hearing. By order
4 filed October 21, 2005, this Hearing Officer granted a continuance of the
5 settlement conference and scheduled a telephonic conference to be held on
6 October 25, 2005. After the telephonic conference, by order filed October 26,
7 2005, this Hearing Officer ordered that Respondent file her proposed amended
8 answer by November 1, 2005, and granted an additional extension of time,
9 until November 1, 2005, for Respondent to file her disclosure statement.
10 Respondent never filed a proposed amended answer. Respondent filed her
11 initial disclosure statement on November 1, 2005.
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15 The State Bar's final list of witnesses and exhibits was filed on
16 November 18, 2005. Due to Respondent's failure to communicate with Bar
17 Counsel regarding a joint prehearing statement, the State Bar filed a unilateral
18 prehearing statement on November 18, 2005. By order issued November 22,
19 2005, this Hearing Officer found that Respondent had failed to comply with
20 her obligations with respect to a prehearing statement, but granted Respondent
21 leave to file a unilateral prehearing statement if filed by November 23, 2005.
22 Respondent filed her unilateral prehearing statement on November 23, 2005.
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1 On December 2, 2005, Respondent filed a motion to continue the
2 hearing and to allow telephonic appearances by Respondent's witnesses. This
3 Hearing Officer granted the motion to continue the hearing, and ordered that
4 Respondent produce written evidence from any witnesses requesting to appear
5 telephonically as to the reasons necessitating such telephonic appearances by
6 December 6, 2005. No such evidence was filed. A telephonic status
7 conference was held on December 6, 2005, and the hearing on the merits was
8 continued until December 16, 2005. By order filed December 6, 2005, this
9 Hearing Officer denied Respondent's motion for telephonic appearance for all
10 witnesses except one, and affirmed the December 16, 2005 hearing date.
11
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13
14 On December 15, 2005, a telephonic conference was conducted and was
15 recorded by a court reporter. During the telephonic conference, Bar Counsel
16 and Respondent informed this Hearing Officer that a settlement had been
17 reached. After inquiring of Respondent about the admissions to be tendered
18 and being informed by Respondent that she was admitting all allegations and
19 that there was a meeting of the minds, and after discussing the proposed
20 sanction, this Hearing Officer ordered that the Tender of Admissions and
21 Agreement for Discipline by Consent and the Joint Memorandum in Support of
22 Agreement for Discipline by Consent be filed by December 21, 2005. A
23 telephonic status conference was scheduled for December 23, 2005, and the
24
25

1 hearing on the merits was rescheduled, for December 29, 2005. The parties
2 were advised that if the consent documents were not timely filed, the hearing
3 would proceed on December 29, 2005.
4

5 The consent documents were not filed because Respondent declined to
6 sign them. As a result, the hearing on the merits was commenced on
7 December 29, 2005, and concluded on January 10, 2006. Despite having failed
8 to file a motion to allow her to personally appear telephonically, Respondent
9 did not appear in person for the hearing on December 29, 2005, but was
10 nonetheless permitted to participate and testify telephonically, and she did so
11 that day. In the early morning hours of January 10, 2006, Respondent
12 informed this hearing officer, through the Disciplinary Clerk's Office, that she
13 was requesting a continuance of the hearing and that if the hearing was not
14 continued, she would not participate.¹ Although this Hearing Officer attempted
15 to contact Respondent to invite her participation, Respondent could not be
16 contacted by telephone. As Respondent had already testified on her own
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21
22 ¹ After the December 29, 2005, hearing on the merits recessed, this Hearing Officer held a
23 telephonic conference with the parties. This Hearing Officer stated that based on
24 Respondent's statements regarding her medical condition, she was or could be disabled.
25 This Hearing Officer stated, and later confirmed in a written order, that if Respondent filed
for and was granted an order of interim disability (or incapacity) this hearing officer would
consider whether the hearing on the merits should be stayed, and would grant a continuance
of the hearing to permit Respondent to seek a stay. However, no order of disability was
obtained and no stay was issued, and so the hearing proceeded as scheduled on January 10,
2006.

1 behalf on December 29, 2005, and as this Hearing Officer found that her
2 justification for requesting a continuance was ill-health that was as likely to
3 recur at any future date, the hearing on January 10, 2006, was conducted
4 without Respondent's participation.
5

6 **II. FINDINGS OF FACT**

7
8 1. At all times relevant, Respondent was an attorney licensed to
9 practice law in Arizona, having been admitted to practice in Arizona on June
10 15, 1976.

11 **COUNTS ONE, TWO AND THREE** 12 **(04-735, 04-1048, 04-1217)**

13 2. On or about April 26, 2004, the State Bar of Arizona received an
14 insufficient funds notice on Respondent's Bank of America, Arizona Bar
15 Foundation client trust account. (State Bar Exhibit 1, BS 001-002²)
16

17 3. The notice indicated that on March 9, 2004, check number 1041 in
18 the amount of \$120.00 attempted to pay against the account when the balance
19 of the account was negative. The bank did not pay the check, returned it and
20 did not charge an overdraft fee, leaving the balance of Respondent's trust
21 account at negative \$265.53. (SB Ex. 1, BS 001-002 and SB Ex. 84, BS 364)
22
23

24
25 ² State Bar Exhibits will be noted by both exhibit number and Bates Stamp numbers as follows, ("SB Ex. #, BS # - #). References to transcripts will be by date, page and line numbers as follows, "Tr. 12/29/05, page number, line numbers."

1 4. By letter dated May 6, 2004, in State Bar File No. 04-0735, the State
2 Bar's Staff Examiner ("Staff Examiner") requested that Respondent explain the
3 overdraft. Included with the May 6, 2004, letter was a copy of the overdraft
4 notice. (SB Ex. 2, BS 003-004)
5

6 5. By letter dated June 8, 2004, Respondent stated that the overdraft
7 was due to a bookkeeping error. Respondent stated that she had been informed
8 by her secretary³ that there were sufficient funds to cover the check and only
9 learned later that this was not correct. (SB Ex. 3, BS 005)
10

11 6. Respondent also stated in her letter that the funds she had deposited
12 into the trust account were earned funds and that the checks written were for
13 outstanding bills. (SB Ex. 3, BS 005)
14

15 7. At the hearing, Respondent first testified that she had no secretary
16 since 2002; when questioned further, she testified that she had a male secretary,
17 part-time, during this period of time and purported to check employment records
18 to corroborate that. (Tr. 12/29/2005, 140:20 – 141:23)
19

20 8. When questioned about the reference in her letter of June 8, 2004, to
21 her secretary as a female, rather than a male, Respondent stated that the reference
22 in her letter to her secretary as "she" was an error. (Tr. 12/29/2005, 142:2 – 19)
23
24
25

³ Respondent's letter referred to her secretary as female.

1 9. By letter dated June 14, 2004, in State Bar File No. 04-0735, the
2 Staff Examiner requested additional information from Respondent, including
3 copies of her trust account bank statements for February and March 2004,
4 corresponding cancelled checks, duplicate deposit slips, individual client ledgers
5 and a copy of Respondent's trust account transaction or check register for
6 February and March 2004. (SB Ex. 4, BS 006 – 007)
7

8 10. Respondent failed to respond. (SB Ex. 5, BS 008; Tr. 12/29/2005
9 77:2 – 4)
10

11 11. On or about June 16, 2004, the State Bar of Arizona received an
12 insufficient funds notice on Respondent's Bank of America, Arizona Bar
13 Foundation client trust account. (SB Ex. 28, BS 228 – 229)
14

15 12. The notice indicated that on May 19, 2004, check number 1110 in
16 the amount of \$340.82 and check number 1223 in the amount of \$27.36 attempted
17 to pay against the account. The bank returned the checks unpaid, as drawn
18 against uncollected funds. (SB Ex. 28, BS 228 – 229)
19

20 13. By letter dated June 22, 2004, in State Bar File No. 04-1048, the
21 Staff Examiner sent Respondent a copy of the overdraft notice and requested an
22 explanation regarding the apparent overdraft of Respondent's client trust account.
23 (SB Ex. 29, BS 230-231)
24

25 14. Respondent did not respond. (SB Ex. 30, BS 232)

1 15. On July 16, 2004, the State Bar of Arizona received another
2 insufficient funds notice on Respondent's Bank of America, Arizona Bar
3 Foundation client trust account. (SB Ex. 51, BS 285)
4

5 16. The notice indicated that on June 2, 2004, and June 3, 2004 check
6 number 1128 in the amount of \$144.00, check number 1133 in the amount of
7 \$59.58 and check number 1124 in the amount of \$494.04, were overdrawn
8 against the account when the balance was negative. (SB Ex. 51, BS 285)
9

10 17. By letter dated July 29, 2004, in State Bar File No. 04-1217, the Staff
11 Examiner sent Respondent a copy of the overdraft notice and requested an
12 explanation regarding the apparent overdraft of her client trust account. (SB
13 Ex. 51, BS 286 – 287)
14

15 18. Respondent failed to respond. (SB Ex. 53, BS 288)

16 19. By letters dated September 9, 2004, in State Bar File Nos. 04-0735,
17 04-1048, and 04-1217, the State Bar's Staff Records Examiner ("Records
18 Examiner") reminded Respondent of her obligations to respond to the inquiry of
19 the State Bar and asked that she provide the information previously requested no
20 later than 20 days from the date of the letters. (SB Ex. 5, BS 008; SB Ex. 30, BS
21 232; SB Ex. 53, BS 288)
22
23

24 20. In each of the letters dated September 9, 2004, Respondent was
25 informed that the failure to cooperate with a disciplinary investigation was

1 grounds, in itself, for discipline. (SB Ex. 5, BS 8; SB Ex. 30, BS 232; SB Ex. 53,
2 BS 288)

3
4 21. By letters dated September 17, 2004, in each file, Respondent stated
5 that she had moved to California, that subsequent to her move, her home in
6 Tucson, Arizona was broken into and numerous documents were stolen, and that
7 the break-in may have been related to an on-going and very contentious domestic
8 relations proceeding between Respondent and her ex-husband. (SB Ex. 6, BS 009
9 – 010; SB Ex. 31, BS 233 – 234; SB Ex. 54, BS 289 – 290)

11 22. In her September 17, 2004 letters, Respondent stated that she would
12 need to begin anew in preparing a response to the inquiries of the State Bar,
13 including locating the necessary trust account records and documentation.
14 Respondent further stated that she had requested records from her bank and
15 requested a 45-day extension so that she might receive the records and prepare a
16 response.
17

18
19 23. By letters dated September 22, 2004, the Records Examiner
20 informed Respondent that an extension for her response had been granted, on the
21 condition that Respondent provide a copy of a report to law enforcement
22 regarding the break-in to which Respondent had referred, and that the due date for
23 Respondent's response was now November 8, 2004. (SB Ex. 7, BS 011; SB Ex.
24 32, BS 235; SB Ex. 55, BS 291)
25

1 24. By a letter dated November 8, 2004, Respondent stated that she had
2 been unable to obtain a copy of the Pima County Sheriff's Department report on
3 her break-in by telephone request. Respondent attached a copy of a letter to the
4 Pima County Sheriff's Department, dated November 5, 2004, in which she had
5 requested a copy of the report. (SB Ex. 8, BS 012 – 014)
6

7 25. Respondent represented in her November 8, 2004 letter, that her
8 client files were on ledger cards stored in Tucson, as well as in a check register.
9 Respondent stated that she last saw these records in September 2004.⁴
10 Respondent alleged that these were some of the documents stolen when her house
11 was broken into in September 2004.
12

13 26. Respondent's allegations that these trust account records were stolen
14 from her home were not corroborated by any evidence other than her suspicions.
15 Her ex-husband, who she blamed, denied stealing anything from her house. (Tr.
16 1/10/06, 235-236)
17
18

19 27. Despite the fact that Respondent admitted to having possession of
20 both her check register and client ledger cards prior to September 2004, these
21 records were never provided to the State Bar pursuant to their numerous requests
22 for information going back to May 6, 2004.
23
24

25 ⁴ This is consistent with Respondent's testimony at the hearing on the merits (Tr.
12/29/2005, 156:4 – 157:9).

1 28. Respondent's failure to provide these records was deliberate and
2 intentional; she essentially admitted as such and testified she was too ashamed to
3 answer sooner. (Tr.12/29/05, 85,163:11-163:18) Respondent's failure to provide
4 requested records prevented the Staff Examiner from conducting a complete
5 examination of Respondent's client trust account.
6

7 29. In her November 8, 2004 letter, Respondent claimed to have
8 previously contacted the Bank of America for bank records relating to her client
9 trust account, and claimed that the bank records had not been sent to her.
10 Respondent provided no evidence other than her statements to support this claim.
11

12 30. Respondent's claim that the Bank of America failed to send her
13 records, and then failed to send complete records, when they promptly complied
14 with the State Bar's subpoena and supplied complete records, is not credible.
15

16 31. In her November 8, 2004 letter, Respondent stated that it would take
17 two weeks for the records to reach her and that she would provide them to the
18 State Bar once she had received them.
19

20 32. By letter dated December 7, 2004, referencing all three files, the
21 Records Examiner requested that as Respondent had not yet provided any of the
22 information first requested in June 2004, Respondent provide the State Bar with
23 all of the requested records within 10 days of the date of the letter. Respondent
24 was reminded of her obligation to cooperate with the State Bar's investigation,
25

1 and advised that her failure to do so might result in further discipline. (SB Ex. 12,
2 BS 021)

3
4 33. By letter dated December 21, 2004, Respondent acknowledged
5 receipt of the Records Examiner's letter. Respondent again failed to provide any
6 of the records relating to her trust account first requested by the State Bar in June
7 2004. (SB Ex. 13, BS 022 - 024)

8
9 34. In her December 21, 2004 letter, Respondent restated that her home
10 had been broken into in September 2004, and in addition Respondent alleged that
11 her car, in which she was storing her trust account records, client ledger cards,
12 bank statements, correspondence with the Bar and her response, had been broken
13 into in December 2004, while she was staying at a motel in Tucson, Arizona. She
14 also testified to these break-ins. (Tr. 12/29/2005, 142:20 - 144:2)

15
16 35. Respondent said in her December 21, 2004 letter that she realized
17 that her car had been broken into "yesterday" which was December 20, 2004 (SB
18 Ex. 13, BS 022-024). This timing is inconsistent with her testimony that she
19 knew her car was broken into when it happened on the night of December 11,
20 2004; she testified that there was visible damage at that time but she chose not to
21 call the police. (Tr. 12/29/05, 142:21-144:23)
22
23
24
25

1 36. Respondent provided no corroborative evidence of the alleged car
2 break-in such as testimony of any other witness or police reports. (Tr. 12/29/2005,
3 131:1 – 21)
4

5 37. Respondent did not report the alleged car break-in to law
6 enforcement and did not provide a credible reason for her failure to do so. (Tr.
7 12/29/2005, 142:20 – 143:4)
8

9 38. In her December 21, 2004 letter, Respondent provided no records of
10 any kind, or any explanation of the overdrafts to her client trust account. Instead,
11 Respondent requested an additional 45-day extension so that she might re-order
12 bank records and reconstruct her documentation to provide to the State Bar.
13

14 39. By letter dated December 27, 2004, from the Records Examiner,
15 Respondent was informed that her request for an additional extension had been
16 granted (yet again) and that her response, and the requested records, needed to be
17 provided by February 10, 2005. (SB Ex. 14, BS 026)
18

19 40. In a letter dated February 10, 2005, to the Staff Examiner and
20 Records Examiner, Respondent stated that in September 2004, while driving to
21 California she and her family stopped in Yuma. Respondent stated that her
22 computer was damaged during that stop in Yuma due to the heat and that
23 numerous files were corrupted and irretrievable. (SB Ex. 15, BS 027 – 029)
24
25

1 41. While respondent had provided numerous other excuses for
2 noncompliance in her earlier letters (SB Ex. 6, BS 009 {September 17, 2004}; SB
3 Ex. 8, BS 012 {November 8, 2004}; and SB Ex. 13, BS 022 {December 21,
4 2004}), this was the first time she asserted that her computer was damaged in an
5 event that happened before those letters were written.
6

7 42. Respondent provided no evidence, other than her own statements, to
8 corroborate the alleged heat damage to her computer records, and this excuse is
9 not credible.
10

11 43. In her February 10, 2005 letter, Respondent stated that some of the
12 information stored on the damaged computer included her client ledger files, files
13 of client bills and other financial files. This is inconsistent with Respondent's
14 testimony that her client ledger cards and check register were stored in Tucson
15 and were in her home as of September 2004 and had been stolen. (Tr. 12/29/2005,
16 110:11 - 19)
17

18 44. By February 10, 2005 Respondent still had provided no response to
19 the requests initially made in May 2004, and still had not provided any records of
20 any kind.
21

22 45. In a letter dated February 23, 2005, Bar Counsel advised Respondent
23 that should her response, and all requested records, not be received by the State
24
25

1 Bar by March 10, 2005, the State Bar would be forced to conclude that
2 Respondent's non-responses were deliberate. (SB Ex. 16, BS 030)

3
4 46. In that February 23, 2005 letter, Bar Counsel reminded Respondent
5 that despite multiple extensions and months of delay, Respondent had failed to
6 provide any records at all.

7
8 47. A letter from the Records Examiner, reiterating the records being
9 requested from Respondent, was attached to Bar Counsel's letter for
10 Respondent's reference.

11
12 48. Due to Respondent's continued failure to provide any records to the
13 State Bar for examination in the investigation, on February 23, 2005, Bar Counsel
14 caused a subpoena to be issued to Bank of America for Respondent's client trust
15 account records. (SB Ex. 18, BS 032 – 033)

16
17 49. On March 15, 2005, the State Bar received from Respondent partial
18 records pertaining to her Bank of America trust account. The records submitted
19 did not fully comply with the requests from the Staff Examiner and Records
20 Examiner made beginning in June 2004. (*See, generally*, SB Ex. 21)

21
22 50. A review of the records provided by Respondent, as well as those
23 obtained through subpoena by the State Bar, showed a large number of
24 disbursements by check from the client trust account for Respondent's personal,
25 not business, expenses. (SB Ex. 21, BS 039 – 201; SB Ex. 84, BS 362 – 369)

1 51. Respondent, in a letter dated March 21, 2005, stated that she did not
2 maintain a personal checking account and provided what she stated were
3 reconstructed client ledgers for six clients. (SB Ex. 22, BS 202 – 209)
4

5 52. In a letter dated April 4, 2005, the Staff Examiner, having reviewed
6 Respondent's submissions to date, requested that Respondent provide additional
7 information and documentation. (SB Ex. 24, BS 214 – 215)
8

9 53. Included with the Staff Examiner's April 4, 2005, letter was a
10 spreadsheet that reconstructed the activity in Respondent's client trust account for
11 the period of February 1, 2004 through July 14, 2004. (SB Ex. 24, BS 216 – 220)
12

13 54. In that April 4th letter, Respondent was asked to explain numerous
14 transactions, including "split deposits" in which cash-back was received, apparent
15 personal expenses paid out of the trust account, explanations for the overdrafts in
16 June and July 2004, and the names of payees for checks listing none.
17

18 55. Other than stating that she could not explain certain individual
19 transactions, including checks in which a third party was listed in the bank
20 account registration portion of two checks, Respondent failed to adequately reply
21 to the Staff Examiner's request for information and provided no reasonable
22 explanations relating to the questioned transactions on her client trust account.
23 (SB Ex. 25, BS 221 – 222; Tr. 12/29/2005, 38:1 – 8)
24
25

1 56. By letter dated May 16, 2005, sent to Respondent at her address of
2 record, Bar Counsel recounted the history of the investigation to date. Bar
3 Counsel informed Respondent that unless all previously requested information
4 was provided within 10 days of the date of the letter, the State Bar would have no
5 choice but to consider Respondent's failure to provide full and complete
6 information a deliberate failure on her part. (SB Ex. 26, BS 223 – 225)
7

8 57. Respondent failed to respond or to provide any further information.
9

10 58. At the time Bar Counsel's letter dated May 16, 2005, was sent to
11 Respondent, the State Bar's investigation had lasted over one year from inception,
12 and was still not concluded due to Respondent's failure to provide full and
13 complete information as requested. (Tr. 12/29/2005, 38:16 – 19)
14

15 **ADDITIONAL FINDINGS RELATING TO**
16 **COUNTS ONE, TWO AND THREE**

17 59. Respondent admits that she failed to conduct required monthly three-
18 way reconciliation of her Bank of America client trust account as mandated by
19 Rule 43. See Respondent's Unilateral Prehearing Statement.
20

21 60. Respondent, prior to 2000, had an accountant reconcile her client
22 trust account once a year as part of the preparation of her income tax returns. (Tr.
23 12/29/2005, 105:9 – 13)
24
25

1 61. After 2000, Respondent no longer used the services of the
2 accountant, and said she maintained her client trust account records on her own.
3
4 (Tr. 12/29/2005, 112:21 – 25)

5 62. Respondent commingled client funds with earned fees and personal
6 funds in her Bank of America client trust account.

7 63. Respondent disbursed funds from her Bank of America client trust
8 account by other than pre-numbered check or wire transfer.
9

10 64. Respondent disbursed funds from her client trust account for
11 personal expenses.

12 65. Respondent utilized “split” deposits, in which cash was received
13 from the deposit.
14

15 66. Respondent failed to keep the trust account records required by the
16 Rules.

17 67. Respondent failed to maintain complete records of her client trust
18 account and failed to preserve them for five years.
19

20 68. The sloppiness exhibited on the documents contained in SB Ex. 21,
21 including omissions on checks and deposit slips, including the failure to complete
22 the “memo” portion of the checks indicating the purpose and/or client for whose
23 benefit funds were disbursed, as well as the incomplete information provided on
24
25

1 the ledgers Respondent reconstructed for the Staff Examiner, clearly demonstrate
2 that adequate and required records were not kept and maintained by Respondent.

3
4 69. The United States Internal Revenue Service ("IRS") entered a lien
5 against Respondent's checking accounts, including her operating and personal
6 checking accounts, seeking to collect unpaid income taxes for the years 1998,
7 1999 and 2000. (Tr. 12/29/2005, 150:1 – 10)

8
9 70. After the IRS lien was entered, Respondent began using her client
10 trust account as a personal account in an attempt to avoid the tax lien placed on
11 her personal account. (Tr. 12/29/2005, 149:13 – 25; 150:11 – 23)

12
13 71. Respondent began using her trust account for personal purposes in
14 the winter of 2003 or spring of 2004, and she continued to do so until October
15 2005, a period of approximately one year and eight months. (Tr. 12/29/05, 140:8-
16 150:22)

17
18 72. Respondent continued to use her trust account for personal purposes
19 until October 2005 even though she knew it was wrong and even though the Bar
20 had started asking her about her trust account by letter dated May 6, 2004. (SB
21 Ex. 2, BS 03-04)

22
23 73. Rather than answering the State Bar, Respondent provided excuse
24 after excuse and delay after delay in an effort to avoid having her wrong doing
25 exposed.

1 74. Respondent never told the State Bar about the tax lien until it was
2 brought out through questioning of this hearing officer at the hearing. (Tr.
3 12/29/04, 149:8-150:22)
4

5 75. During the same period of time in which the State Bar was
6 attempting to conduct its investigation into these matters, Respondent was
7 involved in very contentious domestic relations litigation with her ex-husband in
8 which Respondent sought to have support payments for her daughter, Rebecca,
9 extended past Rebecca's twenty-first birthday.
10

11 76. Although Respondent stated that her failure to timely respond, or to
12 respond at all, to the inquiries from the State Bar in her discipline matters was due
13 partly to severe ill health, during the same period of time Respondent was
14 aggressively able to defend her own interests in the domestic relations litigation;
15 she was able to file numerous pleadings to protect her self-interest. (Tr.
16 12/29/2005, 161:6 – 15; SB Ex. 91, BS 376 – 518)
17
18

19 77. As a result of Respondent's failure to provide information requested,
20 the State Bar was unable to determine conclusively whether any client funds had
21 been compromised during the periods of time in which Respondent's client trust
22 account had been overdrawn.
23

24 78. However, based on the records obtained by the State Bar by
25 subpoena, the Staff Examiner determined that during the period of examination,

1 February 2004 through June 2004, Respondent's client trust account had been
2 overdrawn 19 times. (SB Ex. 84, BS 362 – 369)

3
4 **COUNT FOUR (05-0653)**

5 79. On or about April 25, 2005, the State Bar received a charge from Ziv
6 Baker ("Mr. Baker") dated April 21, 2005, that included allegations that
7 Respondent, who had represented the mother of his children in a domestic
8 relations matter against him, had acted unprofessionally, had missed court
9 hearings, had failed to timely file pleadings, had caused his legal fees to increase
10 due to her failure, and had failed to pay a court-ordered sanction. (SB Ex. 74, BS
11 341 – 342)

12
13
14 80. Mr. Baker also provided the State Bar with a copy of the judgment
15 entered against Respondent by the Honorable Richard D. Nichols ("Judge
16 Nichols") on March 21, 2005, in Pima County Superior Court File No. SP-
17 20000389, that had been mailed to Respondent at her address of record on March
18 23, 2005; a copy of the minute entry filed February 11, 2005, in which Judge
19 Nichols had imposed the sanction; and a letter documenting Mr. Baker's
20 attorney's attempt to get Respondent to comply with the court's order. (SB Exs.
21 75, 76, 77, BS 343 – 352)

22
23
24 81. Respondent had been ordered to pay \$500.00 of Mr. Baker's attorney
25 fees as a sanction for failing to file a timely pretrial statement and failing to

1 appear at the settlement conference in Mr. Baker's domestic relations matter. (SB
2 Ex. 77, BS 351)

3
4 82. By letter dated May 6, 2005, sent to her address of record,
5 Respondent was notified by the State Bar of the charge received from Mr. Baker
6 and was asked to respond. (SB Ex.79, BS 355 – 356)

7 83. Respondent failed to respond.

8
9 84. By letter dated June 23, 2005, sent to her address of record,
10 Respondent was notified that the State Bar had not received any response from
11 her, and was reminded of her obligation to respond, and that a failure to do so
12 might serve, in itself, as a ground for discipline. (SB Ex. 81, BS 358)

13
14 85. Respondent did not respond.

15 86. Respondent admits that she did not pay the court-ordered sanction.

16 See Respondent's Prehearing Statement.

17
18 87. Respondent's conduct in failing to timely file a pretrial statement
19 during the proceedings in Mr. Baker's matter, and her telephonic appearance, in
20 lieu of her personal appearance, without having moved for leave to so appear is
21 consistent with her conduct in this discipline matter.

22
23 88. Respondent's conduct during the Domestic Relations proceedings
24 was inappropriate and unprofessional, as supported by the testimony of both Mr.
25 Baker and his attorney, Keith Singer ("Mr. Singer").

1 89. According to Mr. Singer "I found Ms. Gabroy to be very, very
2 difficult to work with. She was utterly nonresponsive, she was, frankly downright
3 mean-spirited when I did have contact with her. She would not respond to
4 correspondence, she failed to show up at court hearings, failed to submit
5 pleadings on behalf of her client as ordered by the Court, failed to – hold on-
6 failed to assist me to resolve discovery disputes. When I called to resolve that
7 matter, I got hung up on. Behaved in an obnoxious way during court proceedings
8 by making statements during arguments and testimony and being disruptive, and
9 was just generally quite unprofessional." (Tr. 1/10/06, 208:3-208:14)

12 90. Respondent never contacted Mr. Singer to arrange for the payment of
13 the sanction ordered by the Court and never attempted to negotiate a payment
14 schedule. (Tr. 1/10/2006, 209:12 – 18)

16 91. In October or November 2004, Respondent received a payment of
17 approximately \$12,000 from her ex-husband, the last payment due to her pursuant
18 to the settlement of their domestic relations matter. (Tr. 1/10/2006, 241: ll. 16 –
19 18). No explanation was given as to why some of these funds could not have
20 been used to pay the sanction imposed on February 11, 2005.

22 92. Respondent's claim that she attempted to contact Mr. Singer, but that
23 he did not return her calls is not credible in light of Mr. Singer's office practice
24 and diligence in returning telephone calls. (Tr. 1/10/2006, 210:14 – 211:17)

1 93. Respondent failed to appear at three separate court proceedings
2 during the Baker matter, all of which caused additional expense to Mr. Baker. (Tr.
3 1/10/2006, 248: 1:9-25)
4

5 94. Mr. Singer was contacted by Respondent's client and informed that
6 Respondent's client was unable to contact Respondent; Respondent's client was
7 therefore forced to attempt to resolve discovery issues with Mr. Singer on her
8 own.
9

10 95. In addition to her failure to file a timely pretrial statement,
11 Respondent failed to file any responsive pleadings to motions filed by Mr. Singer,
12 nor did she respond to any letters sent to her by Mr. Singer regarding Mr. Baker's
13 matter. (Tr. 1/10/2006, 215:19 – 217:12)
14

15 96. Respondent's conduct harmed her client during Mr. Baker's matter,
16 as it appeared her client appeared alone at one or more proceedings at which
17 Respondent did not appear, and was left "hanging" by Respondent's failure to
18 communicate with her or appear as required during court proceedings. (Tr.
19 1/10/2006, 220:10 – 13; 215:2 – 12)
20

21 97. Respondent's conduct and misconduct during Mr. Baker's matter
22 harmed the legal profession in that Respondent, as a member of the Bar,
23 disregarded a court's order and acted unprofessionally during court proceedings.
24
25

1 This caused Mr. Baker to form a negative impression of lawyers, notwithstanding
2 Mr. Singer's conduct to the contrary. (Tr. 1/10/2006, 249:5 – 252:20)

3
4 98. Respondent's conduct during the course of Mr. Baker's matter,
5 specifically her failure to timely file documents and pleadings, her failure to
6 respond to correspondence from Mr. Singer and her failure to appear for court
7 proceedings, is consistent with her conduct during the instant proceedings.

8 9 **ADDITIONAL FINDINGS**

10 99. Respondent's testimony and excuses for not answering the State Bar
11 are, generally, not credible. This finding is supported, at a minimum, by
12 Respondent's inconsistent testimony about the maintenance of her trust account
13 ledgers and check register, her repeated failure to provide information as
14 requested to Bar Counsel, her inconsistent testimony about her use of secretarial
15 staff, her inconsistent and exaggerated excuses for not providing information, and
16 most significantly, her admission that she deliberately and improperly used her
17 client trust account as a personal checking account to avoid a tax lien.
18

19
20 100. Respondent often claimed that health problems prevented her from
21 providing information and documentation to the Bar. While I do not doubt that
22 her health problems are real, I find that her excuses were not credible as shown by
23 her conduct during the domestic relations litigation, where by minute entry filed
24 October 4, 2004, the Court noted that "each of the parties continue to fill their
25

1 motions with scandalous and scurrilous material. Both parties recount past events
2 which have little, if anything, to do with the current controversies between them.”

3
4 (SB Ex. 91, BS 480)

5 101. Respondent admitted signing an annual renewal statement with the
6 Bar, where she certified that her trust account was in order when it was not. (Tr.
7 12/29/05, 124:9 – 125:12). While not separately charged by the Bar, Respondent
8 intentionally and knowingly made a misrepresentation to the Bar in her renewal
9 papers filed in February 2005. (See Rule 43(b) Ariz. R.S.C.)

11 **III. CONCLUSIONS OF LAW**

12 1. In Counts One, Two and Three, Respondent violated ER 1.15(a),
13 Rule 42, Ariz.R.S.Ct., by: (a) failing to hold property of clients in her possession
14 in connection with a representation separate from the lawyer’s own property, (b)
15 failing to maintain complete records of such account funds and (c) failing to
16 preserve trust records for a period of five years after termination of the
17 representation.
18

19
20 2. In Counts One, Two and Three, Respondent violated ER 1.15(b),
21 Rule 42, Ariz.R.S.Ct., by depositing more personal funds in her Bank of America
22 client trust account than necessary to pay bank service charges on the account.
23 Respondent admitted to depositing personal funds in her client trust account for
24 use as a personal trust account.
25

4 admitted to continually depositing earned funds into her Bank of America client
5 trust account and then disbursing funds from it for personal expenses.
6 Respondent also admitted to using her client trust account as her sole checking
7 account.

8
9 4. In Counts One, Two and Three, Respondent violated Rule 43(a),
10 Ariz.R.S.Ct., by failing to maintain complete records of the handling,
11 maintenance and disposition of all funds in Respondent's possession; by failing to
12 maintain client funds separate and apart from Respondent's personal account; and
13 by failing to maintain these records for a period of five years after the final
14 disposition of the clients' matters.
15

16 5. In Counts One, Two and Three, Respondent violated Rule 43(d),
17 Ariz.R.S.Ct., as follows:
18

19 A. By failing to exercise due professional care in the performance of
20 her duties in violation of Rule 43(d)(1)(A) by failing to maintain
21 required trust account records, by using her client trust account for
22 personal, non-client related transactions, by failing to properly back-
23 up trust account records maintained on her computer, by failing to
24 adequately secure sensitive client trust account documentation
25

1 including bank statements and ledger cards, by disbursing earned
2 fees directly from her client trust account, by commingling earned
3 and personal funds in her client trust account, by failing to conduct
4 monthly three-way reconciliations, and by allowing her client trust
5 account to become overdrawn 19 times from February 2004 through
6 June 2004.
7

8
9 B. By failing to maintain adequate internal controls within her office to
10 safeguard the funds held in trust in violation of Rule 43(d)(1)(C), by
11 failing to implement procedures to prevent misuse of her client trust
12 account, by continually utilizing her client trust account for non-
13 client related disbursements, by failing to verify the collection of
14 funds prior to drawing disbursements resulting in 19 overdraft
15 occurrences, by failing to systematically back-up the client trust
16 account records maintained on computer and by failing to maintain
17 her client trust account records in a secure place.
18

19
20 C. By failing to promptly and completely record all transactions in
21 violation of Rule 43(d)(1)(D), by failing to designate a client name
22 of checks written to disburse client funds, by failing to maintain
23 individual client ledgers with full and complete information, by
24 failing to record individual transactions during the period of
25

1 examination, by failing to provide a payee name on all disbursement
2 checks, in that individual transactions are not accurately reflected on
3 any client or general ledger, and in that specific transactions did not
4 correspond to any specific client according to the reconstructed
5 ledgers submitted for examination.
6

7 D. By failing to keep and preserve for five years records covering the
8 entire time from receipt to final disposition by Respondent of all
9 client funds, and by failing to keep such funds separate and apart
10 from Respondent's own funds, in violation of Rule 43(d)(1)(E),
11 evidenced by Respondent's admitted commingling of personal and
12 client funds and by Respondent's inability to produce any records of
13 her client trust account, other than those obtained from the Bank of
14 America.
15

16
17 E. By depositing earned funds in her client trust account and by failing
18 to promptly withdraw funds once they were earned, in violation of
19 Rule 43(d)(2)(B), by Respondent's admitted practice of depositing
20 earned fees into her client trust account, by failing to deposit client
21 funds intact into her client trust account, then promptly withdrawing
22 the earned portion(s), and by utilizing "split deposits" by which
23 means Respondent obtained cash-back when depositing funds into
24
25

1 her client trust account. This admitted conduct also establishes a
2 violation of Rule 44(a)(2); Further, Respondent violated
3 Rule 43(d)(2)(B) by failing to maintain duplicate deposit slips or
4 equivalent for each deposit, sufficiently detailed to identify each
5 item.
6

7 F. By failing to maintain individual client ledgers as required by
8 Rule 43(d)(2)(C).
9

10 G. By failing to conduct, or cause to be conducted, monthly three-way
11 reconciliations of client ledgers, trust account general ledger or
12 register and trust account bank statements, as required by
13 Rule 43(d)(2)(D).
14

15 H. By failing to maintain the records required in Rule 43(d)(2)(E) and
16 Rule 43(d)(2)(F).
17

18 I. By disbursing against uncollected funds, as prohibited by
19 Rule 43(d)(3) and Rule 43(d)(3)(B).
20

21 J. By failing to make all disbursements from her client trust account by
22 pre-numbered check or by electronic transfer, as required by
23 Rule 43(d)(4).
24

25 6. In Counts One, Two and Three, Respondent violated Rule 44,

Ariz.R.S.Ct., as follows:

1 A. By depositing funds solely belonging to Respondent in her
2 client trust account, in violation of Rule 44(a); and

3 B. By failing to maintain complete records of all client funds in
4 her possession, in violation of Rule 44(b)(3).

5
6 7. In Count Four, Respondent violated ER 3.4(c), Rule 42,
7 Ariz.R.S.Ct., and Rule 53(c), Ariz.R.S.Ct., by failing to comply with the order
8 and sanction entered by Judge Nichols to pay \$500 toward Mr. Baker's attorney's
9 fees. Respondent has admitted that she has not, to date, paid this sanction.
10 Further, Respondent has not attempted to make any payment arrangements with
11 either Mr. Baker, or his attorney, Mr. Singer, despite having received in October
12 or November 2004, a payment of approximately \$12,000 from her ex-husband.

13
14
15 8. In Counts One, Two, Three and Four, Respondent violated Rule
16 53(d), Ariz.R.S.Ct., by failing to cooperate with Bar counsel. Respondent's
17 knowing failure to cooperate with the investigation of the State Bar in these
18 matters is clear and widespread. It started with her obfuscation in June 2004, and
19 continued throughout the Bar's effort to investigate. Respondent failed to
20 cooperate or meaningfully participate in these proceedings as well. For example,
21 she failed, despite at least one extension of time, to timely file disclosure
22 statements. She failed to cooperate with the State Bar in the preparation of a joint
23 statements. She failed to cooperate with the State Bar in the preparation of a joint
24 statements. She failed to cooperate with the State Bar in the preparation of a joint
25

1 prehearing statement. She failed to make filings she requested and she failed to
2 appear at the hearing in person.

3
4 9. In Counts One, Two, Three and Four, Respondent violated Rule
5 53(f), Ariz.R.S.Ct., by continually failing to furnish information and by failing to
6 respond promptly to inquiries and requests from Bar counsel related to the
7 investigation of these matters.

8
9 10. Although not charged in the Complaint in this matter, I further find
10 that Respondent violated ER 8.4(b) and (c), Ariz.R.S.Ct. Respondent testified, at
11 the hearing, that she improperly used her client trust account as her personal
12 checking account to avoid an IRS tax lien on her operating and/or existing
13 personal checking accounts. Respondent's admission clearly establishes that she
14 has engaged in conduct that reflects adversely on her honesty and fitness to
15 practice law, and engaged in conduct involving dishonesty, deceit, and possibly
16 fraud on the United States government.

17
18
19 11. Respondent's conduct in using her trust to avoid the consequences of
20 an IRS tax lien is likely a crime. See 18 U.S.C. §1001 (it is a felony if anyone
21 knowingly and willfully "falsifies, conceals, or covers up by any trick, scheme, or
22 device a material fact"). This applies to federal administrative matters, See *US v.*
23 *Belcher* 927 F.2d 1182 (11th Cir. 1991) (crime for attorney to use trust account to
24 conceal identity of client who was using trust account to avoid currency
25

1 regulations). As a result, and although not charged in the complaint, I also find
2 that Respondent violated ER 8.4(b) (commission of criminal act that adversely
3 reflects on the lawyer's honesty, trustworthiness and fitness to practice law)
4

5 12. Although not specifically charged in the complaint, I also find that
6 Respondent signed a certificate of compliance as required by Rule 43(b), Ariz.
7 R.S.Ct., and that the certificate was knowingly false. As a result, I find that
8 Respondent violated ER 8.4(b) (conduct involving dishonesty, fraud, deceit, or
9 misrepresentation)
10

11 **IV. DISCUSSION**

12 Respondent's conduct in these matters establish numerous, serious
13 violations of Rules 42, 43, 44 and 53, Ariz.R.S.Ct., conducted over a long period
14 of time. Although Respondent offered what appear to be excuses and
15 justifications, they do not negate the findings above.
16

17 **V. RECOMMENDED SANCTION**

18 I recommend disbarment.
19

20 This recommendation is based on the applicable *ABA Standards for*
21 *Imposing Lawyer Sanctions* ("Standards"), 1991 edition, including the relevant
22 aggravating and mitigating factors, as well as its review of the applicable case law
23 regarding proportionality of the proposed sanction.
24
25

1 **A. **APPLICABLE STANDARDS****

2 The *Standards* provide guidance with respect to an appropriate sanction in
3 this matter. The Supreme Court and Disciplinary Commission consider the
4 *Standards* a suitable guideline. *In re Peasley*, 208 Ariz. 27, ¶ 23, ¶ 33, 90 P.3d
5 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040
6 (1990).
7

8 The Supreme Court and the Disciplinary Commission consistently use the
9 *Standards* to determine appropriate sanctions for attorney discipline. *See In re*
10 *Clark*, 207 Ariz. 414, 87 P.3d 827 (2004). The *Standards* are designed to
11 promote consistency in sanctions by identifying relevant factors the Court should
12 consider and then applying these factors to situations in which lawyers have
13 engaged in various types of misconduct. *Standards* 1.3, Commentary.
14

15 In determining an appropriate sanction, the Court and the Disciplinary
16 Commission consider the duty violated, the lawyer's mental state, the presence or
17 absence of actual or potential injury, and the existence of aggravating and
18 mitigating factors. *Peasley*, 208 Ariz. at ¶ 33, 90 P.3d at 772; ABA *Standard* 3.0.
19

20 “The *Standards* do not account for multiple charges of misconduct. The
21 ultimate sanction imposed should at least be consistent with the sanction for the
22 most serious instance of misconduct among a number of violations; it might well
23
24
25

1 be and generally should be greater than the sanction for the most serious
2 conduct.” *Standards*, p.6; *In re Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994).

3
4 Respondent’s conduct as related to how she maintained her trust account
5 constitutes serious instances of misconduct account in violation of ERs 1.15,
6 3.4(a), Rules 43, 44 and Rule 53 (c), (d) and (f). If this were all that were
7 involved, I would be recommending a suspension based on *Standards* 4.12, 6.22
8 and 7.2:
9

10 *Standard 4.12* provides that

11 Suspension is generally appropriate when a lawyer
12 knows or should know that he is dealing improperly
13 with client property and causes injury or potential
14 injury to a client.

15 *Standard 6.22* provides that

16 Suspension is appropriate when a lawyer knowingly
17 violates a court order or rule, and there is injury or
18 potential injury to a client or a party, or interference
19 or potential interference with a legal proceeding.

20 *Standard 7.2* provides that

21 Suspension is generally appropriate when a lawyer
22 knowingly engages in conduct that is a violation of a
23 duty owed as a professional, and causes injury or
24 potential injury to a client, the public, or the legal
25 system.

26 However, the conduct that warrants disbarment is Respondent’s purposeful
27 use of her trust account to avoid a tax lien, and her intentional failure to provide

1 information to the bar when she was caught, coupled with her false dilatory
2 excuses. This conduct implicates the following Standards:

3 *Standard 5.11(b)* provides that

4
5 5.11 Disbarment is generally appropriate when:

6 (b) a lawyer engages in any other intentional conduct
7 involving dishonesty, fraud, deceit, or
8 misrepresentation that seriously adversely reflects on
the lawyer's fitness to practice.

9 *Standard 7.1* provides that

10 Disbarment is generally appropriate when a lawyer
11 knowingly engages in conduct that is a violation of a
12 duty owed to the profession with the intent to obtain
13 a benefit for the lawyer or another, and causes serious
14 or potentially serious injury to a client, the public, or
the legal system.

15 Disbarment is the perceptive sanction in light of the factors listed in the
16 *Standards*.

17
18 **1. The duty violated**

19 Respondent violated her duty to the legal system by failing to comply with
20 the order of the Pima County Superior Court; violated her duty to the profession
21 by failing to either respond or to respond promptly and truthfully to the inquiry of
22 the State Bar in these matters, to provide information requested or to provide it in
23 a timely manner, and by her misuse of her client trust account for dishonest
24 purposes; and, violated her duty to her clients and the public by failing to follow
25

1 the rules applicable for the maintenance of her client trust account. Worse,
2 Respondent violated her duty to the public and profession by using a trust account
3 to hide from the IRS and by continuing to do so when caught by the Bar. She
4 violated her duty to the legal system by obfuscating and evading the Bar
5 investigation in order to continue her wrong doing.
6

7 **2. The lawyer's mental state**
8

9 It is clear from the all of the testimony at the hearing on the merits,
10 including Respondent's, and from Respondent's admissions in her unilateral
11 prehearing statement, that Respondent acted knowingly when she failed to obey
12 the order of the Pima County Superior Court, in failing to cooperate with the State
13 Bar's investigation and in failing to follow the rules applicable to the maintenance
14 and conduct of her client trust account. Further, it is clear that Respondent
15 knowingly, if not intentionally, utilized her client trust account in violation of the
16 applicable rules for a dishonest and deceitful purpose. And it is clear that she
17 knowingly failed to provide truthful information or otherwise cooperate with the
18 Bar.
19
20

21 **3. The actual or potential injury caused by Respondent's**
22 **conduct**

23 Respondent has harmed specific people and she has harmed the IRS and
24 the legal profession. Respondent's failure to pay the \$500 attorney fee ordered by
25 the Pima County Superior Court caused actual harm to the client, Ziv Baker, and

1 to his attorney, Keith Singer. In addition, the example set by the failure of
2 Respondent, as an officer of the Court, to obey an order of the Court caused both
3 actual and potential injury to the judicial system and impugned the integrity of the
4 profession. The failure of Respondent to cooperate with the State Bar and to
5 timely provide, or to provide in total, information requested for the State Bar's
6 investigation and during the formal discipline process violates duties to the
7 general public by engaging in conduct that reflects poorly on the profession.
8 Respondent's failure to cooperate with the disciplinary authority and comply with
9 lawful requests for information concerning a disciplinary matter is a violation of
10 Rule 53(d) and (f), Ariz.R.S.Ct., and is recognized by the *Standards* as a failure to
11 maintain the integrity of the profession. Finally, the failure of Respondent to
12 maintain her client trust account in compliance with Rules 43 and 44
13 Ariz.R.S.Ct., caused potential injury to clients whose funds were deposited
14 therein.
15
16
17
18

19 **4. The aggravating and mitigating circumstances**

20 As set forth above, the presumptive sanction for this misconduct is
21 disbarment. In considering whether disbarment should be recommended, it is
22 appropriate to consider the relevant aggravating and mitigating factors.
23

24 The following factors should be considered in aggravation:
25

1 **Standard 9.22(b) – Dishonest or selfish motive.** Respondent testified that
2 she violated the rules regarding her client trust account, using her client trust
3 account as her personal checking account, to avoid a tax lien on her existing
4 personal and/or operating accounts. She failed to cooperate with the bar so she
5 could keep personally benefiting.
6

7 **Standard 9.22(c) – Pattern of misconduct.** Respondent's intentional and
8 long term improper use of her trust account together with her continued wrongful
9 conduct and her failure to cooperate with the State Bar's investigation in all four
10 counts establishes a pattern of misconduct. Further, Respondent's conduct during
11 the formal disciplinary process, in particular her failure to appear in person for the
12 hearing, plus her failure to timely file a disclosure statement and her failure to
13 cooperate with Bar Counsel in the preparation of a joint prehearing statement is
14 consistent with her pattern of conduct during Mr. Baker's matter. Respondent
15 admitted to continuing to use her client trust account as a personal account until
16 October 2005, after having been placed on notice of the investigation and the
17 filing of the formal complaint; and, by her own admissions, that this was grossly
18 improper.
19
20
21

22 **Standard 9.22(d) – Multiple offenses.** In addition to the multiple offenses
23 within the instant matter, Respondent admitted that she has failed to respond to at
24 least three inquiries from Bar Counsel in new disciplinary matters.
25

1 **Standard 9.22(e) – Bad-faith obstruction of the disciplinary proceeding by**
2 intentionally failing to comply with the rules or orders of the disciplinary agency.

3
4 As noted during the formal disciplinary process, Respondent failed to comply
5 with the Arizona Rules of the Supreme Court relating to the discovery process,
6 and failed to timely file a prehearing statement. Additionally, Respondent failed
7 to appear at the hearing and failed to make other filings she was order to file.

8
9 **Standard 9.22 (i) – Substantial experience in the practice of law.**
10 Respondent was admitted to the State Bar of Arizona on June 15, 1976.

11 **Standard 9.22 (j) – Indifference to making restitution.** Respondent still has
12 failed to pay the court ordered \$500 to Mr. Baker.

13
14 The following factors may be considered in mitigation:

15 **Standard 9.32(a) – Absence of a prior disciplinary history.** Respondent has
16 practiced law since 1976 and has had no prior discipline.

17
18 **Standard 9.32(c) – Personal or emotional problems.** Respondent has
19 personal health problems and problems experienced by her daughter, and those
20 are somewhat mitigatory. However, Respondent overstated and exaggerated
21 these problems as shown by her involvement in extremely contentious domestic-
22 relations litigation that had a negative impact on her ability to practice law;
23 documents admitted into evidence show that during the same period of time
24 Respondent was filing voluminous motions in her own matter, and was clearly
25

1 practicing law to protect her own interests, she was claiming health and personal
2 problems to the State Bar. Therefore, this factor is given little weight.

3
4 Based on the conduct, admitted and proven, the appropriate sanction is
5 disbarment. Based on a review of the aggravating and mitigating factors, the
6 appropriate sanction remains disbarment.

7 B. PROPORTIONALITY

8
9 In the past, the Supreme Court has consulted similar cases in an attempt to
10 assess the proportionality of the sanction recommended. *See In re Struthers*, 179
11 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized
12 that the concept of proportionality review is “an imperfect process.” *In re Owens*,
13 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases
14 “are ever alike.” *Id.*

15
16 To have an effective system of professional sanctions, there must be
17 internal consistency, and it is appropriate to examine sanctions imposed in cases
18 that are factually similar. *Peasley, supra*, 208 Ariz. at ¶ 33, 90 P.3d at 772.
19 However, the discipline in each case must be tailored to the individual case, as
20 neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶
21 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002);
22 *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).
23
24
25

1 As noted above, lawyers who have failed to maintain their client trust
2 accounts and who have failed to obey court orders have received sanctions
3 ranging up to long-term suspensions for each discrete act of misconduct. See, e.g.
4
5 In *In re Bryn*, SB-05-0098-D (2005)(failure to cooperate with the State Bar's
6 investigation and respond to inquiries from Bar counsel, failure to provide
7 requested trust account records, and then failure to participate in the formal
8 proceedings resulted a in suspension for six months and one day, despite a finding
9 in mitigation that he was inexperienced in the practice of law, had personal or
10 emotional problems and lacked a disciplinary history. Similarly, in *In re Gertel*,
11 SB-02-0016-D (2002), the lawyer engaged in misconduct relating to his client
12 trust account. Like here, the lawyer's misconduct included failure to maintain
13 proper records, including client ledgers, commingling personal and client funds,
14 and a failure to preserve his trust account records for five years as required. For
15 the numerous violations of ER 1.15 and Rules 43 and 44, the lawyer was
16 suspended for four months.
17
18
19

20 Other cases where long-term suspensions were imposed include, *In re*
21 *Clark*, SB-01-0192-D (2002), (six months for violations of the rules relating to
22 trust accounts), and, in *In re Weinert-Landrith*, SB-02-0024-D (2002),
23 (suspension of six months, for trust account violations and a failure to provide
24 trust account documents and other information).
25

1 Here, Respondent's conduct exceeds trust account violations and a failure
2 to cooperate with the State Bar. Her conduct involves actively misleading the Bar
3 in order to continue using her trust account for the improper and illegal purpose of
4 avoiding the consequences of a tax lien. Disbarment has occurred in a number of
5 matters that are at least somewhat similar.
6

7 *In Re Hoover*, SB-05-0145-D found disbarment appropriate where that
8 respondent failed to safeguard client property, engaged in trust account violations
9 and failed to respond and cooperate with the State Bar's investigation against a
10 backdrop of a knowing pattern of neglect of client matters. Here, similar trust
11 violations and failing to cooperate violations were found, but against a backdrop
12 of using a trust account to hide assets from the IRS.
13
14

15 I also find instructive the case of *in Re Pozgay*, SB-04-0012-D. That
16 respondent engaged in conduct involving dishonesty and deceit against a
17 backdrop of numerous trust account violations and was disbarred.
18

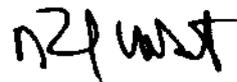
19 Two other cases where trust account violations coupled with dishonest
20 conduct resulted in disbarment are *In re Distel*, SB-02-0131-D and *in re Turley*,
21 SB-02-0042-D.
22

23 In my view, a lawyer who uses her trust account to evade a federal tax lien
24 is likely committing a serious crime. At a minimum she is engaging in deceitful
25 and disreputable conduct that we as lawyers should not countenance. When she

1 then continues this conduct for over a year and half, all the while presenting false
2 excuses to the State Bar to avoid being caught, then she has shown she should not
3 be a lawyer. If there were any doubt, her conduct once the State Bar started these
4 proceedings shows that she can not be trusted to represent others. Had she
5 admitted her conduct when the Bar first contacted her, the result here might have
6 been very different. But her continued conduct throughout these proceedings,
7 right up to not showing up for the second day of the hearing, shows why
8 disbarment is the appropriate sanction.
9
10

11 Respondent should be disbarred and all costs assessed against her. She
12 should also be ordered to make restitution of \$500 to Mr. Baker.
13

14 DATED this 10th day of March, 2006.

15 

16
17 _____
18 Kraig J. Matron
Hearing Officer 8A

19 Original filed with the Disciplinary
20 Clerk of the Supreme Court of Arizona
on this 10th day of March, 2006.

21 Copy of the foregoing was e-mailed and
22 mailed this 10th day of March, 2006, to:

23 Stefani Jean Gabroy
24 202 15th Street
Newport Beach, California 92663
25 Email: rgabroy@yahoo.com
Respondent

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RJWST
