





1 his probation. Restitution is not an issue, since there is no evidence that any client  
2 suffered a financial loss as a consequence of Respondent's misconduct.

### 3 **ABA Standards**

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5 The parties agree, and the Hearing Officer concurs, that the applicable ABA  
6 Standard for Imposing Lawyer Discipline (the Standards) in this case is Standard 4.0 (a  
7 violation of duties owed to client); specifically a failure to preserve client property.  
8 Standard 4.13 says that reprimand (censure in Arizona) is generally appropriate for a  
9 lawyer who is negligent in dealing with client property and causes injury or potential  
10 injury to the client. That appears to be the case here. There is no evidence that  
11 Respondent's conduct was anything other than negligent and there is no evidence that  
12 Respondent's conduct caused any actual injury to a client, although it had that potential.  
13 The Hearing Officer therefore concurs with the parties that the presumptive sanction in  
14 this case is censure.  
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### 17 **Aggravation and Mitigation**

18 There is one factor properly considered in aggravation; a history of prior  
19 discipline (Standard 9.22(a)). On November 10, 2003, Respondent was placed on two  
20 (2) years probation by the probable cause panelist for violation of ER 8.4(c) for making  
21 false statements on an application for employment with the Cochise County Public  
22 Defender's office. On December 19, 2005, Respondent was censured by the Supreme  
23 Court for a violation of ER 3.3(a)(1) (making a false statement of fact or a law to a  
24 tribunal) and ER 8.4(d), (engaging in conduct that is prejudicial to the administration of  
25 justice). In that case, Respondent was found to have lied to a judge in order to obtain a  
26 continuance of a trial date. In addition to a censure, Respondent was placed on a two  
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1 (2) year period of probation, was ordered to submit to a LOMAP audit and to submit to  
2 an assessment by the State Bar Members' Assistance Program.

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4 The two previous cases are factually distinguishable from this case. The first  
5 occurred before Respondent was admitted to practice and could be characterized more  
6 as resume enhancement than a genuine attempt to deceive anyone. The second,  
7 although more serious than the first, was found to have been the result of Respondent's  
8 misguided attempt to accommodate his client's wishes rather than a self-serving or  
9 selfish motive. Respondent's record of prior discipline was not considered serious  
10 enough to be given great weight in aggravation.  
11

12 The only matter stipulated to by the parties in mitigation is Respondent's  
13 inexperience in the practice of law (Standard No. 9.32(f))<sup>1</sup>. Respondent claims that his  
14 failure to properly control his trust account was primarily due to his relatively recent  
15 entry into private practice, and thus limited exposure to trust accounts.  
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17 A failure to record checks properly and keep track of receipts and disbursements  
18 will lead to trouble with any bank account. The fact that this account happens to be a  
19 trust account is significant only because if it had been Respondent's general account,  
20 Respondent's failures would not have come to the attention of the State Bar.  
21 Respondent's relatively brief experience in private practice was therefore also given  
22 little weight in mitigation.  
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24 If anything, the single factor in aggravation and the single factor in mitigation  
25 cancel each other out and do not warrant a departure from the presumptive sanction of  
26 censure.  
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<sup>1</sup> Since the Respondent's conduct here is alleged to be negligent, an argument could be made that  
Standard 9.32(b), absence of a dishonest or selfish motive, also applies. However, it was not advanced  
by the parties and therefore was not considered by the Hearing Officer.

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## Proportionality Review

The Supreme Court has held that, in order to achieve proportionality in imposing discipline, the discipline in each situation must be tailored to the facts of the case (*In re Wines*, 135 Ariz. 203,207, 660 P.2d 454, 458 (1983) and *In re Wolfram*, 174 Ariz. 49, 837 P.2d 94 (1993)). The question is whether the proposed sanction is proportionate to actions taken by the Court and the Commission in similar cases.

The Joint Memorandum in Support of Discipline by Consent contains a thorough proportionality analysis. Burdening the record with a recitation of the analysis would not be helpful. Accordingly, the Hearing Officer adopts, by reference, the parties' analysis and concurs in the conclusion that the proposed sanction in this case is proportional to the sanctions imposed in similar cases.

The Respondent's misconduct here is a result of sloppy office procedures. There was no apparent dishonest motive and no client was harmed. He has taken actions to set things straight in his office and hopefully will benefit from the terms of his probation to the end that the public will be protected against further difficulties with Respondent's trust account. Protection of the public, rather than punishment of the Respondent, is the goal of lawyer discipline. (*In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993)).

## Recommendations

Upon consideration of the facts, application of the Standards, the aggravating and mitigating factors, and the parties' proportionality analysis, the Hearing Officer recommends that the Tender of Admissions and Agreement for Discipline by Consent and Joint Memorandum in Support, be accepted and that pursuant thereto:

1           1.     The Respondent receive a censure.

2           2.     The Respondent be placed on probation for a period of one (1) year from  
3 the date of execution of a Memorandum of Understanding between the Respondent and  
4 the State Bar, specifying the terms of probation (the Memorandum). The State Bar shall  
5 notify the Disciplinary Clerk of the date of commencement of probation. The terms of  
6 probation are as follows:  
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8           a.     Respondent shall meet with the State Bar Staff Examiner for Trust  
9 Accounts, Gloria Barr, within thirty (30) days after the execution of the Memorandum to  
10 schedule an assessment of his client trust account procedures. Following an  
11 assessment, Respondent will enter in a Trust Account Program contract based upon the  
12 recommendations made by Ms. Barr (TAP). TAP will be incorporated by reference into  
13 the Memorandum. Respondent shall comply with all recommendations or requirements  
14 made by Ms. Barr that are a part of the TAP.  
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16           b.     Respondent shall complete the Trust Accounts Ethics  
17 Enhancement Program (TAEEDP) during the probation period.  
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19           c.     Respondent shall pay all costs associated with his probation,  
20 including the TAP and TAEEDP.  
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22           d.     Respondent shall pay all costs incurred by the State Bar in  
23 connection with these proceedings.

24           e.     If Respondent fails to comply with the foregoing conditions, and the  
25 State Bar receives information concerning his failure, Bar Counsel shall file with the  
26 Hearing Office a Notice of Non-Compliance pursuant to Rule 60(a)(5), Ariz.R.S.Ct. The  
27 Hearing Officer shall conduct a hearing within thirty (30) days after receipt of the notice  
28 to determine whether the terms of probation have been violated and if an additional

1 sanction should be imposed. In the event there is an allegation that any of terms have  
2 been violated, the burden of proof shall be on the State Bar to prove non-compliance by  
3 clear and convincing evidence.  
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5 DATED this 25<sup>th</sup> day of August, 2006.

6 Larry W. Suci /cs  
7 Larry W. Suci  
8 Hearing Officer 7A

9 ORIGINAL filed with the  
10 Disciplinary Clerk this  
25<sup>th</sup> day of August, 2006.

11 COPY of the foregoing  
12 mailed this 25<sup>th</sup> day of  
13 August, 2006, to:

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