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MAR 08 2006

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: *[Signature]*

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

IN THE MATTER OF A MEMBER) Nos. 04-1688, 04-1815
OF THE STATE BAR OF ARIZONA,)
)
ROBERT R. JUNG,)
Bar No. 014198)
) **HEARING OFFICER'S REPORT**
)
RESPONDENT.)

PROCEDURAL HISTORY

A Complaint was filed on September 23, 2005. Respondent filed an Answer on October 24, 2005. The parties waived holding a settlement conference. The State Bar then filed a Notice of Settlement on December 27, 2005 indicating the parties had reached an agreement. A Tender of Admissions and Agreement for Discipline by Consent (Tender) and Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent (Joint Memo) were filed on January 19, 2006. A telephonic hearing was held on January 23, 2006.

FINDINGS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on July 17, 1992.

1 Count One

2 2. On October 6, 2004, the State Bar of Arizona received an insufficient
3 funds notice on Respondent's Arizona Business Bank ("Respondent's Bank")
4 Arizona Bar Foundation trust account.
5

6 3. The October 6, 2004 bank notice indicated that on September 30, 2004,
7 Respondent's trust account check number 1021, in the amount of \$5,800.00,
8 attempted to pay against the trust account when the balance in the account was
9 \$5,604.47.
10

11 4. Respondent's Bank paid the check and charged Respondent a \$30.00
12 overdraft fee, thereby leaving Respondent's trust account with a total negative
13 balance of \$225.53.
14

15 5. On October 14, 2004, the Records Examiner for the State Bar of
16 Arizona ("the Records Examiner") sent Respondent a copy of the insufficient
17 funds notice with a letter requesting an explanation regarding the overdraft on his
18 trust account.
19

20 6. Respondent submitted his response on November 4, 2004, and admitted
21 that:

22 a. The overdraft in question was a result of his own misappropriation of
23 settlement funds received by him for the benefit of a client.
24
25

1 b. He rarely does personal injury work and rarely uses the trust fund
2 account, but that in this instance, he represented a client injured in a car accident
3 and received a settlement.
4

5 c. He disbursed the client's share of the settlement proceeds to the client
6 but held some of the client's funds back for the express purpose of paying her
7 doctors.
8

9 d. His personal financial problems were such that he was in danger of
10 losing his house and as a result he made "the wrong decision to try and float some
11 of the settlement money owed to the doctors and pay [Respondent's] bills."
12

13 e. He put off paying the doctors until he got his finances in better order,
14 but when he ultimately obtained sufficient funds to cover the client's outstanding
15 doctor bills, he miscalculated the amount of funds in his trust account and thus
16 did not transfer a sufficient amount back to his trust account. Thus, the account
17 became overdrawn when the trust account check he issued to one of the doctors
18 was presented to Respondent's Bank.
19

20 7. Responding to further inquiries from the Staff Examiner, Respondent
21 revealed that on July 28, 2004, upon receipt of the settlement check from
22 American Commerce Insurance Company in the amount of \$14,500 for the
23 benefit of a client named "Ms. Macias," he deposited the same directly into his
24 personal checking account, Arizona Business Bank Account Number 1507447-D,
25

1 rather than into his trust account, Arizona Business Bank Account Number
2 1003268.

3
4 8. Respondent did not retain a copy of the original settlement check, but
5 on February 11, 2005, provided the State Bar with a 2004 1099-MISC Form
6 issued by American Commerce Insurance Company showing the payment to him
7 of \$14,500.

8
9 9. Respondent also provided a history of his transfers of funds and
10 disbursements involving the \$14,500 in settlement funds.

11 10. Respondent disclosed that the transfers of funds he made after
12 depositing the settlement check into his personal account on July 28, 2004
13 included:

14
15 a. On July 30, 2004, Respondent effected a telephonic transfer of
16 \$6,827.96 from his personal checking account to his trust account and issued trust
17 account check number 1018 in the amount of \$3,338.71 to his client, Ms. Macias.

18
19 b. Prior to mailing payment for his client's outstanding medical bills,
20 Respondent effected a telephonic transfer from his personal checking account to
21 his trust account of \$6000.00, and then on September 15, 2004, Respondent paid
22 \$5,800.00 to Emergency Chiropractic with a check drawn on his trust account.

23
24 c. On September 15, 2004, Respondent paid \$285.00 to Team
25 Physicians with a check drawn on his trust account.

1 d. On September 15, 2004, Respondent paid \$742.96 to Banner Health
2 with a check drawn on his trust account.

3 e. On September 15, 2004, Respondent paid \$31.00 to Associated
4 Radiologists with a check drawn on his trust account.

5 Respondent kept \$4,302.33 for his fees and costs.

6
7 11. On January 14, 2005, the Staff Examiner sent Respondent a request
8 for additional information, including copies of Respondent's client trust account
9 bank statements covering the period from June 2003 through November 2004;
10 copies of the settlement statement and personal injury settlement check; copies of
11 the corresponding deposit slip and individual client ledger for client, Ms. Macias;
12 and explanations for some of the transactions at issue.
13
14

15 12. In response to continuing investigation by the Staff Examiner,
16 Respondent admitted:

17 a. He did not have a copy of a settlement statement because he did not
18 provide one to Ms. Macias, and which is why he previously provided the State
19 Bar with a breakdown of the payments made as a result of the settlement.
20 Respondent stated that Ms. Macias is a friend of his but he did get paid for his
21 services. Respondent stated he did not charge her for any expenses and he
22 lowered his fee to get her more money out of the settlement because the offer was
23 less than she had hoped for. Respondent admitted that he rarely did personal
24
25

1 injury work and he did not know that such a document (settlement statement) is
2 required.

3
4 b. Respondent did not have a copy of the actual check received from
5 the insurance company, which is why he sent a copy of the 1099-MISC Form
6 from the company that reflected the amount of the check. Respondent stated that
7 he was not aware that he was required to keep a copy of the check.

8
9 c. Respondent did not have a copy of the deposit slip for the settlement
10 check because he was not aware that he was required to keep a copy and the
11 deposit may have been made through an ATM. Respondent stated that if the
12 deposit was made through an ATM, Arizona Business Bank requested that
13 depositors not use deposit slips for ATM deposits.

14
15 d. Respondent did not have an individual client ledger or similar
16 document for Ms. Macias.

17
18 **Count Two**

19
20 13. On September 14, 2001, Atilla Veres ("Mr. Veres") retained
21 Respondent to defend his company, Ad Print, Inc. ("Ad Print") in a civil lawsuit,
22 Pima County Superior Court case number C20005175. Respondent filed a notice
23 of appearance on behalf of Ad Print in September 2001.

24
25 14. Respondent stated that pursuant to a signed fee agreement dated
September 14, 2001, Mr. Veres paid an initial \$1,500.00 "retainer" and agreed to

1 maintain a trust account balance of \$1,500.00 at all times. Although the fee
2 agreement characterizes the initial fee paid by Mr. Veres as a "retainer," the terms
3 of the fee agreement specified that ". . . . Client agrees to maintain a trust account
4 balance at all times in the amount of \$1,500.00."

6 15. Respondent's fee agreement provided that Respondent was
7 authorized to apply the \$1,500 against Mr. Veres' "account balance as they [sic]
8 become due" and that Respondent was authorized to "use these funds as needed to
9 pay for court filing fees, costs of messengers, court reporters, other discovery
10 costs and attorney fees incurred." The fee agreement further provided that
11 Respondent had the "right to, at any time and without further notice to Client,
12 withdraw funds from these advances and apply these funds to Client's
13 outstanding fees and costs due and owing to Attorney or experts retained in
14 Client's matter."
15

17 16. The fee agreement also provided that Respondent was to bill for
18 services at the rate of between \$150 and \$225 per hour.
19

20 17. Bar counsel requested from Respondent trust account records from
21 September 2001 through September 2004, spanning the period of time relevant to
22 Respondent's representation of Mr. Veres.
23

24 18. In response, Respondent stated that Mr. Veres did not make
25 payments to maintain the client trust account balance as agreed and, therefore,

1 Respondent had no supporting documentation. Respondent did provide copies of
2 his trust account bank statements for the applicable period but did not provide
3 requested client ledgers, deposit slips, or records of disbursements, apparently
4 because he did not maintain such records.
5

6 19. The State Bar subsequently subpoenaed relevant trust account
7 documents from the Respondent's bank.
8

9 20. Review of the trust account bank statements for the period of
10 September 4, 2001 through October 19, 2004, showed that Respondent deposited
11 \$1,500.00 into his client trust account on September 18, 2001, for the benefit of
12 Mr. Veres.
13

14 21. Respondent's trust account bank statements also reflected that
15 Respondent disbursed \$200.00 from his trust account on September 24, 2001, by
16 a telephone debit transfer to Respondent's operating account number 1006812,
17 and disbursed \$1,000.00 from the account on October 1, 2001, leaving a balance
18 on that date of \$664.60. Respondent's bank statement did not list a check number
19 for the \$1, 000 disbursement, indicating that the disbursement was not done by
20 way of a pre-numbered check.
21
22

23 Count Three

24 22. Respondent admits that a status conference was set in Mr. Veres'
25 case Pima County case number C20005175, for March 29, 2004, at 9:00 a.m. in

1 Tucson. Respondent asked a Tucson lawyer to appear on his behalf so that
2 Respondent could avoid driving to Tucson. Respondent admits that,
3 unfortunately, the lawyer who agreed to appear for Respondent was late and upon
4 his arrival learned the court had already called the case and placed it on the
5 inactive calendar.
6

7 23. Respondent thereafter filed a motion to have the matter set back on
8 the active calendar but the opposing party objected and filed a motion to dismiss.
9 Respondent responded to the motion to dismiss but claims and believes he heard
10 nothing further from the court.
11

12 24. Subsequently, Mr. Veres learned that Respondent had missed the
13 status conference in March 2004, and because he had not heard from Respondent,
14 Mr. Veres contacted the Pima County Superior Court. Mr. Veres learned that a
15 judgment had been entered against his company, Ad Print.
16

17 25. Respondent admitted that he learned of the judgment against Ad
18 Print from Mr. Veres.
19

20 26. Subsequently, Mr. Veres hired new counsel to seek relief from the
21 judgment and to pursue a malpractice claim against Respondent.
22

23 27. Respondent experienced some problems receiving minute entries
24 from the Pima County Superior Court.
25

1 28. A minute entry issued on June 30, 2004, in Pima County case
2 number C20005175, stated that: (1) defendant/cross-claimant Ad Print failed to
3 comply with the Rule 38.1(d)¹, Ariz.R.Civ.Pro., despite ample opportunity to do
4 so; and (2) defendant/cross-claimant Ad Print failed to respond to non-uniform
5 interrogatories and request for production with no good cause shown.
6

7 29. The record reflects that the court granted the co-defendant's motion
8 to enter default and denied Ad Print's motion for reinstatement to the active
9 calendar. In August 2004, the court entered a judgment granting the co-
10 defendant's motion to dismiss Ad Print's appeal, making the arbitration award a
11 final judgment and awarding attorney's fees to the co-defendant for its defense of
12 Ad Print's appeal.
13
14

15 30. Mr. Veres, with the assistance of new counsel, filed a motion for
16 relief from judgment on October 14, 2004; the opposing party filed an opposition
17 to the motion for relief. The court record reflects that although the matter was
18 taken under advisement on November 22, 2004, nothing further appears of record
19 in the court file until a satisfaction of judgment was filed on October 25, 2005.
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¹ Rule 38.1(d) requires parties who wish to remove a case from the inactive calendar to "serve a proper Motion to Set and Certificate of Readiness."

1 check or by electronic transfer; engaged in conduct involving dishonesty; and as
2 described above, engaged in conduct prejudicial to the administration of justice.

3 Respondent's conduct as alleged in this count violated Ariz.R.S.Ct, Rule
4 42, ERs 1.5(b), 1.15, 8.4(c) and 8.4(d), as well as Rules 43 and 44, Ariz.R.S.Ct.

5
6 By failing to maintain trust account records during the applicable period of
7 representation in this matter, including client ledgers, deposit slips and
8 disbursements, Respondent violated Rule 42, Ariz.R.S.Ct., ER 1.15, and Rules 43
9 and 44, Ariz.R.S.Ct.

10
11 For purposes of this Agreement only, and with respect to Count One, the
12 State Bar conditionally agrees to dismiss the allegation that Respondent violated
13 ER 8.4(b) by engaging in a criminal act that reflects adversely on his honesty,
14 trustworthiness or fitness as a lawyer in other respects. Based upon Respondent's
15 explanation of each relevant transaction relating to his trust account, as set forth
16 above in paragraph 10 (a) – (f) and paragraph 12 (a) – (d), the State Bar
17 conditionally admits that it could not prove by clear and convincing evidence that
18 Respondent had the specific intent necessary to sustain a finding that he
19 committed a criminal act.
20
21

22
23 For purposes of this Agreement, the State Bar conditionally dismisses
24 Count Three. If this matter went to a hearing, the State Bar asserts the principle
25 of collateral estoppel would preclude Respondent from contesting the findings of

1 fact and conclusions of law of the trial court regarding the violations of court
2 rules found by the Superior Court. However, the State Bar also concedes that a
3 violation of a court rule does not automatically result in a finding of an ethical
4 violation, and for purposes of this Agreement only, admits that it could not prove
5 by clear and convincing evidence that Respondent violated any ethical rule
6 specified in Count Three.
7

8
9 The State Bar conditionally admits that could not prove Respondent
10 received notice from the court regarding the deficiencies in pleadings filed in the
11 matter and accordingly could not prove his errors in the matter rose to the level of
12 violations of ERs 1.3, 1.4(a) or 3.4(d) Ariz.R.S.Ct.
13

14 ABA STANDARDS

15 The ABA *Standards* list the following factors to consider in imposing the
16 appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the
17 actual or potential injury caused by the lawyer's misconduct, and (4) the
18 existence of aggravating or mitigating circumstances. ABA *Standard* 3.0.
19

20 The parties indicated that *Standard* 4.0 (Violations of Duties Owed to
21 Clients) is the most applicable in this matter. A review of ABA *Standard* 4.1
22 (Failure to Preserve the Client's Property) indicates that suspension is the
23 presumptive sanction for Respondent's misconduct. *Standard* 4.12 specifically
24 provides:
25

1 Suspension is generally appropriate when a lawyer knows or
2 should know that he is dealing improperly with client
3 property and causes injury or potential injury to a client.

4 Respondent's mental state with regard to Count One was "knowing" rather
5 than "negligent" and with regard to Count Two was "negligent" and both actual and
6 potential injury resulted from Respondent's misconduct.

7 AGGRAVATING AND MITIGATING FACTORS

8 This Hearing Officer then considered aggravating and mitigating factors in
9 this case, pursuant to *Standards* 9.22 and 9.32, respectively.

10 This Hearing Officer agrees with the parties that there are four applicable
11 aggravating factors in this matter, pursuant to *Standard* 9.22:

- 12 (b) dishonest or selfish motive;
- 13 (c) a pattern of misconduct;
- 14 (d) multiple offenses; and,
- 15 (i) substantial experience in the practice of law.²

16 This Hearing Officer agrees with the parties that seven factors are present
17 in mitigation, pursuant to *Standard* 9.32:

- 18 (a) absence of a prior disciplinary record;
- 19 (c) personal and emotional problems;

20 ² Respondent has handled primarily criminal matters while in private practice and thus has had
21 little experience in trust account matters as the fees in criminal cases are considered earned
22 upon receipt. Respondent has handled only a very small number of civil matters that have
23 required the use of his trust account during this time.

1 (d) timely good faith effort to make restitution or to rectify consequences
2 of misconduct;

3 (e) full and free disclosure to disciplinary board or cooperative attitude
4 toward proceedings;

5 (g) character or reputation;³

6 (i) mental disability or chemical dependency including alcoholism or drug
7 abuse when:
8

9 (1) there is medical evidence that the respondent is affected by a
10 chemical dependency or mental disability;

11 (2) the chemical dependency or mental disability caused the misconduct;

12 (3) the respondent's recovery from the chemical dependency or mental
13 disability is demonstrated by a meaningful and sustained period of
14 successful rehabilitation; and

15 (4) the recovery arrested the misconduct and recurrence of that
16 misconduct is unlikely.

17 (l) remorse.

18 PROPORTIONALITY REVIEW

19 To have an effective system of professional sanctions, there must be internal
20 consistency, and it is appropriate to examine sanctions imposed in cases that are
21 factually similar. *Peasley, supra*, at ¶ 33, 90 P.3d at 772. However, the discipline
22 in each case must be tailored to the individual case, as neither perfection nor
23 absolute uniformity can be achieved. *Id.* at ¶ 61, 90 P.3d at 778, (citing *In re*
24

25 ³ See Exhibit A to Joint Memo.

1 *Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines* 135 Ariz. 203,
2 207, 660 P.2d 454, 458 (1983)).

3
4 *In re Rubi*, 133 Ariz. 491, 652 P.2d 1014 (1982), the lawyer was
5 suspended for one year for violating DR 1-102(A)(4), DR 7-102(A)(3) and DR
6 9-102(A)(1) and (2). The lawyer deposited client funds into his personal
7 checking account instead of his trust account and the balance later dipped below
8 the amount he was to have held in trust. The lawyer also failed to maintain
9 complete records of the handling, maintenance and disposition of the funds in
10 accordance with trust account requirements and made false statements to the
11 State Bar.
12

13
14 *In re Retter*, 180 Ariz. 515, 885 P.2d 1080 (1994), the lawyer
15 entered into an agreement for discipline by consent for a 120-day suspension and
16 probation for violating Rules 43(a) and 44(a) Ariz.R.S.Ct. The lawyer
17 commingled personal funds with those of his clients' in his trust account to avoid
18 a tax lien on his business account and failed to maintain complete trust account
19 records resulting in an overdraft when he withdrew what he thought were his
20 own funds from the trust account. Mitigating factors found included
21 inexperience in managing complex or lengthy trust account transactions; no
22 actual injury; no prior discipline; immediate good-faith effort to rectify conduct;
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1 and extreme remorse; and cooperative attitude. No aggravating factors were
2 found.

3 *In re Murray*, SB-00-0013-D, 2000 Ariz. LEXIS 21 (2000), the
4 lawyer entered into an agreement for discipline by consent for a six-month
5 suspension and upon reinstatement, two years of probation (LOMAP and EEP)
6 for violating ER 1.15 and Rules 43 and 44, Ariz.R.S.Ct. The lawyer deposited
7 client funds into his business account, failed to make timely payments on behalf
8 of his client to a third party, and later made the payment out of personal funds.
9 Additionally, the lawyer kept certain client funds for himself, which resulted in
10 insufficient trust account funds when he issued a check for payment to his client.
11 The lawyer also failed to maintain individual client ledgers or appropriate trust
12 account reconciliation records. Factors in aggravation included 9.22(a) prior
13 disciplinary offenses, 9.22(c) pattern of misconduct and 9.22(i) substantial
14 experience in the practice of law and in mitigation, 9.32(c) personal or emotional
15 problems, 9.32(d) timely good faith effort to make restitution or to rectify
16 consequences of misconduct, 9.32(e) full and free disclosure to a disciplinary
17 board or cooperative attitude toward proceedings and 9.32(m) remoteness of
18 prior offenses.

19 *In re Cord*, SB-01-0042 (Arizona Supreme Court 2001), the lawyer
20 was suspended for three months and placed on probation for using his trust
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1 account as a general account, co-mingling personal funds with client funds,
2 paying personal expenses from his trust account, allowing his trust account to
3 incur overdrafts and delaying cooperation with the State Bar. There were no
4 factors found in aggravation and in mitigation, 9.32(a) absence of a prior
5 disciplinary record, 9.32(b) absence of a dishonest or selfish motive; 9.32(e) full
6 and free disclosure to a disciplinary board or cooperative attitude toward
7 proceedings; and 9.32(f) inexperience in the practice of law.
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10 *In re Cord*, DC Nos. 03-1743, et al.(2005) the lawyer entered into
11 an agreement for discipline for a six-month-and-one-day suspension for failing to
12 exercise diligence, failing to render an accounting, failing to return unearned
13 retainer, failing to pay child support, contempt and failure to respond to State
14 Bar. Factors found in aggravation included 9.22(a) prior disciplinary offenses,
15 9.22(c) pattern of misconduct and 9.22(e) bad-faith obstruction of the
16 disciplinary proceeding and no mitigating factors were present.
17
18

19 *In re Apker*, SB-01-0126-D, 2001 Ariz. LEXIS 161 (Arizona
20 Supreme Court 2001), the lawyer was suspended for 6 months and one day for
21 failure to deliver trust account funds to third party in violation of ER 1.15(b)
22 (receipt of third party funds); violating 8.4(b) (committing a criminal act that
23 reflects adversely on the lawyer's fitness to practice) [A.R.S. § 13-1802.A.2.];
24 violating ER 8.4(d) (engaging in conduct that is prejudicial to the administration
25

1 of justice); and violating Rule43(d), Ariz.R.S.Ct. (trust account/guideline
2 authority). Factors found in aggravation included 9.22(a) prior disciplinary
3 offenses; 9.22(b) dishonest or selfish motive; 9.22(e) bad-faith obstruction of the
4 disciplinary proceeding; 9.22(g) refusal to acknowledge wrongful nature of
5 conduct; 9.22(h) vulnerability of the victim; 9.22(i) substantial experience in the
6 practice of law; 9.22(j) indifference to making restitution; and 9.22(k) illegal
7 conduct, that included the use of controlled substances. In mitigation, 9.32(m)
8 remoteness of prior offenses [prior private informal reprimand] was found.
9

11 *In re Clarke*, DC No. 99-0849; SB-01-0192-D (Arizona Supreme
12 Court, 2002), the lawyer was suspended for six months for converting
13 approximately \$28,000 via a total of 10 withdrawals over several months.
14 Factors found in aggravation included 9.22(b) dishonest or selfish motive;
15 9.22(c) pattern of misconduct; 9.22(d) multiple offenses; and 9.22(i) substantial
16 experience in the practice of law. A Mitigating factors were, 9.32(c) personal or
17 emotional problems, 9.32(e) full and free disclosure to a disciplinary board or
18 cooperative attitude toward proceedings; 9.32(g) character or reputation; and
19 9.32(l) remorse.
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21

22 *In re Morgan*, DC Nos. 98-1232, et al. SB-04-0140-D (Arizona
23 Supreme Court 2005), the lawyer entered into an agreement for discipline for a
24 retroactive six-month suspension for engaging in a conflict of interest, making a
25

1 false statement to the State Bar, failing to segregate or protect third-party funds
2 in her trust account, and pleading guilty to shoplifting. Factors found in
3 aggravation included 9.22(a) prior disciplinary offenses; 9.22(c) pattern of
4 misconduct; and 9.22(i) substantial experience in the practice of law and in
5 mitigation, 9.32(c) personal or emotional problems; 9.32(d) timely good-faith
6 effort to make restitution or to rectify consequences of misconduct; 9.32(e) full
7 and free disclosure to a disciplinary board or cooperative attitude toward
8 proceedings; 9.32(g) character or reputation; and 9.32(l) remorse.

11 RECOMMENDATION

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

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

1 Upon consideration of the facts, application of the *Standards*, including
2 aggravating and mitigating factors, and a proportionality analysis, this Hearing
3 Officer recommends acceptance of the Tender of Admissions and Agreement for
4 Discipline by Consent and the Joint Memorandum in Support of Agreement for
5 Discipline by Consent which provides for the following:
6

7 1. Respondent shall be suspended for a period of six months.

8 2. Respondent will be placed on probation upon reinstatement for a period
9 of six months effective upon the signing of the probation contract. The State Bar
10 will notify the Disciplinary Clerk of the exact date of commencement of
11 probation. The term of probation is as follows:
12

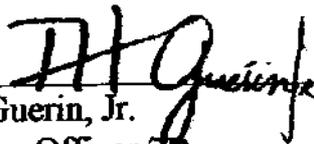
13 a. Respondent shall attend the Trust Account Ethics Enhancement
14 Program (TAEEP) prior to or within six months of reinstatement. In the event
15 Respondent returns to private practice in a field of law requiring a trust account
16 within six months of reinstatement, Respondent shall submit to at least one
17 review of his trust account management procedures by the Staff Examiner of the
18 State Bar or her designee (through the Trust Account Program, "TAP"). Such
19 review will include a review of Respondent's monthly three-way reconciliation of
20 his general ledger, client ledgers and bank statement as well as any additional
21 supporting documentation the Examiner in her discretion needs to review.
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1 b. Respondent shall continue with counseling or other appropriate
2 treatment during his suspension and for six months following the date of his
3 reinstatement and shall substantiate his participation by authorizing his health
4 care provider to provide a quarterly written confirmation of his continued
5 participation to the director of the Members Assistance Program (MAP). In the
6 event Respondent fails to provide such confirmation, bar counsel may require
7 Respondent to submit to a MAP assessment and monitoring.
8
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10 c. In the event that Respondent fails to comply with any of the
11 foregoing conditions, and the State Bar receives information, bar counsel shall
12 file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule
13 60(a)5, Ariz. R. S. Ct. The Hearing Officer shall conduct a hearing within thirty
14 days after receipt of said notice, to determine whether the terms of probation have
15 been violated and if an additional sanction should be imposed. In the event there is
16 an allegation that any of these terms have been violated, the burden of proof shall be
17 on the State Bar of Arizona to prove non-compliance by clear and convincing
18 evidence.
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disciplinatory proceeding.

DATED this 8th day of March, 2006.


T.H. Guerin, Jr.
Hearing Officer *TR*

Original filed with the Disciplinary Clerk
this 8th day of March, 2006.

Copy of the foregoing was mailed
this 8th day of March, 2006, to:

Nancy A. Greenlee
Respondent's Counsel
821 East Fern Drive North
Phoenix, AZ 85014-3248

Loren J. Braud
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: PWilliams