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2 BAR NUMBER 2111
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9 **BEFORE A HEARING OFFICER**

10 IN THE MATTER OF A MEMBER OF THE)
11 STATE BAR OF ARIZONA,)
12)
13 RICHARD G. NEUHEISEL,)
14 Bar No. 001659,)
15)
16 Respondent.)

NO. 05-0107

**HEARING OFFICER'S REPORT
AND RECOMMENDATION**

17 **PROCEDURAL HISTORY**

18 The State Bar filed a Complaint on 3/31/06. On 4/25/06, the Respondent filed a Motion
19 to Extend Time For Filing a Responsive Pleading. On 4/26/06, the first Hearing Officer was
20 disqualified and on 5/3/06, the undersigned Hearing Officer was assigned this case. This Hearing
21 Officer learned of a possible agreement and gave the parties time to file their agreement. On
22 9/5/06, the Tender of Admissions and Agreement for Discipline By Consent as well as the Joint
23 Memorandums in Support of Tender of Admissions and Agreement for Discipline By Consent
24 were filed.

25 **FINDINGS OF FACT**

26 At all times relevant hereto, Respondent was an attorney licensed to practice law in the
27 State of Arizona having been admitted to practice on 9/9/64.

28 **Count I**

1. Respondent represented one Carrie Yoyokie in a paternity suit.
2. The other party was Travis X. Aguirre who was represented by Matthew S. Schultz.
3. Said Yoyokie and Aguirre resided together in a jointly-owned home that they planned to sell.
4. Respondent informed Mr. Schultz that the proceeds from the sale of the home would be

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1 held in escrow until the parties agreed as to the distribution or court determination.

2 5. The sale of the home was consummated yielding proceeds of \$32,919.48.

3 6. The title company issued a check in the above amount payable to the two parties,
4 Yoyokie and Aguirre. It was sent to Respondent attorney to hold in a fiduciary capacity
5 until agreement could be reached as to a division of the proceeds.

6 7. The Respondent contacted Mr. Schultz and requested permission to deposit the proceeds
7 check into Respondent's client's trust account.

8 8. Mr. Schultz did not consent to a deposit into the trust account, but by letter stated that the
9 money should be divided equally.

10 9. Mr. Schultz authorized the Respondent to put the money in his trust account and
11 immediately distribute half the proceeds to each party.

12 10. Respondent did not deposit the proceeds check into the trust account at that time.

13 11. The Respondent held the check rather than putting it into his trust account.

14 12. Respondent negotiated the proceeds of the check, by endorsing the name of Aguirre on
15 the back of the check and by signing Respondent's own name as payee endorsement
16 signatures.

17 13. Respondent made no notation on the check that he was signing for Mr. Aguirre or on his
18 behalf, or that he had any authority.

19 14. Although the Respondent reasonably believed he had implied authority based on Mr.
20 Schultz' demand for disbursement of the funds.

21 15. After endorsing the checks, the Respondent did not deposit the proceed check into the
22 client trust account, but obtained two cashier's checks for equal amounts payable to
23 Yoyokie and Aguirre.

24 16. Mr. Aguirre's check was immediately transmitted to Mr. Schultz for Aguirre's benefits.
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1 **CONCLUSIONS OF LAW**

2 Respondent's conduct involved violations of Rule 42, specifically ER 1.15 and Rule 43,
3 and 44 of Arizona Rules of Supreme Court. Respondent failed to safeguard the property of third
4 persons in his possession by failing to deposit, intact, into his client's trust account funds held for
5 the benefit of others prior to disbursing them and negligently failed to properly negotiate the
6 check made payable jointly to his client and the opposing party.

7
8 **ABA STANDARDS**

9 ABA *Standard* 3.0 provides that four criteria should be considered in determining the
10 sanction: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury
11 caused by the lawyer's misconduct; and (4) the existence of aggravating and/or mitigating
12 factors.

13 The Standards provide guidance with respect to appropriate sanctions in this matter. The
14 Supreme Court and Disciplinary Commission consider the Standards a suitable guideline. *In re*
15 *Peasley*, 208 Ariz. 27, 90 P.3d 764 (Ariz. 2004). The ultimate sanction for misconduct should be
16 consistent with the sanction for the most serious instance of misconduct among a number of
17 violations. *In re Redeker*, 177 Ariz. 305, 868 P.2d 318 (Ariz. 1994).

18 The most serious conduct and the Respondent's actions are in violation of ER 1.15. Based
19 upon the specific facts and circumstances of this case, and on Respondent's conduct Standards
20 4.13 and 4.14 are implicated. Standard 4.13 provides:

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

23 Standard 4.14 provides that:

24 Admonition [informal reprimand in Arizona] is generally appropriate
25 when a lawyer is negligent in dealing with client property and causes
little or no actual or potential injury to a client.

26 Based upon the conditional admissions, and the specific conduct in this matter, the
27 presumptive sanction for the admitted conduct under the Standards, falls between censure and
28 informal reprimand. To determine the applicability of these Standards to this case, the factors

1 listed in theoretical framework must be considered.

2 **A. THE DUTY VIOLATED:**

3 Respondent violated his duty to his client, and in this matter, to the opposing party, as
4 well as to the legal system by negligently failing to determine the appropriate manner in which to
5 negotiate the settlement check, even though Respondent reasonably believed that he had an
6 implied authority to endorse the check. A situation of potential injury could have occurred.

7 **B. THE LAWYER'S MENTAL STATE:**

8 The Respondent acted negligently but in good faith when he negotiated the check for
9 disbursement.

10 **C. THE ACTUAL OR POTENTIAL INJURY CAUSED BY RESPONDENT'S**
11 **CONDUCT:**

12 Respondent's conduct only caused potential injury to the parties. Respondent felt that he
13 was acting under good faith and had authorization.

14 **D. AGGRAVATING AND MITIGATING FACTORS:**

15 **Aggravating:** Standard 9.22(a)-- prior disciplinary offenses; Respondent has informally
16 reprimanded 6 times over the past 20 years. Standard 9.22(l)--substantial experience in the
17 practice of law; Respondent has been practicing over 42 years.

18 **Mitigation:** Standard 9.32(b)--absence of dishonest or selfish motive; Standard
19 9.32(e)--full and free disclosure to disciplinary board and cooperative attitude.

20
21 **PROPORTIONALITY**

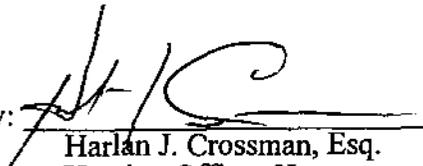
22 In the past, the Supreme Court has consulted similar cases in an attempt to assess the
23 proportionality of the sanction recommended. One must be tailored to the individual facts of the
24 case in order to achieve the purpose of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454
25 (Ariz. 1983).

26 **CONCLUSIONS**

27 In the case of *In re Copple*, DC03-2099 (2005), the lawyer, based upon a negligent
28 assumption that he had authority to sign his former co-counsel's name to a settlement document.

1 The lawyer committed misconduct because of his negligent assumption that he had authorization
2 to sign the agreement. An informal reprimand was issued by the court, which was considered
3 appropriate sanction. This was based upon the lawyer's good faith belief that he retained the
4 authority.

5 This case seems to be directly on point and the undersigned accepts the informal
6 reprimand based upon the lawyer's good faith actions in this case, and lack of bad faith and only
7 the existence of minor negligence. The undersigned finds the informal reprimand to be proper in
8 this case. In addition to the informal reprimand, the Respondent shall be placed upon probation
9 for one year, during which time he shall successfully complete the Ethics Enhancement Program,
10 and payment of the State Bar expenses and costs in this action.

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14 By: 
15 Harlan J. Crossman, Esq.
Hearing Officer 8L

16 COPIES of the foregoing
17 mailed this 14th day of Sept, 2006 to:

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