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DEC 04 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
OF THE STATE BAR OF ARIZONA,**

**Raymond Daniel Romero,
Bar No. 010707**

Respondent.

No. 04-0007

HEARING OFFICER'S REPORT

(Assigned to Hearing Officer 6L
Robert J. Lord)

PROCEDURAL HISTORY

A Probable Cause Order was filed on January 31, 2006. A Complaint was filed on June 1, 2006. Respondent filed an Answer on June 28, 2006. The Hearing Officer filed an Order on October 13, 2006 advising the parties have reached a settlement. The parties filed 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) on October 24, 2006. No hearing has been held in this matter.

FACTS

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 May 10, 1986.

1 8. In late September of 2003, MedFinManager contacted the
2 adverse adjuster in Ms. Riggs' case and learned that the case had settled in
3 July of 2002, and that Respondent had received the settlement check in the
4 amount of \$15,000.
5

6 9. Respondent failed to timely notify MedFinManager of the
7 receipt of settlement funds, and failed to timely respond to the inquiries
8 regarding the matter.
9

10 10. Respondent deposited the settlement check into his trust
11 account on July 23, 2002.
12

13 11. The settlement disbursement sheet provided to Ms. Riggs
14 at the time of settlement showed that Respondent withheld \$4030.00 from the
15 settlement to pay the lien to MedFinManager. The settlement disbursement
16 sheet was in error as the lien total was \$3009.00.
17

18 12. On or about February 27, 2004, Respondent settled the lien
19 matter concerning Ms. Riggs' case with MedFinManager for the full amount
20 of the lien, \$3009.00.
21

22 13. Prior to the settlement of the lien in February 27, 2004,
23 Respondent failed to diligently pursue negotiation of the lien with
24 MedFinManager.
25

1
2 **Alex Ervin**

3 14. In the case for Alex Ervin, MedFinManager had a lien in
4 the amount of \$3118.00 against the recovery from the personal injury case.
5

6 15. On or about November 13, 2002, Respondent advised
7 MedFinManager that he was "wrapping up" Mr. Ervin's personal injury case,
8 and that MedFinManager would receive payment within 90 days. These
9 statements were false.
10

11 16. After that time, Respondent failed to respond to inquiries
12 or otherwise communicate with MedFinManager regarding the status of the
13 matter.
14

15 17. In late September of 2003, MedFinManager contacted the
16 adverse adjuster in Mr. Ervin's case and learned that the case had settled in
17 early 2002.
18

19 18. Respondent failed to timely notify MedFinManager of the
20 receipt of settlement funds, and failed to timely respond to the inquiries
21 regarding the matter.
22

23 19. Respondent deposited the settlement check into his trust
24 account in March of 2002. The settlement check was in the amount of
25 \$12,000.

Trust Account

1
2
3 27. During the state Bar's investigation of this matter,
4 Respondent was asked to provide numerous trust account records for the time
5 periods in question. Among other records, Respondent was asked to provide
6 client ledgers for the clients in question, as well as deposit slips. In addition,
7 Respondent was asked to provide monthly bank statements to show that the
8 lien monies were held in trust from their deposit by Respondent into his trust
9 account, until their disbursement to MedFinManager.
10

11 28. A review of the trust account documents submitted, along
12 with Respondent's explanations, revealed that Respondent:
13

14 a. failed to properly safeguard client funds;
15 Respondent's records reveal that from the time of the deposit of the settlement
16 funds for clients Riggs and Ervin until Respondent paid out the lien funds to
17 MedFinManager, Respondent's trust account dipped below the lien amounts
18 on numerous occasions; in addition, it appears that on at least one occasion,
19 Respondent issued a trust check to himself prior to the deposit of the
20 offsetting funds;
21

22 b. failed to exercise due professional care in the
23 performance of his duties as is required by Rule 43(d)(1)(A) and (d)(1)(B)
24 regarding the failure to maintain proper funds;
25

1 c. failed to record all transactions promptly and
2 completely as is required by Rule 43(d)(1)(D); Respondent was unable to
3 produce individual client ledgers; or administrative funds ledgers,
4

5 d. failed to maintain or cause to be maintained an
6 account ledger of the equivalent for each client in violation of Rule
7 43(d)(2)(C); as set forth above;
8

9 e. failed to maintain duplicate deposit slips or the
10 equivalent to detail each item, as required by Rule 43(d)(2)(B);

11 29. Respondent asserts that the misstatements to MedFin Manager
12 occurred during the time period in his life in which he was experiencing
13 personal problems as set forth in the Joint Memorandum In Support of
14 Agreement for Discipline by Consent. Respondent further asserts, and the
15 State Bar does not contest, that the trust account violations were committed
16 negligently.
17

18 CONDUCT

19
20 As reflected in the Respondent's Tender of Admissions (the "Tender"),
21 Respondent's misconduct involved violations of Rule 42, Ariz.R.Sup.Ct., ERs
22 1.3, 1.15 4.1, 8.4(c) and Rules 43, 44, Ariz.R.Sup.Ct, based on his failure to
23 properly safeguard client funds and comply with the trust account guidelines, and
24
25

1 his misstatement to the medical provider lien holder concerning the status of the
2 case. Respondent conditionally admits the facts as set forth in the Tender.

3
4 **SANCTION**

5 1. Respondent shall be censured, be placed on one
6 year of probation and be ordered to pay the costs and expenses of the
7 disciplinary proceedings in this matter. Respondent has shall pay restitution
8 to Amanda Riggs and Alex Ervin as set forth in the Tender of Admissions.

9 The following terms and conditions shall apply to Respondent's probation:
10

11 a. Respondent shall contact the director of the State
12 Bar's Law Office Management Assistance Program (LOMAP) within 30 days
13 of the date of the final judgment and order. Respondent shall submit to a
14 LOMAP audit of his office's trust account procedures and calendaring
15 procedures. The Director of LOMAP shall develop a probation contract, and
16 its terms shall be incorporated herein by reference. The probation period will
17 begin to run when all parties have signed the probation contract.
18

19 b. Respondent shall also contact the Director of the
20 State Bar's Member Assistance Program (MAP) and undergo an assessment.
21 Based on the assessment, the MAP Director will develop MAP terms to also
22 be incorporated in a probation contract if the assessment indicates that such
23 terms are warranted.
24
25

1 c. Respondent shall complete the Trust Accounts
2 Ethics Enhancement Program (TAEEP) during the probationary period. To
3 schedule his attendance, Respondent shall contact Barbara Chandler at 602-
4 340-3278.
5

6 Respondent shall refrain from engaging in any conduct that would violate the
7 Rules of Professional Conduct or other rules of the Supreme Court of Arizona.
8

9 In determining the appropriate sanctions, the Hearing Officer has
10 considered both the American Bar Association's *Standards for Imposing Lawyer*
11 *Sanctions* ("Standards" or "Standard ___") and applicable case law.
12

13 **I. ABA Standards**

14 The Supreme Court and the Disciplinary Commission consistently use the
15 *Standards* to determine appropriate sanctions for attorney discipline. *See In re*
16 *Clark*, 207 Ariz. 414, 87 P.3d 827 (2004); *In re Peasley*, 427 Ariz. Adv. Rep.
17 23, 90 P.3d 764, §§ 23, 33 (2004). The *Standards* are designed to promote
18 consistency in sanctions by identifying relevant factors the court should
19 consider and then applying these factors to situations in which lawyers have
20 engaged in various types of misconduct. *Standard 1.3, Commentary.*
21

22 In determining an appropriate sanction, the court and the Disciplinary
23 Commission consider the duty violated, the lawyer's mental state, the presence
24 or absence of actual or potential injury, and the existence of aggravating and
25

1 mitigating factors. *In re Tarletz*, 163 Ariz. 548, 554, 789 P.2d 1049, 1055
2 (1990); *Standard* 3.0.

3
4 Given the conduct in this matter, it is appropriate to consider *Standard*
5 4.0 (Violations of Duties Owed to the Client).

6 4.1 Failure to Preserve Client's Property

7 4.12: Suspension is generally appropriate when a
8 lawyer knows or should know that he is dealing
9 improperly with client property and causes injury
10 or potential injury to a client.

11 4.13: Reprimand [censure in Arizona] is generally
12 appropriate when a lawyer is negligent in dealing with
13 client property and causes injury or potential injury to
14 a client.

15 The parties agree, for purposes of this agreement, that Respondent's
16 mental state in relation to the trust account violations in this matter was
17 negligent rather than knowing. However, the State Bar notes that there are at
18 least some facts of the case that indicate that Respondent at least "should have
19 known" that he was dealing improperly with client property.

20 Another applicable provision, governing the misstatement to the medical
21 lien holder, is *Standard* 5.13 calling for a censure when a lawyer knowingly
22 engages in conduct involving dishonesty that adversely reflects on a lawyer's
23 fitness to practice. This section is applicable, as Respondent's misstatement to
24 MedFin was knowingly, but did not involve dishonesty to a client or to a court.
25

1 As such, the parties agree that censure is the most applicable presumptive
2 sanction.

3
4 After determining the presumptive sanction, it is appropriate to evaluate
5 aggravating and mitigating factors enumerated in the *Standards* that would
6 justify an increase or decrease in the presumptive sanction. See *In re Scholl*,
7 200 Ariz. 222, 225-26, 25 P.3d 710, 713-14 (2001); *In re Savoy*, 181 Ariz. 368,
8 371, 891 P.2d 236, 239 (1995).

9
10 **A. The duty violated**

11 Respondent violated his duties to his clients by failing to observe the
12 rules governing the treatment of client funds by attorneys. These rules are
13 designed to ensure that a client's money is not put in jeopardy, or used or taken
14 improperly, by the client's attorney. Although Respondent asserts that he was
15 merely negligent in failing to realize that his treatment of client funds was
16 improper, he had an affirmative duty to familiarize himself with the rules
17 governing his practice of law in Arizona. In addition, Respondent violated his
18 duties to the public by making misstatements to the medical lien holder
19 regarding the status of the cases.

22
23 **B. The lawyer's mental state**

24 The parties agree that Respondent was negligent in failing to be aware of,
25 familiarize himself with, and comply with the rules governing the treatment of

1 client funds by attorneys. In addition, Respondent acted knowingly in making
2 a misstatement to the medical lien holder.

3
4 **C. The potential or actual injury caused by Respondent's conduct**

5 There was potential injury to clients in all of Respondent's rule violations.
6 Respondent's failure to comply with the rules governing treatment of client
7 funds exposed his clients to potential injury by causing their funds to be held
8 without the protections against intentional or inadvertent misdirection or
9 depletion that are provided through strict compliance with ER 1.15 and Rules
10 43 and 44, Ariz.R.S.Ct. In addition, timely return of client funds and payment
11 of the lien holder was caused by the misconduct.
12

13
14 **D. The aggravating and mitigating circumstances**

15 The presumptive sanction for a negligent infraction of this nature is a
16 censure; the presumptive sanction for a knowing violation is suspension. The
17 presence of aggravating and mitigating factors assists in determining which
18 sanction applies.
19

20 The parties agree that the following aggravating factors should be
21 considered:

22 *Standard 9.22(d):* multiple offenses; although this matter stems from
23 one count, the parties note that there are two separate issues of misconduct: the
24 trust account violations, and the misrepresentation to the lien holder.
25

1 *Standard 9.22(i)* (substantial experience in the practice of law).

2 Respondent has been admitted to practice in Arizona since 1986.

3 The following factors should be considered in mitigation:

4 *Standard 9.32(a)*: Absence of a prior disciplinary record;

5 *Standard 9.32(c)*: Personal or emotional problems. Respondent asserts
6 that during the time period in question, he was experiencing personal and
7 emotional problems due to his pending divorce. Attached hereto are exhibits
8 more fully detailing this mitigating factor.
9

10 *Standard 9.32(e)*: Full and free disclosure to disciplinary board or
11 cooperative attitude toward proceedings. Respondent admitted that he had
12 mismanaged his trust account and cooperated with the State Bar during the
13 trust account investigation and exchange of information and records.
14

15 Having considered the above, the parties agree that the aggravating and
16 mitigating factors support the imposition of a censure in this case.
17

18
19 **II. Proportionality analysis of analogous cases**

20 To have an effective system of professional sanctions, there must be
21 internal consistency, and it is appropriate to examine sanctions imposed in
22 cases that are factually similar. *Peasley, supra*, 208 Ariz. at ¶ 33, 90 P.3d at
23 772. However, the discipline in each case must be tailored to the individual
24 case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208
25

1 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600,
2 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

3
4 The most serious instance of misconduct in this case involves
5 Respondent's failure to be aware of, familiarize himself with, and comply
6 with, the rules governing the treatment of client funds. The following cases
7 are instructive concerning these types of misconduct.

8
9 In terms of proportionality, the following cases are instructive: In
10 *Matter of Vingelli*, SB-03-0161-D (January 13, 2004), Mr. Vingelli represented
11 a client, who at the time was a minor, in a personal injury matter. After the
12 matter settled, Mr. Vingelli agreed to contest the claim by the parents' insurer
13 for reimbursement. Mr. Vingelli notified the insurer that the client was
14 contesting the claim and that the disputed money would be held in his client
15 trust account until the matter was resolved. The dispute went on for almost
16 three years. The disputed funds did not always remain in the trust account and
17 the balance dipped below the disputed amount on some occasions. Mr.
18 Vingelli did not resolve the dispute in a timely manner as he received the funds
19 in May 1997 but did not file an interpleader action with the court until
20 September 2002. Mr. Vingelli also did not have all of the trust account records
21 he was required to maintain. Mr. Vingelli was found to have violated ER
22 1.15(a), (b) and (c), Rule 42, Ariz.R.S.Ct., and Rules 43 and 44, Ariz.R.S.Ct.,
23
24
25

1 and was censured by consent and placed on two years of probation, including
2 participation in the Law Office Member Assistance Program.

3
4 Similarly, in *Matter of Romo Vejar*, SB 04-0145-D (November 18,
5 2004), Mr. Romor Vejar received a censure and one year of probation for trust
6 account violations. As in this case, Mr. Romo Vejar delayed in paying a
7 medical lien holder after withholding \$15,000 from a client's settlement
8 proceeds to do so. In addition, Mr. Romo Vejar did not consistently hold the
9 amount in trust, and committed other trust account violations related to record-
10 keeping. His conduct was considered negligent.

11
12 As to the false statement to the lien holder, sanctions for dishonesty
13 range from censures to disbarment depending on the specific facts of the case.
14 One of the determinative factors is whether the dishonest statement involved
15 dishonesty to a client or to the court. Those cases are generally treated more
16 seriously, and sanctions for that sort of misconduct is governed by other
17 sections of the *ABA Standards* not applicable to dishonesty to others. There
18 are several cases indicating that censure is an appropriate sanction for a single
19 instance of dishonesty not involving dishonesty to a court or a client. For
20 instance, in *Matter of Isler*, SB-04-0073-D (2004), the lawyer was censured for
21 lying to his employer about his personal and family circumstances to obtain
22 benefits.
23
24
25

1 Based on the foregoing, the parties believe that a censure and probation
2 are an appropriate sanction under the totality of the circumstances. The
3 Supreme Court "has long held that 'the objective of disciplinary proceedings is
4 to protect the public, the profession and the administration of justice and not to
5 punish the offender.'" *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002)
6 (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). The
7 State Bar and Respondent believe that the sanctions proposed here are
8 consistent with these principles.
9

10 CONCLUSION

11 Recognizing that it is the prerogative of the hearing officer, the
12 Disciplinary Commission and the Supreme Court to determine the
13 appropriateness of sanctions, the State Bar and Respondent assert the
14 objectives of discipline will be met by the proposed sanction of censure, one
15 year of probation and payment of the costs and expenses of these disciplinary
16 proceedings.
17
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19

20 DATED this 4 day of December 2006.

21
22 Robert J. Lord | 
23 Robert J. Lord
24 Hearing Officer 6L

25 Original filed with the Disciplinary Clerk
this 5 day of December, 2006.

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Copy of the foregoing was mailed
this 4 day of December, 2006, to:

Robert J. Lord
Hearing Officer 6L
Berens, Kozub, Lord & Kloberdanz, PLC
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Philip Haggerty
Respondent's Counsel
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Phoenix, Arizona 85022-2257

Copy of the foregoing was hand-delivered
this 4 day of December, 2006, to:

Amy K. Rehm
Chief Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: 