

**FILED**

JUN 15 2007

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

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

1  
2  
3 IN THE MATTER OF A MEMBER OF  
THE STATE BAR OF ARIZONA,

File Nos. 06-0139, 06-0939, 06-1332,  
06-2084

4 **MARK F. BRINTON,**  
5 **Bar No. 007674,**

**HEARING OFFICER'S REPORT  
RECOMMENDING ACCEPTANCE  
OF AGREEMENT FOR  
DISCIPLINE BY CONSENT**

6 Respondent.

(Assigned to Hearing Officer 8W,  
Thomas M. Quigley)

7  
8 Pursuant to Ariz. R. Sup. Ct. 56(e), the undersigned hearing officer recommends  
9 acceptance of the Tender of Admissions and Agreement for Discipline by Consent and  
10 submits the following report.

11 **I. PROCEDURAL HISTORY**

12 The formal complaint in this matter was filed on December 29, 2006<sup>1</sup>. On May  
13 15, 2007 the parties filed a Tender of Admissions and Agreement for Discipline by  
14 Consent ("the Agreement") and a Joint Memorandum in Support of Agreement for  
15 Discipline by Consent ("the Memorandum"). No hearing has been held.

16 **II. FACTS<sup>2</sup>**

17 1. At all relevant times, Respondent was an attorney licensed to practice law  
18 in Arizona, having been admitted to practice in this state on May 14, 1983.

19 **COUNT ONE (Varney)**  
20 **(File No. 06-0139)**

21 2. Charles Blake ("Blake") represented Dana and Donna Varney ("the  
22 Varneys" or "Mrs. Varney") in a lawsuit filed against Mark and Karin Scanlon ("the  
23 Scanlons").

24 3. The Varneys signed a promissory note in favor of Blake in the amount of  
25

26 <sup>1</sup> On March 7, 2007, a probable cause order was entered in file no. 06-2084, which was  
27 not part of the formal complaint. The parties agreed to address and resolve that matter in  
the Agreement and it is therefore included in this report.

28 <sup>2</sup> The following facts have been conditionally admitted, have been adopted by this  
hearing officer, and form the basis for the hearing officer's recommendation. See  
Agreement.

1 \$35,928.06 for services rendered in the Scanlon matter. A deed of trust on real property  
2 owned by Mrs. Varney secured the note.

3 4. The Varneys filed suit against Blake alleging legal malpractice, breach of  
4 fiduciary duty, and breach of contract relating to the Scanlon matter.

5 5. On July 25, 2001, Blake filed an answer and counterclaim, requesting  
6 judicial foreclosure of the deed of trust securing the promissory note.

7 6. On January 21, 2005, Blake requested partial summary judgment, arguing  
8 that the Varneys had defaulted on the note and deed of trust.

9 7. The Varneys retained Respondent to represent them in their legal  
10 malpractice case against Blake, and Respondent filed a response in opposition to the  
11 motion for partial summary judgment.

12 8. The Varneys requested that Respondent assert the following defenses on  
13 their behalf:

- 14 a. that the deed of trust did not secure all of the attorney fees and costs  
15 claimed by Blake;
- 16 b. that Blake misrepresented to the Court the scope of the obligations  
17 secured by the deed of trust; and
- 18 c. that the Varneys had informed Blake numerous times that they  
19 contested the amount of attorney fees he claimed.

20 9. Respondent did not interpret the deed of trust as being limited as did the  
21 Varneys; he did not believe Blake had misrepresented the scope of the obligation  
22 secured by the deed of trust; and believed that he had presented the argument that the  
23 Varneys contested the amount of fees owed.

24 10. On September 22, 2005, the court granted the motion for partial summary  
25 judgment as to the judicial foreclosure because Respondent failed to contest the amount  
26 of money that the Varneys owed.

27 11. On December 25, 2005, Mrs. Varney prepared an affidavit stating in  
28 material part that she disputed the amount of Blake's attorney's fees, that Blake had not

1 responded to her correspondence disputing his charges, and that the lien on her property  
2 was not "open ended."

3 12. Before submitting the affidavit to the court, Respondent removed several  
4 paragraphs from Mrs. Varney's affidavit.

5 13. Respondent viewed the alterations to the affidavit as concerning an  
6 insubstantial matter.

7 14. Respondent did not inform Mrs. Varney of the changes to her affidavit  
8 prior to submitting it to the court.

9 **COUNT TWO**  
10 **(File No. 06-0939/State Bar)**

11 15. Respondent represented Ms. Joyce Corrales ("Ms. Corrales") for a short  
12 time in her employment lawsuit against Chase Bankcard Services ("Chase").

13 16. On June 30, 2006, Respondent discussed a rough draft of Ms. Corrales'  
14 declaration with his paralegal, Mr. Roger McKee ("McKee"). The declaration was to be  
15 a key exhibit in support of Ms. Corrales' Response in Opposition to Defendant's Motion  
16 for Summary Judgment.

17 17. McKee left the June 30, 2006, meeting with instructions from Respondent  
18 to "apply the final touches and then to electronically file the pleading that night . . . ."  
19 Respondent gave McKee his District Court e-filing password so he could file the  
20 pleading.

21 18. On June 30, 2006, at approximately 9:25 p.m., Respondent called Ms.  
22 Corrales to find out if she had signed her declaration. Ms. Corrales told Respondent she  
23 had not.

24 19. Respondent then called McKee to ask when he would have Ms. Corrales  
25 sign her declaration. McKee cursed at Respondent and hung up.

26 20. On July 1, 2006, at approximately 6:30 a.m., Respondent went to his  
27 office and found a faxed copy of Ms. Corrales' declaration. Respondent did not believe  
28 Ms. Corrales had signed the declaration, as it did not look like her handwriting.

21. Respondent asked Ms. Corrales to sign her name three times on a piece of

1 paper and fax it to him, which she did.

2       22. On July 5, 2006, Respondent filed a Motion to Withdraw from Ms.  
3 Corrales' case. The Court denied the motion because Respondent had failed to attach  
4 two exhibits listed in the motion and Respondent failed to give Ms. Corrales notice of  
5 his withdrawal request. Respondent believes he did send a copy of the motion to Ms.  
6 Corrales.

7       23. The exhibits missing from the Motion to Withdraw were a copy of Ms.  
8 Corrales' declaration and the piece of paper with her signatures. Ms. Corrales had not  
9 given Respondent permission to attach the paper with her signatures to his motion.

10       24. On July 7, 2006, Respondent filed a Second Amended Motion to  
11 Withdraw<sup>3</sup> in which he told the Court he did not believe that Ms. Corrales signed the  
12 declaration submitted with the response to the summary judgment motion. Attached as  
13 exhibits were copies of Ms. Corrales' declaration and the piece of paper with her  
14 signatures.

15       25. On July 19, 2006, Chase filed a Response to Second Amended Motion to  
16 Withdraw as Counsel and Request for Show Cause Hearing.

17       26. On September 20, 2006, an Order to Show Cause Hearing was held  
18 regarding "why the complaint should not be dismissed based on submission of alleged  
19 forged signatures to the Court including but not limited to Plaintiff's purported signature  
20 on her June 30, 2006, declaration."

21       27. At the hearing the court directed Ms. Corrales to sign her name three times  
22 on a piece of paper and then reviewed the signatures. The court found that the signature  
23 on the declaration was Ms. Corrales' and that there was no evidence that forged  
24 documents had been submitted to the Court. Therefore the case was not dismissed.

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<sup>3</sup> On July 6, 2006, Respondent had filed an Amended Motion to Withdraw.

**COUNT THREE**  
**(File No. 06-1332/Non-Compliance)**

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2  
3 28. On February 20, 2004, a Judgment and Order was entered in file nos. 02-  
4 1473, 03-0042 and 03-0440 for violations of Ariz. R. Sup. Ct. 42, ERs 1.2, 1.3, 1.4,  
5 1.15, 3.3, 4.1, and 8.4(c) and (d), and Rules 41(c), 43(d) and 44.

6 29. In the first matter, Respondent made a false statement to a tribunal, failed  
7 to be truthful in statements made to others, engaged in conduct involving a  
8 misrepresentation and engaged in conduct prejudicial to the administration of justice.

9 30. In the second matter, Respondent failed to maintain proper trust account  
10 records by failing to maintain a client ledger and by failing to disburse funds from his  
11 trust account with only pre-numbered checks.

12 31. In the third matter, Respondent failed to abide by his client's decisions  
13 concerning the scope of the representation, failed to act diligently and failed to  
14 adequately communicate with his client.

15 32. Respondent was suspended from the practice of law for a period of thirty-  
16 days and upon reinstatement was placed on probation for two-years.

17 33. On May 10, 2004, Respondent was reinstated as a member of the State  
18 Bar after completion of his thirty-day suspension, payment of costs, attendance at his  
19 initial counseling session with the Member Assistance Program (MAP), and after the  
20 scheduling his initial counseling session with the Law Office Management Assistance  
21 Program (LOMAP).

22 34. On August 3, 2004, Respondent signed a probation contract with  
23 LOMAP.

24 35. Respondent failed to comply with the following terms of his Probation  
25 Contract:

26 I(C) Member shall submit a report to LOMAP regarding Member's  
27 compliance with the terms of this agreement every ninety (90) days after the  
Member signs the agreement.

28 I(E)(1) Member shall personally ensure that his trust account is maintained  
in compliance with Rules 43 and 44, Ariz.R.Sup.Ct.

1 I(E)(21)(a) Member shall only make trust account disbursements for  
2 expenditures directly related to representation of clients on whose behalf funds  
3 have been deposited to and are available after collection in the trust account.

4 I(E)(21)(f) Member shall at all times maintain accurate and current balances in  
5 his trust account check register and client ledgers.

6 I(E)(21)(g) Member, with the help of LOMAP staff, shall review  
7 documentation regarding his trust account on a regular basis to ensure  
8 compliance with the applicable rules.

9 **COUNT FOUR**  
10 **(File No. 06-2084/Additional Charge)**

11 36. On December 14, 2006, Respondent inadvertently wrote a \$5,000.00  
12 check on his trust account to pay his monthly mortgage payment.

13 37. On December 15, 2006, the \$5,000.00 check attempted to pay against  
14 Respondent's trust account when the balance was only \$1,630.92.

15 38. The bank returned the \$5,000.00 check, but did not charge an overdraft  
16 fee, thereby leaving the account with a balance of \$1,630.92.

17 39. On December 26, 2006, the State Bar received an insufficient funds  
18 notice on Respondent's trust account.

19 40. State Bar Staff Examiner requested additional trust account information  
20 from Respondent.

21 41. Respondent submitted the requested information except for copies of two  
22 cancelled checks for December 2006.

23 42. Respondent also submitted a three-way reconciliation worksheet that did  
24 not balance.

25 43. The Staff Examiner found these additional problems:

26 a. On January 18 and 20, 2007, there were no personal funds held on  
27 deposit in the trust account to cover a new check order charge in the  
28 amount of \$19.95 and a service charge in the amount of \$35.00.

a. Respondent did not remedy the deficit until February 18, 2007,  
thereby converting client funds for a period of time.

c. Respondent made a mathematical error on one client ledger.

1 d. On January 1, 2006, Respondent issued a check on behalf of a client  
2 for \$200.00, when he did not have funds in the trust account that  
3 belonged to that client, thereby converting other client funds.

4 44. During this time period, Respondent was already on probation for trust  
5 account violations.

### 6 **III. DISMISSED ALLEGATIONS**

7 As part of the Agreement, the State Bar agrees to dismiss the following alleged  
8 violations: COUNT ONE, ERs 1.1, 1.2, and 8.4(c); and COUNT TWO, ERs 5.3, 5.5.

### 9 **IV. THE APPROPRIATE SANCTION**

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

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

#### 20 **A. ABA Standards**

21 The Supreme Court and the Disciplinary Commission consistently use the  
22 American Bar Association Standards for Imposing Lawyer Sanctions ("*Standards*") to  
23 determine appropriate sanctions for attorney discipline. *See In re Clark*, 207 Ariz. 414,  
24 87 P.3d 827 (2004); *In re Peasley*, 208 Ariz. 27, 90 P.3d 764, §§ 23, 33 (2004). The  
25 *Standards* are designed to promote consistency in sanctions by identifying relevant  
26 factors and then applying those factors to situations in which lawyers have engaged in  
27 various types of misconduct. *Standard 1.3, Commentary*.

28 In determining an appropriate sanction, the court and the Disciplinary

1 Commission consider the duty violated, the lawyer's mental state, the presence or  
2 absence of actual or potential injury, and the existence of aggravating and mitigating  
3 factors. *In re Tarletz*, 163 Ariz. 548, 554, 789 P.2d 1049, 1055 (1990); *Standard* 3.0.  
4 In assessing multiple charges of misconduct, the sanction imposed should at least be  
5 consistent with the sanction for the most serious instance of misconduct among a  
6 number of violations. *Standards*, p. 6; *In re Redeker*, 177 Ariz. 305, 868 P.2d 318  
7 (1994).

8 **1. The duty violated**

9 The Respondent has admitted facts that constitute violation of ERs 1.6  
10 (confidential client information), 1.15 (safekeeping of property), 3.3 (candor toward  
11 tribunal), 8.4(c), (d) (professional misconduct) and Rules 42, 43, 44 (trust account) and  
12 Rule 53(e) (probation violation).<sup>4</sup>

13 The most serious misconduct in this case is Respondent's altering of his client's  
14 affidavit without her knowledge or consent and then submitting the altered affidavit to  
15 the Court without informing the court of the changes. By knowingly submitting the  
16 altered affidavit Respondent engaged in conduct involving dishonesty, fraud, deceit or  
17 misrepresentation. *Standard* 6.12 provides:

18 Suspension is generally appropriate when a lawyer knows that false  
19 statements or documents are being submitted to the Court or that  
20 material information is improperly being withheld, and takes no  
21 remedial action, and causes injury or potential injury to a party to the  
legal proceeding, or causes an adverse or potentially adverse effect  
on the legal proceeding.

22 Respondent also disclosed his own concerns, based on confidential information  
23 to the opposing party, failed to comply with probation terms and improperly handled his  
24 trust account.

25 Respondent violated his duty to the legal system, to his clients, and to the State  
26 Bar, failed to follow the terms of his probation, and engaged in conduct prejudicial to

27  
28 <sup>4</sup> Respondent and the State Bar also agreed that Respondent violated ER 4.1  
(truthfulness in statements to others). Because this appears redundant of the violations  
of ER 3.3, this hearing officer did not consider that agreed violation.

1 the administration of justice. "Lawyers are officers of the court, and the public expects  
2 lawyers to abide by the legal rules of substance and procedure which affect the  
3 administration of justice." *Standard* 6.0, Introduction. Respondent admits that his  
4 conduct, taken as a whole, violated his duty to the legal system.

## 5           **2. The lawyer's mental state**

6           The parties agree that Respondent acted with a knowing state of mind with  
7 regard to each of the violations except the trust account violations, which the parties  
8 agree was negligent. This hearing officer accepts that Respondent did not act with  
9 "intent"—the conscious objective or purpose to accomplish a particular result.  
10 *Standards Definitions.*

## 11           **3. The potential or actual injury caused by Respondent's conduct**

12           Respondent's misconduct subjected his clients to potentially serious  
13 injury. Respondent knowingly altered Mrs. Varney's affidavit without her knowledge  
14 or consent and without advising her of the changes he had made, knowingly submitted  
15 the altered affidavit to the Court.

16           Respondent revealed confidential information when he made allegations  
17 concerning Ms. Corrales' veracity in his Second Amended Motion to Withdraw, and  
18 when he attached the paper with her signatures to it without her consent.

19           Respondent converted client funds for a short period of time.

20           Respondent altered and filed an altered document with the court. Respondent's  
21 conduct in filing a motion that caused the Court to hold a show cause hearing about Ms.  
22 Corrales' alleged misconduct was prejudicial to the administration of justice.

23           Throughout his probation period, Respondent failed to comply with the trust  
24 account requirements that were part of his probation contract.

## 25           **4. The aggravating and mitigating circumstances**

26           The hearing officer finds the following factors in aggravation:

27           • Standard 9.22(a) – prior disciplinary offenses. Respondent was suspended  
28 from the practice of law for a period of thirty days and was placed on probation for two

1 years when he was reinstated for violations of ERs 1.2, 1.3, 1.4, 1.15, 3.3, 4.1, 8.4(c)  
2 and (d), and Rules 41(c), 43(d) and 44. Respondent's previous suspension also dealt  
3 with filing false documents with the Court.

4 • Standard 9.22(d) – multiple offenses. This matter involves four separate  
5 matters, and multiple violations.

6 • Standard 9.22(i) – substantial experience in the practice of law.

7 Respondent was admitted to practice on May 14, 1983.

8 No mitigating factors are proffered or found.

9 **B. Proportionality Review**

10 To have an effective system of professional sanctions, there must be internal  
11 consistency, and it is appropriate to examine sanctions imposed in cases that are  
12 factually similar. *See Peasley*, 208 Ariz. at 35, 90 P.3d at 778 (citing *In re Alcorn*, 202  
13 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines* 135 Ariz. 203, 207, 660 P.2d 454,  
14 458 (1983)). The parties have submitted the following case (among others submitted by  
15 the parties that this hearing officer finds too different to apply in this analysis) which  
16 support the agreed six month and one day suspension: *In re Moak*, 205 Ariz. 351, 71  
17 P.3d 343 (2003). As in this case, Moak committed multiple violations, the most serious  
18 of which arose out of concealment/false statements to the court and opposing counsel.  
19 *Id.* at 353-55, 71 P.3d at 345-47. As here, Moak's violation were knowingly rather than  
20 intentional. *Id.* at 355, 71 P.3d at 347. Finally, Moak as here had several aggravating  
21 factors that caused the Arizona Supreme Court to impose a six month and one day  
22 suspension. *Id.* at 356-59, 71 P.3d at 348-51.

23 **V. RECOMMENDATION**

- 24 1. Respondent will receive a six month and one day suspension.
- 25 2. Upon his reinstatement, Respondent will be placed on probation for two  
26 years. The terms of probation will be determined at time of reinstatement.
- 27 3. Respondent will pay all costs and expenses incurred by the State Bar in  
28 this disciplinary proceeding, as provided in the State Bar's statement of costs and

1 expenses, attached hereto as Exhibit 2.<sup>5</sup>

2 4. In the event that Respondent fails to comply with the terms of probation,  
3 to be determined upon his reinstatement into active status, bar counsel shall file a Notice  
4 of Non-Compliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct.  
5 The imposing entity may refer the matter to a hearing officer to conduct a hearing at the  
6 earliest practicable time, but in no event later than thirty days after receipt of notice, to  
7 determine whether a term of probation has been breached, and, if so, to recommend an  
8 appropriate action and response. If there is an allegation that Respondent failed to  
9 comply with any of the foregoing terms, the burden of proof shall be on the State Bar of  
10 Arizona to prove non-compliance by clear and convincing evidence.

11 DATED this 15<sup>th</sup> day of June, 2007.

12  
13 Thomas M. Quigley  
14 Thomas M. Quigley  
15 Hearing Officer 8W

16 Original filed this 15<sup>th</sup> day of June, 2007 with the Disciplinary Clerk of the Supreme Court

17 Copy of the foregoing mailed this 15<sup>th</sup>  
18 day of June, 2007, to:

19 Shauna R. Miller  
20 Staff Bar Counsel  
21 State Bar of Arizona  
22 4201 N. 24<sup>th</sup> Street, Suite 200  
23 Phoenix, Arizona 85016-6288

24 Mark F. Brinton  
25 Law Offices of Mark F. Brinton  
26 1745 S. Alma School Rd., Suite 100  
27 Mesa, AZ 85210-3010

28 By: Christina Solo

<sup>5</sup> No restitution was requested.