

FILED

JAN 23 2007

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY CSAS

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

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3
4 IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)

No. 06-0120

5)
6 **GENE R. STRATFORD,**)
Bar No. 004621)

HEARING OFFICER'S REPORT

7)
8 RESPONDENT.)
9)

PROCEDURAL HISTORY

10
11 A Complaint was filed on June 26, 2006. Respondent filed an Answer on
12 August 8, 2006. The parties filed a Tender of Admissions and Agreement for
13 Discipline by Consent and Joint Memorandum in Support of Agreement for
14 Discipline by Consent on November 27, 2006. No hearing has been held in
15 this matter.
16

FINDINGS OF FACT

17
18 1. At all times relevant, Respondent was an attorney licensed to
19 practice law, having been admitted to practice in Arizona on October 23, 1976.
20

21 2. On or about January 11, 2006, the State Bar was notified of
22 insufficient funds in Respondent's trust account in the amount of \$800, for an
23 item in that amount drawn on a closed trust account.
24
25

1 3. Respondent had opened a new trust account at the same bank and
2 gave the bank instructions to pay any outstanding checks from the new account in
3 which there were sufficient funds.
4

5 4. The State Bar requested additional documentation from Respondent
6 on February 8, 2006, including client ledgers and supporting documentation from
7 the bank of the "bank error."
8

9 5. On February 16th, Respondent provided the requested documents.

10 6. On review of those documents, while they supported the mistake by
11 the bank for the \$800 overdraft, the State Bar found other discrepancies in
12 Respondent's trust account ledgers and bank statements.
13

14 7. This eventually led to the State Bar conducting its own investigation
15 of Respondent's trust account, which revealed:

16 a. overpayments to four clients ranging from three cents to
17 fifteen hundred dollars between 1999 and 2003, which were not corrected,
18

19 b. funds held for five clients between 1995 and 2006 ranging in
20 amounts between two cents and three hundred dollars which were either due to
21 the client as a refund, due to Respondent as earned fees or due to third parties, but
22 whose true nature was not known and could not be determined,
23

24 c. bank charges which were not reversed or paid for by
25 Respondent in 2006,

1 d. inaccurate or inadequate client ledgers and trust account
2 records,

3 e. all of which resulted in some commingling of funds with
4 Respondent's own property.
5

6 8. Respondent failed to keep complete and accurate trust account
7 records, failed to deposit funds to cover bank charges, failed to supervise his
8 employees handling the trust accounts, failed to maintain internal controls to
9 safeguard trust property, failed to do monthly reconciliations and failed to
10 exercise due professional care in regard to his trust obligations.
11

12 9. Respondent's conduct violated Rule 42, *Rules of the Supreme Court*,
13 specifically ER 1.15(a), and (b), and Rules 43(a), 43(d)(1)(A), 43(d)(1)(B),
14 43(d)(1)(C), 43(d)(1)(E), 43(d)(2)(C), 43(d)(2)(D), and 43(d)(2)(E).
15

16 **CONDITIONAL ADMISSIONS**

17 Respondent conditionally admits that his conduct, as set forth above,
18 violated Rule 42, *Rules of the Supreme Court*, specifically ER 1.15 and Rules 43
19 and 44.
20

21 **ABA STANDARDS**

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

1 *Standard* 4.0 (Violations of Duties Owed to Clients) is the applicable
2 *Standard* in this matter. A review of ABA *Standard* 4.1 (Failure to Preserve
3 Client's Property) indicates that reprimand (censure in Arizona) is the
4 presumptive sanction for Respondent's misconduct. *Standard* 4.13 specifically
5 provides:

7 Reprimand is generally appropriate when a lawyer is
8 negligent in dealing with client property and causes injury
9 or potential injury to a client.

10 **AGGRAVATING AND MITIGATING FACTORS**

11 Considering the aggravating and mitigating factors in this case, pursuant to
12 *Standards* 9.22 and 9.32, respectively, this Hearing Officer agrees with the parties
13 that the following are applicable.

14 As aggravating factors:

- 15 (a) 9.22(c) – pattern of misconduct
16 (b) 9.22(d) – multiple offenses
17 (c) 9.22(i) – substantial experience in the practice of law

18 As mitigating factors:

- 19 (a) 9.32(b) – absence of dishonest or selfish motive
20 (b) 9.32(e) – free and full disclosure and cooperation

21 This Hearing Officer also agrees that the aggravating and mitigating factors
22 do not warrant a departure from the presumptive sanction of censure in this case.
23
24
25

1 In imposing discipline, it is appropriate to consider the facts of each case,
2 the American Bar Association's *Standards for Imposing Lawyer Sanctions*
3 (*"Standards"*) and the proportionality of discipline imposed in analogous cases.
4 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
5

6 Upon consideration of the facts, application of the *Standards*, including the
7 aggravating and mitigating factors, and a proportionality analysis, this Hearing
8 Officer recommends acceptance of the Tender of Admissions and Agreement for
9 Discipline by Consent which provides for the following:
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11 1. Respondent shall receive a public censure.

12 2. Respondent shall be placed on probation for one year effective upon the
13 signing of the probation contract. The State Bar will notify the Disciplinary Clerk
14 of the exact date of commencement of probation. The terms of probation are as
15 follows:
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17 a. Respondent shall contact the director of the State Bar's LOMAP
18 within 30 days of the final judgment and order. Respondent shall submit to a
19 LOMAP audit of his trust account procedures. Respondent shall comply with a
20 probation contract created by the director of LOMAP. The probation period will
21 begin to run at the time of the judgment and order and will conclude one year
22 from the date Respondent signs the probation contract;
23
24
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1 Original filed with the Disciplinary Clerk
2 this 23rd day of January, 2007.

3 Copy of the foregoing was mailed
4 this 23rd day of January, 2007, to:

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