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JUL 08 2008

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

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

5)
6 **JAMES R. MCDONALD, Jr.,**)
Bar No. 013604)

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No 07-1812

**DISCIPLINARY COMMISSION
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on June 14, 2008, pursuant to Rule 58, Ariz R Sup Ct, for consideration of the Hearing Officer's Report filed May 7, 2008, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent and Joint Memorandum providing for censure, one year of probation with the State Bar's Trust Account Program ("TAP"), Trust Account Ethic Enhancement Program ("TAEHP") and costs

Decision

Having found no facts clearly erroneous, the eight members¹ of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for censure, one year of probation (TAP and TAEHP), and costs of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk's Office² The terms of probation are as follows

¹ One lawyer member seat remains vacant Commissioner Horsley did not participate in these proceedings Sylvia Vega, a public member from Phoenix, participated as an ad hoc member

² A copy of the Hearing Officer's Report is attached as Exhibit A The State Bar's costs total \$687.50

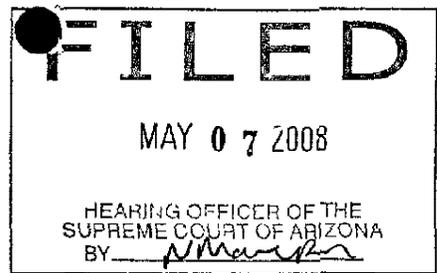
Terms of Probation

1 1 Respondent shall complete TAEPP during the probationary period
2 Respondent shall contact Gloria Green at (602) 340-7278 within 20-days of the date of the
3 final Judgment and Order

4 2 Respondent shall participate in TAP for the period of probation for monitoring
5 of his account records Respondent shall contact the State Bar's Examiner for Trust
6 Account, Gloria Bar at (602) 340-7242, within 20-days from the date of the final Judgment
7 and Order to develop a TAP contract The period of probation shall be effective the date of
8 the final Judgment and Order, and shall conclude one-year from the signing of the TAP
9 contract
10

11 3 Respondent shall refrain from engaging in any conduct that would violate the
12 Rules of Professional Conduct or other rules of the Supreme Court of Arizona.

13 4 In the event that Respondent fails to comply with any of the foregoing
14 conditions, and the State Bar receives information, bar counsel shall file with the imposing
15 entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz R Sup Ct. The
16 Hearing Officer shall conduct a hearing within 30-days after receipt of said notice, to
17 determine whether the terms of probation have been violated and if an additional sanction
18 should be imposed In the event there is any allegation that any of these terms have been
19 violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by
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1 Bruce G. Macdonald
2 Hearing Officer 6M
3 *McNamara, Goldsmith, Jackson & Macdonald, P C*
4 1670 E. River Road, Suite 200
5 Tucson, AZ 85718

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

8 **IN THE MATTER OF A MEMBER
9 OF THE STATE BAR OF ARIZONA,**

No 07-1812

10 **JAMES R. MCDONALD,
11 Bar No. 013604**

HEARING OFFICER'S REPORT

12 Respondent.

(Assigned to Hearing Officer 6M
Bruce G. Macdonald)

13 **PROCEDURAL HISTORY**

14 A Probable Cause Order was filed by Probable Cause Panelist, Richard T.
15 Platt, on January 28, 2008 The State Bar filed a Complaint on January 29, 2008.
16 Respondent filed an Answer on February 20, 2008 The State Bar filed a Notice
17 of Settlement on March 20, 2008, indicating the parties had reached a settlement.
18 A Tender of Admissions and Agreement for Discipline by Consent ("Tender")
19 and Joint Memorandum in Support of Tender of Admissions and Agreement for
20 Discipline by Consent ("Joint Memorandum") were filed on April 10, 2008
21
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1 FINDINGS OF FACT

2 1. Respondent is, and was at all times relevant hereto, a member
3 of the State Bar of Arizona, having been admitted to the practice of law in
4 Arizona on May 18, 1991.
5

6 2. A formal complaint in this matter was filed on January 29,
7 2008. No hearing has been held.
8

9 3. On or about October 24, 2007, Bank of America sent the
10 State Bar of Arizona an "Attorney Trust Account Overdraft Report" regarding
11 Respondent's Arizona Bar Foundation Attorney Trust Account.
12

13 4. On or about October 22, 2007, check number 1058 in the
14 amount of \$3,300.00, attempted to pay against Respondent's trust account
15 when the balance at the time was \$1,172 90.
16

17 5 Bank of America honored check number 1058 thereby
18 causing an overdraft on the account in the amount of -\$2,127.10.
19

20 6. On or about October 30, 2007, the State Bar of Arizona's
21 Trust Account Staff Examiner Gloria Barr, sent Respondent a copy of the
22 Overdraft Report with a letter requesting an explanation of the overdraft of this
23 client trust account
24

25 7. On or about November 19, 2007, Respondent sent an
explanation concerning the client trust account overdraft

1 8. Respondent provided deposit slip images for money
2 deposited into Respondent's client trust account as part of his November 19,
3 2007, explanation.
4

5 9. The deposit slips Respondent provided to the State Bar of
6 Arizona do not identify the client or reason for the deposit on the deposit slip.
7

8 10. On or about September 26, 2007, Respondent wrote check
9 number 1051 on his client trust account in the amount of \$1,500.00 to pay to
10 the order of Edward Doney for rent.

11 11. On or about October 1, 2007, Respondent wrote check
12 number 1052 on his client trust account in the amount of \$899.77 to pay to the
13 order of XO Communications.
14

15 12 On or about October 1, 2007, Respondent wrote check
16 number 1053 on his client trust account in the amount of \$106.68 to pay to the
17 order of Qwest.
18

19 13. On or about October 1, 2007, Respondent wrote check
20 number 1054 on his client trust account in the amount of \$100.00 pay to the
21 order of the State Bar of Arizona for a continuing education late fee
22

23 14. On or about October 4, 2007, Respondent wrote check
24 number 1055 on his client trust account in the amount of \$13.00 to pay to the
25 order of the Pinal County Recorder's Office.

1 15. On or about October 12, 2007, Respondent wrote check
2 number 1056 on his client trust account in the amount of \$204.18 to pay to the
3 order of Qwest.
4

5 16 On or about October 15, 2007, Respondent wrote check
6 number 1058 on his client trust account in the amount of \$3,300.00 to pay to
7 the order of Data Doctors.
8

9 17. Checks number 1051, 1052, 1053, 1054, 1055, 1056, and
10 1058 were used to pay operating expenses of Respondent's law firm.
11

12 18. On or about September 28, 2007, Respondent, or those
13 under his direct supervision, wrote check number 1013 on Respondent's client
14 trust account in the amount of \$1,384.21 to pay to the order of Douglas
15 Killpack.
16

17 19. On or about October 15, 2007, Respondent, or those under
18 his direct supervision, wrote check number 1016 on Respondent's client trust
19 account in the amount of \$1,384 21 to pay to the order of Douglas Killpack.
20

21 20. Checks number 1013 and 1016 were used to pay the salary
22 of an employee of the firm.
23

24 21. On or about September 30, and October 12, 2007,
25 Respondent, or those under his direct supervision, deposited \$1,384 21 to
replace the funds disbursed to pay Douglas Killpack's salary.

1 22. On or about November 21, 2007, Staff Examiner Gloria
2 Barr requested further information from Respondent.

3 23 On or about December 20, 2007, Respondent replied to
4 Staff Examiner Gloria Barr's further information request.
5

6 24 In Respondent's December 20, 2007, response to Staff
7 Examiner's further information request, Respondent admits to not maintaining
8 a ledger for each client that shows the date and amount of deposits and
9 disbursements along with an unexpended balance after each transaction for that
10 client.
11

12 25. Respondent does not maintain a ledger for each client that
13 shows the date and amount of deposits and disbursements along with an
14 unexpended balance after each transaction for that client.
15

16 26. Respondent provided a copy of his trust account checkbook
17 register for the period of August 29, 2007 to November 13, 2007.
18

19 27. Respondent's trust account checkbook register does not
20 maintain a running balance after each deposit or debit.

21 28. Respondent does not conduct an adequate monthly three-
22 way reconciliation because of the deficiencies in his record keeping.
23

24 29. A review of the trust account records submitted by
25 Respondent, along with Respondent's explanations reveal

1 a. Respondent failed to adequately safeguard client
2 property that was in his possession in connection with a representation by using
3 client funds to pay Respondent's firm's operating account in violation of Rule 42,
4 ER 1.15(a) and Rule 44(b);
5

6 b. Respondent failed to maintain and preserve complete
7 records according to the minimum standard by not maintaining valid individual
8 client ledgers or general account ledger in violation of Rule 42, ER 1.15(a);
9

10 c. Respondent failed to maintain complete records
11 covering the entire time from receipt to the time of final disposition of funds by
12 not maintaining valid individual client ledgers or a general account ledger in
13 violation of Rule 43(a);
14

15 d. Respondent failed to properly supervise employees and
16 others assisting the attorney in performance of his duties evidenced by the two
17 checks written on the client trust account to pay the salary of an employee of the
18 firm in violation of Rule 43(d)(1)(B);
19

20 e. Respondent failed to maintain adequate internal controls
21 to prevent Respondent, or those under Respondent's direct supervision, from
22 negligently using the client trust account funds to pay the firm's operating
23 expenses in violation of Rule 43(d)(1)(C);
24
25

1 f. Respondent failed to preserve complete records on a
2 current basis complying with ER 1.15 and preserve records for at least five years
3 after termination by failing to maintain adequate individual client ledgers and an
4 adequate general account ledger in violation of Rule 43(d)(1)(E);
5

6 g. Respondent failed to maintain a duplicate deposit slip or
7 equivalent which was sufficiently detailed to identify each item by failing to
8 identify the client or the reason for the deposit on the deposit slip in violation of
9 Rule 43(d)(2)(B);
10

11 h. Respondent failed to maintain an account ledger or
12 equivalent for each client, person or entity for whom monies have been received
13 in trust, showing the date, and amount of each receipt and disbursement and any
14 unexpended balance by failing to keep individual client ledgers that do not show
15 the dates of deposits or disbursements along with an unexpended balance after
16 each transaction in violation of Rule 43(d)(2)(C);
17

18 i. Respondent failed to make or cause to be made a
19 monthly three-way reconciliation of client ledgers, trust account general ledger or
20 register, and trust account bank statement as evidenced by failing to keep
21 adequate individual client ledgers and an adequate general ledger in violation of
22 Rule 43(d)(2)(D);
23
24
25

1 j. Respondent failed to retain all account trust statements,
2 cancelled pre-numbered checks, other evidence of disbursements, duplicate
3 deposit slips, client ledgers, trust account general ledger or register, and reports to
4 clients by not keeping sufficiently detailed deposit slips, not keeping adequate
5 individual client ledgers, and not keeping adequate general account ledger in
6 violation of Rule 43(d)(2)(E);
7

8 k. Respondent used, endangered, or encumbered money
9 held in trust for a client or third person without permission of the owner by
10 negligently using clients' money held in trust to pay the operating expenses of
11 Respondent's law firm in violation of Rule 43(d)(3);
12

13 l. Respondent failed to maintain complete records of all
14 funds, securities, and other properties of a client coming into the possession of
15 the lawyer and render appropriate accounts to his client regarding them by failing
16 to keep adequate individual client ledgers, adequate general account ledger, and
17 adequate deposit slips in violation of Rule 44(b)(3).
18
19

20 ADMISSIONS

21 Respondent admits the following:

22 1. That he negligently used money held in his client trust account to
23 pay his firm's operating expenses and payroll.
24
25

1 attendance, Respondent shall contact Gloria Green at 602-340-7278 within 20
2 days of the date of the final judgment and order in this matter

3
4 b. Respondent shall participate in the Trust Account Program
5 (TAP) for the probation period for monitoring of his account records.
6 Respondent shall contact the State Bar of Arizona's Staff Examiner for Trust
7 Accounts, Gloria Bar, 602-340-7242, within 20 days of the date of the final
8 judgment and order for development of a TAP contract. Respondent's probation
9 shall begin to run from the date of the final judgment and order, and shall
10 conclude one year from the entry of the TAP contract

11
12 c. Respondent shall refrain from engaging in any conduct that
13 would violate the Rules of Professional Conduct or other rules of the Supreme
14 Court of Arizona.

15
16 3. In the event that Respondent fails to comply with the forgoing terms
17 of probation, and the State Bar of Arizona thereof receives information, Bar
18 Counsel shall file a Notice of Non-Compliance with the imposing entity, pursuant
19 to Rule 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the matter to a
20 hearing officer to conduct a hearing at the earliest practicable time, but in no
21 event later than 30 days after receipt of notice, to determine whether a term of
22 probation has been breached, and, if so, to recommend an appropriate action and
23 response. If there is an allegation that Respondent failed to comply with any of
24
25

1 the foregoing terms, the burden of proof shall be on the State Bar of Arizona to
2 prove non-compliance by clear and convincing evidence.

3
4 4. Respondent shall pay all costs incurred by the State Bar in bringing
5 these disciplinary proceedings. In addition, Respondent shall pay all costs
6 incurred by the Disciplinary Commission, the Supreme Court and the
7 Disciplinary Clerk's Office in this matter. An Itemized Statement of Costs and
8 Expenses is attached as Exhibit "A," and incorporated herein
9

10 SANCTION ANALYSIS

11 ABA STANDARDS

12 The *Standards* are designed to promote consistency in the imposition of
13 sanctions by identifying relevant factors that courts should consider and then
14 applying these factors to situations where lawyers have engaged in various types of
15 misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with
16 respect to an appropriate sanction in this matter. The Court and Commission
17 consider the *Standards* a suitable guideline. *In re Rivkind*, 164 Ariz. 154, 157, 791
18 P.2d 1037, 1040 (1990); *In re Kaplan*, 179 Ariz 175, 177, 877 P 2d 274, 276
19 (1994).
20
21

22
23 In determining an appropriate sanction, both the Court and Commission
24 consider the duty violated, the lawyer's mental state, the actual or potential injury
25

1 caused by the misconduct and the existence of aggravating and mitigating factors.
2 *In re Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); *Standard* 3.0.

3
4 Given the conduct in this matter, the most applicable *Standard* is 4.1, Failure
5 to Preserve the Client's Property Specifically, *Standard* 4.13 provides: "Reprimand
6 [censure in Arizona] is generally appropriate when a lawyer is negligent in dealing
7 with client property and causes injury or potential injury to a client "

8
9 Having determined the presumptive sanction, the Hearing Officer next
10 considered the applicable aggravating and mitigating factors, as set forth in the
11 *Standards*

12
13 One aggravating factor is present: *Standard* 9.22 (1), Substantial Experience
14 in the Practice of Law, the Respondent was admitted to the practice of law on May
15 18, 1991.

16
17 Two mitigating factors are present: *Standard* 9.32 (a), Absence of Prior
18 Disciplinary Record, the Respondent has no formal or informal disciplinary history;
19 and, *Standard* 9.32 (d), Timely Good Faith Effort to Make Restitution or to Rectify
20 Consequences of Misconduct, within the month following the insufficient funds
21 notice, the Respondent replaced all missing funds into the client trust account.

22 PROPORTIONALITY ANALYSIS

23
24 To have an effective system of professional sanctions, there must be internal
25 consistency, and it is appropriate to examine sanctions imposed in cases that are

1 factually similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994)
2 (quoting *In re Wines*, 135 Ariz. 203, 207, 660 P 2d 454, 458 (1983)). However, the
3 discipline in each case must be tailored to the individual case, as neither perfection
4 nor absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604, 615, 691 P.2d
5 695 (1984).
6

7 In *In re Baskerville*, SB-03-0006-D (2003), Mr. Baskerville was
8 censured, placed on one year probation with the terms being LOMAP and
9 TAEPP. Mr. Baskerville failed to properly safeguard client funds in that there
10 were four disbursement errors that resulted in client funds on deposit in
11 Baskerville's trust account being negligently converted. Mr Baskerville also
12 failed to conduct monthly reconciliation of his trust account and failed to
13 maintain proper internal controls to adequately safeguard funds on deposit in
14 his trust account. There were two aggravating factors: pattern of misconduct
15 and substantial experience in the practice of law. There were five mitigating
16 factors. absence of a dishonest or selfish motive, timely good faith effort to
17 rectify consequences, full and free disclosure to disciplinary board, cooperative
18 attitude toward proceedings, and character and reputation. Mr. Baskerville was
19 sanctioned for violations of Rule 42, Ariz.R.Sup.Ct. specifically ER 1 15 and
20 Rules 43 and 44.
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1 In *In re Munoz S*, SB-07-0002-D (2007), Mr. Munoz was censured and
2 placed on probation with the terms of probation being LOMAP and TAEEP. Mr.
3 Munoz failed to adhere to trust account rules and guidelines. Specifically, Mr.
4 Munoz failed to safeguard client funds and to exercise due care regarding overdraft
5 and recordkeeping requirements, failed to consistently record all transactions, failed
6 to disburse funds with pre-numbered checks, failed to consistently maintain
7 duplicate deposit slips and failed to consistently conduct monthly three-way
8 reconciliations. There was one aggravating factor: substantial experience in the
9 practice of law. There were two mitigating factors: absence of a dishonest or
10 selfish motive and full and free disclosure. Mr. Munoz was sanctioned for
11 violations of Rule 42, Ariz.R.Sup.Ct. specifically ER 1.15 and Rules 43 and 44.
12

13
14
15 In *In re Stratford*, SB-07-0082-D (2007), Mr. Stratford was censured,
16 placed on one year of probation with the terms being LOMAP, TAP, and TAEEP.
17 Mr. Stratford failed to maintain complete and accurate trust account records, failed
18 to deposit funds to cover bank charges, failed to supervise employees handling the
19 trust account, failed to maintain internal controls to safeguard trust property and
20 failed to conduct monthly three-way reconciliations. There were three aggravating
21 factors: pattern of misconduct, multiple offenses, and substantial experience in the
22 practice of law. There were two mitigating factors: absence of dishonest or
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1 selfish motive and free and full disclosure. Mr. Stratford was sanctioned for
2 violations of Rule 42, Ariz.R.Sup.Ct. specifically ER 1.15 and Rules 43 and 44.

3
4 **CONCLUSION**

5 The objective of lawyer discipline is not to punish the lawyer, but to protect
6 the public, profession, and the administration of justice. *In re Neville*, 147 Ariz.
7 106, 707 P.2d 1297 (1985). This Hearing Officer finds that the objectives of
8 discipline are met by the discipline set forth above, and that this is a fair, just and
9 appropriate resolution of this matter.
10

11
12 DATED this 7th day of May, 2008.

13
14 By: Bruce G. Macdonald/NM
15 Bruce G. Macdonald
Hearing Officer 6M

16 Original filed this 7th day
17 of May, 2008, with:

18 Disciplinary Clerk of the Supreme Court
19 Certification and Licensing Division
20 1501 W. Washington, #104
Phoenix, Arizona 85007-3329

21 Copies of the foregoing mailed
22 this 8th day of May, 2008, to:

23 James R. McDonald
24 McDonald Law Offices PLLC
25 1907 East Broadway Road, Suite 1
Tempe, Arizona 85282-1768
Respondent

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Jason B. Easterly
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 200
Phoenix, AZ 85016-7250

By: Neeta Mankar

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Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
James R. McDonald, Jr, Bar No 013604, Respondent

File No(s) 07-1812

Administrative Expenses

The Board of Governors of the State Bar of Arizona has adopted a schedule of administrative expenses to be assessed in disciplinary proceedings, depending on at which point in the system the matter concludes. The administrative expenses were determined to be a reasonable amount for those expenses incurred by the State Bar of Arizona in the processing of a disciplinary matter. An additional fee of 20% of the administrative expenses is also assessed for each separate matter over and above five (5) matters due to the extra expense incurred for the investigation of numerous charges.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger, and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

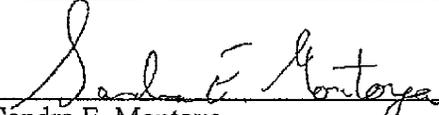
General Administrative Expenses for above-numbered proceedings = \$600.00

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below

Staff Investigator/Miscellaneous Charges

10/30/07	Prepare initial screening letter	\$8.75
11/21/07	Review, scan, and format response; Reconstruct trust account, Update summary of findings; Update chronology, Request additional information	\$26.25
01/04/08	Review, scan, and format response, Reconstruct trust account, Update summary of findings; Update chronology	\$52.50
	Total for staff investigator charges	\$87.50

TOTAL COSTS AND EXPENSES INCURRED **\$687.50**


Sandra E. Montoya
Lawyer Regulation Records Manager

4-3-08
Date