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APR 14 2008
DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY: *[Signature]*

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

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4 IN THE MATTER OF A MEMBER) Nos 06-0540, 06-0954, 06-1809,
5 OF THE STATE BAR OF ARIZONA,) 06-2061
6)
7 **GUY P. ROLL**)
8 **Bar No. 015987**) **DISCIPLINARY COMMISSION**
9) **REPORT**
10)
11 **RESPONDENT**)
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This matter came before the Disciplinary Commission of the Supreme Court of Arizona on March 15, 2008, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the Hearing Officer's Report filed February 25, 2008, recommending acceptance of the Tender of Admissions and the Agreement for Discipline by Consent ("Tender") and the Joint Memorandum ("Joint Memorandum") in Support of Agreement for Discipline by Consent providing for censure, two years of probation with the State Bar's Law Office Management Assistance Program ("LOMAP"), and the State Bar Trust Account Ethics Enhancement Program ("TAEEP), 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, two years of probation (LOMAP and TAEEP), and costs of these disciplinary proceedings² The terms of probation are as follows

¹ One lawyer member seat remains vacant
² A copy of the Hearing Officer's Report is attached as Exhibit A

Terms of Probation

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1 1 Respondent shall cease operating his debt settlement practices as a law firm
2 and shall operate it instead as a law-related business under ER 5 7 Respondent may
3 however, continue his law practice in other fields,

4 2 Respondent shall contact the Director of LOMAP within 30-days of the date of
5 the final Judgment and Order Respondent shall submit to a LOMAP examination of his
6 office procedures, including but not limited to ER 5 7 The LOMAP director shall develop
7 a probation contract and its terms shall be incorporated herein by reference The period of
8 probation will begin to run on the time of the final Judgment and Order and will conclude
9 two years from the date that all parties have signed the probation contract

10 3 Respondent shall attend TAEPP during the period of probation

11 4 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 5. 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 an 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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FEB 25 2008

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

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

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

) No 06-0540, 06-0954, 06-1809,
) 06-2061
)

**GUY P. ROLL,
Bar No. 015987**

) **HEARING OFFICER'S REPORT**
)

Respondent

) (Assigned to Hearing Officer 8Z,
) Christopher D Thomas)
)
)

INTRODUCTION

Respondent Guy P Roll is a member of the State Bar of Arizona whom the Bar asserts violated trust account rules, failed to adequately supervise his employees, and failed to adequately communicate with clients Respondent and the State Bar of Arizona have proposed to resolve this matter through their Tender of Admissions and Agreement for Discipline by Consent ("Tender"), pursuant to Rule 56(a), Ariz.R Sup Ct, and the Guidelines for Discipline by Consent issued by the Disciplinary Commission of the Arizona Supreme Court

In the Tender, Respondent conditionally admits that he violated the trust account rules, failed to adequately supervise his employees, and failed to adequately communicate with clients Respondent and the State Bar have proposed that Respondent be censured, placed on probation, and pay the costs and expenses of the disciplinary proceedings The Hearing Officer finds that the facts conditionally admitted in the Tender support the alleged violations, and further that the proposed sanction is fair and appropriate

FACTS

1 Respondent's legal fee agreement with the consumer Tender, ¶ 7

2 8 Respondent had no direct supervisory authority over the marketing
3 company representatives Respondent contends that the information collected and
4 given by the marketing representative was factual only and, therefore, did not require
5 Respondent's direct supervision. Tender, ¶ 8

6 9 The marketing company representatives were not attorneys: Respondent
7 contended that it was not necessary for the marketing company representatives to be
8 licensed attorneys Tender. ¶ 9

9 10 After the prospective client requested that Respondent's office contact
10 him/her for debt settlement, the marketing company provided the client's name and
11 contact information to Respondent. Tender, ¶ 10

12 11 Subsequently, someone from Respondent's office would make a
13 "compliance call" to the client to review the debt settlement program During this
14 "compliance call," the potential client was immediately informed that the caller was
15 from "Roll Law Office" and that the caller was a non-lawyer representative of the
16 office Tender, ¶ 11

17 12 During the time period in question, Respondent employed two
18 "negotiators" and several "client service managers" None of his employees were
19 attorneys Respondent also employed several administrative assistants Tender, ¶ 12

20 13 Although Respondent is admitted to practice law only in Arizona, he
21 advertised nationwide, and arguably represented clients from other states in debt
22 settlement cases Respondent contended that, for most clients, his services were law-
23 related (as opposed to legal) in nature, and his only legal intervention was in the
24 domain of federal bankruptcy law, of which he gave clients only a generic description
25 Indeed, Respondent specifically informed each client that he would not represent the
26 client should the program fail and the client elect to file bankruptcy. Tender, ¶ 13

1 14 Respondent's debt settlement program was designed to provide that
2 clients paid money in monthly installments to Respondent's law firm, which held the
3 money in trust. Once there was a sufficient amount of money in the client's account,
4 Respondent's negotiators would begin to try to reach settlements with the client's
5 creditors. Tender, ¶ 14

6 15 Respondent used the same fee arrangement for all of his debt settlement
7 clients. That fee agreement was titled "Legal Representation and Fee Agreement" and
8 required a "non-refundable" retainer in the amount of 8% of the debt amount that was
9 to be negotiated. In addition, the clients agreed to pay 15% of the amount by which the
10 debt was reduced as further legal fees. The clients were provided with a set monthly
11 payment amount. That payment was for debt settlement, as well as legal fees. Tender,
12 ¶ 15

13 16 Respondent's normal practice was to apply the initial monthly payments
14 in full toward payment of Respondent's initial retainer amount. After that, the monthly
15 payments would accumulate for use in debt negotiation. Tender, ¶ 16

16 17 Respondent's fee agreement does not expressly state that the monthly
17 payments would go toward fees in full prior to any work beginning on the debt
18 negotiation. Tender, ¶ 17

19 18 Respondent's fee agreement does not state that the "initial retainer" is
20 earned upon receipt, though it does note that the retainer is "non-refundable," and
21 Respondent treated it as such. Tender, ¶ 18

22 19 Respondent's fee agreement does not contain the required ER 1.5
23 language regarding non-refundable fees. Respondent later revised his fee agreement to
24 contain the required language. Tender, ¶ 19

25 20 Respondent routinely placed the clients' monthly payments toward the
26 initial retainer into his operating account even though the fee agreement did not

1 indicate that the fees were earned upon receipt, however, the fee agreement did disclose
2 that the fee was "non-refundable " Tender, ¶ 20

3 21 Respondent placed the subsequent monthly payments that were
4 designated for debt settlement into a "trust account " Tender, ¶ 21

5 22 Respondent's trust account was at Merrill Lynch, and was not a
6 designated IOLTA account, however. Respondent treated the money as being held in
7 trust for the clients' benefit Tender, ¶ 22

8 23 Respondent did not consistently comply with the trust account rules and
9 guidelines, however. Respondent contends that he did consistently perform a three-way
10 reconciliation Tender, ¶ 23

11 24 Respondent routinely employed non-lawyers to handle the compliance
12 call, as well as follow up communication on each debt settlement matter Tender, ¶ 24

13 25. During the compliance call, Respondent's non-lawyer assistants answered
14 questions and advised clients about the effect of the debt settlement program on their
15 credit Respondent alleges that his staff followed a script for their compliance calls to
16 assure that the staff did not provide legal advice or opinions Tender, ¶ 25

17 26 Most of Respondent's debt settlement clients did not receive any direct
18 communication from him or any other lawyer during the law-related debt settlement
19 service Tender, ¶ 26

20 27 Respondent's non-lawyer assistants negotiated the debt with creditors on
21 behalf of the clients Respondent contends that the "negotiation" was always within
22 specific parameters established by Respondent and approved by the clients Tender, ¶

23 27

24 28 Frequently, Respondent's non-lawyer assistants made settlement offers to
25 the creditors without obtaining express client consent as to that offer, however,
26 Respondent asserts that clients had previously given consent as to settlement

1 33 At the time of the retention, Ms Payne spoke with an employee of
2 Respondent's law office, Tommy Kearns Mr Kearns is not an attorney Mr Kearns
3 answered Ms Payne's questions about bankruptcy, and assured her that if she were
4 sued by a creditor, Respondent would represent her in court Tender, ¶ 33

5 34 In accordance with the program Respondent uses for all credit
6 management clients, Ms Payne agreed to stop paying her creditors, and instead pay
7 monthly sums to Respondent's law office The sums were to be used first to pay
8 Respondent's fee, and then to settle Ms Payne's debt Tender, ¶ 34

9 35 Ms Payne signed a form agreeing to allow Respondent's firm to take an
10 automatic monthly withdrawal from her bank account Tender ¶ 35

11 36 Thereafter, Ms Payne had difficulty contacting anyone at the law firm
12 Tender, ¶ 36

13 37 Eventually, Ms Payne was contacted by another non-attorney employee
14 of the law firm, "Bree" Bree informed Ms Payne that she was now assigned to her
15 case, and would be negotiating her debt Tender, ¶ 37

16 38 When Ms Payne informed Bree that she was unable to afford the
17 settlement offer made by one of her creditors, Bree informed Ms Payne that the matter
18 would then go to court, and the creditor would obtain a judgment Ms Payne, alleges,
19 but Respondent denies, that Bree also informed Ms. Payne that she need not be present
20 in court Tender, ¶ 38

21 39 A hold was later placed on Ms Payne's checking account Ms Payne
22 called Bree and asked for advice in June of 2006. Bree was not authorized to provide
23 legal advice, so she could not answer Ms Payne's question Ms Payne told Bree that
24 she would have to file bankruptcy Bree informed Ms Payne that she would then be
25 ineligible for the debt reduction program Tender, ¶ 39.

26 40 Ms Payne later received a call from the law firm in July indicating that

1 she would be dropped from the program if she missed two payments, as set forth in the
2 fee agreement. Tender, ¶ 40

3 41 Ms Payne, initially through her father, submitted a bar charge regarding
4 the matter Ms Payne indicated that she had not heard from anyone in the firm, that
5 none of her debt had been negotiated or paid, and that she had not received any refund
6 from the firm. Tender, ¶ 41

7 42 In or about October of 2006, Respondent returned all of the monies paid
8 to the law firm by Ms Payne, and terminated any representation Tender, ¶ 42

9 **COUNT THREE (File No. 06-0954)**

10 43 Lorrie Siler retained Respondent's law firm to assist her in debt
11 negotiation and reduction in December of 2005 Ms Siler is a Michigan resident who
12 heard about Respondent's firm on the internet. Tender, ¶ 43

13 44 Ms Siler never spoke with an attorney at the firm. All of her contact was
14 with non-attorney employees Tender, ¶ 44

15 45 Ms Siler agreed to make monthly payments to the law firm until her
16 retainer of \$4,037 00 was paid After that, the monthly payment would be used to
17 negotiate her debt As of May, 2006, Ms Siler had made payments to the firm of the
18 entire \$4,037 00 in fees, and an additional \$2,657 00 toward debt Tender, ¶ 45.

19 46 Ms Siler received numerous calls from creditors Tender ¶ 46

20 47 Ms. Siler became dissatisfied with the fact that none of her debts had
21 been paid or negotiated down by May of 2006 Tender, ¶ 47

22 48 Ms Siler cancelled the firm's services, and requested a full refund
23 Tender, ¶ 48

24 49 The firm agreed to refund the \$2,657 00 it was holding for debt
25 negotiation but refused to refund the fees Tender, ¶ 49

26 50 Ms Siler later spoke to a credit counseling agency who informed her that

1 following the firm's advice in allowing her accounts to go into a charge off status by
2 not making payments and settling her accounts would negatively affect her credit for at
3 least 10 years Ms Siler alleges, but Respondent denies, that no one at Respondent's
4 law firm had adequately explained the negative credit impact of debt reduction to Ms
5 Siler. Tender, ¶ 50

6 51. After Ms. Siler filed a bar charge, Respondent refunded the legal fees
7 paid in their entirety Tender, ¶ 51

8 **COUNT FOUR (File No. 06-1809)**

9 52 Monica Richardson retained Respondent to assist her in debt negotiation
10 and reduction Tender, ¶ 52

11 53 All of Ms Richardson's contact was with non-attorney employees of
12 Respondent's firm Tender. ¶ 53

13 54 Ms Richardson contends that she was informed that the firm's fee would
14 be \$944 00 She later discovered that the firm was claiming legal fees of \$4,000 00
15 Tender, ¶ 54.

16 55 Ms Richardson alleges, but Respondent denies, that she was never
17 provided a written confirmation of the fees Tender. ¶ 55

18 56 When Ms Richardson attempted to terminate the law firm's services, she
19 was informed by the law firm that her fees would not be returned Tender, ¶ 56

20 57 After Ms Richardson filed a bar charge, Respondent refunded the fees in
21 full Tender, ¶ 57

22 **CONDITIONAL ADMISSIONS**

23 **COUNT ONE (File No. 06-2061)**

24 Respondent conditionally admits that he failed to adequately communicate with
25 clients in regards to the effect debt settlement would have on their credit, failed to
26 adequately supervise non-lawyer assistants, negligently assisted the unauthorized

1 practice of law, failed to safeguard client property in an unauthorized IOLTA financial
2 institution, and failed to timely refund unearned fees at the conclusion of the
3 representation.

4 Respondent conditionally admits that his conduct as described in this count
5 violated Rule 42, Ariz R S Ct , specifically, ER 1 4, ER 5 3, ER 5 5, ER 1 15, ER
6 1 16(d), and Rule 44, Ariz R Sup Ct

7 **COUNT TWO (File No. 06-0540)**

8 Respondent conditionally admits that he failed to adequately communicate with
9 the client, failed to adequately supervise his non-lawyer assistants, and negligently
10 assisted the unauthorized practice of law

11 Respondent conditionally admits that his conduct as described in this count
12 violated Rule 42, Ariz R S Ct , specifically, ER 1 4, ER 5 3 and ER 5 5

13 **COUNT THREE (File No. 06-0954)**

14 Respondent conditionally admits that he failed to adequately communicate with
15 the client, failed to timely refund monies at the conclusion of the representation, failed
16 to adequately supervise his non-lawyer assistants; and negligently assisted in the
17 unauthorized practice of law

18 Respondent conditionally admits that his conduct as described in this count
19 violated Rule 42, Ariz R S Ct , specifically, ER 1 4, ER 1 16(d), ER 5 3 and ER 5 5

20 **COUNT FOUR (File No. 06-1809)**

21 Respondent conditionally admits that he failed to adequately communicate with
22 the client, failed to timely refund monies at the conclusion of the representation, failed
23 to adequately supervise his non-lawyer assistants, and negligently assisted the
24 unauthorized practice of law

25 Respondent conditionally admits that his conduct as described in this count
26 violated Rule 42, Ariz R S Ct , specifically, ER 1 4, ER 1 16(d), ER 5.3 and ER 5.5

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RESTITUTION

There are no issues of restitution in the present matter Respondent has made refunds to the clients in Counts Two, Three, and Four

SANCTION

Respondent and the State Bar of Arizona jointly proposed, in the Tender, the appropriate disciplinary sanction herein includes

- 1 Respondent shall receive a censure,
- 2 Respondent shall be placed on probation for a period of two years, under the following terms and conditions

- a Respondent shall cease operating his debt settlement practice as a law firm and shall operate it instead as a law-related business under ER 5.7 Respondent may, however, continue his law practice in other fields;

- b Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP) within 30 days of the date of the final judgment and order Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ER 5.7 The director of LOMAP shall develop a probation contract, and its terms shall be incorporated herein by reference The probation period will begin to run at the time of the judgment and order and will conclude two years from the date that all parties have signed the probation contract

- c Respondent shall attend the State Bar's Trust Account Ethics Enhancement Program (TAEHP) during the period of probation

- d Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other rules of the Supreme Court of Arizona

- 3 In the event that Respondent fails to comply with any of the foregoing

1 probation terms, and information thereof is received by the State Bar of Arizona, Bar
2 Counsel shall file a Notice of Noncompliance with the imposing entity, pursuant to
3 Rule 60(a)(5), Ariz R Sup Ct. The imposing entity may refer the matter to a hearing
4 officer to conduct a hearing at the earliest practicable date, but in no event later than 30
5 days after receipt of notice, to determine whether a term of probation has been breached
6 and, if so, to recommend appropriate action and response. If there is an allegation that
7 Respondent failed to comply with any of the foregoing terms, the burden of proof shall
8 be on the State Bar of Arizona to prove noncompliance by clear and convincing
9 evidence.

10 4. Respondent shall pay all costs incurred by the State Bar in bringing these
11 disciplinary proceedings. In addition, Respondent shall pay all costs incurred by the
12 Disciplinary Commission, the Supreme Court and the Disciplinary Clerk's Office in
13 this matter.

14 **I. ABA Standards**

15
16 The Supreme Court and the Disciplinary Commission consistently rely upon the
17 American Bar Association's *Standards for Imposing Lawyer Sanctions* in determining
18 appropriate sanctions for attorney discipline. See *In re Clark*, 207 Ariz. 414, 87 P.3d 827
19 (2004), *In re Peasley*, 90 P.3d 764 (2004). The Standards are a "useful tool in
20 determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 791 P.2d 95 (1990).
21 The *Standards* are intended to promote consistency in sanctions by identifying relevant
22 factors and then applying those factors to situations in which lawyers have engaged in
23 various types of misconduct. *Standard 1.3, Commentary*. The ultimate purpose of
24 discipline is not to punish the lawyer, but to set a standard by which other lawyers may
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1 be deterred from such conduct while protecting the interests of the public and the
2 profession *In re Kersting*, 151 Ariz 171, 726 P 2d 587 (1986)

3
4 In determining an appropriate sanction, the court and the Disciplinary
5 Commission consider the duty violated, the lawyer's mental state, the presence or
6 absence of actual or potential injury, and the existence of aggravating and mitigating
7 factors *In re Tarletz*, 163 Ariz 548, 554, 789 P 2d 1049, 1055 (1990). *Standard 3 0*

8
9 In this matter, it is appropriate to consider *Standard 4 0* (Violations of Duties
10 Owed to the Client) in determining the appropriate sanction for Respondent *Standard*
11 *4 0* reads

12 **4.1 Failure to Preserve Client's Property**

13
14 4 12 Suspension is generally appropriate when a lawyer
15 knows or should know that he is dealing improperly with
16 client property and causes injury or potential injury to a
17 client

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19 4 13 Reprimand [in Arizona, censure] is generally
20 appropriate when a lawyer is negligent in dealing with
21 client property and causes injury or potential injury to a
22 client

23
24 The parties agreed, and the Hearing Officer concurs, that Respondent's trust
25 account violations in this matter arose from negligence rather than knowing
26 violations Respondent contended, and the Bar conceded, that Respondent believed
in good faith that Merrill Lynch was an appropriate IOLTA institution
Respondent's good faith was supported by his contention that he segregated client
funds into that account, and thereafter performed three-way reconciliations

1 Respondent's conduct as set forth above also mandates consideration of
2 *Standard 7 3*, which calls for censure when a lawyer negligently engages in conduct
3 that constitutes a violation of a duty owed to the profession and thereby causes
4 injury or potential injury to a client, the public, or the legal system Given
5 *Standards 4 0* and *7 3*, the parties contend that censure is the most appropriate
6 presumptive sanction
7

8 Determination of the presumptive sanction is not the end of the analysis,
9 however It is now appropriate to evaluate the aggravating and mitigating factors,
10 as enumerated in the *Standards* See *In re Scholl*, 200 Ariz 222, 225-26, 25 P 3d
11 710, 713-14 (2001)
12

13 **A. The Duty Violated**
14

15 The *Standards* identify four distinct entities to whom a lawyer owes a specific duty
16 Those duties are to the lawyer's client, the general public, the legal system, and to the
17 profession As set forth above, Respondent violated his duties to his clients by failing to
18 adhere to the rules governing treatment of client trust accounts The trust account rules
19 exist to ensure that client's funds are not placed in jeopardy. Respondent likewise
20 violated his duties owed to the profession by failing to adequately supervise his non-
21 lawyer assistants, and thus permitting them to engage in the unauthorized practice of
22 law Respondent's violations of these duties were negligent, rather than knowing
23
24

25 **B. The Lawyer's Mental State**
26

1 The parties agree, and the Hearing Officer concludes, that Respondent was
2 negligent in failing to recognize and adhere to the rules governing treatment of client
3 funds and in failing to adequately supervise his non-lawyer assistants
4

5 **a. The Actual or Potential Harm Caused by Respondent's Conduct**

6 Respondent's conduct, for the most part, involved potential rather than actual
7 harm. Respondent's failure to comply with trust account rules exposed his client's to
8 potential injury in the form of loss of client funds, although Respondent contends that
9 such potential injury was mitigated by his use of the segregated Merrill Lynch account.
10 Further, the record suggests that actual harm was suffered by the clients who formed the
11 basis for Counts Two, Three and Four, although Respondent and State Bar suggest that
12 the experiences of those clients were atypical and not shared by numerous other clients
13 represented by Respondent.
14

15 **C. The aggravating and mitigating circumstances**

16 The presumptive sanction for Respondent's conduct in this case is censure. The
17 parties agree, and the Hearing Officer concurs, that the following aggravating factors
18 should be considered in determining whether the presumptive sanction of censure is
19 appropriate herein.
20

21 *Standard 9 22(d) – Multiple offenses* This matter involves multiple counts of
22 misconduct, although the underlying misconduct in such counts is similar.

23 *Standard 9 22(1) – Substantial experience in the practice of law* Respondent has
24 been practicing law in Arizona since 1994.
25
26

1 The parties suggest, and the record supports, consideration of the following
2 mitigation factors

3 *Standard 9.32(a) – Absence of a prior disciplinary record* Respondent has not
4 previously been the subject of disciplinary proceedings

5 *Standard 9.32 (d) Timely, good faith effort to rectify the consequences of*
6 *misconduct* Respondent provided timely refunds to the clients identified in the
7 *complaint, made substantial efforts to improve his law practice management, and*
8 *established a separate, law-related business*

9 *Standard 9.32 (e) Full and free disclosure to disciplinary board or cooperative*
10 *attitude toward proceedings* Respondent has cooperated with the Bar and been
11 *forthcoming during these proceedings*

12 **PROPORTIONALITY ANALYSIS**

13 To have an effective system of professional sanctions, there must be internal
14 consistency in the determination of discipline, and it is appropriate to examine
15 sanctions imposed in cases that are factually similar *In re Peasley*, 208 Ariz 27 35, ¶
16 33, 90 P 3d 764, 772 (App 2004). Nevertheless, the discipline in each case must be
17 tailored to the individual case, as neither perfection nor absolute uniformity can be
18 achieved *Id* at 41 ¶ 61, 90 P 3d at 778 (citing *In re Alcorn*, 202 Ariz 62, 76, 41 P 3d
19 600, 614 (2002) and *In re Wines* 135 Ariz 203, 207, 660 P 2d 454, 458 (1983))

1 In this case, the most serious instance of misconduct involves Respondent's
2 failure to comply with the rules governing treatment of client funds, along with
3 Respondent's failure to adequately supervise his non-lawyer assistants. There appears
4 to be no case directly on point, although several similar cases are instructive
5

6 With regard to Respondent's negligent trust account violations, two cases
7 resulting in censure and probation are relevant

8 In *Matter of Bendalin*, SB-06-0175-D (December 28, 2006), attorney Bendalin
9 was censured and placed on probation for violations of ER 1.15 and Ariz. Sup. Ct.
10 Rules 42 and 44. Bendalin was found, primarily, to have committed misconduct related
11 to his client trust account, and to have similar aggravating and mitigating factors to
12 those herein
13

14 Likewise, in *Matter of Larson*, SB 06-0099-D (June 16, 2006), attorney Larson
15 was censured and placed on probation for negligent trust account violations, having
16 failed to keep his client funds pooled in an interest-bearing client trust account
17

18 With regard to Respondent's failure to adequately supervise his non-lawyer
19 assistants, additional cases are instructive
20

21 In *Matter of Seplow*, SB 02-0108-D (October 8, 2002), attorney Seplow was
22 censured for failing to adequately supervise his non-lawyer assistants on numerous
23 occasions. As is the case herein, Seplow's negligent supervision resulted in the non-
24 lawyer assistants engaging in the unauthorized practice of law. Negligent failure to
25
26

1 adequately supervise the activities of non-lawyer assistants also resulted in censure and
2 probation in *Matter of Olds*, SB 00-0089-D

3
4 Although there are adequate supervision cases involving sanctions more severe
5 than those Respondent and the State Bar suggest are appropriate herein, those cases are,
6 indeed, distinguishable. For instance, in *Matter of Galbasini*, SB-89-0010-D (January
7 30, 1999), attorney Galbasini was suspended for a period of six months for failure to
8 adequately supervise his non-lawyer employees, in a situation also involving a debt
9 collection practice. That case, however, involved more severe misconduct, as
10 Galbasini's assistants solicited clients without his authority, retaining many without the
11 lawyer's knowledge, proceeded without direction, and in some cases converted client
12 funds. Further, Galbasini's practice was not eligible to be treated as a law-related
13 business, as is the case herein
14
15

16 CONCLUSION

17 For the reasons set forth above the Hearing Officer finds that the sanctions
18 jointly proposed by the State Bar and Respondent are appropriate, and that Respondent
19 should be disciplined as follows
20

21 1 Respondent shall receive a censure,

22 2 Respondent shall be placed on probation for a period of two years, under
23 the following terms and conditions

24 a Respondent shall cease operating his debt settlement practice as a law
25 firm and shall operate it instead as a law-related business under ER 5.7. Respondent
26 may, however, continue his law practice in other fields,

1 b. Respondent shall contact the director of the State Bar's Law Office
2 Management Assistance Program (LOMAP) within 30 days of the date of the final
3 judgment and order. Respondent shall submit to a LOMAP examination of his office's
4 procedures, including, but not limited to, compliance with ER 5.7. The director of
5 LOMAP shall develop a probation contract, and its terms shall be incorporated herein
6 by reference. The probation period will begin to run at the time of the judgment and
7 order and will conclude two years from the date that all parties have signed the
8 probation contract.

9 c. Respondent shall attend the State Bar's Trust Account Ethics
10 Enhancement Program (TAEPP) during the period of probation.

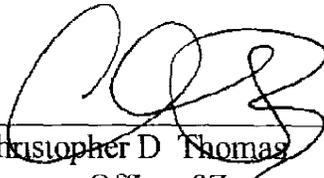
11 d. Respondent shall refrain from engaging in any conduct that would violate
12 the Rules of Professional Conduct or other rules of the Supreme Court of Arizona.

13 3 In the event that Respondent fails to comply with any of the foregoing
14 probation terms, and information thereof is received by the State Bar of Arizona, Bar
15 Counsel shall file a Notice of Noncompliance with the imposing entity, pursuant to
16 Rule 60(a)(5), Ariz R. Sup Ct. The imposing entity may refer the matter to a hearing
17 officer to conduct a hearing at the earliest practicable date, but in no event later than 30
18 days after receipt of notice, to determine whether a term of probation has been breached
19 and, if so, to recommend appropriate action and response. If there is an allegation that
20 Respondent failed to comply with any of the foregoing terms, the burden of proof shall
21 be on the State Bar of Arizona to prove noncompliance by clear and convincing
22 evidence.

23 4 Respondent shall pay all costs incurred by the State Bar in bringing
24 these disciplinary proceedings. In addition, Respondent shall pay all costs incurred by
25 the Disciplinary Commission, the Supreme Court and the Disciplinary Clerk's Office in
26 this matter.

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DATED this 25th day of February, 2008



Christopher D Thomas
Hearing Officer 8Z

Original filed this 25th day
of February, 2008, with

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

Copies of the foregoing mailed this 25th day
of February, 2008 to

Amy K Rehm
State Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
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Copy of the foregoing hand-delivered this
25th day of February, 2008, to

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by 