



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

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

No 06-1405, 06-1539, 07-0689

IVAN S. ABRAMS,
Bar No. 012608

HEARING OFFICER'S REPORT

RESPONDENT

PROCEDURAL HISTORY

A Probable Cause Order alleging violations of Rule 42, Ariz R.Sup Ct , specifically, ERs 1 5(b), 1 8(a), 1 15, and Rules 43 and 44, Ariz R Sup Ct. was filed in regards to all counts on December 6, 2007 On or about February 26, 2008, the parties entered into a joint memorandum in support of argument for discipline by consent On that same date the parties entered into a Tender of Admissions for Discipline by Consent On May 22, 2008, a telephonic hearing was held with the parties, during which time the appropriateness of the agreed-upon sanctions were discussed and the agreed-upon factual record was confirmed

FINDINGS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in this State on March 5, 1991
2. There was no formal complaint filed with respect to the underlying facts contained in this agreement

COUNT ONE (06-1405; Scales)

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2 3 In October 2004, the City of Tucson declared that approximately 800 homes were
3 inappropriate for residential use. Complainant Anita Scales ("Ms. Scales") and other affected homeowners
4 formed an organization called Tucsonans for Sound Solutions to explore their options, including legal
5 recourse.

6 4 In March 2005, Ms. Scales, along with several other representatives of Tucsonans for Sound
7 Solutions, met with Respondent.

8 5 Ms. Scales, on behalf of Tucsonans for Sound Solutions, hired Respondent and paid
9 Respondent with a check for \$5,000.00.

10 6 Respondent's trust account bank records obtained by the State Bar of Arizona indicate that
11 the \$5,000.00 was not deposited into the trust account.

12 7 Respondent cannot provide a written fee agreement for his work on behalf of Tucsonans for
13 Sound Solutions, so it is unknown if these funds were designated as "earned upon receipt," which would
14 have allowed Respondent to place these funds into an operating or personal account.
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16 8 Respondent's work for Tucsonans for Sound Solutions occurred from March 2005 through
17 June 2005. Respondent's work included legal research and meetings with members of Tucsonans for Sound
18 Solutions.

19 9 On November 30, 2005, Respondent provided Ms. Scales an itemized bill for the services
20 performed on behalf of Tucsonans for Sound Solutions. Respondent billed Tucsonans for Sound Solutions a
21 total of \$3,918.60 in fees and expenses.

22 10 Respondent realized while looking back that he initially overcharged Ms. Scales by
23 \$1,081.40. Respondent advised Ms. Scales of this positive balance left on her account via the letter dated
24 November 30, 2005.
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1 11 In the letter dated November 30, 2005, Respondent asked Ms Scales for direction on
2 whether she wanted the \$1,081 40 as a refund or if she required any further legal research.

3 12. In a letter dated December 14, 2005, Ms Scales requested that Respondent refund the
4 \$1,081 40 Respondent's trust account bank records indicate that, at that time, there were insufficient funds
5 held in the trust account to provide for the refund to Ms Scales

6 13 Respondent's trust account bank records indicate that Respondent did not transfer the
7 \$1,081 40 to the trust account from a personal or business account

8 14 In late 2005 and the beginning months of 2006, Respondent prepared for and accepted a
9 volunteer position with a US-based not-for-profit non-governmental organization to work in the country of
10 Bulgaria Respondent and his former assistant began the process of closing down the Tucson, Arizona,
11 practice

12 15 To close his practice and to facilitate the payment of bills and any other payables as
13 Respondent prepared to leave the country, Respondent established a joint checking account with his former
14 assistant out of the practice's general operating account, separate from Respondent's trust account

15 16. During the payment of bills and other payables out of the joint checking account, funds that
16 should have been held in trust for Ms Scales were negligently utilized.

17 17 On January 25, 2006, Respondent informed Ms Scales that she would have her refund in
18 approximately two weeks and directed his former assistant to make that payment

19 18 Respondent and Respondent's former assistant paid bills out of the joint checking account
20 on more than one occasion Respondent believed that the former assistant paid the refund to Ms Scales as
21 part of this process
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1 19 As a result of the negligent use of funds and Respondent's mistaken belief that his former
2 assistant had already refunded the money to Ms Scales, Ms Scales did not receive her refund as of August
3 22, 2006, despite several requests made to Respondent's former assistant

4 20 On August 22, 2006, Ms Scales filed a charge against Respondent with the State Bar of
5 Arizona Respondent asserts that this is the first time Respondent learned that Ms. Scales had not received
6 her refund

7 21 On September 14, 2006, Respondent, then living in the country of Bulgaria and working for
8 the non-governmental organization in that country, submitted a written response to the charge Respondent
9 indicated that he believed that the refund had been made in the prior months

10 22 On October 13, 2006, in a second written response, Respondent admitted that he failed to
11 properly monitor the money held on Ms Scales' behalf when he closed his practice

12 23 In December 2006 and January 2007, by way of two separate checks for \$500.00 each,
13 Respondent paid Ms Scales \$1,000 00. Respondent inadvertently failed to include the remaining \$81 40 as
14 part of the refund

15 24 In March 2007, the State Bar requested Respondent's trust account records as part of the
16 screening investigation

17 25 Respondent failed to maintain the trust account general ledger since the close of his practice
18 in early 2006 and could not produce the general ledger to the State Bar of Arizona

19 26 Respondent failed to maintain trust account ledgers for his individual clients since he closed
20 his practice in early 2006 and could not produce the individual client ledger for Tucsonans for Sound
21 Solutions to the State Bar of Arizona
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1 27 In lieu of a client ledger, Respondent provided an accounting of time expended and charges
2 incurred arising out of his work completed for Tucsonans for Sound Solutions that he obtained from Ms.
3 Scales client file

4 **COUNT TWO (06-1539; Letson)**

5 28 In October 2004, Stephen Letson ("Mr Letson") contacted Respondent in regards to hiring
6 Respondent for representation in a potential lawsuit against several family members and the Roman
7 Catholic Church

8 29 Respondent asserts that he was hired to assess the viability of a claim through legal research
9 and a review of files and investigator reports

10 30 In October and November 2004, Mr Letson paid Respondent a total of \$5,200 00. Mr
11 Letson also contracted with private investigators and paid a retainer of \$1,500 00.

12 31 Respondent's trust account bank records obtained by the State Bar of Arizona indicate that
13 the \$5,200 00 was not deposited into Respondent's trust account

14 32 Respondent failed to communicate the basis of the fee in writing and cannot provide a
15 written fee agreement, so it is unknown if these funds were designated as "earned upon receipt," which
16 would have allowed Respondent to place these funds into an operating or personal account.
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18 33 In his self-report to the State Bar of Arizona, dated September 12, 2006, Respondent
19 indicated the intention was to pay the money to Respondent as time was expended, meaning that
20 Respondent should have deposited the money into the practice's trust account

21 34 Respondent asserts that he determined that Mr Letson's potential claims were cost-
22 prohibitive in mid-2005 Respondent asserts he expressed this determination to Mr Letson

23 35 Respondent only billed for work on Mr Letson's behalf that occurred from October 27,
24 2004, through May 11, 2005
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1 36 From August through December 2005, Mr. Letson was working with the privately
2 contracted investigators to conduct additional interviews and investigation to further develop potential legal
3 claims, which Mr Letson planned to present to Respondent

4 37 In December 2005 and the beginning months of 2006, Respondent prepared for and
5 accepted a volunteer position with a US-based not-for-profit non-governmental organization to work in the
6 country of Bulgaria Respondent and his former assistant began the process of closing down the Tucson,
7 Arizona, practice

8 38 On December 6, 2005, Respondent's staff notified Mr. Letson about Respondent's plans.
9 Mr Letson indicated that he would be prepared to present his case to any new prospective attorney and
10 expressed his hope that Respondent could provide recommendations for prospective new counsel.

11 39 In January 2006, Respondent's staff presented Mr Letson's case to other attorneys and
12 suggested that Mr Letson speak with his privately contracted investigators for a recommendation for
13 prospective new counsel
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15 40 To close his practice and to facilitate the payment of bills and any other payables as
16 Respondent prepared to leave the country, Respondent established a joint checking account with his former
17 assistant out of the practice's general operating account, separate from Respondent's trust account

18 41 In a letter dated March 1, 2006, Mr Letson notified Respondent that he had asked a law
19 firm located in Phoenix, Arizona, to review the facts and evidence of the potential claims. The Phoenix law
20 firm's final impression was that Mr Letson would not prevail in any potential action

21 42 In the letter dated March 1, 2006, Mr Letson thanked Respondent for his services and
22 requested an accounting of Respondent's time and refund of any unused portion of the \$5,200 payment.
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1 43 Respondent and Respondent's former assistant paid bills out of the joint checking account
2 on more than one occasion. During the payment of bills and other payables out of the joint checking
3 account, funds that should have been held in trust for Mr. Letson were negligently utilized.

4 44. On June 30, 2006, Respondent's staff prepared and calculated the final accounting of time
5 expended and charges incurred on behalf of Mr. Letson. Respondent billed Mr. Letson a total of \$3,200.00,
6 meaning that Respondent owed Mr. Letson a refund of \$2,000.00.

7 45 Respondent's trust account bank records indicate that, at this time, there were insufficient
8 funds held in the trust account to provide for the refund to Mr. Letson.

9 46 However, on July 6, 2006, Respondent's former assistant wrote a check out of the joint
10 checking account for Mr. Letson's \$2,000.00 refund.

11 47 On September 12, 2006, Respondent reported his belief that Mr. Letson would file a bar
12 charge against him to the State Bar of Arizona. Respondent admitted that Mr. Letson's refund should have
13 been completed in a timelier fashion.

14 48 On September 18, 2006, Mr. Letson filed a charge against Respondent with the State Bar of
15 Arizona.

16 49 In March 2007, the State Bar requested Respondent's trust account records as part of the
17 screening investigation in File # 06-1405.

18 50 Respondent failed to maintain the trust account general ledger since the close of his practice
19 in early 2006 and could not produce the general ledger to the State Bar of Arizona.

20 51 Respondent failed to maintain trust account ledgers for his individual clients since he closed
21 his practice in early 2006 and could not produce the individual client ledger for Mr. Letson to the State Bar
22 of Arizona.
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COUNT THREE (07-0689; McFarland)

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2 52 In late 2002, Ronald McFarland hired Respondent as criminal defense counsel

3 53 The total fee for Ronald McFarland's criminal defense was \$40,000 00

4 54 In October and November 2002, Respondent collected fees in the total amount of \$5,000 00

5 55 To secure a portion of or the entire remainder of the outstanding balance of Respondent's
6 fee, Ronald McFarland offered to sign over title to a parcel of real estate in Marana, Arizona

7 56 The agreement was that Respondent would accept title and sell the land. If the proceeds
8 exceeded the outstanding balance of legal fees owed to Respondent, then the remaining proceeds would
9 return to Ronald McFarland

10 57 Respondent admits he received the title, and Respondent eventually sold the land for
11 \$25,000 00

12 58 Respondent failed to transmit the transaction and terms on which Respondent acquired an
13 interest in the parcel of land in writing

14 59 Respondent failed to advise Ronald McFarland in writing of the desirability of seeking the
15 advice of independent legal counsel on the transaction

16 60. Respondent failed to obtain informed consent to the essential terms of the transaction and
17 the lawyer's role in the transaction from Ronald McFarland in writing.
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19 **CONDITIONAL ADMISSIONS**

20 Respondent conditionally admits that his conduct violated Rule 42, Ariz R Sup Ct , specifically,
21 ERs 1 5(b), 1 8(a), 1 15, and Rules 43 and 44, Ariz R Sup Ct

22 Respondent's admissions are being tendered in exchange for the form of discipline stated below
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CONCLUSIONS OF LAW

This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz R Sup Ct , specifically, ERs 1 5(b), 1.8(a), 1 15, and Rules 43 and 44, Ariz.R Sup Ct

ABA STANDARD

ABA Standard 3 0 provides that four criteria should be considered (1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the misconduct, and (4) the existence of aggravating and mitigating factors

This Hearing Officer considered all four of the factors of ABA Standard 3 0 in determining the appropriate sanction warranted by Respondent's conduct. Specifically, this Hearing Officer considered the duty that Respondent violated, his mental state, any actual or potential injury caused by Respondent's misconduct

A. The Duty Violated

Given the conduct in this matter, it is appropriate to consider several *Standards*

For the violation of Rule 42, Ariz R Sup Ct , ER 1 5, it is appropriate to consider *Standard 4 63* *Standard 4 63* states, "Reprimand [Censure in Arizona] is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client "

Respondent admits that he failed to provide two clients with complete information regarding fee agreements Respondent cannot produce a written fee agreement in the matters of Ms Scales and Mr Letson Reprimand is justified when the lawyer is merely negligent and there is injury or potential injury to a client See *Standards* at 36 There is no evidence that Respondent knowingly deceived either client, as indicated by Respondent's good faith recognition of refunds owed to the clients and the efforts to pay those refunds

1 Given Respondent's conduct in violation of Rule 42, Ariz R Sup.Ct., ER 1 15, and Rules 43 and
2 44, it is appropriate to consider *Standard 4 13* *Standard 4 13* states, "Reprimand [Censure in Arizona] is
3 generally appropriate when a lawyer is negligent in dealing with client property and causes injury or
4 potential injury to a client."

5 Respondent admits that he failed to properly monitor the money held on Ms. Scales' behalf when
6 he closed his practice. As a result of this negligent handling of funds, Ms. Scales did not receive any of
7 her refund for one (1) year. In the Letson matter, funds that should have been held in trust for Mr.
8 Letson were negligently utilized. Mr. Letson did not receive his refund for just over four (4) months.
9 There is no evidence that Respondent acted knowingly. For example, Respondent operated under a
10 mistaken belief that Ms. Scales had been paid her refund, which contributed to the interim waiting
11 period. Reprimand [Censure in Arizona] should be reserved for lawyers who are merely negligent in
12 dealing with client property, and who cause injury or potential injury to a client. See *Standards* at 29.
13 The Courts have typically imposed reprimands in cases when lawyers fail to maintain adequate trust
14 accounting procedures, or neglect to return the client's property promptly. See *Standards* at 29.

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16 Finally, with respect to the violation of Rule 42, Ariz.R Sup Ct , ER 1 8(a), it is appropriate to
17 consider *Standard 4 33* and *Standard 4 34*. *Standard 4 33* states, "Reprimand [Censure in Arizona] is
18 generally appropriate when a lawyer is negligent in determining whether the representation of a client
19 may be materially affected by the lawyer's own interests, or whether the representation will adversely
20 affect another client, and causes injury or potential injury to a client." *Standard 4.34* states, "Admonition
21 is generally appropriate when a lawyer engages in an isolated instance of negligence in determining
22 whether the representation of a client may be materially affected by the lawyer's own interests, or
23 whether the representation will adversely affect another client, and causes little or no actual or potential
24 injury to a client "

1 Respondent admits that he failed to transmit the terms on which Respondent acquired an interest
2 in a parcel of land from Mr McFarland in writing, he failed to advise Mr McFarland in writing of the
3 desirability to seek advice from independent counsel, and he failed to obtain Mr McFarland's informed
4 consent to the transaction The Courts generally impose a reprimand when a lawyer engages in a single
5 instance of misconduct involving a conflict of interest when the lawyer has merely been negligent and
6 there is no overreaching or serious injury to a client See *Standards* at 33. There is no evidence of any
7 overreaching or serious injury, as Respondent's failures in this regard did not warrant a mention in
8 Marvin McFarland's (Complainant's) written submission

9 **B. The Lawyer's Mental State**

10 Respondent's mental state in all counts was negligent

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

12 Respondent's conduct caused actual and potential injury to his clients Respondent has paid a
13 large portion of the refund to Ms Scales Respondent has paid the refund he believes is warranted to Mr
14 Letson and has agreed to participate in binding fee arbitration, if Mr. Letson requests it There is no
15 known issue of restitution in the McFarland matter
16

17 **PRESUMPTIVE SANCTION**

18 Based on the foregoing, the presumptive sanction for the admitted conduct is Censure

19 **AGGRAVATION/MITIGATION**

20 After determining the presumptive sanction, it is appropriate to evaluate factors enumerated in
21 the *Standards* that would justify an increase or decrease in the presumptive sanction
22

23 The parties agree that, pursuant to *Standard* 9 22, three (3) aggravating factors should be
24 considered in this matter
25

1 Under *Standard 9 22(c)*, Respondent has engaged in a pattern of misconduct Respondent's
2 misconduct involves three (3) separate clients and took place in 2002 and 2006

3 Under *Standard 9 22(d)*, Respondent has committed multiple offenses There are three (3) counts
4 involving three (3) separate clients In the Scales and Letson matters, Respondent's violations of the
5 ethical rules were identical (ERs 1 5, 1 15, and Rules 43 and 44), but committed against two (2) separate
6 clients In the McFarland matter, Respondent's violation of the ethical rules was for a separate issue
7 altogether (ER 1 8) and occurred in 2002

8 Finally, under *Standard 9.22(i)*, Respondent has substantial experience in the practice of law.
9 Respondent was admitted to the practice of law in the State of Arizona on March 5, 1991, over sixteen
10 (16) years ago

11 The parties agree that, pursuant to *Standard 9 32*, there are seven (7) mitigating factors Under
12 *Standard 9 32(a)*, Respondent has a lack of prior discipline ¹

13 Under *Standard 9 32(b)*, there is no evidence of a dishonest or selfish motive. Respondent has
14 refunded \$1,000 00 to Ms Scales Respondent has agreed to pay the remaining balance of \$81 40, which
15 Respondent inadvertently left out of the prior refund payments, to Ms. Scales Respondent has acted to
16 prevent any loss by paying the refund and agreeing to participate in binding Fee Arbitration in the
17 Letson matter Also, the lack of a writing in the McFarland matter was not even an issue in the bar
18 charge, so the terms of the transaction were apparently fair to the client

19 Under *Standard 9 32(c)*, Respondent has had personal and/or emotional problems during the
20 relevant time period From 2003 through 2006, Respondent's older son was incapacitated by an injury
21 sustained during a dental procedure In 2005, Respondent's younger son underwent surgery to remove a
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25 ¹ Respondent has been in diversion with LOMAP since March 2006, arising out of case # 05-1298
(Coulter). The conduct in this matter, however, overlapped the execution of the Diversion
agreement, and Respondent has been extremely cooperative with Diversion.

1 malignant tumor Respondent's own health suffered as he found himself emotionally and physically
2 affected by his sons' health issues Respondent developed sleep apnea coupled with difficult-to-control
3 hypertension, as well related circulatory and other symptoms, which were nearly incapacitating and
4 potentially life threatening Both of Respondent's sons have recovered from their illnesses, and
5 Respondent's health has improved dramatically as he been able to better concentrate on his own
6 wellbeing and improvements to his lifestyle

7 Under *Standard 9 32(d)*, Respondent has made good faith efforts to make restitution In
8 December 2006 and January 2007, Respondent paid Ms Scales a large portion of her refund In July
9 2006, Respondent paid Mr Letson the refund he believes is warranted, and Respondent has further
10 agreed to participate in Fee Arbitration

11 Under *Standard 9 32(e)*, Respondent has been extremely cooperative with the State Bar of
12 Arizona During the investigation and proceedings, Respondent lived and worked in the countries of
13 Bulgaria and Kazakhstan Respondent currently lives and works in Kazakhstan Despite the difficult
14 logistics, Respondent has maintained constant contact with Bar Counsel and staff Respondent has made
15 payments totaling \$1,000 00 to Ms Scales and has agreed to pay the outstanding balance of the refund
16 Respondent has agreed to participate in binding Fee Arbitration in the Letson matter Respondent's self-
17 report to the State Bar of Arizona of the misconduct in the Letson matter pre-dates Mr Letson's
18 complaint Respondent's cooperation is well documented

19 Under *Standard 9 32(g)*, Respondent asserts character and reputation as a mitigating factor.
20 Respondent served for a total of nearly 12 years as a state, then a federal, prosecutor In the latter
21 capacity, he was commended a number of times for his work regarding cases involving organized crime,
22 drug trafficking, and corrupt public officials Respondent also served as a Lieutenant in the Judge
23 Advocates General's Corps of the United States Naval Reserve After he entered private practice,
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1 Respondent devoted considerable *pro bono* time to civil rights and human rights work in southeastern
2 Arizona. Much of his law practice consisted of clients whose cases presented difficult, often complex,
3 issues of fact and law and for whom Respondent performed work at considerably reduced fees, quite
4 frequently without fees whatsoever. Respondent now works abroad for a US-based not-for-profit non-
5 governmental organization. He provides technical assistance to lawyers in developing nations regarding
6 advocacy skills and ethics. He is considered by his peers to be a person of high integrity and excellent
7 character.

8 Finally, under *Standard 9 32(1)*, Respondent has expressed remorse on each and every count in
9 his multiple written responses, submissions, and communications to the State Bar of Arizona.

10 The parties have identified what they believe to be the relevant aggravating and mitigating
11 factors. The parties believe that, given an analysis of the ethical misconduct in light of the aggravating
12 and mitigating factors, the appropriate sanction in this case is Censure with costs followed by a term of
13 probation.
14

15 PROPORTIONALITY

16 To have an effective system of professional sanctions, there must be internal consistency, and it
17 is appropriate to examine sanctions imposed in cases that are factually similar. *In Re Shannon*, 179 Ariz
18 52, 71, 876 P 2d 548, 567 (1994) (quoting *In Re Wines*, 135 Ariz 203, 207 (1983)). However, the
19 discipline in each case must be tailored to the individual case, as neither perfection nor absolute
20 uniformity can be achieved. *Matter of Riley*, 142 Ariz 604, 615 (1984).

21 In *In Re Cawood*, SB-05-0147-D (2005), Cawood failed to return unearned fees to a divorce
22 client for several years and then could not produce the requested trust account records due to a
23 termination of his partnership. Cawood admitted the firm's treatment of client funds was not maintained
24 in compliance with the rules (i.e., retainers went into the operating account, earned fees went into the
25

1 trust account, trust account used as a savings account) Monthly reconciliations were impossible as trust
2 account records were not correctly maintained There was no intentional misappropriation of funds.
3 Cawood violated ERs 1 15 and 1 16, along with Rules 43 and 44 There were no aggravating factors and
4 only two mitigating factors Cawood was censured

5 In *In Re Hentoff*, SB-06-0145-D (2006), Hentoff sold some firearms that were the community
6 property of his client and the client's wife, and then took the proceeds of the sale as fees, all without
7 complying with ER 1 8(a) The Hearing Officer also found that Hentoff violated ERs 1 15 and 1 16 In a
8 second count, Hentoff admitted failures to communicate adequately and to timely return unearned legal
9 fees, in violation of ERs 1 4, 1 15, and 1.16 The only *Standard* cited was 4.33 Two aggravating factors
10 weighed against two mitigating factors. The documents for discipline by consent cited *In Re Cawood*,
11 SB-05-0147 (2005), as proportionality Hentoff was censured.

12 In *In Re Hineman*, SB-02-0154-D (2003), Hineman accepted a quick claim deed to the client's
13 home to secure payment of legal fees Hineman failed to provide notice to the client to consult with
14 independent counsel The Hearing Officer and Disciplinary Commission also found that Hineman
15 charged an unreasonable fee in violation of Rule 42, Ariz R Sup.Ct , ER 1.5, on three cases Hineman
16 was censured

17 In *the Matter of Tucker*, SB-02-0120-D (2002), Mr Tucker failed to properly safeguard funds
18 Mr. Tucker also failed to conduct a monthly reconciliation and failed to maintain proper internal
19 controls to adequately safeguard client funds Mr Tucker also failed to maintain client ledger records
20 and failed to keep his funds separate from that of his clients There were no aggravating factors found in
21 contrast to three mitigating factors (absence of prior discipline, full and free disclosure, and remorse)
22 Mr Tucker received a censure and was placed on probation for one year
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1 This current agreement, therefore, provides for a sanction that is proportionate and meets the
2 goals of the disciplinary system
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4 RECOMMENDATION

5 The objective of lawyer discipline is not to punish the lawyer, but to protect the public, the profession,
6 and the administration of justice. *In Re Neville*, 147 Ariz 106, 708 P 2d 1297 (1985)

7 1 Upon consideration of the facts, application of the *Standards*, including aggravating and
8 mitigating factors, and a proportionality analysis, the Hearing Officer recommends the following:
9 Respondent shall receive a Censure

10 2 Respondent shall pay all costs and expenses incurred by the State Bar in these proceedings
11 within thirty (30) days of the Supreme Court's Final Judgment and Order. [A statement of costs is attached
12 as Exhibit A]

13 3. With respect to Ms Scales, File #06-1405, Respondent will pay restitution in the amount of
14 \$80 41 to Ms Scales within thirty (30) days of the Supreme Court's Final Judgment and Order
15

16 4 With respect to Mr Letson, File # 06-1539, Respondent will participate in binding fee
17 arbitration, if requested by Mr Letson, to decide the ongoing fee dispute Respondent will abide by the
18 decision of the arbitrator

19 5 Respondent will submit and participate in a term of probation for two (2) years under the
20 following terms and conditions

- 21 a During the two (2) year period of probation, should Respondent return to the State of
22 Arizona and engage in the practice of law in any capacity, Respondent shall contact the
23 director of the State Bar of Arizona's Law Office Management Assistance Program
24 (LOMAP) within 30 days of the date of his return to the practice of law in the State of
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1 Arizona Respondent shall submit to a LOMAP audit of his office trust account policies and
2 procedures,

3 b The director of LOMAP shall develop a probation contract, and its terms shall be
4 incorporated herein by reference. The probation period will begin to run at the entry of the
5 Judgment and Order in this matter, and will conclude two (2) years from the date that all
6 parties have signed the probation contract,

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

9 In the event that Respondent fails to comply with any of the foregoing probation terms, and
10 information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of
11 Noncompliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz R.S Ct The imposing entity
12 may refer the matter to a hearing officer to conduct a hearing at the earliest practicable date, but in no
13 event later than 30 days after receipt of notice, to determine whether a term of probation has been
14 breached and, if so, to recommend appropriate action and response If there is an allegation that
15 Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State
16 Bar of Arizona to prove noncompliance by clear and convincing evidence
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22 DATED this 27th day of May, 2008.

23 By Sandra Slaton/am
24 Sandra Slaton
25 Hearing Officer 8A

1 Original filed this 27th day of
2 May, 2008, with the Disciplinary Clerk's
3 Office of the Supreme Court of Arizona

4 Copies mailed this 28th day of
5 May, 2008, to

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14 Respondent (Alternate Address)

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20 by Neeta Manelkar