

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

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

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

WILLIAM D. HOWELL, III,)
Bar No. 020188)

RESPONDENT.)

File Nos. 06-0230, 06-1633, 07-0013

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

1. Probable Cause was found in this case on May 8, May 14, and July 13, 2007. A Complaint was filed on August 7, 2007, and Respondent was served on or about August 8, 2007, by certified mail at his address of record.
2. This matter was assigned to the undersigned Hearing Officer on August 13, 2007, and notice setting the Initial Case Management Conference ("ICMC") on September 10, 2007, was sent out on August 17, 2007. Notice of Default was sent out September 5, 2007, and prior to the Entry of Default, Respondent filed an Answer on September 19, 2007.
3. The ICMC was held on September 10, 2007, and a final hearing was set for November 9, 2007. On September 18, 2007, the State Bar filed a Motion To Strike Respondent's Answer because it was an insufficient five line Answer to a three count 133 paragraph Complaint. After being ordered to do so by the Hearing Officer, on October 31, 2007, Respondent filed an Amended Answer

4. Subsequently, the final hearing date was continued from November 9, 2007, to December 3, 2007, due to Respondent's failure to comply with disclosure requirements. At the final hearing set on December 3, Respondent's son, Elijah Howell, appeared in person on behalf of his father and submitted an Emergency Motion to Continue, signed by the Respondent, claiming that he was in the hospital with what his son indicated were symptoms of a heart attack. The final hearing was continued to January 4, 2008, and the first day of the final hearing was conducted on that date. Due to the large amount of evidence and witnesses, a second day was required and the final hearing was completed on January 8, 2008.

FINDINGS OF FACTS

5. **COUNT ONE (Martwick)**

Count one of the State Bar's Complaint alleges that Respondent engaged in misconduct in his dealings with a client, Justin Martwick ("Mr. Martwick"). Mr. Martwick retained the services of Respondent to contest Mr. Martwick's dissolution case.

6. **The Fee Contract:**

The State Bar alleges that Respondent had Mr. Martwick sign a Fee Contract (Bates Stamp 0082, see attached Exhibit 1 for a better copy) that was improper because it:

- A) did not fully address the scope of representation in violation of ER 1.5(b);
- B) was not a "retainer" but in fact an "advance fee" that should have been deposited in Respondent's trust account, in violation of Rule 43(d)(2)(b);
- C) was unreasonable in violation of ER 1.5(a);

D) stated that the "...retainer shall be deemed earned when paid" in violation of ER 1.5(d)(3), because it did not include language that the client may discharge the attorney at any time and then be entitled to a refund.

7. The State Bar also alleges that Respondent, in his dealings with Mr. Martwick, violated ER 1.15(e) because Respondent did not keep disputed funds separate until the dispute was resolved.

8. Finally, the State Bar alleges that Respondent violated ER 8.1(b) by knowingly making a false statement of material fact in his response to the bar, and violating Rule 53(f) in refusing to furnish information required by the bar.

9. The Hearing Officer has reviewed the Fee Contract and the evidence and concludes as follows:

10. A) Scope of Representation:

Regarding the allegation that the Fee Contract did not fully address the scope of the representation, the State Bar points out that the Respondent did not check the boxes in paragraph 2 of the contract stating whether the Respondent would or would not include litigation or appeals. The Hearing Officer concludes that the Respondent did not check these boxes but, given the extensive discussion between the Respondent and Mr. Martwick (confirmed by Mr. Martwick, see transcript page 105 line 24 – page 115 line 4) concerning what Respondent would be doing for Mr. Martwick, the Hearing Officer concludes that this was an inconsequential oversight. The Hearing Officer finds no violation of ER 1.5(e).

11. B) Retainer or Advanced Fee:

Regarding whether the “retainer” was in fact an “advanced fee” and should have been deposited in Respondent's trust account, the Hearing Officer finds that the wording of the Fee Contract itself (in paragraph 3) stating that it was “...earned when paid and will not be deposited into a trust account” is not sufficient to avoid the requirements of Rule 43(d)(2)(b) that earned funds must be deposited into a trust account. While Respondent claims to have talked to Mr. Martwick prior to the \$2,000 payment, there is no claim that the entire \$2,000 was actually earned upon payment as a result of work performed previously by Respondent. A review of Respondent's “Exhibit B” to the Final Hearing, a “Client Accounting Ledger” for Justin Martwick, submitted by Respondent at the hearing in this matter, shows that Mr. Martwick's \$2,000 “retainer” was in fact not placed in a trust account. Such a payment must be deposited in a trust account pursuant to Rule 43(d)(2)(B). The Hearing Officer finds that Respondent violated Rule 43(d)(2)(B).

12. C) Unreasonable Fee:

The issue of whether Respondent violated ER 1.5(a) by charging Mr. Martwick an unreasonable fee has two facets:

13. 1) There is the issue of whether, given that Mr. Martwick had a limited dispute over a sum that was fairly certain, Respondent exceeded Mr. Martwick's expectations in his billing of over \$12,000 when Mr. Martwick said initially that he did not want to spend over \$5,000. While this matter was pending, Respondent and Mr. Martwick participated in fee arbitration. The Fee Arbitration Panel found that there was no specific agreement to limit the fees, and so does this Hearing Officer. (See the Fee Arbitration Award, page 3 line 18 through page 4 line 3 attached hereto as Exhibit 2.)

14. The Hearing Officer has reviewed the testimony of Mr. Martwick and the Respondent, and reviewed the evidence. There is not enough evidence to show by a clear and convincing standard that the fact that Respondent's bill for services exceeded \$5,000 made the fees per se unreasonable. Respondent assisted Mr. Martwick without question and, given that Mr. Martwick did not contest any specific aspect of the bill (transcript at page 115 line 12 – page 116 line 10), it is hard to say where Respondent went afoul of Rule ER 1.5(a). Just because Mr. Marwick was ultimately unhappy with the size of the bill does not mean that Respondent did not do the work Mr. Martwick wanted him to do.
15. 2) The second aspect of the ER 1.5(a) claim is that there were specific entries in Respondent's billing that were unreasonable. As noted, this matter has previously gone to fee arbitration and Respondent has been ordered to refund to Mr. Martwick a sum of \$1,578.40 by the Fee Arbitration Panel. The Arbitration Panel considered all of the evidence in the case and did a detailed review of Respondent's billing. The Panel concluded that "...some of the charges were unreasonable for routine administrative tasks, some entries are duplicative, and some entries reflect charges for tasks that are not reasonable charges to the client in this kind of representation." (See Arbitration Award attached hereto, Exhibit 2 page 3.) The Panel also "... does not find that Respondent spent time on activities that were unreasonable in light of these limitations beyond what the client wished to have been" (Arbitration Award attached hereto, Exhibit 2 page 5 line 3-4).
16. The State Bar cites to the Arbitration Award as proof that individual billing entries were unreasonable and therefore in violation of ER 1.5. No other evidence was presented at

the hearing in this matter on the specific billing entries. In its Post Hearing Memorandum, the State Bar refers to the detailed findings of the fee Arbitration Award as support for this allegation. The Hearing Officer is mindful that the standard of proof in a fee arbitration is “preponderance of the evidence,” not the higher “clear and convincing” standard in these proceedings. It would be unfair to simply adopt the findings of the Fee Arbitration Panel based on a lower standard of proof as the basis for a finding that respondent violated ER 1.5. Absent more evidence, the Hearing Officer must find that Respondent did not violate ER 1.5

17. D) Retainer “earned when paid”:

The State Bar alleges that because Respondent's Fee Contract had a clause that said “... retainer shall be deemed earned when paid” (see attached Exhibit 1, page 1, paragraph 3), and yet did not contain written language required by ER 1.5 (d)(3) that the client could, nevertheless, discharge the Respondent and still be entitled to a refund, Respondent is in violation of said ER.

18. The Hearing Officer has read Respondent's Fee Contract and, while the specific language required by ER 1.5(d)(3) is not set forth in the Fee Contract, there is the following language (see attached Exhibit 1): “Any unused deposit at the conclusion of attorney services will be refunded without interest” (page 1 paragraph 3), and “Client may discharge or substitute attorney at any time” (page 2 paragraph 8), and “After attorney services conclude, attorney will, upon client’s request, deliver client’s file to a client, along with any client funds or property in attorney's possession” (page 2 paragraph 9).

19. Does the above language in Respondent's Fee Contract meet the requirements of ER 1.5 (d)(3)? The essence is there if not the exact wording. Respondent claims, and Mr.

Martwick did not specifically deny, that Respondent orally explained to Mr. Martwick that the fee was in fact refundable. (Transcript page 155 line 4 – page 156 line 12)

20. The Hearing Officer finds that Respondent is technically in violation of ER 1.5 (d)(3) for not having the specific language of said Rule, but does not consider this a serious infraction. Respondent is directed to modify his Fee Contract to bring it into conformance with ER 1.5 (d)(3).

21. **Keeping Disputed Funds Separate:**

The State Bar alleges that once Respondent received the funds from the sale of Mr. Martwick's home (as part of the dissolution property division) that Respondent drafted a check to Mrs. Martwick for her share and dispersed the remaining funds to his law firm to satisfy outstanding fees owed by Mr. Martwick to the Respondent. The Bar contends that because Respondent's fees were in dispute and Mr. Martwick had not given Respondent permission to disperse the funds, the money disbursed to Respondent's firm for fees should have been held in Respondent's Trust Account until the dispute could be resolved pursuant to ER 1.15(e).

22. Respondent responds that the money was put in his firm's Trust Account and that he did have Mr. Martwick's permission to pay the funds out to Mrs. Martwick and to Respondent's firm to satisfy the claim for attorney's fees.

23. Two issues are apparent here: was the money actually deposited in the Trust Account by Respondent, and did Respondent have authority to disperse the funds?

24. As to whether the money was actually placed in Respondent's Trust Account, see the discussion below regarding ER 8.1(b) and Rule 53(f). There simply is insufficient evidence to conclude that Respondent did deposit the money into the trust account

because Respondent failed to provide full disclosure of all records as requested by the Bar. Therefore, the Hearing Officer must conclude that Respondent did not place the money in a trust account in violation of Rule 44(a).

25. As to the question of whether Respondent was authorized to make the disbursement to himself for attorney's fees, the Hearing Officer finds that Respondent clearly knew that Mr. Martwick disputed the charges for attorney's fees and should not have dispersed the fees to himself absent a resolution of that dispute. The Hearing Officer finds that Respondent violated ER 1.15(e) (Keeping Disputed Funds Separate) and Rule 44(a)(2) (Trust Account Violation).

26. **Failure to respond to the State Bar:**

The final allegation of Count One claims that Respondent failed and refused to comply with ER 8.1(b), "...failing to disclose a fact necessary to correct a misapprehension... or knowingly fail to respond to a lawful demand for information..." and Rule 53(f), failure to furnish information or respond promptly to any inquiry or request from Bar Counsel.

27. The Hearing Officer has reviewed the history of the Bar's many and repeated requests to Respondent to provide copies of trust account documents. (These events and dates are admitted by Respondent in his Amended Answer and in his testimony, transcript page 433 through page 442.)

28. The first request on February 16, 2006, for a written response to the charges and "... if the funds received from Justin Martwick, or for his benefit, were deposited into your Client Trust Account, please provide the following: (see Exhibit 2 to the Final Hearing, B/S 00214)

... individual client ledger,

...Trust Account Bank Statements for your Client Trust Account for the period July 2005 to January 2006,

... copies of canceled checks and duplicate deposit slips relating to your representation of Justin Martwick,

... copy of your Trust Account Transaction Register or Check Register for the period from July 2005 to January 2006.

29. A response to the inquiry was requested by March 8, 2006. Respondent did not respond to the Bar's requests by March 8, 2006, (admitted by Respondent in his Amended Answer filed on October 31, 2007).
30. The State Bar sent a courtesy reminder to Respondent on March 16, 2006, reminding Respondent of his duty under Rule 53 and requesting a response within 10 days (Exhibit 2 to the Final Hearing, B/S 00212). Respondent did not respond by March 26, 2006, as requested (admitted by Respondent in his Amended Answer).
31. On March 26, Respondent faxed a request for extension to submit his response (Exhibit 2 to the Final Hearing, B/S 00208), and Respondent was given until April 3 to respond (admitted by Respondent in his Amended Answer).
32. On April 4, 2006, Respondent sent another fax to the State Bar promising that he would submit his response by the end of the day (Exhibit 2 to the Final Hearing, B/S 203). Respondent failed to provide his response as promised (admitted by Respondent in his Amended Answer).
33. On April 7, 2006, the State Bar received Respondent's late and incomplete response (Exhibit 2 to the Final Hearing, B/S 00197, which is Respondent's two-page letter without any of the requested documents attached).

34. On April 11, 2006, the State Bar sent Respondent a letter pointing out that the documents requested were not included in his April 7 letter (Exhibit 2 to the Final Hearing, B/S 00196) and requested the information by April 19, 2006. Respondent failed to provide the documents by April 19, 2006, (admitted by Respondent in his Amended Answer).
35. On April 21, 2006, the State Bar received a letter from Respondent stating that due to his caseload he was unable to provide the requested information but would do so by April 25, 2006, (Exhibit 2 to the Final Hearing, B/S 00195). Respondent did not furnish the documents by April 25, 2006, (admitted by Respondent in his Amended Answer).
36. On April 26, 2006, Respondent faxed a letter to the State Bar stating he was still working on his response and would provide it "In the next day" (Exhibit 2 to the Final Hearing B/S 00192). Respondent failed to provide the documents on April 27, 2006, (admitted by Respondent in his Amended Answer).
37. On May 1, 2006, the State Bar granted Respondent until May 19, 2006, to provide his response (Exhibit 2 to the Final Hearing, B/S 00190). Respondent acknowledged the extension on May 2, 2006, (Exhibit 2 to the Final Hearing, B/S 00188). Respondent failed to respond by May 19, 2006, (admitted by Respondent in his Amended Answer).
38. On May 22, 2006, Respondent e-mailed the State Bar and stated that he would provide his response by the end of the day. Respondent did not do so (admitted by Respondent in his Amended Answer).
39. On May 31 the State Bar again communicated with the Respondent, noted the Respondent's failure to respond and pointed out that his failure to cooperate was a violation of Rule 53(d)(f). The State Bar insisted that Respondent provide his response by June 6, 2006, or it would be considered a deliberate non-response (Exhibit 2 to the

- Final Hearing, B/S 00186). Respondent did not respond by June 6, 2006, (admitted by Respondent in his Amended Answer).
40. Because Respondent and Mr. Martwick were engaged in fee arbitration, Respondent requested, on July 17, 2006, that he be given until July 21, 2006, to provide his response and the State Bar consented via phone the same day. Respondent failed to provide the response by July 21, 2006, (admitted by Respondent in his Amended Answer).
 41. On July 26, **FIVE** months after being requested, Respondent finally sent a more complete response but **without** the requested trust account records, ledgers or deposit slips (Exhibit 2 to the Final Hearing, B/S 0026). It is hard to tell how much of the documentation set forth in Exhibit 2 after B/S 0026 was included in the disclosure, but there is clearly only one document relating to trust account records, B/S 00140. Respondent ultimately also provided one other document, which is purported to be Mr. Martwick's client ledger. (Respondent's Exhibit B to the Final Hearing. This document was provided by Respondent in his First Supplemental Disclosure after the filing of the Complaint and one day prior to the first Final Hearing date, November 9, 2007.)
 42. The State Bar claims that Respondent has never provided all of the trust account records requested in its initial request. (See Joint Prehearing Statement page 16, line 106 and State Bar's Post Hearing Memorandum page 6 line 13.)
 43. Respondent responds to these allegations of failing to provide trust account information and thus violating ER 8.1(b) and Rule of 53(d) and (f) by stating that:
 44. A) "The State Bar knowingly waived the right to raise the issue of any deadlines for Respondent's submission of material each time it granted an extension of time." (Joint Prehearing Statement page 24 line 6)

45. B) "The State Bar is not entitled to engage in fishing expeditions and Respondent is only obligated to provide relevant information regarding any pending charges before the State Bar." (Joint Prehearing Statement page 24 line 14)
46. C) "Respondent is a busy sole practitioner. Respondent has is (sic) staff calendar matters for his clients. Respondent prepares calendars (sic) matters for bar related matters. It is often difficult to (sic) Respondent to meet his obligations to his existing clients and respond to the bar. Respondent had made an effort to respond to bar matters and has notified the bar on those occasions when he required more time." (Respondent's Amended Closing Memorandum page 17 line 23 – page 18 line 3)
47. D) That he, Respondent, provided all the specific documents relative to the Martwick case (Respondent's Amended Closing Memorandum page 8 line 3 – 10), and that there was nothing else the State Bar needed (transcript page 511 line 20 – page 512 line 3).
48. The essence of this claim is that the State Bar says it did not get the trust account records it needed to properly evaluate the Martwick's case after giving Respondent more than ample time to respond. Respondent claims that, because the Bar was so patient with his dilatory behavior, that the Bar waived timeliness, and besides, he gave them what he thought they needed.
49. Respondent's arguments are not only disingenuous, they are stunning in the betrayal of his lack of understanding of the rules. Just because the Bar was exceedingly patient with Respondent, does not mean that it waives the right to receive the documents requested in a timely fashion, (documents that Respondent ultimately never provided) and Respondent is not the person that gets to dictate what information the Bar is entitled to receive.

50. A review of the timelines set forth above, and summarized in Exhibit 3 attached hereto, is telling of a situation where Respondent felt that he could control not only the time frame of his response, but what his response needed to be. Because of his incomplete and untimely response, it is exceedingly difficult to re-create what was going on in the Martwick case and the State Bar was hampered in its ability to prove its case by Respondent's refusal to cooperate.

51. The Hearing Officer has reviewed the documents provided to the Bar in response to its request for trust account records in count one and finds them deficient. The Hearing Officer finds that Respondent violated Rule 53(d) and (f) and ER 8.1(b). The Hearing Officer also must conclude from Respondent's refusal to provide trust account documents that he is not keeping the required accounting of his trust account in violation of Rule 43.

52. **COUNT TWO (Williams)**

Count two deals with allegations of misconduct by Respondent: 1) In his dealings with a client Nysia Williams ("Ms. Williams"), on her personal injury claim; 2) Failure to provide trust account information; and 3) Representation of Ms. Williams' boyfriend, Gerard Hall ("Mr. Hall") in criminal charges, where Ms. Williams was the victim of an alleged assault by Mr. Hall.

53. **1) Ms. William's Personal Injury Claim:**

Ms. Williams was involved in a car accident and had a claim for damages. In Ms. Williams' personal injury claim, the State Bar alleges that Respondent:

A) Failed to provide competent representation.

B) Failed to act with reasonable diligence and promptness.

C) Failed to promptly notify the client upon receiving funds in which she had an interest, and failed to promptly deliver funds Ms. Williams was entitled to receive.

D) Allegations of misconduct involving fraud or deceit.

E) Failed to provide records.

54. A) Failure to Provide Competent Representation, ER 1.1:

This allegation deals with the fact that Respondent sent to his client for her review prior to sending it to the insurance company, a letter marked "draft", which was a demand letter to the insurance company for an amount less than the insurance company had already offered. Ms. Williams pointed out the error and Respondent corrected it before sending the letter to the insurance company. There was no prejudice to Ms. Williams or her case. While certainly sloppy, the Hearing Officer does not feel that this rises to the level of an ER 1.1 violation.

55. B) Failure to Act with Reasonable Diligence and Promptness, ER 1.3:

This allegation involves a claim that the Respondent was not prepared for the arbitration of Ms. Williams' claim. The Hearing Officer has reviewed the evidence and finds that the State Bar has failed to prove this allegation by clear and convincing evidence.

This claim involves Respondent receiving a settlement check on behalf of Ms. Williams and not notifying or paying her for over two months, and failing to assure that all medical providers were accounted for and paid. The Hearing Officer concludes that part of the problem in Ms. Williams case is that she was "very active" in the prosecution of her case. Given Respondent's missteps prior to the receipt of the settlement check (the erroneous demand letter), it is easy to understand why Ms. Williams inserted herself into the matter.

There was much confusion regarding what her medical bills were and how much was ultimately to be paid. It is not entirely clear everything was Respondent's fault.

56. C) Failure to Act with Reasonable Diligence and Promptness, and Failure to Promptly Deliver Funds, ER 1.15 (d):

Considering the confusion over the medical bills, some delay in getting the money to Ms. Williams is understandable. Whether Respondent was entirely at fault regarding the late payment and nonpayment of Ms. Williams' bills is not shown by clear and convincing evidence. The Hearing Officer does not find a violation of ER 1.15(d) in this count.

57. D) Allegation of misconduct involving fraud or deceit:

The State Bar alleges that Respondent also violated ER 8.4(c), Misconduct Involving Fraud or Deceit. The Hearing Officer finds insufficient evidence to support this claim.

58. **2) Failure to provide trust account records:**

The State Bar alleges in its Closing Memorandum that Respondent refused to provide trust account documents in the Williams case. (See State Bar's Closing Memorandum page 10 line 21 – page 11 line 6 and transcript page 447 line 14 - page 448 line 24.) Respondent responds that he provided the bank statements regarding Ms. Williams funds and provided canceled checks, (Respondent's Amended Closing Memorandum page 15 line 24 – page 16 line 3). Respondent admits that he did not provide all of the documents requested in the Williams case (transcript of the Final Hearing page 447 line 15 – page 448 line 24).

59. While the specific allegation of a violation of ER 8.1(b) and Rule 53(d) & (f) are not contained in the State Bar's Complaint against Respondent in this count, the failure to provide the full trust account information may have precluded the State Bar from fully

developing its case against Respondent on the claim of fraud and deceit set forth in E) above.

60. Respondent's explanation for failing to turn over the trust account records mirrors his excuse in Count One, claiming that he gave them what he thought was important. Although not specifically alleged, the Hearing Officer finds that the evidence shows that Respondent violated ER 8.1(b) and Rule 53(d) and (f) in not providing his trust account records. The Hearing Officer also must conclude from Respondent's refusal to provide trust account documents that he is not keeping the required accounting of his trust account in violation of Rule 43.

61. **3) Representing clients with adverse interests, ER 1.7:**

The State Bar alleges that the Respondent, while representing Ms. Williams in her personal injury action, agreed to represent Gerard Hall ("Mr. Hall") in a criminal action pending against him for assault against Ms. Williams. (Mr. Hall's mother, Judy Billingsley, worked for Respondent's law firm at the time).

62. Respondent does not deny these facts but rather offers the following: (See Respondent's Post Hearing Memorandum page 11 line 10 – page 14 line 12 and transcript of the Final Hearing page 456 line 14 – 471 line 19.)

A) Ms. Williams was the aggressor in the incident with Mr. Hall.

B) Ms. William's father, not Ms. Williams, called the police.

C) Mr. Hall told Ms. Williams that Respondent was representing him and she did not object.

D) Ms. Williams said nothing when told Respondent would be representing Mr. Hall.

E) Ms. Williams did not object to Mr. Hall going to see Respondent.

- F) Ms. Williams told Respondent's staff that she wanted Respondent to represent Mr. Hall and ensure that she did not have to go to court.
 - G) Ms. Williams regretted that the matter had proceeded as far as it did.
 - H) Ms. Williams was actively avoiding the prosecutor and intended not to show up in court.
 - I) Ms. Williams was very vocal, complaining about everything during Respondent's representation of her and she never said she was uncomfortable with Respondent representing Mr. Hall.
 - J) Respondent told Mr. Hall he would not represent him if Ms. Williams came to court.
 - K) When Respondent appeared in court for Mr. Hall, Ms. Williams did not appear, and Respondent was successful in getting the charges dismissed.
 - L) Ms. Williams was happy when the charges against Mr. Hall were dismissed and they went out and celebrated.
 - M) Ms. William's interests were not adverse to Mr. Hall "simply because she was listed as the victim". (Respondent's Amended Closing Memorandum page 14 line 9)
 - N) Going to court and arguing for the dismissal helped both Mr. Hall and Ms. Williams.
63. Accepting all that Respondent says, there is still a conflict and A-N listed above do not explain it away. First, there is the problem of Respondent saying he would only represent Mr. Hall if Ms. Williams essentially ignores an Order of the Court to appear. While not a specific directive to her not to appear in Court, the implication is clear: Respondent will help Mr. Hall if Ms. Williams ignores a Court Order. Then there is the problem that ER 1.7 says that it applies if there is a significant risk that the representation of one client will be materially limited by the lawyer's responsibility to another.

64. What if Ms. Williams changed her mind and decided to proceed with the prosecution of Mr. Hall, a distinct possibility recognized by the Respondent. (Transcript of the Final Hearing, page 504 line 20 – page 505 line 3). What if Mr. Hall decided that Ms. Williams, the purported aggressor in Respondent's view, should have charges filed against her? This potential was also recognized by Respondent. (Transcript of the Final Hearing, page 509, line 12 - 19) Additionally, once the Respondent makes an appearance as a defense attorney in a criminal matter, in most instances, the Court will not allow him to withdraw. How does Respondent then represent both Mr. Hall and Ms. Williams?
65. Had the judge in Mr. Hall's criminal case found out that Respondent was also representing the alleged victim, Respondent would not have been allowed to appear for Mr. Hall. The potential for conflict is rampant. Lastly, Respondent, by his own admission, recognized that there was a potential conflict and yet did not get the written consent required by ER 1.7 (b).
66. Respondent goes to great pains (see A-N above) to excuse his conduct. He was not blind to the conflict, he just chose to ignore it. The Hearing Officer finds that Respondent violated ER 1.7(a) and (b).
67. **COUNT THREE (Adams)**
- Count three involves the allegation that, after receiving notification that Respondent's trust account was overdrawn in December 2006 by \$779.82, the State Bar requested an explanation and specific supporting documents by January 25, 2007. (Exhibit 15, B/S 00508). The State Bar claims that Respondent never provided the trust account documents requested in violation of ER 8.1(d), failed to safe keep client property in violation of ER 1.15, comingled and converting clients funds in violation of Rule 43(a),

failed to maintain proper records, and failed to conduct monthly three way reconciliation in violation of Rule 43 (d)(2)(d).

68. Respondent's response is to say that his client, Ms. Adams, cashed a check after telling Respondent that she would not, and that Respondent cooperated with the Bar giving it the documents it needed. (See Respondent's Amended Closing Memorandum page 17 line 1 – 10.)

69. The dispute in this Court can be divided into several aspects: Did Respondent comply with the State Bar's request for documents? Did Respondent violate trust account rules by comingling and converting client funds? Did Respondent fail to perform the proper reconciliation and keep the required records? Did Respondent engage in conduct Prejudicial to the Administration of Justice?

70. **History**

Due to the overdraft notice from the bank mentioned above, the State Bar, through Trust Account Investigator Ms. Nancy Heffron, sent Respondent a letter dated January 5, 2007, requesting an explanation and specific supporting documents by January 25, 2007, (Exhibit 15, B/S 00508). Respondent submitted a late response on January 30, 2007, that did not include the requested trust account documentation (Exhibit 15, B/S 00497 – 00504).

71. Ms. Heffron sent Respondent a letter on February 6, 2007, asking Respondent to provide the specific trust account documents by February 26, 2007, (Exhibit 15, B/S 00487). Respondent failed to respond (transcript of Final Hearing page 350 – 353), so Ms. Heffron sent a third letter to Respondent on February 27, 2007, asking for the documents by March 9, 2007, (Exhibit 15, B/S 00 486). In response to this request, Respondent, on

- March 9, 2007, submitted four check copies (front only, not front and back as requested) and a December bank statement (Exhibit 15, B/S 00390-00408).
72. Respondent still had not provided the trust account documents requested which the Examiner needed to review the accounts. Ms. Heffron sent Respondent a fourth demand on March 13, 2007, (Exhibit 4, B/S 00388)) advising him that his response was incomplete, and again asked for the specific trust account documents previously requested, and other documents, by March 28, 2007. Respondent did not respond to this letter (admitted by Respondent in his Amended Answer).
73. On or about April 24, 2007, a subpoena duces tecum for the trust account documents was signed by a Probable Cause Panelist and sent to Respondent at his address of record (transcript of Final Hearing page 357 line 8 – page 358 line3). The documents were directed to be provided within 20 days of the subpoena, which would be May 9, 2007. In a letter dated May 9, 2007, Respondent advised the Bar that the subpoenaed documents would be provided by May 14, 2007. Respondent did not do as he said he would.
74. Other than the incomplete response on March 9, 2007, Respondent **never** responded to the request for documents or the subpoena. (Respondent admitted to all of the above in his Amended Answer.) The State Bar was forced to subpoena the bank's records and those records, according to the State Bar, are not sufficient to properly re-create Respondent's dealings with his trust account (transcript of Final Hearing page 403 – 405). According to the Bar's Trust Examiner, various transactions were conducted with Respondent's trust account, both deposits, as well as disbursements, leading to the overdraft that cannot be fully reviewed because Respondent refused to provide the State

- Bar with the trust account documents (transcript of Final Hearing page 365 and page 403 – 405).
75. Respondent did not provide any trust account documents until he provided “Respondent's Exhibit C” to the Final Hearing in his Supplemental Disclosure Statement just one day prior to the first trial setting in this case, (transcript of Final Hearing page 406) and even this is not sufficient (transcript of Final Hearing page 403 – 405).
 76. From the testimony of the Trust Account Investigator and the Staff Examiner for the State Bar, when a check “bounces” from a trust account, the funds to cover the bounced check come from other clients and there is, therefore, a conversion (transcript of Final Hearing page 370, 420, & 399). Additionally, there were numerous five dollar debits from the trust account for administrative costs due to Respondent requesting copies for which he did not reimburse the trust account (transcript of Final Hearing page 366 & 376 line 15 – page 380, also page 426- 427 line 12). Respondent asserts that there was other money in the trust account to cover these fees (transcript of Final Hearing page 430 line 6 – 23) but without all the trust account documents requested by the Bar, there is no way to verify that assertion.
 77. Further, according to the Trust Account Investigator, there were other transactions involving Respondent's trust account that could not be fully explained, leading the State Bar Examiner to conclude that Respondent was comingling his money with clients’ money (transcript of Final Hearing page 365 – 370).
 78. Respondent attempts to excuse the overdraft by the misconduct of his client in cashing a trust account check that she was not supposed to cash, and claiming that there were other funds in the trust account which contained fees due to him, so any overdraft would be

“covered” by the fees owed to Respondent (transcript of Final Hearing page 391 line 1 – page 402).

79. As stated previously, there are four facets of this count:
80. Did Respondent comply with the State Bar's request for trust account information?
Clearly Respondent did not comply with the State Bar's request for trust account documents in Count Three in violation of ER 8.1(b) and Rule 53(f).
81. The fact that Respondent stonewalled the Bar in its request for documents precluded the Bar's ability to fully account for what else was going on in Respondent's trust account and the context within which it was taking place.
82. Did Respondent violate trust account rules by comingling and converting client's funds?
The Hearing Officer finds, as did the State Bar Trust Account Investigator, Ms. Heffron, and the State Bar Staff Examiner, Ms. Barr, that the explanation given by Respondent for how the overdraft occurred is borne out by the documents ultimately received as a result of the subpoena duces tecum to the bank. The fact that an overdraft occurred establishes that there was a conversion. The other testimony establishes that there was also comingling.
83. Respondent's explanation of why the overdraft took place is probably true. However, subsequent review of documents from the bank show that Respondent was not complying with the trust account rules resulting in not just sloppy bookkeeping, but a Byzantine labyrinth of credits and debits that implicates improper behavior not sufficiently explained away by the Respondent.
84. The Hearing Officer finds that Respondent violated Rule 43(a), keeping client and attorney funds separate. There was certainly comingling of attorney-client funds in

Respondent's trust account. The Hearing Officer also finds that there was a technical conversion of funds when the overdraft occurred, but this was inadvertent and not intentional. The multiple assessments for administrative costs of making copies were the Respondent's responsibility and there was never any adequate explanation that Respondent paid those costs. Respondent implies that he had money in the account that was owed to him as fees, presumably to cover those costs. But because he never provided sufficient records, the Hearing Officer must conclude that these funds came from other clients, thus the Respondent commingled and converted client funds in violation of Rule 44(b) and Rule 42, ER 1.15.

85. Did Respondent do the proper three-way reconciliation? While Respondent insists that his Exhibits A, B and C to the Final Hearing were generated as a result of getting information from three different sources, his refusal to provide the State Bar Examiners the requested documents makes it impossible to establish that Respondent met the standard of a three-way reconciliation required by Rule 43(d)(2)(D) (transcript of Final Hearing, pages 426, 410 and 419). Respondent is not entitled to refuse to provide the requested documents and say "trust me". The Hearing Officer finds that Respondent violated Rule 43(d)(2)(D).
86. Did Respondent engage in Conduct Prejudicial to the Administration of Justice? The State Bar asked Respondent for his trust account documents on four different occasions, and Respondent failed to provide the documents requested. Because of Respondent's intransigence, the State Bar had a subpoena duces tecum issued to Respondent personally and he ignored the subpoena. Not only is Respondent's conduct in ignoring the subpoena improper, it falls within the definition of misconduct defined in

Rule 42, ER 8.4(d) engaging in conduct that is Prejudicial to the Administration of Justice. The Hearing Officer finds Respondent violated Rule 42 ER 8.4(d).

CONCLUSIONS OF LAW

87. The Hearing Officer finds that there is clear and convincing evidence that Respondent violated the following Rules and ERs:

88. **Count One (Martwick)**

Rule 43(d)(2)(B) and Rule 44(a), Failure to deposit unearned fees (retainer) in a trust account.

Rule 42, ER 1.5(d)(3), Technical violation of requirement that the fee agreement specifies that attorney may be discharged at any time and unused fee refunded.

Rule 42, ER 1.15(a), Failure to deposit proceeds from sale of house into trust account.

Rule 42, ER 1.15(e) and Rule 44(a)(1), Failure to hold disputed funds in trust account until dispute is resolved.

Rule 42, ER 8.1(b) and Rule 53(d) and (f), Failure to disclose a fact, knowingly failing to respond to a lawful demand for information or inquiry from the Bar, refusing to cooperate with officials and staff of the State Bar.

Rule 43(a), Failure to keep the required trust account records.

89. **Count Two (Williams)**

Rule 42, ER 8.1(b) and Rule 53(d)&(f), Failure to disclose a fact, knowingly failing to respond to a lawful demand for information or inquiry from the Bar, refusing to cooperate with officials and staff of the State Bar.

Rule 42, ER 1.7(a), Representing clients with conflicting interests.

Rule 42, ER 1.7(b), Obtaining written consent when there is a conflict.

Rule 43, Failure to keep the required trust account records.

90. **Count Three (Adams)**

Rule 42, ER 8.1(b) and Rule 53(d)&(f), Failure to disclose a fact, knowingly failing to respond to a lawful demand for information or inquiry from the Bar, refusing to cooperate with officials and staff of the State Bar.

Rule 43(a), Failure to keep client funds separate and comingling and converting other clients' funds to cover administrative costs.

Rule 43, Failure to keep the required trust account records.

Rule 42, ER 8.4(d), Conduct Prejudicial to the Administration of Justice.

ABA STANDARDS

91. *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 lawyer's misconduct; (4) the existence of aggravating or mitigating factors.

92. **1) The duty violated:**

The Hearing Officer finds that Respondent violated his duty to his clients and the legal profession as set forth above.

93. **2) The lawyer's mental state:**

The Hearing Officer finds that Respondent was negligent in violating ER 1.5(d)(3) (requiring specific wording in the fee agreement in Count One). As to all other violations the Hearing Officer finds that Respondent's mental state was knowing.

94. **3) The actual or potential injury caused by the lawyer's misconduct:**

The Hearing Officer finds the following:

95. Count One (Martwick)

There was potential harm to Mr. Martwick by Respondent not keeping the retainer and proceeds of the sale of the home in a separate trust account. There was actual harm to the profession by: Respondent not timely responding to the inquiry of the State Bar so that the facts of the case could be fully ascertained and charges proven or disproven; not being honest about responding to the State Bar's inquiry; not keeping the required records on his trust account; and generally showing disdain for the rules of the legal profession.

96. Count Two (Williams)

There was potential harm to Ms. Williams as a result of the conflict in Respondent representing both her as well as her boyfriend in a situation where their interests were in conflict. There was actual harm to the profession by: Respondent not timely responding to the inquiry of the State Bar so that the facts of the case could be fully ascertained and charges proven or disproven; not being honest about responding to the State Bar's inquiry; not keeping the required records on his trust account; and generally showing disdain for the rules of the legal profession.

97. Count Three (Adams)

There was potential and actual harm in the comingling of client and attorney's funds. There was actual harm in the conversion of client funds. There was actual harm to the profession by: Respondent not timely responding to the inquiry of the State Bar so that the facts of the case could be fully ascertained and charges proven or disproven; not

being honest about responding to the State Bar's inquiry; not keeping the required records on his trust account; and generally showing disdain for the rules of our profession.

98. **STANDARDS**

The Hearing Officer considered the following *Standards* in determining the appropriate sanction:

Standard 4.12: Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

Standard 4.32: Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Standard 7.2: Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

99. **Aggravating and Mitigating Factors**

When deciding the aggravating and mitigating factors, the Hearing Officer normally has input from both parties. In this matter, the State Bar submitted several aggravating factors and no mitigating factors. The Respondent denied any wrongdoing and submitted no mitigating factors. Because the Hearing Officer did find wrongdoing by the Respondent, aggravating and mitigating factors are addressed below.

100. The commentary to *Standard 9.1* states that the aggravating and mitigating factors generally relate to the offense at issue, matters independent of the specific offense but relevant to fitness to practice, or matters arising incident to the disciplinary process.

101. **Aggravating Factors:**
102. *Standard 9.22* gives guidance in deciding the aggravating factors.
103. *Standard 9.22(a):* Prior Disciplinary Offenses. (Please see attached Exhibit 3 for a complete summary of Respondent's prior disciplinary history and his pattern of conduct in responding to the Bar.) On October 8, 2003, Respondent received an Informal Reprimand in case 02-2009 for violating ER 3.4 (c) & (d). On September 8, 2004, Respondent received an Informal Reprimand in cases 03-1404, 03-1444, and 04-03264 violation of ERs 1.3 and 1.4. On February 23, 2007, Respondent received a Censure, six months of probation, EEP and LOMAP in cases 02-1548, 02-2379, 03-0499, 03-121 3, 04-0910, 04-1 282, 05-03 75, 05-1984, and 05-1991 for violation of ER 5.5(a) and Rule 53(e).
104. *Standard 9.22(b):* Dishonest or Selfish Motive. The Hearing Officer finds that Respondent's failure to properly oversee his trust account, implement the required accounting requirements, and his haphazard philosophy about accounting for his client's funds in his trust account, borders on dishonest and is certainly selfish. While the comingling and conversion of client money may have been inadvertent, Respondent's refusal to meet the accounting requirements of the rules and provide the Bar the documents after he said he would, was dishonest.
105. *Standard 9.22(c):* Pattern of Misconduct. In each of the counts in this case, Respondent at first ignored the Bar, then made promises that he would comply that he did not keep, and finally never did give the Bar the required information.
106. *Standard 9.22(d):* Multiple Offenses. There are three counts in this matter.

116. In *In re Gabroy*, SB-06-0124-D (2006), Gabroy was suspended for two years with two years of probation upon reinstatement for violation of ERs 1.15, 3.4(c), Rules 43, 44, and 53. Gabroy misused her client trust account, failed to comply with court orders, and failed to respond or cooperate with the State Bar's investigation.
117. In *In re Namura*, SB-06-0003-D (2006), Namura was suspended for three years with two years of probation upon reinstatement for violation of ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.7, 1.15, 8.1, Rules 43, 44, and 53. Namura failed to comply with bankruptcy requirements, engaged in a conflict of interest by undertaking a joint representation without the proper waivers, failed to properly maintain his trust account, converted client funds, charged unreasonable fees, and failed to respond to the State Bar's investigation.

RECOMMENDATION

118. As noted herein, the Respondent has been found not responsible for some charges based on merit and other charges were not able to be proven because of Respondent's refusal to cooperate with the Bar. Respondent's refusal to cooperate can only lead to the conclusion that he was either in violation as the Bar has charged and covering it up, or simply not keeping the required records, or both. Other charges were proven by clear and convincing evidence.
119. The presumptive sanction, whether suspension or reprimand, set forth in the *Standards* turns on whether the Respondent acted negligently (4.13, 4.33, and 7.3) or intentionally (4.12, 4.32 and 7.2). Respondent's conduct in prior disciplinary cases (see attached Exhibit 3) and his conduct in the cases at hand (all taking place while Respondent was engaged in the disciplinary process for prior misconduct) leads the Hearing Officer to

conclude that Respondent is acting intentionally, knowing full well that there are sanctions for refusal to follow the rules and cooperate with the Bar.

120. The Hearing Officer reviewed *Standard* 8.2 which provides that suspension is appropriate when a lawyer has been reprimanded (censured) in the past for the same or similar conduct, and engages in further similar acts of misconduct that causes injury or potential injury to a client or the profession.
121. While the Hearing Officer does not have all the details of misconduct which provide the basis for Respondent's prior disciplines, and so cannot say if it is the same or similar misconduct, one thing is clear: Respondent has not in the past complied with the terms of his probation/diversion in a timely fashion, and has often refused to cooperate with the Bar's requests. (See Hearing Officer's September 8, 2006, report 02-1548.) This conduct further betrays an intentional state of mind.
122. After considering the *Standards* and concluding that the presumptive *Standard* is suspension, the aggravating and mitigating factors should be considered. In this case the Hearing Officer has found seven aggravating factors and only one speculative mitigating factor.
123. A consideration of the proportionality cases supports a suspension as the appropriate sanction in this matter.
124. The Hearing Officer is swayed in this matter, not only by the Respondent's infractions of the Rules, but his attitude that the Rules do not apply to him and his responsibility to the Bar and our profession can be so blatantly ignored. There are many negative facets to Respondent's conduct, not the least of which is his inability to come to terms with the fact that he must cooperate with the Bar and he cannot, as he did in this case both before

and after the Complaint was filed, turn every inquiry into a cat and mouse game of intransigence, deflection and guile. Respondent's refusal to follow through when he makes a commitment displays a lack of integrity that is ominous for any professional, but particularly for an attorney.

125. Respondent's excuses that he is busy, that it is someone else's fault, and that he is complying as much as he thinks he needs to, coupled with an utter and complete refusal to acknowledge any responsibility or humility when repeatedly found to have broken the rules, betray an arrogance, dishonesty and lack of integrity that brings into question his ability to be rehabilitated.
126. After weighing all of the factors in this case, the Hearing Officer concludes that the appropriate and proportional sanction is suspension for a period of two years to be followed by a term of probation of two years plus MAP and LOMAP. The specific terms of Respondent's probation are to be determined upon his application for reinstatement.

DATED this 12th day of March, 2008.

Hon. H. Jeffrey Coker /cs
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 12th day of March, 2008.

Copy of the foregoing mailed
this 12th day of March, 2008, to:

William D. Howell, III
Respondent
1906 North 16th St., Suite 201
Phoenix, AZ 85006-0001

Stephen P. Little
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: CSL

Date	Type	Ref#	Received From/Paid To Explanation	Fees	Disb	A/R	Trust Acc#	Retaine r
556 Williams, Nysia								
CV04-060404								
Jun 8/2005	CER	55716	Miscellaneous Legal Services Pol Miscellaneous Legal Services Police Reports		15.00	B		Resp Lawyer: WDR
Jun 30/2005	CER	55713	Legal Fees:Filing Fees Legal Fees:Filing Fees		245.00	B		
Jul 22/2005	CER	55714	Process Server Fees Process Server Fees		45.00	B		
Aug 15/2005	CER	55717	Miscellaneous Legal Services Med Miscellaneous Legal Services Medical Reports Dr. Smith		45.00	B		
Feb 27/2006	CER	55715	Court Reporting Depositions, Tra Depositions, Transcripts		125.00	B		
Jun 15/2006	RET	6206	Settlement Refund Settlement Refund					19250.00
Jun 15/2006	CER	55718	Mileage Fees Mileage Fees		33.75	B		
Jun 15/2006	CER	55726	Miscellaneous Legal Services Miscellaneous Legal Services Medical Liens Dr. Jang		1007.49	B		
Jun 15/2006	CER	55719	Miscellaneous Legal ServicesLega Legal Fees: Parking fees		10.00	B		
15/2006	CER	55724	Miscellaneous Legal Services Miscellaneous Legal Services Medical Records Health South		25.00	B		
Jun 15/2006	CER	55725	Miscellaneous Legal Services Miscellaneous Legal Services Smith Chiropractic		4816.70	B		
Jun 15/2006	CER	55727	Miscellaneous Legal Services Miscellaneous Legal Services: MED FIN		2119.90	B		
Jun 15/2006	CER	55723	Postage and Delivery Postage and Delivery		152.82	B		
Jun 15/2006	CER	55720	Photocopies Photocopies 1759 pages @ \$.20 per page		351.80	B		
Jul 24/2006	RET	6207	Settlement Refund Settlement Refund Nysia Williams					415.00
Aug 14/2006	CHE	1074	Settlement Refund to Nysia Willi Settlement Refund to Nysia Williams		5329.32	B		
Oct 31/2006	CER	55722	Process Server Fees Process Server Fees		210.00			
31/2006	CER	55721	Legal Fees:Filing Fees Legal Fees:Filing Fees		108.00			
May 1/2007	CER	55728	Miscellaneous Legal Services Dis Miscellaneous Legal Services Discovery		18.55			
Nov 3/2007	BIL	11580	Billing on Invoice 11580	-5899.50	-14321.78	556.28		-19665.00
Totals for Report Period:				-5899.50	336.55	556.28	0.00	0.00
Totals up to Ending Date:				-5899.50	336.55	556.28	0.00	0.00

*** Firm Totals ***

Firm Totals for Report Period:	-5899.50	336.55	556.28	0.00	0.00
Firm Totals up to Ending Date:	-5899.50	336.55	556.28	0.00	0.00

REPORT SELECTIONS

Report: Client Accounting Ledger
Layout Template: All
Requested by: Misti
Finished: Wednesday, November 07, 2007 at 07:39:52 PM
Date Range: To Nov 7/2007
Matters: CV04-060404
Clients: All
Major Clients: All
Responsible Lawyer: All
Client Intro Lawyer: All
Assigned Lawyer: All
Type of Law: All
Select From: Active, Inactive Matters
Ver: 7.63f

Show Check # on Paid Payables: No
Matters Sort By:: Default
New Page for Each Lawyer: No
Totals Only: No
Firm Totals Only: No
Trust Only: No
Show Trust Summary by Account: No

Respondent's Exhibit A

Date	Type	Ref#	Received From/Paid To Explanation	Fees	Disb	A/R	Trust Acc#	Retainer
602 Martwick, Justin								
FN05-0011818 Martwick, Justin & Sylvia Martwick								
Jul 27/2005	RET	6281	Mr. Justin Martwick Domestic Relations					Resp Lawyer: WDH 2000.00
Oct 11/2005	CER	00717	Expense Recovery Deposition Transcripts of Sylvia Martwick		538.00	B		
Oct 18/2005	BIL	10984	Billing on Invoice 10984	-4867.20	0.00	2867.20		
Nov 4/2005	REC	6300	Legal Fees Legal Fees			-2000.00		-2000.00
Nov 17/2005	REC	6313	Mr. Justin Martwick Domestic Relations			-867.20		
Nov 17/2005	RET	6313	Mr. Justin Martwick Domestic Relations					632.80
Nov 21/2005	BIL	11001	Billing on Invoice 11001	-4080.40	-538.00	3985.60		
Dec 12/2005	REC	111	Legal Fees:Attorney's Fees Legal Fees:Attorney's Fees Sale of Property				23103.65	1 -632.80
Dec 21/2005	CER	00738	Expense Recovery Photocopies of Mr. Martwicks file 1050@0.20		210.00	B		
Dec 22/2005	CHE	1031	The Howell Law Firm, LLC Payment for Legal Services				-3000.00	1
Dec 22/2005	REC	6210	The Howell Law Firm, LLC Payment for Legal Services			-3000.00		
Dec 22/2005	CHE	1032	Settlement Refund Settlement Refund to Mr. Martwick				-4119.20	1
Dec 28/2005	CHE	1030	Settlement Refund Settlement Refund to Sylvia Martwick				-11551.82	1
Dec 31/2005	BIL	11589	Billing on Invoice 11589	-3237.10	-210.00	3447.10		
Apr 26/2007	CHE	1120	Miscellaneous Legal Services Settlement Refund per the AZ State Bar				-1578.40	1 0.00
Apr 26/2007	CHE	1121	The Howell Law Firm, LLC Attorney's Fees				-2854.23	1
Apr 26/2007	REC	6211	The Howell Law Firm, LLC Attorney's Fees			-2854.23		
Apr 26/2007	BIL	11593	Billing on Invoice 11593	-924.80	0.00	924.80		0.00
Totals for Report Period:				-13109.50	0.00	2503.27	0.00	0.00
Totals up to Ending Date:				-13109.50	0.00	2503.27	0.00	0.00

*** Firm Totals ***

Firm Totals for Report Period:	-13109.50	0.00	2503.27	0.00	0.00
Firm Totals up to Ending Date:	-13109.50	0.00	2503.27	0.00	0.00

REPORT SELECTIONS

Report: Client Accounting Ledger
Layout Template: All
Requested by: Misti
Finished: Wednesday, November 07, 2007 at 03:04:55 PM
Date Range: To Nov 7/2007
Matters: FN05-0011818
Clients: All
Major Clients: All
Responsible Lawyer: All
Client Intro Lawyer: All
Assigned Lawyer: All
Type of Law: All
Select From: Active, Inactive Matters
Ver: 7.63f

Show Check # on Paid Payables: No
Matters Sort By:: Default
New Page for Each Lawyer: No
Totals Only: No
Firm Totals Only: No
Trust Only: No
Show Trust Summary by Account: No

*Respondent's
Exhibit B*

To Nov 7/2007
Fees

Disb

A/R

Trust Acc#

Retainer

Type Ref# Received From/Paid To
Explanation

Resp Lawyer: WDH
2000.00

Adams, Latrice

FC06-006493 Latrice Adams and Larry Lynn Jones

2/2007 RET 6576 Latrice Adams
Legal Fees:Attorney's Fees

12.32 B

22/2007 CER 00794 Expense Recovery
Hand Delivery of Joint
Parenting Plan to opposing
counsel #1859

-3027.05 -12.32 1039.37 -2000.00

17/2007 BIL 11550 Billing on Invoice 11550

Totals for Report Period: -3027.05 0.00 1039.37 0.00 0.00
Totals up to Ending Date: -3027.05 0.00 1039.37 0.00 0.00

*** Firm Totals ***

Firm Totals for Report Period: -3027.05 0.00 1039.37 0.00 0.00
Firm Totals up to Ending Date: -3027.05 0.00 1039.37 0.00 0.00

PORT SELECTIONS

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Client Accounting Ledger
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ADMIN
Wednesday, November 07, 2007 at 10:51:41 AM
To Nov 7/2007
FC06-006493

Show Check # on Paid Payables: No
Matters Sort By:: Default
New Page for Each Lawyer: No
Totals Only: No
Firm Totals Only: No
Trust Only: No
Show Trust Summary by Account: No

*Respondent's
Exhibit C*

Exhibit
1

ATTORNEY-CLIENT FEE CONTRACT

This ATTORNEY-CLIENT FEE CONTRACT ("Contract") is entered into on the 2 day of Jan, 2007 by and between LATRICE ADAMS whose mailing address is 2936 East Flower Phoenix, AZ 85016 ("Client") and **WILLIAM D. HOWELL III, ESQ.** ("Attorney") of **THE HOWELL LAW FIRM, LLC.**

1. CONDITIONS

This Contract will not take effect, and Attorney will have no obligation to provide legal services, until Client returns a signed copy of this Contract and pays the deposit called for under paragraph 3.

2. SCOPE AND DUTIES

Client hires Attorney to provide legal services in connection with FC2006-006493. Attorney shall provide those legal services reasonably required to represent Client, and shall take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. Attorney's services will will not include litigation of any kind, whether in court, in administrative hearings or before government agencies or arbitration tribunals. Attorney will will not represent Client during appeals.

3. GENERAL RETAINER FEES

Client agrees to pay a general retainer fee of \$ 200.00 for Attorney's services under this Contract, due by 2-07. Attorneys shall have no obligation whatsoever to provide services to Client until the retainer fee is paid in full unless the fee retained would be unconscionable and except as provided in paragraph 6. The sum will be deposited in a general account, to be used to pay: Costs and expenses only. Costs and expenses and fees for legal services. The retainer shall be deemed earned when paid and will not be deposited into a trust account. Client hereby authorizes Attorney to withdraw sums from the general account to pay the costs and/or fees Client incurs. If the retainer balance is consumed, The Howell Law Firm, LLC may require replenishment of the retainer after consultation with the client and given due consideration of the client's then financial circumstances. The amount of replenishment shall be based upon a number of factors including the status of the litigation and the anticipated remaining amount of work. Any unused deposit at the conclusion of Attorneys' services will be refunded, without interest. The client is asked to sign below to signify that he or she acknowledges and accepts the terms of the retainer:


Client Signature

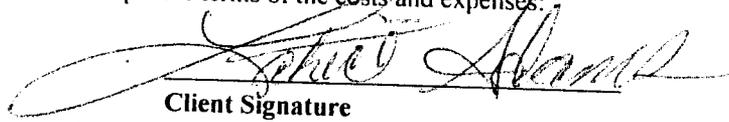
4. LEGAL FEES

Client agrees to pay for legal services at the following rates (RATE CODE _____): Partners-\$ 150.00/hour; associate attorneys-\$ 120.00/hour; paralegals-\$ 100.00/hour; law clerks-\$ 85.00/hour; and for other personnel \$ 65.00/hour. Attorney and staff charge in minimum units of .2 hours. These fees include work performed by all staff of The Howell Law Firm, LLC and are not limited to services performed by the assigned attorney.

5. COSTS AND EXPENSES

Legal fees will be due and payable at the conclusion of this case or if Client terminates employment not as a result of breach of this contract. Client shall be required to pay up front for all costs and expenses incurred by Attorney, including, but not limited to, fees fixed by law or assessed public agencies, long distance telephone calls, messenger and other delivery fees, postage, in-office photocopying at \$.20 per page, parking, mileage at \$.40 per mile, filing fees, printing costs, Court Reporter Costs (including but not limited to depositions and transcripts), service of process fees, investigation expenses, consultants' fees, expert witness fees and other similar items. Client authorizes Attorney to incur all reasonable costs and to hire any investigators, consultants reasonably necessary in I have read and understand the forgoing Latrice Adams

Attorney's judgment. Attorney shall obtain its consent before knowingly incurring any in excess of \$500.00. The client is asked to sign below to signify that he or she acknowledges and accepts the terms of the costs and expenses:


Client Signature

Client will be charged a \$50.00 insufficient funds check fee as well as a half an hour handling fee of paralegal time for any drafts or checks that are returned to the Attorney because of insufficient funds.

6. STATEMENTS AND TERMS OF PAYMENT

Attorney shall send Client periodic statements for fees and costs incurred. Client may request a statement at intervals of no less than 30 days. Upon Client's request Attorney will provide a statement within 10 days. Client shall pay Attorney's statements within 10 days after each statement's date. Client shall submit, in writing any dispute regarding fees charged within said 10 days after which time Client waives its right to dispute charges for attorney fees and costs. Client agrees to deposit into Attorney's General Account, prior to the time that the Attorney must prepare for a judicial hearing, such sums as Attorney shall determine to be reasonably necessary to discharge future Attorney fees and costs. All balances remaining unpaid after 30 days shall bear interest at the rate of 1.5% per month. **Client understands that if Attorney continues representation on upon non-payment of any fees, costs or expenses, that such representation shall be solely at Attorney's discretion and shall not constitute a waiver of any amounts due to attorney. Client understands and acknowledges that this contract is impervious to the initiation of bankruptcy proceedings on Clients behalf and filing of bankruptcy will not release Client from payment of any outstanding balances.**

With each bill from The Howell Law Firm, LLC, a statement disclosing information as follows will be included:

1. A brief description of the services rendered, the date of service and the amount charged
2. The nature and amount of any costs and expenses incurred;
3. The retainer balance; and
4. The balance due or status of client's retainer credit.

7. CLIENT RESPONSIBILITY

Client agrees to keep Attorneys advised of Client's whereabouts and address at all times and to cooperate in the preparation and trial of the case, to appear on reasonable notice for depositions and court appearances, and to comply with all reasonable requests made of Client in connection with this case. Failure to so cooperate may result in Attorney's withdrawal from this cause of action and/or court-imposed sanctions, which may include dismissal of Client's claim and/or a judgment taken against Client. **Client agrees to be truthful and forthright with The Howell Law Firm, LLC at all times. Client consents to Attorney's withdrawing from this case in the event of Client's failure to satisfy the outstanding balance of fees and costs within 45 days of billing by Attorney or by Client giving Attorney any check or other legal tender that has been returned by Client's or someone paying on behalf of Client's bank or other financial institution.**

8. DISCHARGE, SUBSTITUTION AND WITHDRAWAL

Client may discharge or substitute Attorney at any time. Attorney may withdraw for good cause or lack of payment. Good cause includes Client's breach of this contract, Client's refusal to cooperate with Attorney or to follow Attorney's advice on a material matter or any other fact or circumstance that would render Attorney's continuing representation unlawful or unethical.

9. CONCLUSION OF SERVICES

When Attorney's services conclude, whether by discharge, substitution or withdrawal, all unpaid charges shall become immediately due and payable. After Attorney's services conclude, Attorney will, upon Client's request, deliver client's file to Client, along with any Client funds or property in Attorney's possession.

10. POWER OF ATTORNEY

Client hereby appoints Attorney as his/her attorney in fact with full authority to act in his/her place and stead as fully as he/she could in person, to sign execute any drafts, bank notes, checks or other documents to effectuate and carry the terms of this agreement.

I have read and understand the forgoing 

11. DISCLAIMER OF GUARANTEE

Nothing in this contract and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of Client's matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of Client's matter are expressions of opinion only.

12. TIME NECESSARY TO CONCLUDE CASE

Every client wants a speedy resolution of his or her case. Unfortunately, a contested case (a case where the parties cannot reach a speedy agreement on every issue), often requires, due to severe Court congestion, not less than nine (9) to eighteen (18) months from start through trial or settlement. At any given moment there are approximately 3,500 dissolution/custody cases pending in Maricopa County so the reason for the delay is often beyond the attorney's control. And, should there be any appeal from the Court's decision, the process can take several additionally years. The Howell Law Firm, LLC knows that this is discouraging information but it is essential that the client adjust his or her personal plans, emotions and expectations accordingly.

Also, client's sometimes think that The Howell Law Firm, LLC has it in their power to settle cases no matter what circumstances exist and even if the other side does not wish to settle. Other clients believe that the Court can impose a settlement upon parties without the necessity of a trial. None of this is true. Every party, whatever the reason and no matter how fair the proposed settlement, has a right to have his or her case tried and a decision rendered by the Court on all unsettled issues. The plain fact is that all of the issues in the case must settle or the case will proceed to trial.

13. EFFECTIVE DATE

The date at the beginning of this Contract is for reference only. Even if this Contract does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

14. FINANCE CHARGES

Client understands that a FINANCE CHARGE shall be imposed upon the net sum of the "Total From Previous Bill" after first deducting all "payments" and other "credits" only if that net sum is not Paid in full within 30 days of the date of the Periodic Statement.

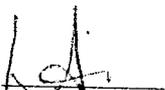
Client understands that a FINANCE CHARGE shall be imposed upon the net sum of the "Total From Previous Bill" after first deducting all "payments" and other "credits" only if that net sum is not Paid in full within 30 days of the date of the Periodic Statement.

The dollar balance upon which the FINANCE CHARGE may be computed is determined as follows: From the previous balance amount are subtracted all "payments" and/or "credits" posted to this balance during the current billing cycle. A FINANCE CHARGE is imposed upon the balance remaining. All payments received are first applied to FINANCE CHARGES imposed and then to the principal balance previously billed and then to the legal fees and costs posted since the last billing date.

The method of determining the amount of the FINANCE CHARGE shall be as follows: For all charges the amount of the FINANCE CHARGE will be determined by subtracting all "payments" and all "credits" posted during the billing period for the "Total From Previous Bill" and multiplying that net figure by the periodic rate of 1.5% per month (ANNUAL PERCENTAGE RATE OF 18%).

Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award may be entered in any court having jurisdiction thereof. Client agrees to pay reasonable collection costs and attorney's fees incurred in collecting amounts due. Furthermore, Client consents to Attorneys notification to credit reporting agencies information regarding Client's indebtedness to Attorneys.

I have read and understand the forgoing



15. CLIENT'S CONSENT TO CREDIT CHARGES FOR PAST DUE BILLS

By signing below, I hereby consent to any past due charges being irrevocably charged to the following credit card:

Credit Card Issuer: _____
Name on Credit Card: _____
Expiration Date: _____
Billing Address: _____

"ATTORNEY"

By: [Signature]
WILLIAM D. HOWELL III, ESQ.

"CLIENT"

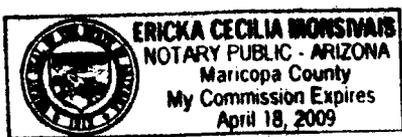
[Signature]
Name: Latrice N Adams
Address: 2936 E. Flower
PHX AZ 85016
Hm. Telephone: (602) 956-5158
Wk. Telephone: _____
Cellular Telephone: (602) 292-1699
SSN: 601-16-5341
DOB: 2-14-74

SUBSCRIBED AND SWORN to before me

This 2 day of January 2009

Notary Public: Erica Cecilia Monsivais

My Commission Expires: 4/18/2009



I have read and understand the forgoing [Signature]

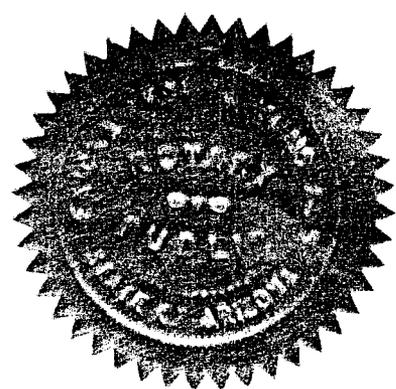


Exhibit
2

1 Steven L. Evans, State Bar No. 012998
2 STEVEN L. EVANS, PLC
3 322 West Roosevelt Street
4 Phoenix, Arizona 85003
5 (602) 288-3325
6 Arbitration Panel Chair

State Bar of Arizona
RECEIVED

MAR 20 2007

RECEIVED

MAR 21 2007

STATE BAR OF ARIZONA
FEE ARBITRATION

State Bar of Arizona
Special Services Department

8 JUSTIN MARTWICK,
9
10 Petitioner,
11 vs.
12 WILLIAM D. HOWELL, HOWELL LAW
13 FIRM, L.L.C.,
14 Respondent.

Case No.: 06-B060

ARBITRATION AWARD

14 The arbitration hearing in this matter was held on February 9, 2007. Petitioner and
15 respondent appeared in person. All parties were sworn to tell the truth prior to the
16 commencement of testimony. The arbitration panel has jurisdiction to decide this dispute
17 pursuant to the written agreement to arbitrate between the parties.
18

19 1. FINDINGS OF FACT.

20 In the petition and at the hearing petitioner asked the panel to award a refund of fees he
21 previously paid to respondent in the amount of \$8,551.52 plus return an additional amount still
22 held in trust. The basis for petitioner's request, essentially, is that the fees he paid were
23 unreasonably high based on the nature of the representation. Respondent maintains that the
24 fees paid by petitioner were reasonable and that no fees should be refunded. Based on the
25

1 petition, the response, the additional documents submitted by the parties prior to the hearing,
2 and the testimony presented at the hearing, the arbitration panel finds as follows.

3 On or about July 23, 2005, after a little over a month of consultations, petitioner
4 retained respondent to represent him in connection with the dissolution of his marriage. The
5 marriage was of relatively short duration and there were no children. The primary issue in the
6 dissolution was determination of the parties' respective interests in a residence purchased by
7 petitioner before the marriage. Petitioner believed that there was about \$100,000 equity in the
8 residence and that the residence was his sole and separate property.

9 In the dissolution proceeding, petitioner also raised issues concerning whether his wife
10 had attempted to mislead him about her use of birth control and/or her efforts to become
11 pregnant. Petitioner believed that his wife had used these issues to fraudulently persuade
12 petitioner to add the wife's name as an owner on the title to the residence. Respondent and
13 petitioner discussed the difficulties presented by trying to avoid having the residence treated as
14 a community asset. They also discussed the relationship between those difficulties, the
15 likelihood of success on the fraud theory, and the costs of the dissolution. The panel finds that
16 petitioner was made aware of the interplay between these issues and wished to continue to
17 pursue all of the equity in the residence, at least until relatively late in the proceedings.

18 There was credible evidence presented that petitioner wanted respondent to approach
19 the dissolution very aggressively. There also was credible evidence presented that petitioner
20 was concerned about the cost of the representation and the relationship between that cost and
21 the reasonably attainable objectives of the representation. Petitioner and respondent discussed
22 fees on several occasions, particularly as the dissolution neared completion, and petitioner
23 testified that he understood respondent to have placed an upper limit of the fees that petitioner
24 would pay to complete the dissolution. Respondent testified that he did not agree to any limit
25 on fees, but rather advised petitioner about the likely amount of fees that would be generated in

1 completing the case. On balance, the arbitrators find that the parties did not agree to any limit
2 on the amount of fees. Rather, the parties entered into an agreement under which petitioner
3 would pay an hourly rate for respondent's time spent in connection with the case.

4 Respondent submitted the billing statements that he provided to petitioner reflecting the
5 fees for the representation. At the hearing, the panel had concerns about some of the billing
6 entries, and the panel has carefully reviewed the billing statements. Based on that review, the
7 panel finds that some of the billing entries reflect unreasonable charges for routine
8 administrative tasks, that some entries are duplicative, and that some entries reflect charges for
9 tasks that are not reasonably charged to the client in this kind of representation. The details of
10 the panel's findings in this regard are set forth in the table attached as Exhibit 1 to this
11 Arbitration Award.

12
13 **2. ANALYSIS.**

14 All attorney's fee agreements (whether hourly, fixed, or contingent), and all attorney's
15 fees, are subject to retrospective review for reasonableness. Whether a fee is reasonable is
16 determined by the factors set forth in ER 1.5, Arizona Rules of Professional Conduct. The
17 version of ER 1.5 that was in effect during the subject representation reads as follows:

18 (a) A lawyer shall not make an agreement for, charge, or collect an
19 unreasonable fee or an unreasonable amount for expenses. The factors to be
20 considered in determining the reasonableness of a fee include the following:

21 (1) the time and labor required, the novelty and difficulty of the questions
22 involved, and the skill requisite to perform the legal service properly;

23 (2) the likelihood, if apparent to the client, that the acceptance of the
24 particular employment will preclude other employment by the lawyer;

25 (3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

- 1 (6) the nature and length of the professional relationship with the client;
2
3 (7) the experience, reputation and ability of the lawyer or lawyers
performing the services; and
4 (8) the degree of risk assumed by the lawyer.
5

6 The factors set forth in ER 1.5 that are applicable to this dispute, as framed by the
7 parties, are factors (1), (3), and (4).

8 Factor (1) contemplates the importance of time and labor, difficulty of the issues, and
9 necessary skill in determining a reasonable fee. Client's case involved relatively straight-
10 forward issues that could have been handled by any reasonably experienced domestic relations
11 lawyer; there was nothing about the issues or the skill required that would serve to increase or
12 decrease the amount of a reasonable fee. Likewise, the time and/or labor required to handle the
13 case was neither unusually high or low except as set forth in Exhibit 1. Respondent's billing
14 statements, given the adjustments discussed above and in Exhibit 1, reflect a reasonable amount
15 of time to handle the case given the circumstances and issues in the case. Application of this
16 factor favors reducing the fees paid by petitioner as indicated in Exhibit 1.

17 Factor (3) takes into account the fees charged in the community for similar legal
18 services. Although the parties did not specifically raise respondent's hourly rates as an issue,
19 the panel notes that respondent's rates are within the prevailing range of rates for domestic
20 relations lawyers in this community. Accordingly, application of this factor does not affect the
21 reasonableness of the fee at issue one way or the other.

22 Factor (4) looks at the amount involved in the case and the result obtained by the
23 lawyer. Petitioner's dissolution involved, essentially, a single issue: the parties' respective
24 property rights in the residence. The result obtained was limited by the difficulty of proving
25 the factual issues surrounding the fraud theory and by the actual equity in the residence. Those
limitations were not created by petitioner or respondent; those limitations were beyond their

1 control. The parties did discuss those limitations, as discussed above, and petitioner did not
2 choose to relinquish his position regarding the equity in the residence until late in the game.
3 The panel does not find that respondent spent time on activities that were unreasonable in light
4 of these limitations beyond what the client wished to have done. On balance, the panel does
5 not find that any reduction, beyond the reductions discussed above, are called for by
6 application of this factor.

7 Taken together, the factors discussed above favor reduction of respondent's fee. Under
8 the circumstances of petitioner's case, and given the application of ER 1.5 discussed above, the
9 panel finds that respondent's fee should be reduced by the amount of \$1,578.40.

10

11 **3. AWARD.**

12 Based on the foregoing, the panel finds in favor of petitioner. Respondent shall refund
13 fees to petitioner in the amount of \$1,578.40 and shall return to petitioner any remaining funds
14 held in trust.

15 DATED this 20 day of March 2007.

16

17

18

19

20

21

ORIGINAL of the foregoing mailed
this 20 day of March 2007, to:

22

Ms. Peggy Alford
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288

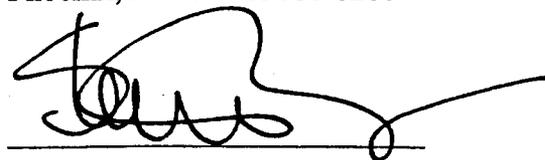
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Steven L. Evans
STEVEN L. EVANS, PLC
322 West Roosevelt Street
Phoenix, Arizona 85003
Arbitration Panel Chair



Count One Timeline

Date of initial request for response and trust account documents:	February 16, 2006
Number of requests for response/documents and extensions by State Bar:	six
Number of times Respondent promised compliance and did not comply:	five
Date Complaint filed:	August 7, 2007
Time period between initial request and Complaint:	18 + months
Total trust documents provided (Exhibits a, b and c):	three
Date provided to the Bar:	November 8, 2007

William Howell Disciplinary History

1. **First Disciplinary Action (Cause #02-2009):**

Respondent received an Order of Informal Reprimand, plus costs and probation on October 8, 2003, for violating Rule 42, specifically ER 3.4(c), knowingly disobeying an obligation under the rules of a tribunal, and (d) failing to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party.

2. The Order, filed October 8, 2003, required Respondent to attend the one day Ethics Enhancement Program (EEP), and he was directed to contact the Program Coordinator within 20 days of the date the Order was mailed.

3. **Second Disciplinary Action (Cause #'s 02-1548, 02-2379, 03-499 & 03-1213):**

In this action, on December 19, 2003, Respondent was ordered into diversion including MAP.

4. **Third Disciplinary Action (Cause #'s 03-1404, 03-1444 & 04-326):**

In this action, on September 10, 2004, Respondent was given a second Order of Informal Reprimand, plus probation for six months: "... at the conclusion of the probation currently in effect" for violating Rule 42 Ariz.R.Sup.Ct., ER 1.3, failing to act diligently on behalf of his clients, and ER 1.4 failing to adequately communicate with his clients.

5. Respondent was ordered to participate in fee arbitration and: "... will comply with the terms of probation/diversion in cases 02-2009..." (the first disciplinary action dated October 8, 2003, Order of Probation set forth above) and Cause numbers 02-1548, 02-2379, 03-499 and 03-1213 (the second disciplinary action dated December 19, 2003, Order of Diversion). Respondent was further directed to report in writing his compliance with the terms of his probation. (See Order of Informal Reprimand dated September 10, 2004.)

6. **Fourth Disciplinary Action (Cause #'s 02-1548, 02-2379, 03-0499, 03-1213, 04-0910, 04-1282, 05-0375, 05-1984, & 05-1991):**

On January 23, 2007, in the above cause numbers, the Disciplinary Commission filed a report adopting the Hearing Officer's Report accepting a Tender of Admissions and Agreement for Discipline by Consent. This Report concluded that Respondent should receive a Censure, six months probation with LOMAP and EEP. This action was a combination of Respondent's noncompliance with previous disciplinary actions and one new count.

7. Counts one, two, three and four (02-1548, 02-2379, 03-499, and 03-1213) involved the finding that Respondent failed to comply with the requirements of the diversion grant of December 19, 2003 (Respondent's second disciplinary action). Respondent was sent four letters by the State Bar notifying him of his noncompliance and he did not respond to any of these notices or bring himself into compliance. (See Hearing Officer's Report dated September 8, 2006.) Counts five and six were dismissed.
8. Count seven involved the Respondent, after having been Summarily Suspended from the practice of law between January 21, 2005, and February 17, 2005, for failure to pay a \$375.00 fee, practicing law during the period of suspension in violation of Rule 42, specifically ER 5.5(a).
9. In Counts eight and nine it is found that the Respondent violated conditions of his third disciplinary action which had ordered compliance with the first two disciplinary actions. (Please see pages two through nine of the Hearing Officer's Report filed September 8, 2006, for a more detailed listing of the State Bar's efforts to get Respondent to comply.)
10. Ultimately, on November 8, 2007, a Notice of Compliance was filed in the fourth disciplinary action stating that Respondent had completed probation.