

**FILED**  
MAY 07 2008  
HEARING OFFICER  
SUPREME COURT OF ARIZONA  
BY: *[Signature]*

1 Bruce G Macdonald  
2 Hearing Officer 6M  
3 *McNamara, Goldsmith, Jackson & Macdonald, P C*  
4 1670 E. River Road, Suite 200  
5 Tucson, AZ 85718

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

7 **IN THE MATTER OF A MEMBER**  
8 **OF THE STATE BAR OF ARIZONA,**  
9 **JAMES R. MCDONALD,**  
10 **Bar No. 013604**  
11 **Respondent**

No. 07-1812  
**HEARING OFFICER'S REPORT**  
(Assigned to Hearing Officer 6M  
Bruce G. Macdonald)

**PROCEDURAL HISTORY**

13  
14  
15 A Probable Cause Order was filed by Probable Cause Panelist, Richard T.  
16 Platt, on January 28, 2008. The State Bar filed a Complaint on January 29, 2008.  
17 Respondent filed an Answer on February 20, 2008. The State Bar filed a Notice  
18 of Settlement on March 20, 2008, indicating the parties had reached a settlement  
19 A Tender of Admissions and Agreement for Discipline by Consent ("Tender")  
20 and Joint Memorandum in Support of Tender of Admissions and Agreement for  
21 Discipline by Consent ("Joint Memorandum") were filed on April 10, 2008.  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**FINDINGS OF FACT**

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

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

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

4 On or about October 22, 2007, check number 1058 in the amount of \$3,300.00, attempted to pay against Respondent's trust account when the balance at the time was \$1,172.90.

5 Bank of America honored check number 1058 thereby causing an overdraft on the account in the amount of -\$2,127 10

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

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

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

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

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

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

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

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

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

1           15.     On or about October 12, 2007, Respondent wrote check  
2 number 1056 on his client trust account in the amount of \$204 18 to pay to the  
3 order of Qwest.  
4

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

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

12           18     On or about September 28, 2007, Respondent, or those  
13 under his direct supervision, wrote check number 1013 on Respondent's client  
14 trust account in the amount of \$1,384 21 to pay to the order of Douglas  
15 Killpack.  
16

17           19.     On or about October 15, 2007, Respondent, or those under  
18 his direct supervision, wrote check number 1016 on Respondent's client trust  
19 account in the amount of \$1,384.21 to pay to the order of Douglas Killpack  
20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

10 **SANCTION ANALYSIS**

11 **ABA STANDARDS**

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

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

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

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

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

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

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

### 22 **PROPORTIONALITY ANALYSIS**

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

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

7         In *In re Baskerville*, SB-03-0006-D (2003), Mr. Baskerville was  
8 censured, placed on one year probation with the terms being LOMAP and  
9 TAEEP. Mr. Baskerville failed to properly safeguard client funds in that there  
10 were four disbursement errors that resulted in client funds on deposit in  
11 Baskerville's trust account being negligently converted. Mr. Baskerville also  
12 failed to conduct monthly reconciliation of his trust account and failed to  
13 maintain proper internal controls to adequately safeguard funds on deposit in  
14 his trust account. There were two aggravating factors: pattern of misconduct  
15 and substantial experience in the practice of law. There were five mitigating  
16 factors: absence of a dishonest or selfish motive, timely good faith effort to  
17 rectify consequences, full and free disclosure to disciplinary board, cooperative  
18 attitude toward proceedings, and character and reputation. Mr. Baskerville was  
19 sanctioned for violations of Rule 42, Ariz.R.Sup.Ct. specifically ER 1.15 and  
20 Rules 43 and 44.  
21  
22  
23  
24  
25

1 In *In re Munoz S*, SB-07-0002-D (2007), Mr Munoz was censured and  
2 placed on probation with the terms of probation being LOMAP and TAEEP. Mr.  
3 Munoz failed to adhere to trust account rules and guidelines. Specifically, Mr.  
4 Munoz failed to safeguard client funds and to exercise due care regarding overdraft  
5 and recordkeeping requirements; failed to consistently record all transactions, failed  
6 to disburse funds with pre-numbered checks, failed to consistently maintain  
7 duplicate deposit slips and failed to consistently conduct monthly three-way  
8 reconciliations. There was one aggravating factor: substantial experience in the  
9 practice of law. There were two mitigating factors: absence of a dishonest or  
10 selfish motive and full and free disclosure. Mr. Munoz was sanctioned for  
11 violations of Rule 42, Ariz.R.Sup.Ct. specifically ER 1.15 and Rules 43 and 44.

12  
13  
14  
15 In *In re Stratford*, SB-07-0082-D (2007), Mr. Stratford was censured,  
16 placed on one year of probation with the terms being LOMAP, TAP, and TAEEP.  
17 Mr Stratford failed to maintain complete and accurate trust account records, failed  
18 to deposit funds to cover bank charges, failed to supervise employees handling the  
19 trust account, failed to maintain internal controls to safeguard trust property and  
20 failed to conduct monthly three-way reconciliations. There were three aggravating  
21 factors. pattern of misconduct, multiple offenses, and substantial experience in the  
22 practice of law. There were two mitigating factors: absence of dishonest or  
23  
24  
25

1 selfish motive and free and full disclosure. Mr. Stratford was sanctioned for  
2 violations of Rule 42, Ariz.R.Sup.Ct. specifically ER 1.15 and Rules 43 and 44  
3

4 **CONCLUSION**

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

11  
12 DATED this 7<sup>th</sup> day of May, 2008.

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

16 Original filed this 7<sup>th</sup> day  
17 of May, 2008, with:

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

By: Neeta Mavelkar

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## Statement of Costs and Expenses

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

File No(s). 07-1812

### Administrative Expenses

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

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

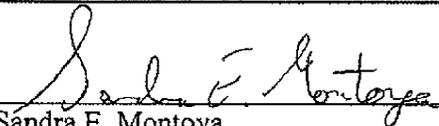
*General Administrative Expenses for above-numbered proceedings* = \$600.00

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

### Staff Investigator/Miscellaneous Charges

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

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

  
Sandra E. Montoya  
Lawyer Regulation Records Manager

4-3-08  
Date