

**FILED**

FEB 25 2008

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

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

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

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

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

) **HEARING OFFICER'S REPORT**  
)  
) (Assigned to Hearing Officer 8Z,  
) Christopher D Thomas)  
)

**INTRODUCTION**

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

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

**FACTS**

1 **GENERAL ALLEGATIONS**

2 1 At all times relevant hereto, Respondent was an attorney licensed to  
3 practice law in the State of Arizona, having been admitted to practice in Arizona on  
4 October 22, 1994 Tender, ¶ 1

5 2 Respondent is not admitted to practice law in any other jurisdiction  
6 Tender, ¶ 2

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

8 3 In or about June, 2004, Respondent began to practice law in the area of  
9 consumer debt settlement In late 2005, consumer debt became Respondent's primary  
10 practice area sometime in late 2005 Respondent is a member of NACBA (National  
11 Association of Consumer Bankruptcy Attorneys) and two relevant professional  
12 organizations USOBA (United States Organization of Bankruptcy Alternatives) and  
13 TASC (The Association of Settlement Companies) Tender, ¶ 3

14 4 At all times relevant hereto, Respondent was a solo practitioner operating  
15 under the name "The Roll Law Office, PLLC " Tender, ¶ 4

16 5 Respondent advertised his practice through the internet by "buying  
17 leads " Tender, ¶ 5

18 6 In "buying leads," Respondent paid a marketing company that owns and  
19 operates a website to receive the consumer contact information for a certain number of  
20 potential "leads" per day The marketing company obtained the contact information  
21 directly from consumers who search the internet for information about debt settlement  
22 Consumers then entered their names on the website to indicate that they wished to be  
23 contacted by a consumer debt relief business with further information. Tender, ¶ 6

24 7 After obtaining the consumer's contact information, a marketing  
25 representative contacted the consumer and discussed Respondent's debt settlement  
26 program. obtained factual information regarding the consumer's debt, and discussed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 27 Respondent's non-lawyer assistants negotiated the debt with creditors on  
21 behalf of the clients Respondent contends that the "negotiation" was always within  
22 specific parameters established by Respondent and approved by the clients Tender, ¶  
23 27

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

1 parameters Tender, ¶ 28

2 29 When a client terminated Respondent's law firm, Respondent's non-  
3 lawyer client services manager reviewed the file to determine whether a refund was  
4 due Respondent acknowledges that not all refunds were timely made Tender, ¶ 29

5 30 Since the initiation of this proceeding, Respondent has made significant  
6 changes to his practice Specifically, Respondent retained Lynda C Shely, Esq to  
7 review all of his office practices and procedures, revise firm documents including his  
8 fee agreement, and conduct extensive training of all personnel on subjects such as  
9 avoiding the unauthorized practice of law In addition, Respondent closed his Merrill  
10 Lynch "trust" account and opened an IOLTA account at an approved bank Finally,  
11 Ms Shely and Scott Rhodes (Respondent's counsel in this matter) have assisted  
12 Respondent in setting up a law-related business pursuant to ER 5 7 Tender, ¶ 30

13 31 Respondent and the Bar acknowledge that Respondent's problems in this  
14 matter was his failure to recognize the application of ER 5 7 to his debt settlement  
15 business, and his failure to set up his business in that regard The parties further  
16 acknowledge that Respondent has already taken steps necessary to establish such a  
17 business Finally, as discussed in the mitigation section of the accompanying  
18 Memorandum in Support of Tender of Admissions, the parties acknowledge that,  
19 notwithstanding the ethical deficiencies in the management of his firm during the  
20 pertinent time period (the seriousness of which the parties do not deny), Respondent  
21 operated his business in good faith, and the evidence demonstrates that he achieved  
22 substantial savings for his hundreds of client, many of which have expressed their  
23 appreciate to him in writing Tender, ¶ 31

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

25 32 Elizabeth Payne retained the services of Respondent's laws office to  
26 assist her in debt negotiation and reduction in or about August of 2005 Tender, ¶ 32

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **CONDITIONAL ADMISSIONS**

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

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

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

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

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

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

11 Respondent conditionally admits that his conduct as described in this count  
12 violated Rule 42, Ariz R S Ct , specifically, ER 1.4, ER 5 3 and ER 5 5

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

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

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

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

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

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



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

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

#### 14 **I. ABA Standards**

15  
16 The Supreme Court and the Disciplinary Commission consistently rely upon the  
17 American Bar Association's *Standards for Imposing Lawyer Sanctions* in determining  
18 appropriate sanctions for attorney discipline. See *In re Clark*, 207 Ariz 414, 87 P 3d 827  
19 (2004). *In re Peasley*, 90 P 3d 764 (2004). The Standards are a "useful tool in  
20 determining the proper sanction." *In re Cardenas*, 164 Ariz 149, 791 P 2d 95 (1990).  
21 The *Standards* are intended to promote consistency in sanctions by identifying relevant  
22 factors and then applying those factors to situations in which lawyers have engaged in  
23 various types of misconduct. *Standard 1.3, Commentary*. The ultimate purpose of  
24 discipline is not to punish the lawyer, but to set a standard by which other lawyers may  
25  
26

1 be deterred from such conduct while protecting the interests of the public and the  
2 profession *In re Kersting*, 151 Ariz 171, 726 P 2d 587 (1986)

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

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

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

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

18 4 13 Reprimand [in Arizona, censure] is generally  
19 appropriate when a lawyer is negligent in dealing with  
20 client property and causes injury or potential injury to a  
21 client

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

1 Respondent's conduct as set forth above also mandates consideration of  
2 *Standard 7.3*, which calls for censure when a lawyer negligently engages in conduct  
3 that constitutes a violation of a duty owed to the profession and thereby causes  
4 injury or potential injury to a client, the public, or the legal system. Given  
5 *Standards 4.0 and 7.3*, the parties contend that censure is the most appropriate  
6 presumptive sanction  
7

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

13 **A. The Duty Violated**  
14

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

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

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

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

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

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

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

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

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

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

3 *Standard 9 32(a)* – Absence of a prior disciplinary record Respondent has not  
4 previously been the subject of disciplinary proceedings

5 *Standard 9 32 (d)* Timely, good faith effort to rectify the consequences of  
6 misconduct Respondent provided timely refunds to the clients identified in the  
7 complaint, made substantial efforts to improve his law practice management and  
8 established a separate, law-related business

9 *Standard 9 32 (e)* Full and free disclosure to disciplinary board or cooperative  
10 attitude toward proceedings Respondent has cooperated with the Bar and been  
11 forthcoming during these proceedings

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15  
16 **PROPORTIONALITY ANALYSIS**

17 To have an effective system of professional sanctions, there must be internal  
18 consistency in the determination of discipline, and it is appropriate to examine  
19 sanctions imposed in cases that are factually similar *In re Peasley*, 208 Ariz 27 35, ¶  
20 33, 90 P 3d 764, 772 (App 2004) Nevertheless, the discipline in each case must be  
21 tailored to the individual case as neither perfection nor absolute uniformity can be  
22 achieved *Id* at 41, ¶ 61, 90 P 3d at 778 (citing *In re Alcorn*, 202 Ariz 62, 76, 41 P 3d  
23 600, 614 (2002) and *In re Wines* 135 Ariz 203, 207, 660 P 2d 454, 458 (1983))

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

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

8 In *Matter of Bendalin*, SB-06-0175-D (December 28, 2006), attorney Bendalin  
9 was censured and placed on probation for violations of ER 115 and Ariz. Sup. Ct.  
10 Rules 42 and 44. Bendalin was found, primarily, to have committed misconduct related  
11 to his client trust account, and to have similar aggravating and mitigating factors to  
12 those herein.  
13

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

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

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

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

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

#### 14 15 16 **CONCLUSION**

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

- 20  
21 1 Respondent shall receive a censure,
- 22 2 Respondent shall be placed on probation for a period of two years, under  
23 the following terms and conditions:
  - 24 a Respondent shall cease operating his debt settlement practice as a law  
25 firm and shall operate it instead as a law-related business under ER 5.7. Respondent  
26 may, however, continue his law practice in other fields,

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

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

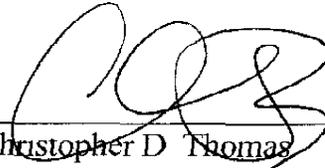
11           d       Respondent shall refrain from engaging in any conduct that would violate  
12 the Rules of Professional Conduct or other rules of the Supreme Court of Arizona.

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

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

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DATED this 25<sup>th</sup> day of February, 2008

  
\_\_\_\_\_  
Christopher D Thomas  
Hearing Officer 8Z

Original filed this 25<sup>th</sup> day  
of February, 2008, with

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

Copies of the foregoing mailed this 25<sup>th</sup> day  
of February, 2008 to

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J Scott Rhodes  
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Copy of the foregoing hand-delivered this  
25<sup>th</sup> day of February, 2008, to

Lawyer Regulation Records Manager  
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by 