

**FILED**

MAR 25 2009

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA

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

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3 IN THE MATTER OF A MEMBER ) Nos. 07-0665, 07-1224, 07-2012,  
4 OF THE STATE BAR OF ARIZONA ) 08-0140, 08-0450, 08-0526  
5 )  
6 **WILLIAM L. TIFFT,** )  
7 **Bar No. 003022** ) **DISCIPLINARY COMMISSION**  
8 ) **REPORT**  
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10 **RESPONDENT.** )  
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This matter first came before the Disciplinary Commission of the Supreme Court of Arizona on July 12, 2008, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed June 2, 2008, recommending acceptance of the Agreement for Discipline by Consent providing for a six month and one day suspension, one year of probation with the State Bar's Law Office Management Assistance Program (LOMAP), Member Assistance Program (MAP), and payment of costs within 30 days of the date of the final Judgment and Order. A majority of the Commission rejected the agreement and remanded the matter for further evidentiary proceedings because the status of the underlying probate matter was unclear from the existing record. The Commission also expressed concern as to whether or not the agreed-upon sanction was sufficient based on Respondent's conditional admissions.

Respondent was originally represented by counsel, however, he ultimately withdrew. Respondent thereafter failed to participate in these disciplinary proceedings. An aggravation and mitigation hearing was held on November 24, 2008.

1 This matter again came before the Disciplinary Commission on March 14, 2009,  
2 pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed  
3 January 12, 2009, recommending disbarment, restitution, and costs.

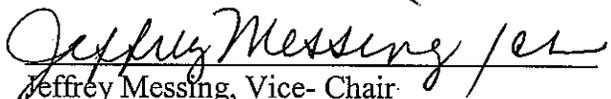
4 **Decision**

5 Having found no facts clearly erroneous, the seven members <sup>1</sup> of the Disciplinary  
6 Commission unanimously recommend accepting and incorporating the Hearing Officer's  
7 findings of fact, conclusions of law, and recommendation for disbarment, restitution, and  
8 costs of these disciplinary proceedings, including any costs incurred by the Disciplinary  
9 Clerk's Office or the Supreme Court of Arizona. The amount of restitution is in addition  
10 to any amount that may be ordered by the Probate Court. See Hearing Officer's Report, p.  
11 40, fn.5.

12 **Restitution**

13 MFC Holding Trust \$11,681.85

14 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of March, 2009.

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18 Jeffrey Messing, Vice- Chair  
19 Disciplinary Commission

20 Original filed with the Disciplinary Clerk  
21 this 25<sup>th</sup> day of March, 2009.

22 Copy of the foregoing mailed  
23 this 26<sup>th</sup> day of March, 2009, to:  
24  
25

26 <sup>1</sup> Commissioner Osborne did not participate in these proceedings. Commissioner Flores recused.

1 Hon. H. Jeffrey Coker  
2 Hearing Officer 6R  
3 P.O. Box 23578  
4 Flagstaff, AZ 86002

5 William L. Tiff  
6 Respondent  
7 P.O. Box 2521  
8 Globe, AZ 85502-2521

9 Russell J. Anderson  
10 Bar Counsel  
11 State Bar of Arizona  
12 4201 North 24th Street, Suite 200  
13 Phoenix, AZ 85016-6288

14 by: Evelyn Loza

15 /mps  
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# **EXHIBIT**

**A**

BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA

**FILED**  
JAN 12 2009  
HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *[Signature]*

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

Nos. 07- 0665, 07-1224, )  
08-0140, 08-0450, 08-0526 )

**WILLIAM L. TIFFT,** )  
**Bar No. 003022** )

**HEARING OFFICER'S REPORT**

RESPONDENT. )  
\_\_\_\_\_ )

**PROCEDURAL HISTORY**

1. Probable Cause was found in 07-1224 on October 26, 2007, and in 07-0665 on August 31, 2007. A Complaint (“First Complaint”) was filed on those two counts on November 30, 2007. Notice of service reflects service on the Respondent on December 3, 2007. The matter was thereafter assigned to Hearing Officer 6n on December 21, 2007, and the Respondent through his attorney at that time, Stephen Sherick, filed an Answer to the First Complaint on December 31, 2007. Thereafter, on February 25, 2008, the State Bar filed a Motion to Continue because new charges were being filed against Respondent.
2. Probable Cause was found in 08-0140 on February 29, 2008, and a Complaint (“Second Complaint”) was filed on March 7, 2008. The State Bar, on March 7, 2008, filed a Motion to Consolidate the new cause, 08-0140, with the prior Complaint in 07-1224 and 07-0665. A Notice of Settlement in the three cause numbers was thereafter filed on March 14, 2008, and the prior Hearing Officer granted the Motion to Consolidate on March 19, 2008.<sup>1</sup> The Tender of

<sup>1</sup> The settlement also included case numbers 06-1923 and 07-2012, which were two matters that were not at that time filed as formal Complaints.

Admissions and Joint Memorandum were filed on April 11, 2008. The prior Hearing Officer submitted her Hearing Officer's Report on June 2, 2008.

3. On August 7, 2008, the Disciplinary Commission rejected the Tender and Joint Memorandum, remanding this matter for further evidentiary proceedings.
4. On August 13, 2008, the undersigned Hearing Officer was assigned to this matter and, after an Initial Case Management Conference, the matter was set for a settlement conference on September 19, 2008, and Final Hearing on October 6, 2008. On September 18, 2008, as a result of a request for an expedited status conference, the undersigned Hearing Officer was advised by Respondent's counsel, Stephen Sherick, that Respondent was no longer staying in touch with Mr. Sherick and Mr. Sherick requested a continuance of the settlement conference and Final Hearing. The undersigned Hearing Officer advised that, should Respondent fail to appear for the September 19, 2008, settlement conference, a brief continuance of the Final Hearing would be granted in order for Mr. Sherick to withdraw from his representation of the Respondent and give notice to Respondent of the new Final Hearing date. Respondent failed to appear at the settlement conference.
5. On September 19, 2008, Mr. Sherick filed a Motion to Continue and Withdraw citing repeated attempts to contact the Respondent which had been unsuccessful. On September 22, 2008, the undersigned Hearing Officer granted the Motion to Withdraw and reset the Final Hearing on November 24, 2008.
6. Probable cause was found in 08-0526 (Molin) on August 20, 2008; in 07-2012 (Alvarez) on September 4, 2008; and in 08-0450 (Judicial Referral) on September

24, 2008. A Complaint (“Third Complaint”) containing these file numbers was filed on September 24, 2008.

7. On September 24, 2008, the State Bar filed a Motion to Consolidate those of Respondent's files not brought or resolved in the earlier settlement which was rejected by the Disciplinary Commission, 07-2012, 08-0450 and 08-0526. That motion was granted by the undersigned Hearing Officer on October 2, 2008.
8. As a result of the Respondent not filing an Answer to the new case numbers, 07-2012, 08-0140, 08-0450, and 08-0526, on October 28, 2008, the State Bar filed a Motion for Initiation of Default Procedures. Default was entered against Respondent in these file numbers on November 18, 2008. Thereafter, the Final Hearing, which had been set on November 24, 2008, was conducted as an Aggravation/Mitigation hearing. Neither Respondent nor his representative appeared for the Aggravation/Mitigation Hearing.

#### **FINDINGS OF FACT**

9. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona, having been first admitted to practice in Arizona on September 23, 1972.
10. There were three separate Complaints filed in this matter, one on November 30, 2007, which Respondent filed an Answer to. The Second Complaint, filed on March 7, 2008, and a Third Complaint filed on September 24, 2008, were not responded to by the Respondent and his default was entered as to those Complaints. Because there were three different Complaints and therefore multiple

Counts One and Two, the different cases against the Respondent will be referred to as a "Cause" with the appropriate numerical designation. There will also be reference herein to whether the specific Cause was in the first Complaint (deemed contested because of Respondent's Answer) or in the second or third Complaint (deemed admitted).

**CAUSE NUMBER 07-2012 (Third Complaint, Deemed Admitted)**

11. This Cause Number, as well as the following Cause No. 07-0665, addresses Respondent's conduct while representing Herbert Henson ("Mr. Henson") a trustee of MFC Holding Trust (also referred to herein as the "trust"). This Cause Number, 07-2012, specifically deals with Respondent's financial dealings with the trust and contains facts set forth in the second Complaint which are deemed admitted, while the second Cause Number, 07-0665, sets forth facts enumerated in the original Complaint (contested) and addresses his conduct in relation to his duty to the Court in legal proceedings related to the trust and complying with orders of the Court.

**Financial Dealings with the Trust:**

12. Sometime in October 2003, the legal case in PB 2002-002367, a Maricopa County Superior Court case, was settled and a Settlement Agreement was filed with the Court.
13. On or about July 11, 2005, the plaintiffs, Lonnie Johnson Sr. ("the Plaintiff Johnsons") represented by Merwin Grant, filed further proceedings in PB 2002-002367 for breach of the settlement agreement. The Plaintiff Johnsons alleged

- that one of the trustees, Mr. Henson, failed to account for trust activities and failed to disperse monies to trust beneficiaries of the trust.
14. Respondent represented Mr. Henson individually and as Trustee of the MFC Holding Trust in the action brought by Plaintiffs Johnsons.
  15. By Minute Entry dated September 9, 2005, Respondent was ordered to meet with the Plaintiff Johnsons' counsel and provide them with discovery, specifically a full trust accounting.
  16. On or about September 18, 2006, the Plaintiff Johnsons again accused Mr. Henson of breaching the Settlement Agreement.
  17. Among other issues, the Plaintiff Johnsons claimed Respondent had failed to provide a complete and accurate accounting of the trust, that Mr. Henson had used trust funds to pay Respondent unearned fees, and that Mr. Henson had failed to disperse monies to trust beneficiaries (trust account issues).
  18. By minute entry dated November 8, 2006, Respondent was ordered to meet with the Plaintiff Johnsons and the beneficiaries' attorneys to resolve the trust account issues (Hearing Exhibit "H/E" 1).
  19. On or about November 16, 2006, Respondent met with the beneficiaries' attorneys, but did not bring any documentation relating to the trust account issues. Respondent told the beneficiaries' attorneys he would provide the requested documentation by November 30, 2006.
  20. By letter dated November 30, 2006, Respondent told the beneficiaries' attorneys he would provide the requested documentation by December 8, 2006.

21. By letter dated December 13, 2006, Respondent told the beneficiaries' attorneys he would be unable to provide the documentation until December 20, 2006.
22. As the Respondent failed to provide the documents to the beneficiaries' counsel by December 20, 2006, they moved to set an Order to Show Cause hearing Re: Sanctions and Contempt.
23. The Court scheduled an Order to Show Cause hearing for February 20, 2007.
24. On or about February 6, 2007, depositions were set for Respondent and Mr. Henson. The depositions were scheduled for February 19, 2007.
25. Both Respondent and Mr. Henson were served with a subpoena duces tecum to bring documentation regarding the trust account issues (H/E 24).
26. Respondent failed to appear at his deposition on February 19, 2007, and told Plaintiffs' counsel that he would not appear even with a court order (Transcript of Aggravation/Mitigation Hearing "Tr." 25:22-26:19).
27. Respondent failed to appear at the Order to Show Cause hearing held on February 20, 2007. Respondent was admitted into a hospital and claimed to be unable to attend the Order to Show Cause hearing.
28. By Minute Entry dated February 20, 2007, the Order to Show Cause hearing was continued to March 13, 2007.
29. By Minute Entry dated February 20, 2007, the Court directed Plaintiff Johnsons' attorney, Merwin Grant, to submit a form of order ordering Respondent to provide the trust account documents referred to in the subpoena duces tecum to the beneficiaries' counsel by March 6, 2007, (H/E 2).

30. By Minute Entry dated February 20, 2007, the Court also ordered Respondent to provide documentation of his hospitalization to the Court by March 13, 2007, (H/E 2).
31. Respondent failed to provide the subpoenaed trust account documents to the beneficiaries' counsel by March 6, 2007.
32. By Minute Entry dated March 8, 2007, Respondent was ordered to provide the trust account documents referred to in the subpoena duces tecum to the beneficiaries' counsel by 5 p.m. on March 9, 2007, (H/E 3).
33. Respondent failed to provide the subpoenaed documents by 5 p.m. on March 9, 2007.
34. By Minute Entry dated March 13, 2007, Respondent and his client, Mr. Henson, were ordered to appear for their depositions on March 20, 2007, (H/E 4).
35. By Minute Entry dated March 13, 2007, Respondent was also ordered to provide the trust account documents referred to in the subpoena duces tecum to the beneficiaries' counsel by 5 p.m. on March 16, 2007, (H/E 4).
36. By Minute Entry dated March 13, 2007, Respondent was also ordered to provide the Court with a record or a doctor's affidavit regarding his time of admission to the hospital on February 20, 2007, (H/E 4).
37. The Court continued the Order to Show Cause hearing Re: Sanctions and Contempt to May 10, 2007.
38. Respondent failed to appear at the deposition on March 20, 2007, (Tr. 20:6-15).

39. On or about March 23, 2007, the beneficiaries' counsel filed a Motion for Sanctions Including and Order of Contempt for Issuance of a Civil Arrest Warrant ("Motion for Sanctions"). The Court scheduled oral argument on the Motion for Sanctions for April 24, 2007.
40. Neither Respondent nor his client, Herbert Henson, appeared at the April 24, 2007, oral argument on Motion for Sanctions and Contempt (H/E 5).
41. By Minute Entry dated April 24, 2007, (H/E 9, later corrected and reissued on April 27, 2007, H/E 5) the Court:
  - a) Found that Respondent had knowledge of, understood, and willfully failed to comply with the Court's orders.
  - b) Found Respondent to have repeatedly violated the Court's orders and found Respondent to be in contempt of court.
  - c) Granted Plaintiff Johnsons' Motion for Sanctions and awarded them reasonable attorney's fees.
  - d) Found Respondent jointly and severally responsible with Mr. Henson for the awarded attorney's fees.
  - e) Ordered a Civil Arrest Warrant be issued against Respondent on April 27, 2007, with the purge bond to be an amount of attorney fees due Plaintiff Johnsons, to be determined after Plaintiffs' attorneys file an attorney fee affidavit.
  - f) Continued the Order to Show Cause Hearing to May 10, 2007, (H/E 5).

42. Respondent failed to appear at the May 10, 2007, continuation of the Order to Show Cause hearing (H/E 6).
43. By Minute Entry dated May 10, 2007, the Court:
  - a) Ordered Respondent not to destroy any trust documents.
  - b) Ordered Respondent to turn over all documents related to the trust in his possession to the beneficiaries' counsel.
  - c) Directed the Maricopa County Sheriff's Office ("MCSO") to provide a copy of Respondent's Civil Arrest Warrant to the Pinal County Sheriff's Office ("PCSO") for service.
44. Respondent failed to produce to the beneficiaries' counsel any of the documents referred to in the Court's May 10, 2007, order.
45. Mr. Henson attended a deposition with Plaintiff Johnson's counsel, on July 16, 2007. Mr. Henson testified during his deposition that Respondent had not provided Mr. Henson with a bill for the fees Respondent was paid out of the trust. Respondent later admitted this fact (H/E 26 Bates Stamp Number "BSN" 337 page 32: 16-20).
46. Mr. Henson testified during his deposition that the amount of the fees Respondent billed out of the trust totaled approximately \$108,000.
47. Mr. Henson testified during his deposition that Respondent told him to ignore the Court's orders for Mr. Henson to attend depositions and court hearings (Tr. 50:24-51:12).

48. By Minute Entry dated August 10, 2007, the Court ordered Respondent's law office to turn over all documents relating to the trust to the beneficiaries' counsel (H/E 7). Respondent failed to provide the documents to the beneficiaries' counsel.
49. By Minute Entry dated September 9, 2007, the Court ordered Respondent's legal assistant, Jennifer Baroldy ("Ms. Baroldy"), to appear at a deposition on September 14, 2007, (H/E 8). Ms. Baroldy's deposition was to take place at Respondent's office.
50. By letter dated September 13, 2007, Respondent informed the beneficiaries' counsel that his office would not be available for Ms. Baroldy's deposition because Respondent would not be in the office due to ongoing medical treatment (H/E 25). Respondent also took Ms. Baroldy's keys to the office away from her and locked the office to discourage her deposition being taken (Tr. 27:22-28:2).
51. Ms. Baroldy appeared for her deposition on September 14, 2007, with counsel.
52. At her deposition, Ms. Baroldy testified that Respondent removed the trust file from Respondent's office sometime in early 2007. Ms. Baroldy also testified that she had not seen the trust file in the office after Respondent had removed it.
53. Respondent posted a full cash bond in the amount set by the Court of \$37,663.74 on or about November 21, 2007.
54. On February 7, 2008, Respondent appeared for a deposition and provided the beneficiaries' counsel with some but not all trust documents (H/E 26, Tr. 18:20-19:6, 36:5-9, 39:5-15, 41:11-20).

55. During his deposition, Respondent stated he was in control of all accounting and tax filings for the MFC Trust.
56. During his deposition, Respondent stated he took check number 1085, dated August 19, 2002, in the amount of \$20,000 as payment for his work on behalf of the trust. On or about August 19, 2002, Respondent's fees and costs totaled approximately \$3,054.50.
57. During his deposition, Respondent stated he took check number 1086, dated March 10, 2003, in the amount of \$70,000 as payment for his work on behalf of the trust. On or about March 10, 2003, Respondent's fees and costs totaled approximately \$13,751.50.
58. During his deposition, Respondent stated he took check number 1106, dated September 27, 2004, in the amount of \$42,000.
59. During his deposition, Respondent stated that \$40,450.13 of check number 1106 was used to pay property taxes for the trust.
60. During his deposition, Respondent stated that approximately \$1,549.87 of check number 1106 was taken by Respondent as payment for his work on behalf of the trust.
61. During his deposition, Respondent stated he took check number 1121, dated November 7, 2006, in the amount of \$17,000 as payment for his work on behalf of the trust.
62. On or about November 7, 2006, Respondent's fees and costs totaled approximately \$97,784.62.

63. During his deposition, Respondent stated he took an additional \$6,000 as payment for his work on behalf of the trust.
64. During his deposition, Respondent testified he took \$114,549.87 as total payment for his work on behalf of the trust.
65. Respondent's billing statement dated March 19, 2007, reflects Respondent's fees and costs for his work on behalf of the trust totaled \$102,868.02.
66. During his deposition, Respondent testified that while he prepared some attorney fee billings, he affirmed his client's testimony that he did not send those billings to Mr. Henson.
67. During his deposition, Respondent stated he did not adequately communicate with Mr. Henson.
68. Respondent's deposition is set forth in Hearing Exhibit 26, and in that deposition, BSN 336, page 26:13-17 and 26:21-27:11, BSN 336, page 37:15-16, and BSN 338, page 34:2-5, Respondent testified that he took fees out of the trust account before he had earned them and, as of the date of his deposition had not decided (H/E 26 BSN 338 page 34: 6-14) on whether he would or could pay any money back to the trust.
69. Respondent testified that he could not recall if the moneys received from the trust were put into his office trust account (H/E 26 BSN 337 page 31:10-16), that his office trust account was not in compliance with Supreme Court Rules (H/E 26 BSN 336 page 26:21-27:5), and that he was the one responsible for the compliance of his office trust account (H/E 26 BSN 364 page 140:13-141:16).

Respondent testified in his deposition that these funds were taken in error, (H/E 26 BSN 336, page 26:7-17).

70. During his deposition, Respondent stated that during this period he had a gambling and alcohol problem (H/E 26 BSN 338 Page 34:15- 36:5, BSN359 page 120:12-15).
71. On or between August 2002 and September 2007, Respondent withdrew \$97,290.25 from his general operating account to support his gambling habit (Tr. 42:18-43:9).
72. During his deposition, Respondent stated he had not performed a three-way reconciliation on his client trust account on or about 2002 through 2007, and that he was the one ultimately responsible for this (H/E 26 BSN 364 140:11-141:1).
73. The Hearing Officer finds the above enumerated facts to have been proven by clear and convincing evidence.

**CAUSE NUMBER 07-665 (Contested)<sup>2</sup>**

74. The focus of this cause is Respondent's failure to follow Court orders.<sup>3</sup>
75. Respondent represented a defendant, Herbert Henson, in the conservatorship matter in Maricopa County Superior Court, PB 2002-002367, discussed in detail in the prior Cause Number (07-2012).
76. On or about November 6, 2006, Respondent was ordered by the Court to provide documents to Plaintiffs' counsel. There were numerous documents requested by Plaintiffs' counsel, but specifically relating to Respondent were tax documents,

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<sup>2</sup> This is the Cause with which the Disciplinary Commission had unresolved questions previously.

<sup>3</sup> Because most of the facts in this Cause are the same as the facts in the previous Count, and were admitted by Respondent due to his default, the citations to authority are not repeated herein. The remaining facts in this Cause number were testified to by Plaintiff Johnsons' attorney, Merwin Grant, at the Aggravation/Mitigation Hearing.

- attorney fee billings and payments, unreimbursed advances made to or from attorneys, and "... any other documents relating to attorney fees in this and related matters," ( H/E 24 p.4). Respondent failed to provide the documents to Plaintiffs' counsel.
77. The Court scheduled an Order to Show Cause hearing for February 20, 2007. Respondent failed to appear at the Order to Show Cause hearing.
  78. On or about February 20, 2007, Respondent was ordered by the Court to provide the documents referred to previously to the Plaintiffs' counsel by March 6, 2007. Respondent failed to provide the documents to Plaintiffs' counsel.
  79. The Court scheduled a second Order to Show Cause hearing for March 13, 2007. On or about March 13, 2007, Respondent was ordered to provide the documents referred to above to Plaintiffs' counsel by March 16, 2007. Respondent failed to provide the documents to Plaintiffs' counsel.
  80. On or about March 23, 2007, Plaintiffs' counsel filed a Motion for Sanctions including an Order of Contempt for Issuance of a Civil Arrest Warrant ("Motion for Sanctions").
  81. The Court scheduled oral argument on the Motion for Sanctions for April 24, 2007. Respondent failed to appear at the oral argument.
  82. On or about April 24, 2007, the Court found that Respondent had knowledge of, understood, and willfully failed to comply with the Court's orders. On that date, April 24, 2007, Respondent was found to be in contempt of court.

83. Also, on or about April 24, 2007, Plaintiff's Motion for Sanctions was granted and Plaintiff was awarded reasonable attorney fees. The Court also found Respondent jointly and severally responsible with his client for the award of attorney fees.
84. On or about April 27, 2007, the Court issued a Civil Arrest Warrant against Respondent.
85. The Arizona State Bar was notified of the Respondent's conduct via minute entry dated April 24, 2007.
86. By letter dated May 23, 2007, the State Bar requested a written response from Respondent addressing the conduct found by the Court. The State Bar's letter was sent to Respondent's address as maintained by membership records. Respondent failed to respond to the State Bar's letter.
87. By letter dated June 22, 2007, the State Bar again requested a written response from Respondent addressing the conduct found by the Court. The State Bar's letter was sent to Respondent at the address as maintained by membership records. The State Bar's letter warned Respondent that failure to cooperate with a disciplinary investigation was, by itself, grounds for discipline under Ariz.R.Sup.Ct. 53(d) and (f). Respondent failed to respond to the State Bar's letter.
88. Attorney Merwin Grant, representing the opposing parties in the trust matter, and to whom Respondent was to have provided the documentation, testified at the Aggravation Mitigation hearing that he needed the documents requested of Respondent to determine the appropriateness of disbursements made from the trust account to the Respondent and his client, Mr. Henson.

89. Merwin Grant further testified that he sent 20 to 25 letters to Respondent asking for the information and these letters were used as a basis for the finding of contempt by the Judge.
90. Merwin Grant also testified that in addition to Respondent's numerous failures to appear at the specified Orders to Show Cause, he did not show up for a deposition that the Judge had ordered. Respondent called and said that he would not appear, and also discouraged his office assistant's appearance at her deposition. Ultimately, Respondent did appear for his deposition, (SBE 26).
91. Merwin Grant also testified that during the course of litigation with Respondent, Respondent's demeanor was hostile and uncooperative and that he did not respond to correspondence or phone calls from Mr. Grant (Tr. 25:22).
92. Merwin Grant also testified that Respondent's refusal to provide the documentation in a timely fashion delayed the resolution of the issues involved in the case.
93. When this matter was previously heard by the Disciplinary Commission on the Tender and Joint Agreement, the Commission expressed a concern about whether or not the Probate Court had reached a final resolution in the underlying matter. Merwin Grant testified at the Aggravation/Mitigation hearing that the Probate Court has still not formally closed all proceedings (Tr. 48:4-15, 49:6-50:7); that since Respondent and his client have been removed, the "hangup" is now the IRS (Tr. 62:16-22). The Probate Court did remove Respondent's client from the trust, and Respondent withdrew as attorney in the matter in early 2007. The bond of \$37,663.17 posted by Respondent to satisfy the warrant that had been issued for

his arrest was divided between the attorneys for the Plaintiffs to satisfy a portion of their attorney fees (Tr. 53:2-21). Merwin Grant testified that no decision has been made regarding whether to try to recoup any of the other monies paid to the Respondent by the trust, or recoup from him further attorney fees, pending a decision on whether said monies are recoverable from the Respondent (Tr. 49:6-50:7). Since the conclusion of the Aggravation/Mitigation Hearing the State Bar has filed a Supplement To Post Hearing Memorandum on December 22, 2008, which states that Mr. Grant, on behalf of the MFC Holding Trust, has advised Bar Counsel that his clients have decided that they will only request \$11,681.85 in restitution in these proceedings and they may request further restitution regarding unearned attorney fees in the Probate Court. The victims only request that the figure requested in these proceedings not preclude recovery of a greater amount in the Probate Court if ordered there.

94. Finally, Merwin Grant testified at the Aggravation/Mitigation hearing that Respondent showed no remorse during his deposition, and in fact, given his admissions, seemed "arrogant" (Tr. 52:9-19).

95. The Hearing Officer finds the above enumerated facts to have been proven by clear and convincing evidence.

**CAUSE NUMBER 07-1224 (Woods) (First Complaint, deemed contested)**

96. This Cause number was set forth in the original Complaint as Count Two. This Cause number deals with the allegation that Respondent, during the months between April and July 2007, failed to adequately represent his client, Donald Woods, by: failing to stay in touch with Mr. Woods; failing to respond to Mr.

Wood's requests for information; failing to file an action on behalf of Mr. Woods as he was retained to do; failing to provide a full accounting of his fees when requested by his client; and failing to return the unused portion of the fee.<sup>4</sup>

97. Respondent, through his then attorney, Stephen Sherick, filed an Answer admitting most of the allegations set forth in the Complaint, however denying others claiming a "disability" prevented him from compliance. A comparison of the admissions Respondent makes in his Answer to the specifics of the Complaint filed by the State Bar shows that Respondent admits that: He was contacted by Mr. Woods on several occasions requesting an update for information on the case; that Respondent failed to file the action in the Gila County Superior Court as directed by his client; that he was fired by Mr. Woods; that Mr. Woods made a request for a full refund of his retainer; and that Respondent failed to respond to Mr. Woods demand. Respondent claims that his "medical condition" precluded him from being able to comply with his obligation to his client. Respondent, in his Answer, then goes on to admit that he failed to respond to the State Bar's inquiries even after being warned that failure to respond could result in sanction in and of itself.

98. This Cause Number was not addressed by the State Bar at the Aggravation/Mitigation hearing, and no further evidence was submitted. Exhibit 1, attached to the original Tender and Joint Agreement, is a letter from Respondent's doctor dated April 5, 2008, (which is Exhibit 17 to the Aggravation/Mitigation hearing in

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<sup>4</sup> Mr. Woods did not appear at the Aggravation/Mitigation hearing, and this Cause was in the Original Complaint which Respondent answered, so the facts are deemed contested. Because there was no testimony from Mr. Woods, the Hearing Officer compared Respondent's admissions in his Answer to the allegations in the Complaint.

this matter and has been sealed) the essence of which says that Respondent has for many years, and apparently during the period of time that Respondent was dealing with Mr. Woods, suffered from severe and debilitating mental health issues.

99. This Hearing Officer is then confronted with the fact that Respondent admits to the essence of several of the allegations set forth in this Cause, but claims that his mental health issues precluded him from complying with his responsibilities to his client and the profession. Unfortunately, Respondent did not appear at the Aggravation/Mitigation hearing in this matter to explain how his mental health issues precluded him from complying with his obligation to his client and the profession. It is insufficient for an attorney to simply rely on a doctor's report as an excuse for all of his misbehavior without some connecting testimony as to the specifics.

100. While certainly Respondent's mental health will be considered later in the Mitigation section, because there was no testimony to tie this condition with his failure to represent Mr. Woods and respond to the Bar, it does not rise to the level of excusing his behavior.

101. The Hearing Officer finds the above enumerated facts by clear and convincing evidence.

**CAUSE NUMBER 08-140 (O'Leary) (Second Complaint, deemed admitted)**

102. This Cause deals with the Respondent's failure to comply with orders regarding a diversion.

103. On or about March 28, 2006, Respondent was retained by Lynn O'Leary ("Mr. O'Leary") to probate property belonging to his deceased sister, Patsy Bradley ("Ms. Bradley").
104. Mr. O'Leary filed a Bar Complaint on November 27, 2006, alleging communication problems he had with Respondent.
105. The State Bar opened an investigation into the conduct alleged in Mr. O'Leary's Bar Complaint in file number 06-1923. As a result of this investigation, the State Bar recommended Respondent be placed into a diversion program for violations of Rule 42, Ariz.R.Sup.Ct., specifically ER 1.4.
106. By an Order of Diversion ("Order") dated July 9, 2007, Respondent was ordered into a diversion program for the conduct alleged in file number 06-1923.
107. Respondent's terms of diversion required him to contact the State Bar's Law Office Management Assistance Program ("LOMAP") for a consultation regarding client communication and calendaring. Respondent was ordered to contact LOMAP within 20 days from the date the Order was mailed.
108. A copy of the Order was mailed to Respondent on or about July 12, 2007. Respondent did not file an objection to the Order. Respondent was required to contact LOMAP by August 1, 2007. Respondent failed to contact LOMAP by August 1, 2007.
109. Maria Bahr ("Ms. Bahr") was the director of LOMAP at the time Respondent was ordered into diversion. By letter dated August 6, 2007, Ms. Bahr requested Respondent contact her to schedule his ordered LOMAP consultation. This letter

- was mailed to Respondent's last known address as maintained by membership records.
110. Sometime between August 6, 2007, and August 23, 2007, Respondent contacted LOMAP.
  111. Respondent scheduled an appointment to meet with Ms. Bahr at 10 a.m. on September 14, 2007, to conduct Respondent's ordered LOMAP consultation. Ms. Bahr agreed to conduct the consultation at Respondent's Law office in Globe, Arizona.
  112. By letter dated August 23, 2007, the date, time, and location of the LOMAP consultation was confirmed with Respondent. This letter was mailed to Respondent at his last known address as maintained by membership records.
  113. Sometime on or after August 23, 2007, Respondent requested to reschedule the LOMAP consultation. The LOMAP consultation was rescheduled to September 26, 2007. Respondent canceled the September 26, 2007, LOMAP consultation.
  114. Sometime between September 26, 2007, and October 12, 2007, Respondent scheduled the LOMAP consultation for the third time. Ms. Bahr again agreed to conduct the LOMAP consultation at Respondent's office in Globe Arizona. The LOMAP consultation was scheduled to take place on October 25, 2007, and the time, date and location of the LOMAP consultation was confirmed with Respondent by mail at his address as maintained by membership records.
  115. Respondent canceled the October 25, 2007, LOMAP consultation and failed thereafter to attend a LOMAP consultation as required by the Order.

116. By order dated January 16, 2008, Respondent was found to have violated his terms of diversion.

117. The Hearing Officer finds that the above enumerated facts have been proven by clear and convincing evidence.

**CAUSE NUMBER 08-0526 (Dal Molin)** (Third Complaint, deemed admitted)

118. This Cause deals with Respondent's failure to communicate with the State Bar Regarding a Bar Complaint.

119. Respondent was retained by Russell Dal Molin's son. Thereafter, Mr. Dal Molin asked Respondent to return his son's client file. Respondent failed to return the client file, and failed to return Mr. Dal Molin's telephone calls.

120. By letter dated June 4, 2008, the State Bar asked Respondent to respond to the allegations set forth above. The letter to Respondent was sent to Respondent's last known address as maintained by membership records.

121. The letter to Respondent reminded him of his duty to cooperate with the State Bar's investigation. Respondent failed to respond.

122. By letter dated July 10, 2008, the State Bar again asked Respondent to respond to the allegations referred to above. This letter was also sent to Respondent's last known address as maintained by membership records. This letter also warned Respondent that failure to respond may, in and of itself, be grounds for discipline.

123. Respondent failed to respond.

124. The Hearing Officer finds that the facts enumerated above have been proven by clear and convincing evidence.

**CAUSE NUMBER 08-0450 (Country Club)** (Third Complaint, deemed admitted)

125. This Cause deals with allegations that Respondent failed to act with diligence, issues of conflict of interest, failing to withdraw when impaired, failure to expedite litigation, disobeying an order of a tribunal, and failing to respond to the Bar.
126. On or about August 15, 2005, William Phillips (“Mr. Phillips”) filed a lawsuit against Cobre Valley Country Club (“Country Club”) in Gila County Superior Court, CV2005-202.
127. Due to judicial conflicts regarding the case, CV2005-202 was transferred to Graham County Superior Court on or about June 5, 2007.
128. Respondent was the attorney of record for the Country Club.
129. On or about June 16, 2007, Mr. Phillips attorney filed a First Amended Verified Complaint, expanding the number of named defendants to include both the Country Club and 24 other individual defendants.
130. Respondent began to represent 20 of the 24 individual defendants. The number of the individual defendants included members, officers, and employees of the Country Club.
131. Respondent did not obtain the informed, written consent of the Country Club’s authorized agent or the 20 individual defendants.

132. The Court set a Status Conference on October 22, 2007. Respondent requested attorney Jerry DeRose (“Mr. DeRose”) stand in for him at the Status Conference.
133. At the Status Conference on or about October 22, 2007, Mr. DeRose informed the Court that Respondent was unable to appear due to medical concerns. The Court continued the Status Conference to December 17, 2007.
134. On or about December 17, 2007, Respondent appeared telephonically at the continued Status Conference. During the Status Conference, Respondent informed the Court he was in the process of talking to his clients to help them find other council due to his personal medical concerns.
135. During the December 17, 2007 hearing, Respondent agreed to Bates stamp, copy, and mail all board minutes and other business records being requested by opposing counsel by January 11, 2008. The Court then set a Review Hearing on January 28, 2008, (“Review Hearing”).
136. Respondent failed to Bates stamp, copy, and mail the documents described above to opposing counsel by January 11, 2008.
137. On or about January 28, 2008, Respondent failed to appear at the Review Hearing.
138. At the Review Hearing, opposing counsel informed the Court that Respondent had not provided them with the documents referred to above, requested sanctions, and requested that Respondent be removed from the case.

139. At the Review Hearing, the Court found Respondent had failed to provide discovery as referred to above, and set another hearing to address the issue of sanctions on February 5, 2008, ("Sanctions Hearing").
140. On or about February 5, 2008, Respondent appeared at the Sanctions Hearing. At the Sanctions Hearing, Respondent informed the Court he did not recall participating in the December 17, 2007, hearing due to medication he had been on at the time for diabetes and emotional problems. Respondent also informed the Court that his staff had not calendared the Review Hearing.
141. At the Sanctions Hearing, the Court ordered Respondent to meet with opposing counsel in Globe, Arizona, to review the documents requested at the Country Club on February 16, 2008.
142. Respondent reviewed the documents with opposing counsel and codefendant's counsel at the Country Club on February 16, 2008.
143. By letter dated April 9, 2008, the State Bar asked Respondent to respond to the conduct described herein.
144. The State Bar's letter was sent to Respondent's counsel at the time at the address provided to the State Bar by Respondent's counsel.
145. Respondent's counsel at the time indicated that he was not formally representing Respondent in this matter, but would forward the State Bar's letter.
146. Respondent failed to respond until Respondent, his counsel, and the State Bar began negotiations of a settlement agreement in File Numbers 07-0665 and 07-1224.

147. The Hearing Officer finds the above enumerated facts proven by clear and convincing evidence.

### **CONCLUSIONS OF LAW**

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

**CAUSE NUMBER 07-2012 (Financial dealings with the trust)**

149. Rule 42 Ariz.R.Sup.Ct.
150. ER 1.3 Diligence: Respondent failed to act with reasonable diligence and promptness in representing his client.
151. ER 1.5(a) Fees: Charging an unreasonable fee.
152. ER 1.15(a) Safekeeping Property: Respondent failed to keep his clients fund's separate from his personal funds and used them interchangeably.
153. ER 1.16(a)(2) Declining or Terminating Representation: Respondent failed to withdraw when his physical or mental condition impaired his ability to represent his client.
154. ER 3.2 Expediting Litigation: Respondent failed to expedite litigation in this matter.
155. ER 3.4(a) Fairness: Respondent unlawfully obstructed another parties' access to evidence.
- (c) Respondent knowingly disobeyed an obligation under the rules of the tribunal.
156. ER 8.4(a) Respondent violated Rules of Professional Conduct.

- (c) Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.
- (d) Respondent engaged in conduct that was prejudicial to the administration of justice.
157. Rule 43 and Rule 44, Trust Count Verification: Respondent failed in his responsibility to his client regarding his client's funds, and failed to verify the activities in his trust account.
158. Rule 53(c) Willful Violation: Respondent willfully violated an order of the Court.  
**CAUSE NUMBER 07-0665 (Violation of Responsibility to the Court)**
159. Rule 42 Ariz.R.Sup.Ct.
160. ER 1.3 Diligence: Respondent failed in his responsibility to diligently and promptly represent his client.
161. ER 3.2 Expediting Litigation: Respondent failed to make reasonable efforts to expedite litigation in this matter.
162. ER 3.4(a) Fairness: Respondent unlawfully obstructed the opposing parties' access to evidence.  
  
(c) Respondent knowingly disobeyed an obligation under the rules of a tribunal.
163. ER 8.1(b) Disciplinary Matters: Respondent failed to disclose information to the Disciplinary Authority.
164. ER 8.4(c) Misconduct: Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.  
  
(d) Respondent engaged in conduct that was prejudicial to the administration of justice.

165. Rule 53(c) Grounds for Discipline: Respondent willfully violated a Rule of the Court.

(d) Respondent refused to cooperate with officials and staff of the State Bar.

(f) Respondent refused to provide information and respond promptly to an inquiry from Bar Counsel.

**CAUSE NUMBER 07-1224** (Woods) (Failure to comply with client wishes; failure to respond to the Bar)

166. Rule 42, Ariz.R.Sup.Ct

167. ER 1.2(a) Respondent failed to follow the wishes of his client.

168. ER 1.3 Respondent failed to act diligently.

169. ER 1.4(a)(4) Respondent failed to promptly respond to requests for information.

170. ER 1.16(d) Respondent failed to promptly return property to his client.

171. ER 8.1(b) Respondent failed to respond to a lawful demand for information from the State Bar.

172. Rule 53(d) Respondent failed to cooperate with officials of the State Bar.

173. Rule 53(f) Respondent refused to provide information and respond promptly to an inquiry from Bar Counsel.

**CAUSE NUMBER 08-140** (O'leary) (Violation of a condition of diversion)

174. Rule 53(e) By refusing to cooperate with the conditions of LOMAP, Respondent violated a condition of his diversion.

**CAUSE NUMBER 08-0526** (Dal Molin)

175. Rule 42 Ariz.R.Sup.Ct.

176. ER 8.1 Disciplinary Matters: Respondent knowingly failed to respond to a lawful demand for information from the State Bar.
177. Rule 53(d) Grounds for Discipline: Respondent refused to cooperate with officials of the State Bar.
- (f) Respondent refused to furnish information or respond promptly to an inquiry or request made from Bar Counsel.

**CAUSE NUMBER 08-0450 (Country Club)**

178. Rule 42 Ariz.R.Sup.Ct.
179. ER 1.3 Diligence: Respondent failed to act with reasonable diligence and promptness in representing his client.
180. ER 1.7 Conflict of Interest. Respondent represented a multitude of defendants in an action where there were concurrent conflicts of interest.
181. ER 1.16(a)(2) Declining or Terminating Representation: Respondent did not withdraw from representation of a client when his physical or mental condition impaired his ability to represent the client.
182. ER 3.2, Expediting Litigation: Respondent failed to make reasonable efforts to expedite litigation in this Cause.
183. ER 3.4(c) Fairness to Opposing Party: Respondent knowingly disobeyed an obligation under the rules of a tribunal.
184. ER 8.1(b) Disciplinary Matters: Respondent failed to respond to a lawful demand for information from a disciplinary authority.
185. ER 8.4(d) Misconduct: Respondent engaged in conduct that was prejudicial to the administration of justice.

186. Rule 53(d) Grounds for Discipline: Respondent refused to cooperate with officials of the State Bar.

(f) Respondent failed to furnish information or respond promptly to an inquiry or request from Bar Counsel.

### **RESTITUTION**

187. The State Bar states that, other than \$11,681.85 owed to MFC Holding Trust in Cause No. 07-0665 and 07-2012, there is no restitution owed to any other party (State Bar's Closing Memorandum, page 11:6).

### **ABA STANDARDS**

188. 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 and mitigating factors.

#### **1) The Duty Violated**

189. The Hearing Officer finds that the Respondent violated on multiple occasions his duty to his clients, the Court, and the profession all as more specifically set forth in the Conclusions of Law.

190. The American Bar Association's *Standards for Imposing Lawyer Sanctions* assists in determining the range of sanctions for Respondent's violation of his duties to his clients, the Court, and the profession.

191. It is well established that the sanction imposed should be at least consistent with a sanction for the most serious instance of misconduct among numerous violations. Trying to weigh all of Respondent's violations is difficult and not easy to do.

However, it appears to this Hearing Officer that Respondent's most serious misconduct arises in Cause Number 07-2012, wherein he engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in taking fees that he had not earned and was not entitled to from the trust, and consistently taking fees from the trust prior to having earned them, all to his own benefit; and in Cause Number 07-665 disobeyed Court orders, was dishonest with the Court, and engaging in conduct that was prejudicial to the administration of justice.

192. *Standard 4.6* Lack of Candor, is implicated in this case.

193. *Standard 4.61* states the following:

“Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client.”

194. *Standard 4.62* states the following:

“Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.”

195. The difference between these two *Standards* is whether the attorney deceives a client and causes injury to the client with the intent to benefit himself (disbarment), or simply deceives a client, and causes injury to the client, not necessarily for his own direct benefit (suspension).

196. *Standard 7.0*, Duties Owed as a Professional, is also implicated in this case.

197. *Standard 7.1* states as follows:

“Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to

obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.”

198. *Standard 7.2* states as follows:

“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.

199. Again, the distinction between disbarment and suspension is whether the attorney knowingly engaged in conduct that is a violation of a duty owed as a professional, either with the intent to obtain a benefit for the lawyer (disbarment), or knowingly engages in conduct that injures his client without necessarily intending to benefit himself (suspension).

200. Therefore, in order to determine the presumptive sanction, Respondent's intention is important. Respondent did not appear at the Aggravation/Mitigation hearing, and so there was never an opportunity to examine him on this issue. However, Respondent's admissions in his deposition ultimately taken in the case underlying Cause numbers 07-2012 and 07-665 (H/E 26) sheds light on the fact that Respondent knew that he was taking payments from the trust before they were due, and that he had not considered repaying any monies back to the trust. Clearly then, Respondent's conduct was generated for his own benefit. The presumptive sanction then is disbarment.

## **2) The Lawyer's Mental State**

201. Due to the fact that Respondent did not participate in the Aggravation/Mitigation Hearing, it is difficult to ascertain his state of mind. After reading the Respondent's doctor's report, it is clear that the Respondent is suffering from some severe mental and emotional problems. Whether these problems would preclude a "knowing" state of mind or not is the issue. Respondent also claimed that the unearned withdrawals were made in "error".

202. After reading Respondent's deposition, it is apparent that he knew that he was not in compliance with accounting rules for his own office trust account, was uncertain if the unearned fees had been properly deposited in his office trust account, had little or no idea what his time slips amounted to, and was very haphazard in accounting for the money he received being in relation to the work that he did. Respondent also acknowledged having taken more money than he was due and that he owed money back to the trust.

203. Respondent's deposition also reveals that Respondent had periods where he was fully capable and aware such that he knew what he was doing and capable of correcting the problems, or at least withdraw himself from the representation of his clients so that he would cause no further damage. In that Respondent's violations were so numerous over such an extended period of time, and given that there is no other evidence other than the doctor's report, this Hearing Officer must find that Respondent's mental state was knowing.

### **3) Injury Caused**

204. The evidence shows that, specifically in Cause Number 07-2012, Respondent caused financial loss in the amount of \$11,681.85, perhaps more. In Cause

Number 07-665, Respondent's delay and refusal to cooperate with opposing counsel and comply with the Court orders caused an indeterminable amount of delay and expense, not to mention clogging up the Court's calendar with enforcement hearings. In Cause Numbers 07-1224, 08-526 and 08-450 Respondent caused delay to his clients and to the disciplinary process. In Cause Number 08-140 Respondent was given an opportunity to resolve disciplinary matters in a diversion program, and, after causing a large expenditure of time by Bar staff, Respondent ultimately simply ignored the process.

#### **4) Aggravating and Mitigating Factors**

##### **Aggravating Factors**

205. *Standard 9.22(a) Prior Disciplinary Offenses:*

Respondent, on February 16, 1979, received a Censure in file number 77-4-5 G for a violation of the then applicable Rules from the Model Code of Professional Responsibility and Code of Judicial Conduct. Respondent's violations were for: engaging in conduct involving dishonesty, fraud, deceit or misrepresentation (DR1-102(A)(4); intentionally failing to carry out a contract of employment entered into with a client for professional services (DR7-101(A)(2); and failing to respond to client calls and letters as well as sending dishonest letters to a client (DR6-101(A)(3).

206. Respondent, on November 11, 1983, received a second Censure in file number 82-3-4B for failing to properly advise the Court of a second pending lawsuit (engaging in conduct that is prejudicial to the administration of justice, DR1-102(A)(5)).

207. Respondent, on January 16, 1986, received an Informal Reprimand in Disc. Comm. No. 5-1421 for losing and refusing to return client files (DR1-102(A)(1), DR9-102(B)(2), (DR9-102(B)(3), DR9-102(B)(4).
208. The Hearing Officer notes that all of these disciplinary offenses are more than 20 years old, and so has not given quite as much weight as if they had been more recent.
209. *Standard 9.22(b) Dishonest or Selfish Motive:*  
Respondent received over \$11,000 beyond what he was due, and acknowledged that on multiple occasions he was taking money before he actually earned it. Respondent also ignored multiple Court orders which resulted in both he and his client being sanctioned by the Court. The only plausible explanation for Respondent's ignoring Court orders is his attempt to cover up the sloppy bookkeeping which was allowing him to take money from the trust, and take money before it was earned.
210. *Standard 9.22(c) Pattern of Misconduct:*  
In all of these Causes, Respondent has shown a pattern of failing to attend proceedings, failing to appear at hearings, not communicating with his clients, opposing counsel, the Court, or the State Bar.
211. *Standard 9.22(d) Multiple Offenses:*  
These multiple Causes have adversely affected many clients, opposing parties and their attorneys, the Courts and the State Bar.
212. *Standard 9.22(e) Bad Faith Obstruction of the Disciplinary Proceedings:*

In File Numbers 07-665, 07-1224, 08-450, and 08-526, Respondent initially refused to respond to the State Bar's investigation into his conduct. Then, after this matter was remanded from the Disciplinary Commission, Respondent disappeared, refusing to maintain contact with his attorney, the State Bar or this Hearing Officer. Respondent failed to appear at his settlement conference scheduled on September 19, 2008, as well as the Aggravation/ Mitigation hearing on November 24, 2008.

213. *Standard 9.22(i) Substantial Experience in the Practice of Law:*

Respondent was admitted to the State Bar of Arizona on September 23, 1972, so has been practicing law for over 35 years.

**Mitigating Factors**

214. *Standard 9.32(c) Personal or Emotional Problems:*

Based upon the contents of Exhibit 17, Respondent suffers from significant mental health and emotional problems. Further, Respondent admitted to having alcohol abuse and gambling problems.

215. *Standard 9.32(K) Imposition of Other Penalties or Sanctions:*

Following the issuance of his and his client's civil arrest warrant, Respondent posted a cash bond in the amount of \$37,663.74, which was later forfeited and dispersed to pay opposing parties' attorney's fees.

216. *Standard 9.32(l) Remorse:*

The State Bar submits that, during his initial settlement negotiations prior to the rejection of the Consent Agreement, Respondent openly acknowledged his misconduct. A reading of Respondent's deposition also indicates that he

acknowledged his misconduct. The State Bar also submits that Respondent's prior counsel advised Bar Counsel that Respondent had closed his office and retired from the practice of law effective July 2008 as a result of these proceedings.

217. This Hearing Officer has always viewed the issue of remorse with some skepticism. Many times remorse is expressed as a sadness at being caught, rather than a true regret at having harmed one's client and/or the profession. True remorse must be coupled with sufficient self-awareness to take steps to assure that misconduct does not re-occur. It is unfortunate that Respondent chose not to participate further in these proceedings so that this issue could have been explored in more detail.
218. Merwin Grant testified that during Respondent's deposition, Respondent showed no sign of remorse and instead was "arrogant".
219. Based upon the fact that the Respondent has acknowledged the wrongfulness of his conduct and also closed his law practice, thus no further clients can be harmed, this Hearing Officer will find that Respondent has expressed some sign of remorse. However, it cannot be given very much weight.

#### **PROPORTIONALITY REVIEW**

220. The Supreme Court has held that one of the goals of attorney discipline should be to achieve consistency when imposing discipline. It is also recognized that the concept of proportionality is "an imperfect process" because no two cases are ever alike, *In re Struthers*, 179 Ariz. 216, 887 P.2d 789 (1994), *In re Wines*, 135 Ariz.

- 203, 660 P.2d 454 (1983). In order to achieve internal consistency, it is appropriate to examine sanctions imposed in cases that are factually similar, *In re Peasley*, 208 Ariz. 90, 90 P.2d 772 (2004). It is also the goal of attorney discipline that the discipline imposed be tailored to the individual case and that neither perfection nor absolute or uniformity can be achieved *Peasley supra*.
221. In this case the State Bar is recommending that Respondent be suspended for no less than three years, or in the alternative that he be disbarred.
222. In *In re Beskind*, SB-07-0115-D (2007), Beskind was disbarred and ordered to pay restitution for knowingly and intentionally failing to adequately and fully perform legal services for multiple clients, failing to attend various hearings, failing to communicate with multiple clients, and failing to respond to the State Bar's investigation into his conduct. Beskind was found to be in violation of Rule 42, specifically, ER's 1.3, 1.4, 1.5, 3.4(c) and 8.4(d), as well as Rules 53(d), (e), and (f), Ariz.R.Sup.Ct.. There were eight aggravating factors, and one mitigating factor found in Beskind's case.
223. In *In Re Menkveld*, SB-06-0120-D (2006), Menkveld was disbarred and ordered to pay restitution for knowingly abandoning his clients and law practice, misappropriating funds from his client's estate, and failing to respond to the State Bar's investigation into his conduct. Menkveld was found to be in violation of Rule 42, specifically, ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, 3.4(c), 8.1, 8.4(d), as well as Rules 32, 43, 44, and 53(d) and (f), Ariz.R.Sup.Ct. There were seven aggravating factors, and only one mitigating factor found in Menkveld's case.

224. In *In re Hoover*, SB-05-0145-D (2005), Hoover was initially suspended by the Hearing Officer for three years for knowingly failing to diligently represent and communicate with multiple clients, abandoning his clients, failing to safeguard the property of his clients, various trust account violations, and not cooperating with the State Bar's investigation into his conduct. Subsequently, the Commission disbarred Hoover. Hoover was found to be in violation of Rule 42, specifically, ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, 8.4(c) and 8.4(d), as well as Rules 43, 44, 53(d) and (f), Ariz.R.Sup.Ct. There were six aggravating factors and no mitigating factors found in Hoover's case.

#### RECOMMENDATION

225. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, the administration of justice, and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993), *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). It is also the purpose of attorney discipline to instill public confidence in the Bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 881 P2d 352 (1994).
226. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Associations *Standards for Imposing Lawyer Sanctions* and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994).
227. As pointed out previously, the question in this matter is whether Respondent should be suspended or whether he should be disbarred. An argument can be

made that Respondent's conduct was so egregious over such a continuous period of time and that, at least in 07-0665, and 07-1224, his conduct was self-serving such that disbarment is the appropriate sanction. Also, it is clear that the aggravating factors outweigh the mitigating factors.

228. The Hearing Officer reviewed Hearing Exhibit Number 17, Respondent's doctor's letter, and is moved by the fact that Respondent is plagued by some very serious mental health and emotional problems. These are not problems that Respondent either ask for or earned. It also appears that, at least in part, they affected his ability to communicate with his clients and do his work appropriately. However, in the end, it must be considered that, for whatever reason, Respondent did not continue to participate in these proceedings such that a better understanding of his mental health issues could be obtained. It must also be considered that, given the facts of this case, Respondent's conduct falls squarely within the disbarment category of *Standards* 4.61 and 7.1.

229. Accordingly, it is the recommendation of this Hearing Officer that:

- 1) Respondent be disbarred.
- 2) Respondent be ordered to pay at least \$11,681.85 to MFC Holding Trust.<sup>5</sup>
- 3) Respondent be ordered to pay the cost of these proceedings.

DATED this 12<sup>th</sup> day of January, 2009.

Hon. H. Jeffrey Coker / N.M.  
H. Jeffrey Coker, Hearing Officer

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<sup>5</sup> Unless the Probate Court orders a greater amount.

Original filed with the Disciplinary Clerk  
this 12<sup>th</sup> day of January, 2009.

Copy of the foregoing mailed  
this 13<sup>th</sup> day of January, 2009, to:

William Tiff  
Respondent  
PO Box 2521  
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Russell Anderson  
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by: Evelyn Loza