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FEB 22 2011

BEFORE THE DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ARIZONA

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IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA )  
 )  
GREGORY L. DROEGER, )  
Bar No. 012117 )  
 )  
RESPONDENT. )

No. 10-0173  
  
DISCIPLINARY COMMISSION  
REPORT

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 22, 2011, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed December 22, 2010, recommending censure and costs.

Decision

The seven members<sup>1</sup> of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact and conclusions of law and recommendation for censure and costs of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk's office.<sup>2</sup>

RESPECTFULLY SUBMITTED this 22 day of February 2011.

*Pamela M. Katzenberg*  
Pamela M. Katzenberg, Chair  
Disciplinary Commission

Original filed with the Disciplinary Clerk  
this 22 day of February, 2011.

<sup>1</sup> Commissioner Belleau and Horsley did not participate in this proceeding.  
<sup>2</sup> The Hearing Officer's Report is attached as Exhibit A. The State Bar's costs total \$3,862.50.

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Copy of the foregoing mailed  
this 24 day of February, 2011, to:

Gregory L. Droeger  
Respondent  
274 West View Point Drive  
Nogales, AZ 85621-4115

Thomas E. McCauley  
Bar Counsel  
State Bar of Arizona  
4201 North 24th Street, Suite 200  
Phoenix, AZ 85016-6288

Copy of the foregoing hand delivered  
this 24 day of February, 2011, to:

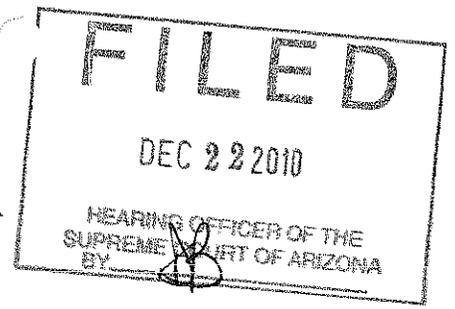
Hon. Jonathan H. Schwartz  
Hearing Officer 6S  
1501 W. Washington, Suite 104  
Phoenix, AZ 85007

by: Deanna Barb

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# EXHIBIT A



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

IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
)  
**GREGORY L. DROEGER,** )  
**Bar No. 012117** )  
)  
)  
RESPONDENT. )  
\_\_\_\_\_ )

No. 10-0173

**HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

The parties filed a Tender of Admissions and Agreement for Discipline by Consent and Joint Memorandum in Support of the Agreement for Discipline by Consent on October 8, 2010. No Complaint has been filed in this matter. The Hearing Officer held a telephonic conference with Bar Counsel Thomas McCauley Jr. and Respondent Gregory Droeger on November 4, 2010. The conference was recorded by the court reporter. The Hearing Officer used the conference as a hearing to ask questions of the Bar and Respondent about the agreement.

**FINDINGS OF FACT<sup>1</sup>**

1. 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 October 21, 1988. (TR 5:6)
2. Respondent set up a "sub-office" within his office, with its own separate trust account, to handle his property tax lien foreclosure work. (TR 5:16 through 6:22)
3. That work is for a flat fee, with half up front to cover most of the standard costs and the remainder paid after the foreclosure has been completed as the attorney's fees. (TR 6:23 through 7:3)
4. A long-time assistant was charged with reconciling all of Respondent's checking accounts. (TR 7:4-17)

<sup>1</sup> The facts are found in the Tender of Admissions and in the transcript of the telephonic conference/hearing.

5. Respondent has his principal client trust account with Bank of America, which provides hard copies of cancelled checks. (TR 7:18-22)
6. The foreclosure client trust account was with Chase Bank, which provided only electronic copies. (TR 7:23 through 8:1)
7. Respondent hired a new assistant, Fernanda Magallanes, in 2001.<sup>2</sup> (TR 8:2-16)
8. Ms. Magallanes was eventually provided with access to the checkbooks so that she could write checks for various expenses and use Respondent's signature stamp. (TR 8:24 through 9:3)
9. Ms. Magallanes was charged with opening mail and emails. (TR 9:4-6)
10. Eventually, Ms. Magallanes convinced the long-time assistant charged with the trust accounts that she was in charge of reconciling the foreclosure client trust account. (TR 9:7-13) At the hearing Respondent testified that he did not know at the time it occurred that Ms. Magallanes took over this responsibility. (TR 9:14-24)
11. On January 28, 2010, checks for \$648.22 and \$143.72 attempted to pay against a balance of \$626.09 in the foreclosure account. (TR 10:4-10)
12. It appears that the bank paid the checks, and did not charge an overdraft fee, thereby leaving the account with a negative balance of \$165.85. (TR 10:14-19)
13. After the overdraft hit, Respondent discovered that Ms. Magallanes had been writing on the check stubs for seemingly routine costs, when in actuality the check was made payable to her, often in a higher amount. (TR 10:20 through 11:1)
14. Respondent fired her and immediately reported the theft to the police. (TR 11:5-7)
15. Further investigation revealed that Ms. Magallanes had pilfered \$42,500 over about two years from the foreclosure client trust account. (TR 11:8-11) Respondent testified that almost all of

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<sup>2</sup> The Tender of Admissions at paragraph 7 incorrectly states that Ms. Magallanes was hired in 2008. The parties agreed at the hearing that she was hired in 2001. (TR 8:10-16)

the money in this trust account was fees that he had earned. He estimated that 95% of the funds were fees that he had left in the account and 5% was client money. (TR 12:9 through 13:22)

16. Respondent then credited the client accounts so that they balanced out. (TR 12:9 through 13:16)

17. Respondent had not personally checked the foreclosure client trust account for some time and had left some earned fees in the account. (TR 12:23, 13:25 through 14:4)

18. Respondent had delegated supervision of the trust accounts to his assistants and had not participated in any review of the accounts for an unknown period of time. Respondent testified that he had not reviewed the Chase Bank account for probably a year. He had reviewed the Bank of America account. (TR 14:5-15)

19. Respondent had no written policies or cross-checks for his trust accounts. (TR 14:16-19)

#### **CONDITIONAL ADMISSIONS/CONCLUSIONS OF LAW**

Respondent conditionally admits that his conduct, as set forth in this count, violated Rule 42, Ariz.R.Sup.Ct., ER 1.15, and Rule 43, Ariz.R.Sup.Ct. The Hearing Officer finds that based on the admissions and the record at the hearing the Bar has established by clear and convincing evidence the following violations:

20. Respondent failed to safe keep client property and failed to maintain complete records according to minimum standards, in violation of ER 1.15(a). (TR 14:20-25)

21. Respondent failed to exercise due professional care in the care of his client trust account, in violation of Rule 43(b)(1)(A), Ariz.R.Sup.Ct. (TR 15:2)

22. Respondent failed to properly supervise employees in the maintenance of his client trust account, in violation of Rule 43(b)(1)(B), Ariz.R.Sup.Ct. (TR 15:3)

23. Respondent failed to maintain adequate internal controls to safeguard funds, in violation of Rule 42(b)(1)(C), Ariz.R.Sup.Ct. (TR 15:5)

24. Respondent failed to ensure that complete records of the handling, maintenance and disposition of trust funds in the firm's possession were maintained, in violation of Rule 42(b)(2)(A), Ariz.R.Sup.Ct. (TR 15:6)

25. Respondent failed to make reasonable efforts to ensure that the firm performed accurate and complete monthly three-way reconciliations, in violation of Rule 42(b)(2)(C), Ariz.R.Sup.Ct. (TR 15:9)

26. Respondent endangered money held in trust for clients, in violation of Rule 42(b)(4), Ariz.R.Sup.Ct. (TR 15:13)

### **RESTITUTION**

There are no outstanding issues of restitution.

### **ABA STANDARDS**

In determining the appropriate sanction, consideration was given to the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") and Arizona case law. The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying these factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. The court and commission consider the *Standards* a suitable guideline. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990). *In re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274, 276 (1994). In determining an appropriate sanction, both the court and the commission consider the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *In re Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA *Standard* 3.0.

Given the conduct in this matter, the most applicable *Standard* is *Standard* 4.13: “Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.”

**Duty Violated**

Respondent violated his duty to his clients to keep safe their property by accurate trust account procedures. (TR 18:2-4)

**Mental State**

Respondent was negligent in failing to appropriately supervise his staff in record keeping concerning client property. (TR 18:5-7)

**Injury**

Although actual injury was not established, the potential for injury existed. Respondent was collecting advanced fees for his work on tax lien foreclosures. Although the funds in the trust account were technically client funds, the money in the account had mostly been earned by Respondent. When his employee stole these funds Respondent suffered most of the monetary loss. However, a small portion of the funds belonged to his clients. (TR 18:8 through 19:2)

In deciding what sanction to impose the following aggravating and mitigating circumstances should be considered:

**Aggravation:**

*Standard* 9.22(a) (prior discipline):

Respondent received a censure in 2009. That discipline did not involve any client trust account issues. Respondent consented to a censure for his conflict of interest (ER 1.7) in representing a person who was challenging a will and codicil that Respondent had drafted for the decedent. Respondent violated ER 3.7 (Lawyer as witness) for representing this individual when it was likely that Respondent would be a necessary witness. Respondent’s conduct was prejudicial to the

administration of justice (ER 8.4 (d)) because his conflict caused a delay in the probate process when a relative of the decedent moved for his disqualification, Respondent fought the disqualification and the court later ordered Respondent disqualified. (See Hearing Officer's Report, September 11, 2009, No. 08-0462)

*Standard 9.22(i)* (substantial experience in the practice of law):

Respondent has been an Arizona attorney for 19 years.

**Mitigation:**

*Standard 9.32 (b)* (absence of a dishonest or selfish motive)

*Standard 9.32 (d)* (timely good faith effort to make restitution or to rectify consequences of misconduct)

*Standard 9.32 (e)* (full and free disclosure)

In evaluating the aggravating and mitigating factors, the Hearing Officer agrees with the parties that they do not justify varying from the presumptive sanction of Censure.

**PROPORTIONALITY ANALYSIS**

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994) (quoting *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604, 615, 691 P.2d 695 (1984).

## **Proportional cases**

*In re Stoltman*, SB 10-0006-D (2010) Respondent accepted an Agreement for Censure and one year of Probation (LOMAP/EEP). Respondent failed to adhere to trust account rules and guidelines in managing her client trust account. Specifically, Respondent failed to safeguard client funds, and to maintain complete records of the handling, maintenance and disposition of all client funds. Respondent also failed to conduct monthly, three-way reconciliations of her trust account. She violated ER 1.15 and Rules 43 and 44. Aggravation: none. Mitigation: no prior discipline, no dishonest or selfish motive, full disclosure. Mental state: negligent. No actual injury.

*In re Stratford*, SB 07-0082-D (2007) Respondent accepted an Agreement for Censure and one year of Probation (LOMAP/TAP/TAEPP). Respondent failed to maintain complete and accurate trust account records, failed to deposit funds to cover bank charges, failed to supervise employees handling the trust account, failed to maintain internal controls to safeguard trust property and failed to conduct monthly reconciliations. ER 1.15 and Rule 43 and 44. Aggravation: pattern of misconduct, multiple offenses, substantial experience. Mitigation: no dishonest or selfish motive, full disclosure. Mental State: negligent. Injury not addressed.

*In re Gutierrez* SB 08-0147-D (2008) is an example of a case involving trust account violations where a censure was agreed to, but probation was not a part of the sanction. The respondent in that case agreed that the Bar could monitor his trust account procedures. He failed to exercise due professional care in the operation and maintenance of his trust account, failed to safeguard client properly and failed to promptly disperse funds belonging to a client or third party. His mental state was negligence and a potential for injury was found.

In *In re Rogers* SB 03-0153-D (2004) Respondent failed to diligently represent and adequately communicate with clients, and also failed to properly manage his trust account by failing to maintain client ledgers, not withdrawing earned fees from the trust account, failing to

record all transactions completely and promptly, failing to maintain proper internal controls within his office to adequately safeguard funds and failing to maintain proper trust account records. He received a censure without probation and he was assessed the costs of the disciplinary proceeding. His mental state was negligence and actual injury was found.

Based on the *Standards* and case law, the Hearing Officer agrees with the parties that a censure is within the range of appropriate sanctions in this case and will serve the purposes of lawyer discipline. The sanction will serve to protect the public, instill confidence in the public, deter other lawyers from similar misconduct, and maintain the integrity of the bar.

### CONCLUSION/RECOMMENDATION

The objective of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Recognizing it is the prerogative of the Disciplinary Commission and the Supreme Court to determine the appropriate sanction, the Hearing Officer agrees with the State Bar and Respondent that the objectives of discipline will be met by the imposition of the proposed sanction of a censure and the costs and expenses of these proceedings.

This case presents a unique situation. Respondent was negligent in not supervising his employees. One of those employees stole \$42,500 over about two years from a separate trust account established by Respondent for funds from his tax lien foreclosure work. The employee Ms. Magallanes had worked for Respondent for nine years. (TR 8:14) Respondent did not know that Ms. Magallanes had convinced another of Respondent's employees that Ms. Magallanes would take over the task of reconciling the foreclosure client trust account. (TR 9:7 through 10:2)

When Respondent learned of the theft he immediately fired Ms. Magallanes and reported the matter to the Nogales Police Department. (TR 11:5-14) The police referred the matter to the prosecutor's office and Ms. Magallanes was charged with felony crimes. She pled

guilty to felonies and was set for sentencing on October 19, 2010. She failed to appear for sentencing and a warrant has been issued for her arrest. (TR 11:15 through 12:8)

The Hearing Officer agrees with the reasoning of Bar Counsel in agreeing to a censure in this matter. Bar Counsel stated that the separate trust account contained mostly advanced fees that were already earned by Respondent. Another trust account maintained by Respondent with more client money was not affected by the theft. Although Respondent had been sanctioned in 2009, the sanction was not in any way related to mishandling client property. Respondent acted quickly to deposit sufficient funds in the separate trust account so that no client would be actually injured. During the disciplinary process Respondent was very cooperative with the Bar. (TR 21:19 through 22:21)

Respondent testified that as a consequence of the theft he lost most of the money that he had earned in advanced fees. He has not received any restitution from Ms. Magallanes. (TR 23:6-16) The Hearing Officer asked Bar Counsel and Respondent why probation and mandatory attendance by Respondent at the State Bar's Trust Account Ethics Enhancement Program (TAEHP) were not a part of the agreed sanction in this case. Bar Counsel responded that the Bar investigation revealed that Respondent understood all of his trust account obligations. Respondent's mistake was in not supervising his staff closely enough. (TR 16:1 through 17:9) The Hearing Officer agrees that in this instance probation and attendance at TAEHP is not necessary.

The Hearing Officer is further encouraged by the steps Respondent has taken to correct this situation. Respondent testified that he now operates his office differently. He meets monthly with the two staff members in his office who are responsible for trust account matters. He personally reviews each client's individual ledger. He conducts the three-way reconciliation and maintains the appropriate ledgers. Bar Counsel stated that he was satisfied with Respondent's current oversight of his trust account program. (TR 23:21 through 25:4)

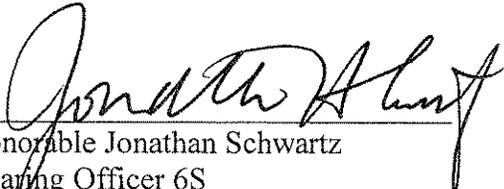
## SANCTIONS

The Hearing Officer recommends the following sanction:

- 1) Respondent will receive a Censure.
- 2) Respondent shall pay all costs and expenses incurred in this disciplinary proceeding.<sup>3</sup> The Bar's Statement of Costs and Expenses is attached as Exhibit

A.

DATED this 22 day of December, 2010.

  
Honorable Jonathan Schwartz  
Hearing Officer 6S

Original filed with the Disciplinary Clerk  
this 22 day of December, 2010.

Copy of the foregoing mailed  
this 28 day of December, 2010, to:

Gregory L. Droeger  
LAW OFFICE OF GREGORY L. DROEGER  
274 West View Point Drive  
Nogales, AZ 85621-4115

Thomas E. McCauley  
Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 200  
Phoenix, AZ 85016-6288

by Deann Barber

/jsa

<sup>3</sup> The Joint Memorandum (at page 5) erroneously referred to probation as part of the sanction. After the hearing the Hearing Officer contacted the parties who agreed that the reference to "probation" was an error. An Order reflecting this agreement was issued on December 10, 2010.

# EXHIBIT A

1 **Statement of Costs and Expenses**

2  
3 In the Matter of a Member of the State Bar of Arizona,  
4 Gregory L Droeger, Bar No. 012117, Respondent

5 File No(s). 10-0173

6 **Administrative Expenses**

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8 The Board of Governors of the State Bar of Arizona has adopted a schedule  
9 of administrative expenses to be assessed in disciplinary proceedings. The  
10 administrative expenses were determined to be a reasonable amount for those  
11 expenses incurred by the State Bar of Arizona in the processing of a disciplinary  
12 matter. An additional fee of 20% of the administrative expenses is also assessed  
13 for each separate matter over and above five (5) matters due to the extra expense  
14 incurred for the investigation of numerous charges.

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

17 ***General Administrative Expenses for above-numbered proceedings \$1200.00***

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

21 **Staff Investigator/Miscellaneous Charges**

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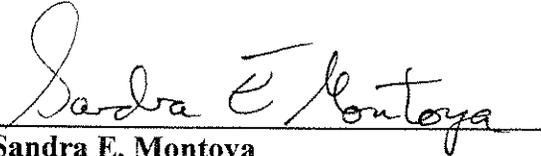
02/23/10	Review, scan and format response; Update summary of findings and chronology	\$ 18.75
23 03/08/10	Consult with Bar Counsel	\$ 18.75
24 03/09/10	Call to Respondent; Request additional information	\$ 37.50
04/19/10	Reconstruct trust account (4/19 – 4/23)	\$1125.00
25 04/26/10	Filter missing data by categories; Request additional information	\$375.00

1	06/17/10	Update trust account reconstructions	\$262.50
2	06/21/10	Update trust account reconstructions	\$375.00
3	07/22/10	Update chronology, trust account reconstructions, and summary of findings	\$412.50
4	07/23/10	Complete summary of findings	\$ 37.50
5	Total for staff investigator charges		\$2,662.50

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7 **TOTAL COSTS AND EXPENSES INCURRED** **\$3,862.50**

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10 Sandra E. Montoya 10-8-10

11 **Lawyer Regulation Records Manager** **Date**

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