

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

IN THE MATTER OF A MEMBER)	Nos. 01-2136, 02-1560, 02-2422,
OF THE STATE BAR OF ARIZONA,)	03-0268, 03-1505
)	
ROBERT H. GREEN JR.,)	
Bar No. 015089)	
)	
RESPONDENT.)	HEARING OFFICER'S REPORT AND RECOMMENDATION
_____)	

This matter came before Hearing Officer 8Z of the Supreme Court of Arizona pursuant to Rule 56(a), Ariz. R. S. Ct., for consideration of the Tender of Admissions and Agreement for Discipline by Consent (Agreement) and the Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memorandum) filed December 19, 2003, providing for a 60-day suspension and upon reinstatement, two years of probation including participation the State Bar's Law Office Management Assistance Program (LOMAP) with a practice monitor (PM), participation in the Member Assistance Program (MAP), successful completion of the Ethics Enhancement Program (EEP), restitution and costs.¹ On February 24, 2004, this Hearing Officer filed a Request for Modification of Agreement, recommending that the Agreement be modified to reflect a 30-day suspension and upon reinstatement, two years of probation with (LOMAP with a PM/MAP/EEP) and restitution. This Hearing Officer believes that given the mitigation present in the record, a 60-day suspension is unduly harsh and punitive. Respondent has acknowledged his misconduct, has taken steps to rectify his misconduct by streamlining and changing his practice, and there have been no further incidents of misconduct. This Hearing

Officer further believes that a 30-day suspension with probation is well within the range of reasonableness for similar misconduct, and that considerable weight should be given to Respondent's absence of prior disciplinary record and his personal and emotional problems, as set forth in the appendices to the Joint Memorandum and in Respondent's supplemental letter filed February 9, 2004. In addition, although there was an initial failure to timely respond to the State Bar's investigation, Respondent ultimately did respond and cooperate once counsel was obtained. The parties filed a Stipulation to Supplement Record on March 9, 2004.

The State Bar has refused to amend the Agreement, citing primarily its agreement, should the Tender be accepted, not to appeal dismissal of the Probable Cause Panelist's dismissal of File No. 99-1259, a separate charge which asserted that Respondent had failed to adequately safeguard and supervise his trust account. That charge and, to some extent those at issue herein, arose out of Respondent's past employment of a suspended attorney who apparently embezzled \$125,000 from Respondent's trust account, and then passed away. After Respondent discovered the theft, he took steps to rectify the matter, including obtaining a mortgage on his home, and retaining his wife to assist in practice management. According to the record, the stress of that situation contributed to the dissolution of Respondent's marriage. In short, a primary financial and personal victim of the trust account embezzlement at issue in File No. 99-1259 appears to be Respondent himself.

The State Bar has indicated that, should the Tender be rejected, it may appeal the dismissal of File No. 99-1259. The Hearing Officer is mindful that rejection of the Tender may

¹ Consideration of costs is not appropriate at this time. *See* Rule 60, Ariz. R. S. Ct.

prompt further litigation of both this matter and No. 99-1259. In essence, it is the Bar's position that Respondent must serve an additional 30-days suspension in order to avoid additional litigation, based on a charge that has been dismissed. The Hearing Officer cannot agree, based on a dismissed charge, to double the length of an otherwise appropriate and proportional suspension. Even were the dismissed charge reinstated and part of this proceeding, the Hearing Officer believes that a 60-day suspension would be unduly harsh and punitive, given the mitigating factors evident in the record.

Therefore, this Hearing Officer recommends rejection of the Agreement and Joint Memorandum pursuant to Rule 56(e)3, Ariz. R. S. Ct.

DATED this _____ day of _____, 2004.

Christopher D. Thomas
Hearing Officer 8Z

Original filed with the Disciplinary Clerk
this _____ day of _____, 2004.

Copy of the foregoing mailed
this _____ day of _____, 2004, to:

Kent E. Turley
Respondent's Counsel
Turley, Swan & Childers, P.C.
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Phoenix, AZ 85012-2643

Copy of the foregoing hand-delivered
this _____ day of _____, 2004, to:

Loren J. Braud
Senior Bar Counsel
State Bar of Arizona

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Phoenix, AZ 85003-1742

by: _____