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FEB 22 2005

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: *William*

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

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

CHRISTOPHER H. REED,
Bar No. 016713

RESPONDENT.

) No.: 02-0068, 02-1576, 02-2188,
) 03-0030, 03-0632, 03-1558,
) 03-1796, 03-2008, 04-0185,
) 04-0812, 04-0895, 04-0982,
) 04-1122, 04-1149, 04-1205,
) 04-1265

) **HEARING OFFICER'S REPORT**

PROCEDURAL HISTORY

The State Bar filed a Complaint in File No. 02-0068 and ten other files on July 22, 2004 (the "First Complaint"). Respondent filed an Answer to the First Complaint on September 8, 2004. The State Bar filed a Complaint in File No. 04-0982 and four other files on October 14, 2004 (the "Second Complaint"). Respondent did not file an Answer to the Second Complaint. On November 30, 2004, this Hearing Officer entered an Order consolidating the two cases. The parties filed a Tender of Admissions and Agreement for Discipline by Consent ("Tender") and a Joint Memorandum in Support of Agreement for Discipline by Consent ("Joint Memo") on November 30, 2004. A hearing on the Tender and Joint Memo was held on January 14, 2005.

FINDINGS OF FACT

1. Respondent is an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on December 4, 1995. Respondent was suspended from the practice of law from May 14 through June 8, 2004 for failure to pay bar dues.

File No. 02-0068

2. On February 13, 2002, the State Bar of Arizona received a notice from Wells Fargo Bank indicating that, on February 11, 2002, Respondent's trust account had been overdrawn.

1 3. The Wells Fargo notice revealed that, on February 11, 2002, check no. 1048 for \$960.00
2 attempted to clear the account when the balance was only \$323.68, resulting in an overdraft of
3 \$636.32

4 4. Wells Fargo assessed overdraft fees of \$29.00, making the total negative balance in
5 Respondent's trust account \$665.32.

6 5. On February 27, 2002, the State Bar of Arizona received a second notice from Wells
7 Fargo indicating that, on February 25, 2002, Respondent's trust account had again been overdrawn.

8 6. The second Wells Fargo notice revealed that, on February 25, 2002, check no. 1055 for
9 \$550.00 attempted to clear the account when the balance was only \$384.68, resulting in an overdraft
10 of \$165.32

11 7. Wells Fargo assessed overdraft fees of \$29.00, making the total negative balance in
12 Respondent's trust account \$194.32.

13 8. The State Bar subpoenaed records of Respondent's client trust account including bank
14 statements, canceled checks, and records of deposits from Wells Fargo for the periods January 1,
15 2001 through November 15, 2001 and April 12, 2002 through July 30, 2002 (although both Wells
16 Fargo notices were for dates not covered by the subpoena).

17 9. By subpoena duces tecum filed on October 23, 2002, the State Bar requested that
18 Respondent appear and submit his client ledgers, duplicate deposit slips, client fee agreements,
19 billing statements, client invoices, receipts of client payments and timekeeping records and all credit
20 card payment receipts processed through his trust account for the period of January 1, 2002 through
21 July 30, 2002.

22 10. Respondent only produced copies of his client billing statements and failed to produce
23 any of the other requested records or to provide an explanation for failing to do so.

24 11. The State Bar's Trust Account Staff Examiner ("Staff Examiner") ultimately

1 reconstructed a history of transactions involving Respondent's client trust account covering the
2 period of time including the bank overdraft reports underlying Counts One through Four of the First
3 Complaint. The Staff Examiner was able to re-construct client ledgers from Respondent's bank
4 records and billing statements. The Staff Examiner was forced to perform such a reconstruction
5 because of Respondent's failure to produce his own records, even when subpoenaed to do so.

6 12. The Staff Examiner's reconstruction of transactions is set forth below at paragraphs 40
7 through 47 below.

8 File No. 02-1576

9 13. On August 8, 2002, the State Bar of Arizona received a notice from Wells Fargo
10 indicating that Respondent's trust account was overdrawn a total of \$296.96.

11 14. By letter dated August 19, 2002, addressed to Respondent's address of record with the
12 State Bar, the State Bar requested that Respondent respond to the charge he violated the Rules of
13 Professional Conduct and Trust Account guidelines within 20 days of the date of the letter.
14 Respondent failed to respond to the State Bar's letter.

15 15. By letter dated September 18, 2002, addressed to Respondent's address of record with
16 the State Bar, the State Bar again requested that Respondent respond concerning his trust account
17 within ten days of the date of the letter.

18 16. By letter dated September 25, 2002, Respondent wrote the Staff Examiner and advised
19 that he had not received the notice from the bank and that, after he reviewed certain information he
20 had requested from the bank, he would provide a response.

21 17. By letter dated October 2, 2002, addressed to Respondent's address of record with the
22 State Bar, the Staff Examiner requested that Respondent provide copies of his trust account bank
23 records, canceled checks, duplicate deposit slips, individual client ledgers and general account
24 ledger for the period of August 1 through 31, 2002 within 15 days of the date of the letter.

1 Respondent failed to respond to the State Bar's letter.

2 18. By letter dated October 21, 2002, addressed to Respondent's address of record with the
3 State Bar, the Staff Examiner requested that Respondent respond to the October 2 letter and that he
4 provide the requested documents letter within ten days of the date of the letter. Respondent failed
5 to respond to the State Bar's letter.

6 19. On January 21, 2003, the State Bar subpoenaed Respondent's client trust account
7 records for the period of August 1, 2002 through December 31, 2002 from Wells Fargo, including
8 bank statements, canceled checks and records of deposits. Wells Fargo produced the requested
9 records.

10 20. By subpoena duces tecum filed on January 21, 2003, the State Bar requested that
11 Respondent appear and submit his client ledgers, duplicate deposit slips, client fee agreements,
12 billing statements, client invoices, receipts of client payments and timekeeping records and all credit
13 card payment receipts processed through his trust account for the period of August 1, 2002 through
14 December 31, 2002.

15 21. Respondent failed to appear for a deposition set for February 14, 2003 and failed to
16 produce any of the requested records.

17 22. The Staff Examiner's reconstruction of transactions is set forth below at paragraphs 40
18 through 47 below.

19 **File No. 02-2188**

20 23. On November 6, 2002, the State Bar of Arizona received a notice from Wells Fargo
21 indicating that, on November 4, 2002, Respondent's trust account was overdrawn.

22 24. The Wells Fargo notice revealed that, on November 4, 2002, a \$222.01 NDPS debit
23 attempted to clear the account when the balance was only \$180.50, resulting in an overdraft of
24 \$41.51.

1 25. Wells Fargo assessed overdraft fees of \$31.00, making the total negative balance in
2 Respondent's trust account \$72.51.

3 26. By letter dated November 8, 2002, addressed to Respondent's address of record with the
4 State Bar, the State Bar requested that Respondent respond to the charges concerning his trust
5 account within 20 days of the date of the letter. Respondent failed to respond to the State Bar's
6 letter.

7 27. By letter dated December 10, 2002, addressed to Respondent's address of record with
8 the State Bar, the State Bar requested that Respondent respond to the charges concerning his trust
9 account within ten days of the date of the letter. Respondent failed to respond to the State Bar's
10 letter.

11 28. On January 21, 2003, the State Bar subpoenaed Respondent's trust account records for
12 the period of February 18, 2002 through April 14, 2003 from Wells Fargo. Wells Fargo produced
13 the requested records.

14 29. By subpoena duces tecum filed on January 21, 2003, the State Bar requested that
15 Respondent appear and submit his client ledgers, duplicate deposit slips, client fee agreements,
16 billing statements, client invoices, receipts of client payments and timekeeping records and all credit
17 card payment receipts processed through his trust account for the period of August 1, 2002 through
18 December 31, 2002.

19 30. Respondent failed to appear for a deposition set for February 14, 2003 and failed to
20 produce any of the requested records.

21 31. The Staff Examiner's reconstruction of transactions is set forth below at paragraphs 40
22 through 47 below.

23 File No. 03-0030

24 32. On January 7, 2003, the State Bar of Arizona received a notice from Wells Fargo

1 indicating that, on January 3, 2003, Respondent's trust account was overdrawn.

2 33. The Wells Fargo notice revealed that, on January 3, 2003, a \$120.54 NDPS debit
3 attempted to clear the account when the balance was only \$104.92, resulting in an overdraft of
4 \$15.62.

5 34. Wells Fargo assessed overdraft fees of \$31.00, making the total negative balance in
6 Respondent's trust account \$46.62.

7 35. By letter dated January 9, 2003, addressed to Respondent's address of record with the
8 State Bar, the State Bar informed Respondent of the allegations concerning his trust account and
9 requested that Respondent respond to the allegations within 20 days of the date of the letter.
10 Respondent failed to respond to the State Bar's letter.

11 36. On January 21, 2003, the State Bar subpoenaed Respondent's trust account records for
12 the period of February 18, 2003 through April 14, 2003 from Wells Fargo. Wells Fargo produced
13 the requested records.

14 37. By subpoena duces tecum filed on January 21, 2003, the State Bar requested that
15 Respondent appear and submit his client ledgers, duplicate deposit slips, client fee agreements,
16 billing statements, client invoices, receipts of client payments and timekeeping records and all credit
17 card payment receipts processed through his trust account for the period of August 1, 2002 through
18 December 31, 2002.

19 38. Respondent failed to appear for a deposition set for February 14, 2003 and failed to
20 produce any of the requested records.

21 39. The Staff Examiner's reconstruction of transactions is set forth below at paragraphs 40
22 through 47 below.

23 40. The Staff Examiner examined the records obtained from Wells Fargo Bank and
24 Respondent, and identified certain facts that could be documented from such records.

1 41. On August 6, 2001, Respondent opened his trust account at Wells Fargo. From
2 August 6, 2001 through August 13, 2001, there were only three deposits to the account, none for
3 anyone names Isabel Rosales. The three deposits included a \$2,212.03 cashier's check from an
4 unidentified source, a \$1,750.00 personal check payable to Respondent from Lois A. Cross-
5 Standlee as an advance fee payment, and a \$3,500.00 settlement check from Legacy Insurance
6 Service payable to Caroline Clinton and "her attorney." Based on Ms. Cross-Standlee's billing
7 statement provided by Respondent, he had only earned \$270.00 as of August 13, 2001. However,
8 there was a disbursement to Ms. Rosales for \$5,600.00, and it is clear that Respondent disbursed
9 Ms. Cross-Standlee's and Ms. Clinton's money for the benefit of Ms. Rosales. Respondent has
10 never indicated he had any authority to do so and such funds were at least temporarily
11 misappropriated.

12 42. On August 17, 2001, a check for \$10,500.00 payable to Respondent and Robert Szwica
13 was deposited into Respondent's trust account. On August 30, 2001, a \$2,943.00 check payable to
14 Mr. Szwica cleared the account. On October 19, 2001, two checks totaling \$1,385.45 payable to
15 Mr. Szwica's medical providers cleared the account. On October 22, 2001, two more checks
16 totaling \$929.44, also payable to Mr. Szwica's medical providers, cleared the account. However,
17 from August 31, 2001 through September 6, 2001, the total trust account balance fell below
18 \$2,314.89 and, on September 24, 2001, the trust account balance was negative and remained
19 negative until October 1, 2001. From October 1, 2001 through October 18, 2001, the total account
20 balance was less that the \$2,314.89 that should have been in the account as funds held for
21 Mr. Szwica. Accordingly, funds belonging to or to be held for the benefit of Mr. Szwica were
22 temporarily misappropriated.

23 43. On October 24, 2001, a check in the amount of \$100,000.00 payable to Respondent and
24 Joan Whiteside was deposited into Respondent's trust account. On November 13, 2001, a check for

1 \$66,670.00 payable to Ms. Whiteside cleared the account. Accordingly, from October 24, 2001
2 through November 11, 2001, Respondent's trust account balance should not have fallen below the
3 \$66,670.00 that was held in trust for Ms. Whiteside. However, from November 6, 2001 through
4 November 7, 2001, the total account balance in Respondent's trust account fell below \$66,670.00,
5 indicating that Ms. Whiteside's money was temporarily misappropriated.

6 44. On December 20, 2001, a check for \$8,231.05 payable to Respondent and Robert
7 Huntley was deposited into Respondent's trust account. On February 6, 2002, check no. 1049 for
8 \$4,000.00 payable to Scottsdale Healthcare for the benefit of Mr. Huntley paid against the trust
9 account. However, from January 17, 2002 through January 28, 2002, the balance in the account fell
10 below \$4,000.00, indicating that Mr. Huntley's funds were temporarily misappropriated.

11 45. On April 5, 2002, a check for \$18,276.65 payable to Respondent and Theodore Coronier
12 was deposited to Respondent's trust account and, on April 30, 2002, check no. 1071 payable to Mr.
13 Coronier for \$18,276.65 paid against the trust account. However, from April 15, 2002 through
14 April 25, 2002, the balance in the trust account fell below \$18,276.65, indicating that
15 Mr. Coronier's funds were temporarily misappropriated.

16 46. On November 13, 2002, a check for \$70,225.01 payable to Respondent and Molly Lynn
17 Garvey was deposited into Respondent's trust account. On November 21, 2002, Respondent wired
18 \$50,000.00 from his trust account to Federal Home Loan for benefit of Ms. Garvey. On December
19 13, 2002, Respondent wired an additional \$17,000.00 from his trust account to Federal Home Loan
20 for benefit of Ms. Garvey. However, between November 22, 2002 and December 12, 2002, the
21 total in the trust account fell below \$17,000.00, indicating that Ms. Garvey's funds were
22 temporarily misappropriated.

23 47. Review of Respondent's billing record revealed eight other clients whose trust account
24 funds were temporarily misappropriated or otherwise compromised.

File No. 03-0632

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2 48. On or about January 22, 2002, Tanya Etter retained Respondent to represent her in a
3 landlord-tenant matter. At that time, Ms. Etter paid Respondent \$700.00.

4 49. Shortly thereafter, Ms. Etter received a check for \$10,000.00, which she was unable to
5 cash.

6 50. On or about January 30, 2002, Respondent volunteered to deposit the check into his trust
7 account. Ms. Etter agreed and so deposited the check.

8 51. After the check cleared, Respondent gave portions of the money, totaling \$8,000.00, to
9 Ms. Etter.

10 52. Ms. Etter, in her complaint to the State Bar, asserted that Respondent could not return all
11 of the funds as he had spent the funds.

12 53. On or about March 28, 2002, Ms. Etter wrote Respondent and requested the balance of
13 her funds, \$2,000.00, be sent to her.

14 54. Respondent failed to respond and failed to return Ms. Etter's funds to her.

15 55. By letter dated June 20, 2003, addressed to Respondent's address of record with the
16 State Bar, the State Bar requested that Respondent respond to the Ms. Etter's charges within 20
17 days of the date of the letter. Respondent failed to respond to the State Bar's letter.

18 56. By letter dated July 20, 2003, addressed to Respondent's address of record with the State
19 Bar, the State Bar requested that the Respondent respond to Ms. Etter's charges within ten days of
20 the date of the letter. Respondent failed to respond to the State Bar's letter.

21 **File No. 03-1558**

22 57. La Doris Hickman paid \$5,000.00 to Respondent to assist her with an intentional
23 infliction of mental distress case she had been pursuing pro per (indicating that she needed his
24 assistance with the petition she had filed to set forth the correct legal theory for her cause of action).

1 58. Ms. Hickman reports that Respondent corrected the deficiencies in her petition and
2 advised her she "had a case."

3 59. Ms. Hickman charges that, from May 1, 2002 until August 14, 2002, Respondent led her
4 to believe he was helping her with the case, claiming he would conduct depositions and go to court
5 on her behalf. However, on August 14, 2002, Respondent advised Ms. Hickman he could not help
6 her with her case any further.

7 60. Ms. Hickman's case was dismissed and a judgment for attorney's fees and court costs
8 was entered against her. On August 27, 2002, Respondent reported to Ms. Hickman that, pursuant
9 to a meeting with her, Respondent was sending \$1,365.00 to opposing counsel Bruce Feder as court
10 fees, in return for Mr. Feder agreeing to vacate the judgment. Ms. Hickman charges she never
11 agreed to the payment or to the vacation of the judgment.

12 61. Ms. Hickman has provided a copy of a letter from opposing counsel dated January 22,
13 2003 indicating that Respondent never sent the \$1,356.00 he promised to send on August 27, 2002.

14 62. Respondent failed to communicate with Ms. Hickman, failed to abide by her decisions
15 concerning the means by which the objectives of the representation should be accomplished and
16 failed to exercise diligence in representing her. Further, Respondent's failure to promptly pay the
17 agreed-upon funds to opposing counsel required opposing counsel to take extra steps to attempt to
18 enforce a settlement agreement and, as of the date of the complaint, the judgment in case CV2002-
19 003513 appeared not to have been vacated.

20 63. By letter dated September 26, 2003, addressed to Respondent's address of record with
21 the State Bar, the State Bar requested that Respondent respond to the Ms. Hickman's charges within
22 20 days of the date of the letter. Respondent failed to respond to the State Bar's letter.

23 64. By letter dated October 24, 2003, addressed to Respondent's address of record with the
24 State Bar, the State Bar requested that the Respondent respond to Ms. Hickman's charges within ten

1 days of the date of the letter. Respondent failed to respond to the State Bar's letter.

2 File No. 03-1796

3 65. On or about July 23, 2003, John Violette met with Respondent regarding a dispute with
4 the management of his mobile home park.

5 66. Mr. Violette retained Respondent to negotiate with the management of the mobile home
6 park and paid Respondent a retainer of \$350.00.

7 67. Shortly after retaining Respondent and continuing throughout the representation,
8 Mr. Violette had difficulty in communicating with Respondent.

9 68. At one point, Respondent told Mr. Violette that he had written the mobile home park
10 management and was informed that the mobile home park turned the matter over to their attorney,
11 but failed to name who that attorney was.

12 69. Respondent later informed Mr. Violette that he would write the management at the
13 mobile home park to find out the identity of its attorney.

14 70. Mr. Violette requested that Respondent send him copies of the letters Respondent wrote
15 to the mobile home park management and any response from them, but Respondent failed to
16 provide those documents to Mr. Violette.

17 71. Respondent told Mr. Violette that he could not leave any messages at the office of the
18 mobile home park's management as they did not have an answering machine. However, it was
19 Mr. Violette's experience that the mobile home park's management office always had an answering
20 machine available.

21 72. Respondent also told Mr. Violette that neither he nor his secretary could contact anyone
22 at the mobile home park's management office during business hours.

23 73. Mr. Violette, who has lived at the mobile home park for many years, is aware that the
24 office always has someone available in the office during the posted business hours.

1 74. Mr. Violette repeatedly attempted to set up an appointment with Respondent, but
2 Respondent's secretary always told Mr. Violette that Respondent was unavailable.

3 75. When Respondent did return Mr. Violette's calls, the return calls were hurried and did
4 not give Mr. Violette any status about his pending matter.

5 76. By letter dated October 10, 2003, addressed to Respondent's address of record with the
6 State Bar, requested that Respondent respond to Mr. Violette's charges within 20 days of the date of
7 the letter. Respondent failed to respond to the State Bar's letter.

8 77. By letter dated November 11, 2003, addressed to Respondent's address of record with
9 the State Bar, the State Bar requested that Respondent respond to Mr. Violette's charges within ten
10 days of the date of the letter. Respondent failed to respond to the State Bar's letter.

11 **File No. 03-2008**

12 78. On or about September 25, 2002, Respondent submitted check no. 1366 to the Maricopa
13 County Clerk of the Superior Court ("Clerk of Court") in the amount of \$136.00 for filing fees. The
14 check was returned unpaid as having been drawn on a closed account.

15 79. On or about July 21, 2003, Respondent submitted check no. 1367 to the Clerk of Court
16 in the amount of \$190.00 for filing fees. Said check was returned marked "non-sufficient funds,
17 2nd time."

18 80. On or about July 30, 2003, Respondent submitted check no. 1371 to the Clerk of Court
19 in the amount of \$18.00 for filing fees. The check was returned unpaid as having been drawn on a
20 closed account.

21 81. On or about July 30, 2003, Respondent submitted check no. 1372 to the Clerk of Court
22 in the amount of \$18.00 for filing fees. The check was returned unpaid as having been drawn on a
23 closed account.

24 82. On or about July 30, 2003, Respondent submitted check no. 1373 to the Clerk of Court

1 in the amount of \$136.00 for filing fees. The check was returned unpaid as having been drawn on a
2 closed account.

3 83. Total fees owed to the Clerk of Court due to non-sufficient funds in Respondent's closed
4 business account are \$498.00.

5 84. The Clerk of Court also assessed a service charge fee to Respondent of \$125.00.

6 85. The total arrearage that Respondent owes the Clerk of Court is \$623.00.

7 86. Employees of the Clerk of Court telephoned Respondent and left messages on
8 Respondent's answer machine on or about August 7, August 12, August 13, and August 15, 2003.

9 87. Respondent failed to respond and failed to return any of the foregoing phone calls and
10 messages from the office of the Clerk of Court.

11 88. By letter dated November 18, 2003, addressed to Respondent's address of record with
12 the State Bar, the State Bar requested that Respondent respond to the charges from the Clerk of
13 Court within 20 days of the date of the letter. Respondent failed to respond to the State Bar's letter.

14 89. By letter dated December 23, 2003, addressed to Respondent's address of record with
15 the State Bar, the State Bar requested Respondent to respond to the charges from the Clerk of Court
16 within ten days of the date of the letter. Respondent failed to respond to the State Bar's letter.

17 **File No. 04-0185**

18 90. On or about February 17, 2003, Gary Paulsen consulted with Respondent concerning an
19 appeal of a civil judgment, paying Respondent \$35.00 for such consultation.

20 91. On or about February 26, 2003, Mr. Paulsen again consulted with Respondent and at that
21 time retained Respondent to assist him with an appeal of a civil judgment rendered against
22 Mr. Paulsen in Tolleson Justice Court, Case No. CV02-04112. On that date, Mr. Paulsen paid
23 another consultation fee of \$35.00 and an additional flat fee of \$2,500.00.

24 92. Mr. Paulsen states that Respondent failed to file a timely appeal, failed to communicate

1 with him and failed to refund fees for services not rendered.

2 93. Mr. Paulsen expended additional costs of \$190.00 and \$593.00 for filing and
3 transcription fees only to learn from the Superior Court, on or about August 30, 2003, that
4 Respondent failed to timely file an appeal.

5 94. Mr. Paulsen attempted many times to contact Respondent concerning Respondent's
6 failure to file a timely appeal; however, Respondent refused to take Mr. Paulsen's phone calls and
7 refused to answer his questions.

8 95. On or about December 30, 2003, Mr. Paulsen finally spoke to Respondent. Respondent
9 informed Mr. Paulsen that he would contact him at 8:00 a.m. on January 2, 2004 to schedule an
10 appointment.

11 96. Respondent did not contact Mr. Paulsen at the pre-scheduled time.

12 97. By letter dated February 2, 2004, addressed to Respondent's address of record with the
13 State Bar, the State Bar requested that Respondent respond to Mr. Paulsen's charges within 20 days
14 of the date of the letter. Respondent failed to respond to the State Bar's letter.

15 File No. 04-0812

16 98. Rudolf Robinson charges that he retained Respondent on or about November 29, 2000 to
17 handle a medical malpractice case. Mr. Robinson provided a billing statement indicating that,
18 originally, he was paying Respondent on an hourly basis and paid a total of \$8,000.00 in hourly
19 fees.

20 99. On July 3, 2001, Mr. Robinson entered into a contingent fee agreement with
21 Respondent.

22 100. Mr. Robinson reports that, in December 2002, he spoke with Respondent and requested
23 that Respondent subpoena the various treating physicians, but Respondent did not do so, nor
24 apparently did Respondent provide the depositions and reports of the treating physicians through

1 discovery to the opposing side.

2 101. On March 21, 2003, at a pre-trial management conference, the presiding judge in the
3 case ruled that it was too late for Mr. Robinson to provide medical bills and records to the court,
4 resulting in them being excluded from the case.

5 102. Mr. Robinson also paid the Respondent the following amounts to pay for the following
6 items:

Date	Amount	Description
5/22/02	\$450.00	Medical report by Dr. Blumenkranz
8/16/02	\$292.40	Transcript of deposition of Spencer Brown, M.D.
9/16/02	\$295.25	Transcript of deposition of Robert J. Standerfer, M.D.
10/16/02	\$339.00	Transcript of deposition of John Charles Opie, M.D.

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11 103. These bills were still unpaid at the time Mr. Robinson filed his complaint with the State
12 Bar on May 11, 2004.

13 104. On May 26, 2004, bar counsel sent Respondent a letter addressed to Respondent at his
14 address of record with the State Bar requesting his response to Mr. Robinson's charge and
15 requesting that Respondent address his conduct in light of ERs 1.2 (scope of representation), 1.3
16 (diligence) and 8.4(d) (misconduct prejudicial to the administration of justice). No response was
17 received.

18 **File No. 04-0895**

19 105. Montie Yetter charges that he advanced Respondent \$9,352.00 to bring a wrongful
20 termination lawsuit.

21 106. On April 3, 2002, Mr. Yetter received his last billing statement in the case, indicating he
22 had a \$1,852.00 credit and, on December 10, 2002, Mr. Yetter paid Respondent \$7,500.00 as an
23 advance to take the case to trial.

24 107. On March 31, 2003, the defendant employer filed bankruptcy. As such, the case never

1 went to trial and, in May 2003, Mr. Yetter met with Respondent and requested an accounting and a
2 return of his unearned funds. Respondent indicated he had computer problems and would mail the
3 mail the information to Mr. Yetter later.

4 108. From June 2003 through February 2004, Mr. Yetter left numerous messages for
5 Respondent regarding the matter but received no return calls.

6 109. On February 9, 2004, Mr. Yetter sent a registered letter requesting an accounting.
7 Mr. Yetter received a receipt indicating that the letter was delivered but received no response from
8 Respondent.

9 110. From February 2004 through April 2004, Mr. Yetter left repeated messages for
10 Respondent but received no return calls.

11 111. On May 11, 2004, Respondent called Mr. Yetter indicating he had moved his business
12 into his home and was unable to locate any of Mr. Yetter's records. At that time, Respondent
13 offered \$500.00 as a settlement. Mr. Yetter said he would consider the offer and call back.

14 112. On May 14, 2004, Mr. Yetter called Respondent and indicated that the \$500.00 offer
15 was rejected. Respondent asked for additional time to look for Mr. Yetter's records.

16 113. On May 17, 2004, Mr. Yetter again called Respondent. Respondent requested he call
17 back in one hour but, when Mr. Yetter called one hour later, Respondent did not answer the call.
18 Mr. Yetter left a message, but he received no return call.

19 114. On May 18, 2004, Mr. Yetter filed his charge with the State Bar.

20 115. On June 8, 2004, bar counsel sent a letter to Respondent at his address of record with the
21 State Bar requesting he address his conduct in light of the applicable ethical rules. Respondent did
22 not respond.

23 File No. 04-0982

24 116. On June 4, 2004, the State Bar received an overdraft notice on Respondent's trust

1 account indicating that, on June 2, 2004, an automatic debit in the amount of \$30.00 attempted to
2 clear at a time when the account had a balance of only \$23.49.

3 117. The bank paid the debit and charged a \$33.00 overdraft charge, overdrawing
4 Respondent's account by \$39.51.

5 118. By letter dated June 14, 2004, the Staff Examiner notified Respondent that she was
6 investigating the trust account matter. The Staff Examiner requested that Respondent provide a
7 response with an explanation, including all supporting documentation and trust account records.

8 119. Respondent failed to respond to the State Bar's letter.

9 120. The State Bar subpoenaed Respondent's bank records for the period from January 1,
10 2003 through June 30, 2004.

11 121. The Staff Examiner's review of Respondent's trust account bank records indicated that
12 all of Respondent's deposits since January 1, 2003, with the exception of two \$100.00 cash
13 deposits, were credit card deposits, thereby rendering it impossible for the Staff Examiner to
14 determine the actual source or purpose of such funds.

15 122. The Staff Examiner also determined that no disbursements were made by check.
16 Instead, debits to the trust account were in the form of either debits for credit card charges or cash
17 withdrawals from the trust account.

18 **File No. 04-1122**

19 123. The State Bar received overdraft notices on Respondent's trust account dated July 6, 7,
20 13, 21 and 23, 2004. The notices indicated that, on those dates, charges were assessed against
21 Respondent's trust account when the account had an insufficient balance.

22 124. The charges appear to be bank charges, possibly charges for credit card activity.

23 125. By letters dated July 13, July 14, July 26 and August 9, 2004, the Staff Examiner
24 notified Respondent of the new charges and requested that Respondent explain why the overdrafts

1 did not represent violations of ER 1.15 and Rules 43 and 44, Ariz. R. S. Ct.

2 126. Respondent failed to respond to the State Bar's letters.

3 File No. 04-1149

4 127. Gary Fritcke hired Respondent to pursue a "lemon law" claim against the Toyota Motor
5 Sales Company ("Toyota").

6 128. Mr. Fritcke paid Respondent an advance fee of \$2,500.00 pursuant to a written fee
7 agreement. The agreement indicated that the advance fee would be deposited to Respondent's trust
8 account and would be billed against.

9 129. The agreement also indicated that billing statements would be prepared identifying the
10 legal fees/expenses as Respondent performed the work.

11 130. After settlement of the case, Toyota's legal representative sent a settlement check to
12 Respondent on April 19, 2004.

13 131. Respondent held the settlement funds for over six weeks. Despite Mr. Fritcke's
14 continued attempts to contact him, Respondent did not deliver the check to Mr. Fritcke until June 9,
15 2004.

16 132. After receiving his settlement check, Mr. Fritcke learned that Respondent had been
17 suspended from the practice of law in Arizona from May 14, 2004 until June 8, 2004 for non-
18 payment of dues.

19 133. Mr. Fritcke became concerned about Respondent's status and asked Respondent for an
20 accounting of the advanced fee paid.

21 134. Respondent declined to provide an accounting and never provided Mr. Fritcke with any
22 evidence of the advance fee being deposited to the trust account, or of being billed against as the fee
23 agreement represented it would be.

24 135. Respondent informed Mr. Fritcke, contrary to the written fee agreement, that the matter

1 had been a "flat fee" case, that there were no records and that no refund or accounting was due.

2 136. By letter dated July 27, 2004, Respondent was sent a copy of Mr. Fritcke's charge with a
3 request that he respond within ten days.

4 137. The letter also requested that Respondent address his apparent violations of ERs 1.2
5 (scope of representation), 1.3 (diligence), 1.4 (communications), 1.15 (safekeeping property), 1.16
6 (declining or withdrawing from representation), 5.5 (unauthorized practice of law), 8.4(b) (criminal
7 acts), 8.4(c) (misconduct involving dishonesty), 8.4(d) (misconduct prejudicial to the administration
8 of justice), and Rules 43 and 44 relating to management of the trust account.

9 138. Respondent has failed to respond to the State Bar's letter requesting a response to
10 Mr. Fritcke's charge.

11 File No. 04-1205

12 139. Margaret Maginnis, an Oregon lawyer, paid Respondent \$1,550.00 to assist her in
13 pursuing a personal lawsuit against an Arizona property management company. Ms. Maginnis' suit
14 asserted a breach of contract and negligence claim.

15 140. Respondent drafted a complaint and Ms. Maginnis signed a verification of the complaint
16 and returned it to Respondent.

17 141. Ms. Maginnis thereafter attempted to determine the status of her lawsuit but was unable
18 to find any evidence that Respondent ever filed the complaint she hired him to file on her behalf.

19 142. Despite several attempts to contact Respondent, including faxing, emailing and sending
20 three letters, one of which was sent certified, Ms. Maginnis was unable to elicit a response or any
21 other return communication from Respondent.

22 143. On one occasion, Ms. Maginnis was able to contact Respondent on his cell phone;
23 however, Respondent told Ms. Maginnis he could not speak to her at that time and would call her
24 back in five minutes, but then failed to do so.

1 144. By letter dated July 27, 2004, Respondent was sent a copy of Ms. Maginnis' charge with
2 a request that he respond within ten days.

3 145. The letter also requested that Respondent address his apparent violations of ERs 1.2
4 (scope of representation), 1.3 (diligence), 1.4 (communications), 1.15 (safekeeping property), 1.16
5 (terminating or withdrawing from representation), 8.4(c) (misconduct involving dishonesty) and
6 8.4(d) (misconduct prejudicial to the administration of justice).

7 146. Respondent failed to respond to the State Bar's letter requesting a response to
8 Ms. Maginnis' charge.

9 File No. 04-1265

10 147. In November 2003, Daniel Straight paid Respondent \$2,500.00 to represent him in a
11 child support and visitation modification action arising out of an earlier marriage dissolution.

12 148. Respondent attended one conference in the judge's chambers, but missed a second court
13 date where support issues were to be considered.

14 149. In April 2004, subsequent to the Court's order for psychological evaluations and
15 Mr. Straight's ex-wife's objections to the results of the evaluation, Mr. Straight gave Respondent an
16 additional \$1,500.00 to file a motion for an evidentiary hearing in the matter.

17 150. Upon discovering that Respondent had failed to file the motion, Mr. Straight
18 unsuccessfully attempted to contact Respondent for several weeks.

19 151. On one occasion, Mr. Straight was finally able to contact and question Respondent about
20 his failure to file the motion. At that time Respondent claimed he had mailed the motion to the
21 Court but the Court must not have received it.

22 152. Respondent also claimed that his computer had crashed but indicated he would reprint
23 the motion and would personally take it to the courthouse on July 21, 2004.

24 153. Mr. Straight again checked with the court and, as of July 23, 2004, nothing had been

1 filed in his case.

2 154. A review of Mr. Straight's case via the on-line docket in Maricopa County case no.
3 DR1999-011475, indicated that, as of the filing of the complaint, Respondent had failed to file the
4 motion for evidentiary hearing or any other pleading of any type.

5 155. By charging letter dated August 12, 2004, the State Bar sent Respondent a copy of
6 Mr. Straight's charge with a request for a response within ten days.

7 156. The letter also requested that Respondent address his apparent violations of ERs 1.2
8 (scope of representation), 1.3 (diligence), 1.4 (communications), 1.15 (safekeeping property), 3.2
9 (failing to expedite litigation), 8.4(b) (criminal acts), 8.4(c) (dishonesty misconduct), 8.4(d)
10 (misconduct prejudicial to the administration of justice), as well as Rules 43 and 44 Ariz. R. S. Ct.
11 (trust account rules).

12 157. Respondent failed to respond to the State Bar's letter requesting a response to
13 Mr. Straight's charge.

14 **Conditional Admissions & Dismissals**

15 158. File Nos. 02-0068, 02-1576, 02-2188, 03-0030: Respondent conditionally admits his
16 conduct in these files violated Rule 42, Ariz. R. S. Ct., ER 1.15 (safekeeping property) and Rules 43
17 and 44, including by incorporation, the State Bar of Arizona Trust Account Guidelines in effect at
18 the time, including Guidelines 1(a) (due professional care must be exercised in the performance of
19 the lawyer's duties under these guidelines.), 1(b) (employees and others assisting the attorneys in
20 the performance of such duties must be competent and properly supervised.), 1(c) (internal controls
21 within the lawyer's office must be adequate under the circumstances to safeguard funds or other
22 property held in trust.), 1(d) (all transactions must be recorded promptly and completely), 1(e)
23 (every lawyer engaged in the private practice of law in the State of Arizona must maintain, on a
24 current basis, records complying with ER 1.15 and these guidelines, and such records shall be

1 preserved for at least five years following completion of the lawyer's fiduciary obligation), 2(c) (all
2 trust account disbursements shall be made by pre-numbered check), 2(d) (an account ledger or the
3 equivalent shall be maintained for each person or entity for whom monies have been received in
4 trust, showing the date of receipt, the amount received, the date of any disbursements, the amount
5 disbursed, and any unexpended balance), and 2(e) (a monthly reconciliation of the trust account
6 records and the bank statement must be made). Respondent also conditionally admits his conduct
7 violated Ariz.R.Sup.Ct. 42, ER 8.4(d) (misconduct prejudicial to the administration of justice), ER
8 8.1(b) (knowingly failing to respond to a lawful demand for information from a disciplinary
9 authority) and Rule 51(h)¹ (failure to furnish information or respond promptly to any inquiry or
10 request from bar counsel) and Rule 51(i)² (refusal to cooperate with officials and staff of the State
11 Bar).

12 The State Bar conditionally admits that it could not prove a violation of ER 8.4(b)
13 (criminal act) or 8.4(c) (misconduct involving dishonesty) due to a lack of clear and convincing
14 evidence Respondent had the requisite intentional state of mind.

15 159. File No. 03-0632: Respondent conditionally admits his conduct in this file violated Rule
16 42, Ariz. R. S. Ct., specifically: ER 1.4 (communication), ER 1.15 (safekeeping property), ER
17 8.4(c) (misconduct-involving dishonesty), ER 8.4(d) (misconduct prejudicial to the administration
18 of justice), ER 8.1(b) (knowingly failing to respond to a lawful demand for information from a
19 disciplinary authority), Rule 51(h) (failure to furnish information or respond promptly to any
20 inquiry or request from bar counsel) and 51(i) (refusal to cooperate with officials and staff of the
21 State Bar).

22 _____
23 ¹ Conduct occurring prior to December 1, 2003 is characterized by the Rule of the Supreme Court in effect at the time.
24 Effective December 1, 2003, Rule 51(h) was renumbered as 53(f).

² Effective December 1, 2003, Rule 51(i) was renumbered as 53(d).

1 The State Bar conditionally admits that it could not prove a violation of 8.4(c)
2 (misconduct involving dishonesty) due to a lack of clear and convincing evidence Respondent had
3 the requisite intentional state of mind.

4 160. File No. 03-1558: Respondent conditionally admits his conduct in this file violated Rule
5 42, Ariz. R. S. Ct., specifically: ER 1.2 (scope of representation), ER 1.3 (diligence), 1.4
6 (communication), ER 8.4(d) (misconduct prejudicial to the administration of justice), ER 8.1(b)
7 (knowingly failing to respond to a lawful demand for information from a disciplinary authority),
8 Rule 51(h) (failure to furnish information or respond promptly to any inquiry or request from bar
9 counsel) and 51(i) (refusal to cooperate with officials and staff of the State Bar).

10 161. File No. 03-1796: Respondent conditionally admits his conduct in this file violated Rule
11 42, Ariz. R. S. Ct., specifically: ER 1.2 (scope of representation), ER 1.3 (diligence), 1.4
12 (communication), 1.5 (fees), 3.2 (expediting litigation), ER 8.4(d) (misconduct prejudicial to the
13 administration of justice), ER 8.1(b) (knowingly failing to respond to a lawful demand for
14 information from a disciplinary authority), Rule 51(h) (failure to furnish information or respond
15 promptly to any inquiry or request from bar counsel) and 51(i) (refusal to cooperate with officials
16 and staff of the State Bar).

17 The State Bar conditionally admits that it could not prove a violation of ER 8.4(c)
18 (misconduct involving dishonesty) due to a lack of clear and convincing evidence Respondent had
19 the requisite intentional state of mind.

20 162. File No. 03-2008: Respondent conditionally admits his conduct in this file violated Rule
21 42. Ariz. R. S. Ct., specifically: ER 1.1 (competence), ER 8.4(d) (misconduct prejudicial to the
22 administration of justice), ER 8.1(b) (knowingly failing to respond to a lawful demand for
23 information from a disciplinary authority), Rule 51(h) (failure to furnish information or respond
24 promptly to any inquiry or request from bar counsel) and 51(i) (refusal to cooperate with officials

1 and staff of the State Bar).

2 The State Bar conditionally admits that it could not prove a violation of ER 8.4(b)
3 (criminal act) or 8.4(c) (misconduct involving dishonesty) due to a lack of clear and convincing
4 evidence Respondent had the requisite intentional state of mind.

5 163. File No. 04-0185: Respondent conditionally admits his conduct in this file violated Rule
6 42, Ariz. R. S. Ct., specifically: ER 1.2 (scope of representation), ER 1.3 (diligence), 1.4
7 (communication), 1.5 (Fees), ER 8.4(d) (misconduct prejudicial to the administration of justice), ER
8 8.1(b) (knowingly failing to respond to a lawful demand for information from a disciplinary
9 authority), Rule 51(h) (failure to furnish information or respond promptly to any inquiry or request
10 from bar counsel) and 51(i) (refusal to cooperate with officials and staff of the State Bar).

11 164. File No. 04-0812: Respondent conditionally admits his conduct in this file violated Rule
12 42, Ariz. R. S. Ct., specifically: ER 1.2 (scope of representation), ER 1.3 (diligence), ER 1.4
13 (communication), ER 1.15 (safekeeping property), ER 8.4(d) (misconduct prejudicial to the
14 administration of justice), ER 8.1(b) (knowingly failing to respond to a lawful demand for
15 information from a disciplinary authority), Rule 51(h) (failure to furnish information or respond
16 promptly to any inquiry or request from bar counsel) and 51(i) (refusal to cooperate with officials
17 and staff of the State Bar).

18 The State Bar conditionally admits that it could not prove a violation of ER 8.4(c)
19 (misconduct involving dishonesty) due to a lack of clear and convincing evidence Respondent had
20 the requisite intentional state of mind.

21 165. File No. 04-0895: Respondent conditionally admits his conduct in this file violated Rule
22 42, Ariz. R. S. Ct., specifically: ER 1.2 (scope of representation), ER 1.3 (diligence), ER 1.4
23 (communication), ER 1.15 (safekeeping property), ER 8.4(d) (misconduct prejudicial to the
24 administration of justice), ER 8.1(b) (knowingly failing to respond to a lawful demand for

1 information from a disciplinary authority), Rule 51(h) (failure to furnish information or respond
2 promptly to any inquiry or request from bar counsel) and 51(i) (refusal to cooperate with officials
3 and staff of the State Bar).

4 The State Bar conditionally admits that it could not prove a violation of ER 8.4(b)
5 (criminal act) or ER 8.4(c) (misconduct involving dishonesty) due to a lack of clear and convincing
6 evidence Respondent had the requisite intentional state of mind.

7 166. File Nos. 04-0982 and 04-1122: Respondent conditionally admits his conduct in this file
8 violated Rule 42, Ariz. R. S. Ct., specifically: ER 1.15 (safekeeping property – failing to keep
9 disputed funds in a trust account.), ER 8.1(b) (knowingly failing to respond to a lawful demand for
10 information from a disciplinary authority) and 8.4(d) (misconduct prejudicial to the administration
11 of justice), Rule 43(d)(1)(A) (due professional care must be exercised in the performance of the
12 lawyer's duties), Rule 53(d) (evading service or refusal to cooperate), and Rule 53(f) (failure to
13 furnish information).

14 The State Bar conditionally admits that it could not prove a violation of Rule 42,
15 Ariz. R. S. Ct., specifically: ER 8.4(c) (misconduct involving dishonesty) due to the fact
16 Respondent has now explained the overdrafts reported by his bank. Such overdrafts resulted when
17 a credit card payment to his trust account was contested by a client and the credit card company
18 repeatedly debited Respondent's client trust account for partial payments in an attempt to recover
19 the contested funds from the trust account when there were insufficient funds therein. Respondent
20 maintains the funds withdrawn by the credit card company were earned. The State Bar admits that
21 no one has filed a charge with the State Bar related to these debits. The State Bar conditionally
22 admits, for purposes of the Tender and Joint Memo, that the disputed fees appear to be the subject
23 of a fee dispute not constituting evidence of an ethical violation beyond those already admitted
24 herein.

1 167. File No. 04-1149: Respondent conditionally admits his conduct in this file violated Rule
2 42, Ariz. R. S. Ct., specifically: ER 1.2 (scope of representation and allocation of authority between
3 client and lawyer), ER 1.3 (diligence), ER 1.4 (communication), ER 1.15 (safekeeping property),
4 ER 1.16 (declining or terminating representation), ER 5.5 (unauthorized practice of law), Rule 31(b)
5 (authority to practice), ER 8.4(d) (misconduct prejudicial to the administration of justice). In
6 addition, Respondent admits his conduct violated Rule 42, ER 8.1(b) (knowingly failing to respond
7 to a lawful demand for information from a disciplinary authority), Rule 53(d) (evading service or
8 refusal to cooperate) and 53(f) (failure to furnish information).

9 The State Bar conditionally admits that it could not prove a violation of ER 8.4(c)
10 (misconduct involving dishonesty) due to a lack of evidence Respondent had the requisite
11 intentional state of mind.

12 168. File No. 04-1205: Respondent conditionally admits his conduct in this file violated Rule
13 42, Ariz. R. S. Ct., specifically: ER 1.2 (scope of representation and allocation of authority between
14 client and lawyer), ER 1.3 (diligence), ER 1.4 (communication), ER 1.15 (safekeeping property),
15 ER 1.16 (declining or terminating representation), ER 3.2 (expediting litigation), and ER 8.4(d)
16 (misconduct prejudicial to the administration of justice), as well as 43(d)(1)(A) (due professional
17 care must be exercised in the performance of the lawyer's duties). In addition, Respondent
18 conditionally admits his conduct violated ER 8.1(b) (knowingly failing to respond to a lawful
19 demand for information from a disciplinary authority), Rule 53(d) (evading service or refusal to
20 cooperate) and 53(f) (failure to furnish information).

21 The State Bar conditionally admits that it could not prove a violation of ER 8.4(c)
22 (misconduct involving dishonesty) due to a lack of evidence Respondent had the requisite
23 intentional state of mind.

24 169. File No. 04-1265: Respondent conditionally admits his conduct in this file violated Rule

1 factors. Here, Respondent engaged in a pattern of violations of the rules regulating the management
2 of client trust accounts, knowingly failed to diligently represent or communicate with clients, and
3 failed to respond to investigations into such charges conducted by the State Bar.

4 The parties agree that Respondent's extensive violations of the trust account rules are the
5 most serious incidents of misconduct and that it is accordingly appropriate to first consider ABA
6 *Standard 4.1 (Failure to Preserve the Client's Property)*, which identifies sanctions considered
7 generally appropriate in cases involving the failure to preserve client property.

8 *ABA Standard 4.11* provides:

9 Disbarment is generally appropriate when a lawyer knowingly converts client
10 property and causes injury or potential injury to a client.

11 *ABA Standard 4.12* provides:

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

15 The parties also agree that Respondent's misconduct in mishandling numerous client matters
16 is arguably just as serious. The parties accordingly agree it is also appropriate to consider ABA
17 *Standard 4.4 (Lack of Diligence)*, which identifies sanctions generally appropriate in cases
18 involving a failure to act with reasonable diligence and promptness in representing a client,
19 including failures to communicate with a client.

20 *ABA Standard 4.41* provides:

21 Disbarment is generally appropriate when:

- 22 (a) a lawyer abandons the practice and causes serious or potentially serious injury
23 to a client; or
24 (b) a lawyer knowingly fails to perform services for a client and causes serious or
potentially serious injury to a client; or
(c) lawyer engages in a pattern of neglect with respect to client matters and causes
serious or potentially serious injury to a client.

1 ABA *Standard* 4.42 provides:

2 Suspension is generally appropriate when:

- 3 (a) a lawyer knowingly fails to perform services for a client and causes injury or
4 potential injury to a client, or
5 (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to
6 a client.

7 Although less serious than the breaches of Respondent's duties to his clients, Respondent's
8 multiple failures to respond to or cooperate with the State Bar during the investigations of the
9 charges herein also warrant consideration of the ABA *Standards*. In particular, ABA *Standard* 7.0
10 (Violations of Other Duties Owed as a Professional) identifies sanctions generally appropriate in
11 cases involving false or misleading communication about the lawyer or the lawyer's services,
12 improper communication of fields of practice, improper solicitation of professional employment
13 from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper
14 withdrawal from representation, or failure to report professional misconduct. The ABA *Standards*
15 also indicate that *Standard* 7.0 is appropriate as guidance in determining a sanction in cases where
16 lawyers fail to respond to lawyer disciplinary authorities in violation of ER 8.1(b). See ABA
17 *Standards*, Appendix 1 at page 57.

18 ABA *Standard* 7.1 provides:

19 Disbarment is generally appropriate when a layer knowingly engages in conduct that
20 is a violation of a duty owed as a professional with the intent to obtain a benefit for
21 the lawyer or another, and causes serious or potentially serious injury to a client, the
22 public, or the legal system.

23 ABA *Standard* 7.2 provides:

24 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.

1 **AGGRAVATING AND MITIGATING FACTORS**

2 This Hearing Officer considered aggravating and mitigating factors in this case, pursuant to
3 ABA *Standards* 9.22 and 9.32 respectively, and agrees with the parties that three aggravating
4 factors apply and should be considered in this matter: (d) multiple offenses; (e) bad faith obstruction
5 of the disciplinary proceeding by intentionally failing to comply with rules or orders of the
6 disciplinary agency; and (j) indifference to making restitution.

7 This Hearing Officer also agrees with the parties that four factors are present in mitigation:
8 (a) absence of a prior disciplinary record; (c) personal or emotional problems; (e) full and free
9 disclosure to disciplinary board or cooperative attitude toward proceedings; and (l) remorse. The
10 finding of both aggravating factor (e) and mitigating factor (e) requires a bit of explanation. While
11 Respondent generally ignored the proceedings against him in their early stages, he later cooperated
12 considerably with the State Bar during the development of the Tender and Joint Memo, including
13 his agreement to the payment of restitution without requiring the State Bar, the witnesses and the
14 Hearing Officer to go through a lengthy and difficult hearing.

15 During the hearing on the Tender and Joint Memo (which has been sealed at the request of
16 Respondent and with the agreement of the State Bar), Respondent described the circumstances
17 (financial, emotional and medical) that led to the period in Respondent's life when all of the
18 problems at issue here arose. This Hearing Officer has no doubt of Respondent's remorse.

19 **PROPORTIONALITY REVIEW**

20 An effective system of professional sanctions requires internal consistency. Accordingly, it
21 is appropriate to examine sanctions imposed in cases that are factually similar. *In re Shannon*, 179
22 Ariz. 52, 71, 876 P.2d 548, 567 (1994), (quoting *In re Wines*, 135, Ariz. 203, 207 (1983)).
23 However, the discipline in each case must be tailored to the individual case, as neither perfection
24 nor absolute uniformity can be achieved. *Matter of Riley*, 142 Ariz. 604, 615 (1984).

1 Recent cases providing guidance in determining what a proportional sanction would be
2 include the following.

3 In *In re Augustine*, Arizona Supreme Court No. State Bar-04-0114-D, Disciplinary
4 Commission Nos. 02-0207, 02-1137, 02-1916 (2004), the Supreme Court, after a lawyer defaulted
5 in the case in chief but appeared for the aggravation/mitigation hearing, suspended the lawyer for
6 two years and also ordered restitution, probation and costs. The misconduct found in connection
7 with the three-count complaint included violations of ER 1.3 (diligence), ER 1.4 (communications),
8 ER 1.15(b) (safekeeping property), ER 1.16(d) (declining or terminating representation), 8.1(b)
9 (knowingly failing to respond to a lawful demand for information from a disciplinary authority),
10 8.4(c) (misconduct involving dishonesty), 8.4(d) (misconduct prejudicial to the administration of
11 justice) as well as Ariz.R.Sup.Ct. 53(f) (failure to furnish information) and 53(d) (evading service or
12 refusal to cooperate). The hearing officer found five aggravating factors of 9.22: (c) a pattern of
13 misconduct, (d) multiple offenses, (e) bad faith obstruction of the disciplinary proceeding,
14 (i) substantial experience in the practice of law, and (j) indifference to making restitution. The
15 hearing officer found six mitigating factors of 9.32: (a) absence of a prior disciplinary record,
16 (b) absence of a dishonest or selfish motive, (c) personal or emotional problems, (g) character or
17 reputation, (h) physical and mental disability or impairment, and (l) remorse. The Disciplinary
18 Commission found the hearing officer's recommendation of a six month and one day suspension
19 was based on "clearly erroneous findings and conclusions" and recommended the two-year
20 suspension that the Supreme Court ultimately imposed.

21 In *In re Roberts*, Supreme Court No. SB-04-0123-D, Disciplinary Commission No. 02-1526,
22 et. al. (2004), the Supreme Court, pursuant to an agreement for discipline by consent arising out of a
23 five count complaint, suspended the lawyer for three and one-half years and, as conditions of
24 reinstatement, ordered restitution, participation in the State Bar's Trust Account Ethics

1 Enhancement Program (TAEPP) and Members Assistance Program (MAP), as well as payment of
2 costs and expenses. The misconduct conditionally admitted included findings that, in four of the
3 counts, the lawyer violated ERs 1.2, 1.3, 1.15, 1.16, 8.4(d) and trust account rules Ariz.R.Sup.Ct. 43
4 and 44. Aggravating factors found included dishonest or selfish motive, and multiple offenses.
5 Mitigating factors included absence of a prior disciplinary record, personal or emotional problems,
6 and full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Cases
7 cited in the Memorandum in Support of the Agreement for Discipline by Consent in *In re Roberts*
8 included a number of cases that are also relevant herein, including *In re Hovell*, SB-02-0020-D
9 (2002), *In re Turnage*, SB-01-0120-D (2001); *In re Torosian*, SB-00-0100-D (2001) and *In Re*
10 *Camacho*, SB 96-0079-D (1997).

11 In *In re Hovell*, the lawyer was disbarred and received six months of probation including
12 participation in LOMAP and was ordered to make restitution of \$77,133.53. The misconduct
13 consisted of five counts in which the lawyer was found to have settled a case without the consent of
14 the client; failed to deliver settlement proceeds to the client; failed to disburse funds due to another
15 attorney; failed to provide clients with an accounting of costs deducted from a recovery; and failed
16 to reimburse an expert witness. Aggravating factors included dishonest or selfish motive, pattern of
17 misconduct, multiple offenses, failure to cooperate, substantial experience, and indifference to
18 restitution. Mitigating factors included no prior disciplinary history and emotional problems.

19 In *In re Turnage*, the lawyer received a four-year suspension and was ordered to pay
20 restitution in connection with an eight-count complaint including charges the lawyer failed to
21 provide diligent representation in five cases, failed to respond to the State Bar in one case, failed to
22 communicate with the client in another case, failed to comply with an order of court resulting in
23 dismissal of another case and committed three violations of the trust account rules. Aggravating
24 factors found included prior disciplinary offenses, pattern of misconduct, multiple offenses, failure

1 to cooperate, and substantial experience in the practice of law. Mitigating factors included personal
2 and emotional problems including alcoholism, timely and good faith effort to make restitution, and
3 full and free disclosure and cooperative attitude after formal proceedings were filed.

4 In *In re Torosian*, the lawyer received a four-year suspension and two years of probation for
5 misappropriating a portion of the proceeds of a settlement of his sister's personal injury matter
6 whereby he failed to disburse the funds to his client and or pay a medical lien. The lawyer instead
7 used the settlement funds to satisfy his gambling addiction. The hearing officer recommended
8 disbarment. Although the Disciplinary Commission found that disbarment was appropriate,
9 mitigating factors, including absence of prior disciplinary record, personal and emotional problems,
10 cooperative attitude, and inexperience in the practice of law resulted in imposition of a four-year
11 suspension. The Disciplinary Commission found that suspension was appropriate even though there
12 was no causal connection was found between the lawyer's emotional problems and the misconduct.

13 In *In re Camacho*, the lawyer was disbarred after he converted \$3,045.75 in settlement funds
14 to his own use, intentionally misled a client about disposition of his case, and agreed to settlement
15 without his client's consent. Although the lawyer repaid the settlement funds, all aggravating
16 factors were found to apply, including a prior disciplinary record and failure to cooperate with the
17 State Bar by failure to answer the complaint and requesting a continuance to secure assistance of
18 counsel at the disciplinary proceeding. The mitigating factors were remorse and depression.

19 RECOMMENDATION

20 The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and to
21 deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). It is
22 also the objective of lawyer discipline to protect the public, the profession and the administration of
23 justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public
24 confidence in the Bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

1 In imposing discipline, it is appropriate to consider the facts of the case, the ABA *Standards*
2 and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283,
3 286, 872 P.2d 1235, 1238 (1994).

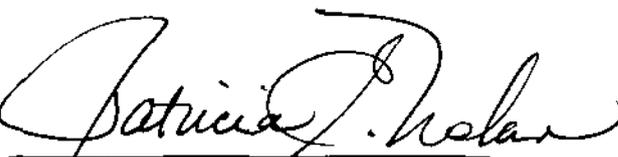
4 Upon consideration of the facts, application of the ABA *Standards*, including aggravating
5 and mitigating factors, and a proportionality analysis, this Hearing Officer recommends acceptance
6 of the Tender and the Joint Memo, providing for the following:

- 7 1. Respondent shall be suspended for a period of three years.
- 8 2. Respondent shall be placed on probation for a period of two years upon
9 reinstatement. The terms and conditions of reinstatement shall be determined at the time.
- 10 3. Respondent shall pay restitution, prior to his application for reinstatement, as
11 follows:

Tanya Etter	\$2,000.00
La Doris Hickman	2,500.00
John Violette	350.00
Maricopa County Clerk of Court	623.00
Gary Paulsen	3,365.00
Rudolf Robinson:	2,078.58
Montie Yetter:	9,352.00
Margaret M. Maginnis	1,550.00
Daniel Straight	<u>4,000.00</u>
Total:	\$25,818.58

- 18 4. Respondent shall pay the costs and expenses incurred in this disciplinary proceeding.

19 DATED this 22nd day of February, 2005.

20 
21 Patricia E. Nolan
22 Hearing Officer 7Y

23 Original filed with the Disciplinary Clerk
24 this 22 day of February, 2005.

1 Copy of the foregoing was mailed
2 this 22 day of February, 2005, to:

3 Christopher H. Reed
4 9393 North 90th Street, #102
5 PMB No. 231
6 Scottsdale, AZ 85258
7 *Respondent*

8 Loren J. Braud
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