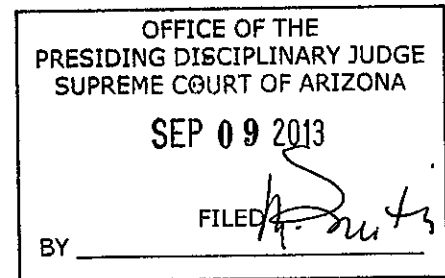


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Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

James A. Landon,
Bar No. 017315,

Respondent.

PDJ-2013-9080

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar No. 13-0348

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent James A. Landon, who is represented in this matter by counsel, Ralph W. Adams, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER(s) 1.8(e), 1.15, Rule 43(b)(1)(A), (b)(1)(B), (b)(1)(C), and (b)(2)(C),

Ariz. R. S. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: reprimand and probation for one year to include completion of the State Bar's Trust Account Ethics Enhancement Program (TAEHP) and participation in the State Bar's Law Office Management Assistance Program (LOMAP). Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

GENERAL ALLEGATIONS

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 19, 1996.

COUNT ONE (State Bar File No. 13-0348)

2. On February 13, 2013, five checks, check number 13261 for \$16.86, check number 13278 for \$154.00, check number 13279 for \$260.00, check number 13281 for \$261, and check number 13282 for \$652.50, attempted to pay against Respondent's client trust account when the balance was \$567.92. The bank paid the checks, leaving the account with a negative balance of \$776.44.

3. In response to a February 22, 2013, written inquiry by the State Bar's Trust Account Examiner, Respondent stated that a check for \$7,799.46, had been deposited into his client trust account on August 2, 2012, by use of a check scanner but that for reason(s) unbeknownst to him it had not been posted to his account.

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

Respondent was unaware of this fact until after he received the inquiry of the Trust Account Examiner in February 2013, thereby negligently converting client funds for approximately six months.

4. In addition to the \$7,799.46 that should have been deposited to his account on or around August 2, 2012, three other deposited checks, for a total of \$341.40, that should have been deposited to Respondent's trust account in August and November 2012, were not credited to the account. Those non-credited checks were also initially deposited by use of a check scanner. Each instance caused the negligent conversion of client funds; these shortfalls were not discovered until after Respondent received the State Bar's inquiry.

5. After review of his client trust account, conducted in response to the inquiry of the Trust Account Examiner, Respondent admitted that his client trust account was out of trust, with a shortfall of \$4,302.62.

6. Respondent conducted a high-volume collections practice and opened the trust account at issue in this matter in 2007. Since that time Respondent had not maintained a "to the dollar" accurate accounting of the funds present in his client trust account. Respondent admitted that there were likely errors in accounting in the collections practice dating back many decades because a manual accounting system had been used by the firm prior to his purchase of the firm.

7. Respondent routinely had negative balances reflected on individual client ledgers and considered them "over expended balances." In such situations once the balance for an individual client or case was reduced to zero, Respondent, or his bookkeeper, thereafter disbursed funds from Respondent's operating account, constituting loans to clients.

8. In examining his records and account after the initial inquiry by the Trust Account Examiner, Respondent found that there were numerous closed files in which negative balances of client funds were reflected.

9. During an examination of Respondent's trust account records, the Trust Account Examiner also found:

- a. That individual client ledgers were improperly maintained as they did not reflect the actual and accurate balance of funds held on deposit in Respondent's client trust account on any given day;
- b. That errors in the posting of deposits were not discovered for many months after the error occurred;
- c. That Respondent and/or his staff did not maintain an accurate record of earned commissions transferred from the trust account to Respondent's operating account;
- d. That trust account checks for \$458.78 and \$1,217.19, were erroneously disbursed on April 30, 2012, rather than checks from Respondent's operating account, thereby causing the negligent conversion of client funds. Those funds were not replaced in the client trust account until August 2, 2012;
- e. That there were 60 stale checks outstanding from the trust account as far back as October 2006, and no action was taken to account for them until August 2012;
- f. That no administrative funds ledger, or an equivalent, was maintained for the trust account, thereby making it impossible to determine whether or not administrative funds were on the deposit

in the account at any specific point in time, or if they were, the amount of those funds;

- g. That Respondent maintained \$272.55 in a dormant Bank of the West account but could not identify for whom those funds were maintained;
- h. That on or about December 20, 2012, Respondent deposited \$25.00 into his client trust account for the benefit of a client, but for unknown reasons only \$20.00 was credited to Respondent's account. This shortfall was not discovered by Respondent until February 2013, after he received the State Bar's inquiry;
- i. That because Respondent was not appropriately maintaining the records of his client trust account, he was not able to conduct the required monthly three-way reconciliation of his client trust account.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. S. Ct., specifically ERs 1.8(e), 1.15, and Rule 43(b)(1)(A), (b)(1)(B), (b)(1)(C), and (b)(2)(C), Ariz. R. S. Ct.

CONDITIONAL DISMISSALS

There are no conditional dismissals.

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: reprimand and probation for one year. Respondent shall complete the State Bar's Trust Account Ethics Enhancement Program (TAEED) and shall participate in the State Bar's Law Office Management Assistance Program (LOMAP) during the period of probation.

LOMAP

Respondent shall contact the Director of LOMAP, at 602-340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.15 and Rule 43, Ariz. R. S. Ct. The Director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude one year from that date. Respondent shall be responsible for any costs associated with LOMAP.

TAEED

Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEED). Respondent must contact the TAEED Program Coordinator, State Bar of Arizona, at (602) 340-7278, within 20 days from the date of the final

judgment and order. Respondent shall be responsible for the cost of attending the program.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those 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. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to 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. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The parties agree that *Standard* 4.12 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.12 provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. Respondent has acknowledged that he was aware that there were likely accounting errors dating back many years and that he was not reconciling his client trust account "to the dollar." Although Respondent "inherited" a dysfunctional accounting system from his former partner, this does not lessen the fact that he

was aware, or should have been, that his client trust account was not being appropriately maintained.

Additionally, *Standard 4.33* is implicated because of Respondent's practice of "over expended balances" – making loans to clients from his operating account when their as indicated on their client ledger reached zero. Although of concern, *Standard 4.12* governs the presumptive sanction in this matter as Respondent's maintenance of "over expended balances" arose from the improper maintenance of his client trust account.

The duty violated

As described above, Respondent's conduct violated his duty to his clients.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent knew or should have known that he failed to appropriately maintain his client trust account and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential harm to his clients.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22(c) Pattern of misconduct

The mismanagement of the client trust account had been going on for years before it was revealed due to the State Bar's investigation.

Standard 9.22(i) Substantial experience in the practice of law

Respondent has been practicing law for 17 years.

In mitigation:

Standard 9.32(a) Absence of prior disciplinary record

Standard 9.32(b) Absence of a dishonest or selfish motive

Standard 9.32(c) Personal or emotional problems. Documentation in support of this factor is attached to this agreement under seal as Exhibit "B." The parties stipulate that because of the personal and confidential nature of the information provided, this Exhibit should be sealed from the public.

Standard 9.32(e) Cooperation with Bar investigation

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: Respondent has admitted his misconduct and has begun to take remedial steps to remedy this long-standing problem.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of reprimand and probation for one year with TAEPP and LOMAP and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "C."

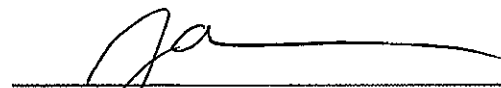
DATED this 3 day of September, 2013.

STATE BAR OF ARIZONA


Roberta L Tepper
Senior Bar Counsel

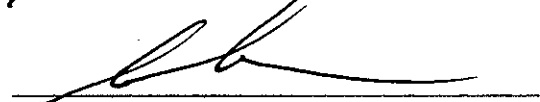
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. [I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.]

DATED this 22 day of August, 2013.


James A Landon
Respondent

DATED this 27th day of August, 2013.

gl



Ralph W Adams
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 9th day of September, 2013.

Copies of the foregoing mailed/emailed
this 9th day of September, 2013, to:

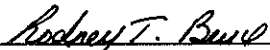
Ralph W Adams
Adams & Clark PC
520 E Portland St
Phoenix, AZ 85004-1843
Email: Ralph@adamsclark.com
Respondent's Counsel

Copy of the foregoing emailed
this 9th day of September, 2013, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 9th day of September, 2013, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

By: 
RLT:aq

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**JAMES A. LANDON,
Bar No. 017315**

Respondent.

PDJ-2013-9080

FINAL JUDGMENT AND ORDER

[State Bar No. 13-0348]

FILED SEPTEMBER 16, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on September 9, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **James A. Landon**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this final Judgment and Order.

IT IS FURTHER ORDERED that Respondent be placed on probation for one year to include completion of the State Bar's Trust Account Ethics Enhancement Program (TAEHP) and participation in the State Bar's Law Office Management Assistance Program (LOMAP) as set forth below. Respondent also agrees to pay the

costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at (602) 340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ER 1.15 and Rule 43. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude one year from that date. Respondent shall be responsible for any costs associated with LOMAP.

TAEPP

Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEPP). Respondent must contact the TAEPP Program Coordinator, State Bar of Arizona, at (602) 340-7351, within 20 days from the date of the final judgment and order. Respondent shall be responsible for the cost of attending the program.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 16th day of September, 2013.

/s/ William J. O'Neil

The Honorable William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 16th day of September, 2013.

Copies of the foregoing mailed/emailed
this 16th day of September, 2013, to:

Ralph W. Adams
Adams & Clark PC
520 East Portland Street
Phoenix, Arizona 85004-1843
Email: Ralph@adamsclark.com
Respondent's Counsel

Copy of the foregoing hand-delivered/emailed
this 13th day of September, 2013, to:

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Sandra Montoya
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by: MSmith