

FILED

MAY 1 9 2008

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY: *[Signature]*

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

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
JANET L. WHITE-STEINER,)
Bar No. 014295)
)
RESPONDENT.)
_____)

No. 06-0796

**DISCIPLINARY COMMISSION
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on April 19, 2008, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed March 3, 2008, recommending censure, two years of probation with the State Bar's Law Office Management Assistance Program ("LOMAP"), Trust Account Ethics Enhancement Program ("TAEHP") and Trust Account Program ("TAP"), and costs. The State Bar filed an objection and requested Oral Argument. Respondent, Respondent's Counsel, and counsel for the State Bar appeared.

The State Bar argues that the Hearing Officer erred in finding that Respondent's mental state was negligent and erred in recommending censure and probation for violations of ERs 1.15(a), 5.1, 5.3 and Rules 43 and 44. The State Bar asserts that a suspension of six-months and one-day is appropriate for the co-mingling and conversion of client funds and is necessary to deter Respondent and others from engaging in similar misconduct, assure the integrity of the legal profession, and to instill confidence in the public. The State Bar further asserts that a pattern of misconduct is present as Respondent has been

1 previously sanctioned for similar violations and she has been evasive and untruthful in the
2 current disciplinary proceedings.

3 In rebuttal, Respondent urges the Commission to accept the Hearing Officer's
4 recommendation, as the sanction is appropriate and reasonable. Respondent now admits
5 that she was the person designated to handle the client trust account and maintains that
6 improvements as recommended by LOMAP have been taken to properly manage and
7 reconcile client funds.

8 Decision

9 The seven members¹ of the Disciplinary Commission by a majority of six,²
10 recommend accepting and incorporating the majority of the Hearing Officer's findings of
11 fact and conclusions of law, but modify the recommended sanction to reflect a six-month
12 and one-day suspension and costs of these disciplinary proceedings.³ The Commission
13 determined that the Hearing Officer erroneously concluded that Respondent acted
14 negligently.
15

16 Discussion of Decision

17 The Disciplinary Commission's standard of review is set forth in Rule 58(b), which
18 states that it applies a clearly erroneous standard to findings and reviews questions of law
19 *de novo*. In addition, the Commission gives great deference to the Hearing Officer's
20 Report and recommendation. *Matter of Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1989).
21

22 Most, but not all, aggravating and mitigating factors are findings of fact. *In re*
23 *Tocco*, 194 Ariz. 453, 456, 984 P.2d 539, 543 (1999). Determining an attorney's state of
24

25 ¹ Commissioners Flores and Katzenberg did not participate in these proceedings. Hearing Officer
Mark Sifferman, participated as an ad hoc member. One lawyer member seat remains vacant.

26 ² Commissioner Todd abstained.

³ A copy of the Hearing Officer's Report is attached as Exhibit A.

mind is a finding of fact. *See Republic Ins. Co. v Feidler*, 178 Ariz. 528, 531, 875 P.2d 187, 190 (App.1993). In attorney discipline proceedings, the attorney's state of mind is a fact question. *Matter of Clark*, 207 Ariz. 414, 417, ¶ 14, 87 P.3d 827, 830 (2004) and *Matter of Van Dox*, 214 Ariz. 300, 152 P.3d 1183 (2007). The Hearing Officer's findings are briefly summarized as follows:

Respondent and her husband/counsel, Richard Steiner are partners in a two-partner law firm, *Steiner & Steiner, P.C.* Richard Steiner spends up to one-half of his time practicing law in Colorado and Respondent is in charge of the office when Mr. Steiner is out of town.

On May 15, 2006, a nonsufficient funds ("NSF") check notice was received by the State Bar of Arizona in regards to an overdraft in Respondent's trust account. The State Bar subsequently investigated the overdraft and during that investigation, uncovered various ethical violations including the failure to safeguard client property and to comply with trust account rules and guidelines. At the time of the NSF check, Richard Steiner was in Colorado.

The firm's IOLTA account number is registered solely to Respondent and from May 2006 until the time of the first disciplinary hearing on June 1, 2007, Respondent never denied she was the responsible party for the trust account. In her original Answer, Respondent admitted to three ethical violations. Notwithstanding the admissions, by the time of the hearing, Respondent asserted that the trust account was the responsibility of her husband, Richard Steiner. Respondent further asserted that the State Bar never asked her if she was responsible and she had no proactive duty to tell the State Bar who was in-charge of the trust account. Mr. Steiner prepared Respondent's original Answer as well as

1 virtually all pre-June 2007 correspondence with the State Bar and acted as Respondent's
2 counsel in this matter.⁴

3 Respondent's paralegal, Ms. Nicholson, did not receive any training with
4 regard to the trust account prior to the NSF incident and Respondent only supervises Ms.
5 Nicholson on the work she does on behalf of Respondent. Withdrawal slips and deposit
6 tickets to the firms trust account were filled out and signed by Respondent, including
7 checks disbursing client funds in May of 2006. Both Mr. Steiner and Ms. Nicholson told
8 the State Bar examiner that the negative balances on the client ledgers indicated conversion
9 of client funds. Additionally, funds totaling \$124,864.01 in the deficit column of the
10 reconciliation provided were not explained including \$18,330.26 in client funds that were
11 missing from the trust account on May 4, 2006.

12
13 The Hearing Officer found and the Commission agrees that clear and
14 convincing evidence is present that Respondent violated ERs 1.15(a), 5.1, 5.3 and Rules 43
15 and 44.

16 In determining the appropriate sanction, the Supreme Court has held that the
17 *ABA Standards for Imposing Lawyer Sanctions* ("Standards") are a suitable guideline. *In*
18 *re Peasley*, 208 Ariz. 27, 33, 23, 90 P.3d 764, 770 (2004). The Supreme Court and the
19 Commission are consistent in utilizing the *Standards* to determine appropriate sanctions
20 for attorney discipline. In imposing a sanction after a finding of misconduct, consideration
21 is given to the duty violated, the lawyer's mental state, the actual or potential injury caused
22

23
24
25 ⁴ On August 10, 2007, Respondent filed a Stipulated Substitution of Counsel and Mr. Steiner was
26 substituted as counsel. On August 30, 2007, the Hearing Officer denied the State Bar's Motion to
Disqualify Mr. Steiner as counsel. A Petition for Special Action was filed; however, on November
1, 2007, the Court declined to accept jurisdiction of the Petition for Special Action.

by the misconduct, and the existence of aggravating and mitigating factors. *See Standard*
3.0.

The Hearing Officer specifically found that Respondent is a party responsible for the maintenance of the Firm's Trust Account. (*See* Hearing Officer's Report, p. 15 ¶ 86). The Hearing Officer further found that Respondent co-mingled client retainer funds and earned funds with client funds in the firm's credit card collection account and trust account. (*Id.* at 16 ¶ 87) and Respondent's conduct caused actual injury to clients by virtue of the use of other client funds to pay the debt of another client. (*Id.* at 24)

In regards to prior disciplinary offenses, the Hearing Officer found that Respondent's husband/partner Richard Steiner participated in LOMAP in 1999, a fact Respondent initially denied knowing, but subsequently admitted. (*Id.* at 18, ¶¶ 106, 108) On October 19, 2001, Respondent and Mr. Steiner received an informal reprimand in consolidated File Nos. 00-2495 and 00-0748 for violating ERs 1.15 and 1.16(d) and Rules 43 and 44. Respondent also participated in Diversion in File No. 99-0501. *See* State Bar's Notice of Intent to Use Prior Discipline. The Order of Informal Reprimand imposed in 2001 stated that:

"Your conduct in failing to hold client funds in your trust account violated ER 1.15 and Supreme court Rules 43 and 44. This appears to have been brought about, in part, by the ambiguous terms in your fee agreement, which clearly did not reflect the nature of the funds and where the funds would be deposited. Your conduct also violated ER 1.16(d) when you failed to promptly return the unearned fees to Mr. Grimm once the representation ended."

Standard 4.12 Violations of Duties Owed to Clients 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.

1 The *Commentary to Standard 4.12* further provides that comingling is considered a serious
2 violation for which a period of suspension is appropriate even absent any client harm. The
3 Hearing Officer's findings support the conclusion that Respondent co-mingled client funds
4 and caused actual and potential injury to clients. The Hearing Officer further found that
5 "there is evidence that Respondent could reasonably foresee that injury could occur to the
6 firms' clients." See Hearing Officer's Report, p. 24.

7
8 Based on these findings, the Commission concludes that the Hearing Officer
9 erred in applying ABA *Standard 4.13* and erroneously concluded that Respondent's
10 conduct was negligent in dealing with client property. A lawyer's mental state affects the
11 sanction imposed for ethical violations. Given Respondent's previous sanction for similar
12 misconduct, Respondent was clearly on notice that she was dealing improperly with client
13 funds and improperly managing her client trust account. Respondent knew or should have
14 known what her ethical duties and obligations required with regards to the handling of
15 client property; therefore, *Standard 4.12*, suspension is the presumptive sanction.

16
17 The Commission agrees with the Hearing Officer's findings regarding
18 aggravating and mitigating factors: aggravating factors 9.22(a) prior disciplinary offenses
19 and 9.22(g) failure to acknowledge wrongfulness of misconduct, and mitigating factors,
20 9.32(b) absence of selfish or dishonest motive and 9.32(g) character or reputation.

21 Conclusion

22 Lawyer discipline is intended to deter the respondent and other attorneys from
23 engaging in similar unethical conduct in the future. *In re Kleindienst*, 132 Ariz. 95, 644
24 P.2d 249 (1982). It is also intended to help maintain the integrity of the legal system and
25
26

1 instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881
2 P.2d, 352, 362 (1994); *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993).

3 The presumptive sanction for Respondent's misconduct is suspension. Respondent
4 has previously received lesser sanctions for similar misconduct but they did nothing to
5 alter her conduct and her clients suffered as a result. Under the circumstances, the
6 Commission recommends Respondent be suspended for six-months and one-day and be
7 required to pay the costs of these proceedings.

8 RESPECTFULLY SUBMITTED this 19th day of May, 2008.

9
10
11 Jeffrey Messing /cs
12 Jeffrey Messing, Vice-Chair
Disciplinary Commission

13 Original filed with the Disciplinary Clerk
14 this 19th day of May, 2008.

15 Copy of the foregoing mailed
16 this 20th day of May, 2008, to:

17 Stanley R. Lerner
Hearing Officer 7V
18 3707 North 7th Street, Suite 250
Phoenix, AZ 85014-5057

19 Richard A. Steiner
20 Respondent's Counsel
21 *Steiner and Steiner, P.C.*
22 2025 N. 3rd Street, Suite 155
Phoenix, AZ 85004

Patricia Ramirez
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: Christina S. 8

/mps

EXHIBIT

A

BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

FILED

MAR - 3 2008

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY [Signature]

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

JANET L. WHITE-STEINER,
Bar No. 014295

Respondent.

No. 06-0796

HEARING OFFICERS FINDINGS OF
FACT AND CONCLUSIONS OF LAW

(Assigned to Hearing Officer 7V, Stanley
R. Lerner)

I. PROCEDURAL HISTORY

The State Bar filed its formal Complaint on January 26, 2007. Respondent accepted service of the Complaint on January 30, 2007. On February 16, 2007, Respondent filed an Answer to The State Bar's Complaint.

On March 7, 2007, Nancy Greenlee filed a Notice of Appearance on behalf of Respondent.

On June 1, 2007, a hearing on the merits was conducted. At the conclusion of the hearing, the State Bar made an oral Motion to Amend the Complaint to Conform to the Evidence. At the same time, Respondent's counsel made an oral Motion to Dismiss. The Hearing Officer took both motions under advisement.

The State Bar filed its Motion to Amend the Complaint to Conform to the Evidence on June 4, 2007. Respondent filed a Response to the State Bar's Motion to Amend the Complaint to Conform to the Evidence on June 6, 2007. On June 8, 2007, The State Bar filed its Reply to Respondent's Response to State Bar's Motion to Amend the Complaint to Conform to the Evidence.

1 On June 19, 2007, the Hearing Officer granted the State Bar's Motion to Amend the
2 Complaint to Conform to the Evidence. On the same date, the Hearing Officer filed a Motion
3 for Extension of Time within Which to Conduct Hearing.

4 On June 25, 2007, the State Bar filed its Amended Complaint.

5 On June 26, 2007, The Supreme Court granted the Hearing Officer's Motion for
6 Extension of Time within Which to Conduct Hearing and ordered the hearing be continued
7 through September 17, 2007.

8 Respondent filed an Amended Answer on July 18, 2007.

9 On July 25, an Order was issued, setting the hearing on the Amended Complaint on
10 September 11, 2007.

11 On August 10, 2007, Respondent filed a Stipulated Substitution of Counsel, wherein
12 her husband and partner, Richard Steiner, was substituted in as counsel. The State Bar filed a
13 Motion to Determine Counsel on August 20, 2007. Respondent filed a Response to the State
14 Bar's Motion to Determine Counsel on August 24, 2007. On August 29, 2007, the State Bar
15 filed a Motion to Expedite Ruling on Determination of Counsel. On August 30, 2007,
16 Respondent filed a Response to the State Bar's Motion to Expedite Ruling on Determination
17 of Counsel. On August 30, 2007, the Hearing Officer denied the State Bar's request to
18 disqualify Mr. Steiner as Respondent's counsel. On August 31, 2007, the State Bar made a
19 Motion to Stay the Proceeding in order to file a Petition for Special Action challenging the
20 Hearing Officer's ruling, which the Hearing Officer granted.

21 On September 7, 2007, the Hearing Officer issued an Order Of Stay, pending the
22 resolution of the Petition For Special Action. On September 7, 2007, the Hearing Officer filed
23 an Accelerated Motion to Continue the Hearing Set For September 11, 2007. On September
24
25

1 10, 2007, the Hearing Officer's Accelerated Motion to Continue the Hearing Set for
2 September 11, 2007, was granted and the time within which to hold the hearing was extended
3 through October 11, 2007.

4 The State Bar filed its Petition for Special Action on September 10, 2007. On
5 September 11, 2007, an Order Submitting Petition for Ruling without Oral Argument,
6 Directing Service and Fixing Time for Response and Reply was issued by the Supreme Court.
7 The Order stated that the Court would consider the Petition For Special Action on October 30,
8 2007.

9
10 On September 17, 2007, the State Bar filed a Request for Stay with the Supreme
11 Court, given that the Court was to consider the Petition for Special Action on October 30,
12 2007, and the disciplinary hearing was scheduled to take place on October 11, 2007.

13 On September 26, 2007, Respondent filed a Response to Petition for Special Action.

14 On September 28, 2007, the Supreme Court issued an Order denying the State Bar's
15 Request for a Stay of the hearing. On October 1, 2007, the State Bar filed a Motion
16 Requesting Additional Time to Hold Hearing with the Disciplinary Commission. On October
17 4, 2007, Respondent filed a Response to the State Bar's Motion Requesting Additional Time
18 to Hold Hearing.

19 On October 9, 2007, the State Bar filed its Reply In Support Of Its Petition for Special
20 Action.

21
22 On October 10, 2007, the Supreme Court issued its Order granting the State Bar
23 additional time within which to hold the hearing. The Order stated that the hearing would be
24 completed no less than 30 days after the Court's final disposition of the Petition for Special
25 Action.

1 On October 31, 2007, The Supreme Court declined to consider the State Bar's Petition
2 for Special Action.

3 On November 14, 2007, the Hearing Officer gave notice that the hearing on the State
4 Bar's Amended Complaint was scheduled for November 30, 2007, at which time the hearing
5 took place.

6 On December 15, 2007 Respondent filed her Motion Re: Sanctions Re: Failure to
7 Disclose.

8
9 **II. FINDINGS OF FACT**

10 1. At all times relevant, Respondent was licensed to practice law in the State of
11 Arizona, having first been admitted to practice in Arizona on May 23, 1992.

12 2. Respondent and her husband, Richard Steiner ("Mr. Steiner") are partners in a
13 two-partner law firm, Steiner & Steiner, P.C. [Hearing Transcript 16:14 - 17:22]¹

14 3. Notwithstanding that Respondent is a partner in the firm, Respondent claims
15 she is not one half of the firm with regard to the firm's trust account. [Tr. 76: 17-20]

16 4. Mr. Steiner is licensed to practice law in Colorado. [Tr. 21:25 - 22:1]

17 5. Mr. Steiner spends approximately one-third to one-half of his time in Arizona;
18 the rest of the year is spent in Colorado. [Tr. 168: 3 - 9]

19 6. Mr. Steiner was in Colorado most of April and May 2006. [Tr. 144:22 - 145:3]

20 7. Respondent is in charge of the office when Mr. Steiner is gone. [Tr. 259: 6 -8]

21 8. The firm employs one paralegal, Lisa Nicholson ("Ms. Nicholson"), who has
22 been with the firm for twelve years. [Tr. 242: 10-13]
23

24
25 ¹ Hereinafter, references to the transcript of the hearings conducted on June 1, 2007 and
November 30, 2007, will be referred to as "Tr." followed by "page number(s): line

1 9. Prior to joining the firm, Ms. Nicholson had no bookkeeping or accounting
2 experience. [Tr. 248: 21-24]

3 10. The responsibility for maintaining the firm's trust account records was
4 transferred to Ms. Nicholson by Becky Hoeffner, a former employee of the firm. [Tr. 243: 16-
5 22]

6 11. When Ms. Hoeffner left the firm approximately three years ago she provided
7 Ms. Nicholson with a book of trust account ledgers and instructed Ms. Nicholson to log only
8 disbursements in the book. [Tr. 249: 4-7; Tr. 269: 20-21; Tr. 276: 1-6]

9 12. It has only been since the occurrence of the NSF incident in May 2006 that Ms.
10 Nicholson has received training at the firm with regard to the trust account. [Tr. 250:3 -
11 251:1]

12 13. As to supervision, Respondent only supervises Ms. Nicholson on the work she
13 does on behalf of Respondent. [Tr. 18:14 - 19:6]

14 14. On or about May 8, 2006, check # 1554, in the amount of \$432.36 attempted to
15 pay against the firm's trust account at Compass Bank when the balance was \$424.09 [SB Ex.
16 6, BS 12-13]

17 15. On or about May 8, 2006, Compass Bank paid check # 1554 and charged a
18 \$36.00 overdraft fee, leaving the account with a negative balance of \$44.27. [SB Ex. 6, BS
19 12-13]

20 16. By postcard received on May 15, 2006, Compass Bank notified the State Bar
21 about the overdraft in Respondent's trust account. [SB Ex. 3, BS 4]

22
23
24
25

number(s)." References to the State Bar Exhibits will be noted as "SB Ex. #" followed by
"Bates Stamp ("BS") number(s)."

1 17. NSF bank notices to the State Bar generally include the responsible attorney's
2 name or the IOLTA account number. [Tr. 345: 6-25]

3 18. If the NSF notice failed to include the attorney's name, Barbara Chandler (Ms.
4 Chandler"), the State Bar's Records Examiner's secretary, would enter the IOLTA account
5 number into the Bar Foundation's database and the name of the attorney responsible for the
6 trust account would be provided [Tr. 344: 17- 21; Tr. 346: 1-11]

7 19. The State Bar directs its investigation at the attorney whose name appears in
8 the State Bar Foundation's database. [Tr. 348: 5-8]

9 20. If more than one attorney's name appeared on the database, evidencing more
10 than one signatory on the trust account, Ms. Chandler called the firm to ascertain the attorney
11 responsible for writing the check that caused the NSF incident. [Tr. 346: 12 - 21]

12 21. In this matter, Ms. Chandler received an NSF notice from Compass Bank on
13 May 15, 2005 with Steiner & Steiner's trust account number. [SB Ex. 3, BS 4; Tr. 346:22 -
14 347:1]

15 22. Upon entering the firm's IOLTA account number in the database, Ms.
16 Chandler found that it was registered only to Respondent. [Tr. 347: 4-8; Tr. 347: 9-11]

17 23. By letter dated May 18, 2006, Gloria Barr ("Ms. Barr"), the State Bar's Record
18 Examiner, mailed Respondent a copy of the overdraft notice with the State Bar's initial
19 screening letter, and requested that Respondent provide an explanation for the overdraft. [SB
20 Ex. 2, BS 2-3; SB Ex. 3, BS 4]

21 24. By letter dated June 23, 2006, Respondent provided a response to Ms. Barr's
22 letter and signed her name to the response. [SB Ex. 6, BS 9-10]

1 25. In her response, Respondent explained that: all client retainers and payments
2 are placed in the firm's trust account; on May 8, 2006, Compass Bank received a total of
3 \$8,478.72 that was to be deposited into the trust account; and that her paralegal made a
4 disbursement in the amount of \$432.26 on May 8, 2006, before said deposit was credited to
5 the account, resulting in a negative balance. [SB Ex. 6, BS 9-10]

6 26. Notwithstanding Respondent's claim that the firm's paralegal made the
7 disbursement that resulted in the NSF incident, Respondent filled out and signed check # 1554
8 on or about May 3, 2006. [SB Ex. 6, BS 15; Tr. 31: 15 – 32:16]

9 27. By letter dated June 28, 2006, Ms. Barr requested various items, including
10 individual client ledgers and the Bank Fee/Administrative Funds ledger, or their equivalents,
11 that corresponded to the May 2006 trust account bank statements. [SB Ex. 8, BS 23]

12 28. By letter dated July 19, 2006, Respondent provided a response to Ms. Barr's
13 request and signed her name to the response. [SB Ex. 9, BS 24]

14 29. Respondent included several copies of Checking/Savings Withdrawals slips
15 written on the firm's credit card collection account with her response. [SB Ex. 9, BS 28, 30,
16 31, 32, 34, 36, 37, 43]

17 30. The firm's credit card collection account has existed, at a minimum, for twelve
18 years. [SB Ex. 13, BS 274; Tr. 298, 2- 7]

19 31. Client funds in the credit card collection account are transferred to the trust
20 account by check. [Tr. 266:20 – 267:3]

21 32. Respondent contends that she does not transfer funds from the credit card
22 collection account. [Tr. 21: 7-13]

1 33. Notwithstanding Respondent's contention that she does not transfer funds from
2 the credit car collection account, all of the Checking/Savings Withdrawal slips submitted were
3 filled out and signed by Respondent for deposit into the firm's trust account. [SB Ex. 9, BS
4 28, 30, 31, 32, 34, 36, 37, 43; Tr. 21: 7-13; Tr. 54:10 – 58:20]

5 34. Respondent also included copies of several deposit tickets, which evidenced
6 deposits into the firm's trust account; Respondent wrote out the deposit tickets between
7 March 23, 2006 and May 30, 2006. [SB Ex. 9, BS 27-47; Tr. 280: 10-18]

8 35. Respondent contends she does not typically fill out the checks for
9 disbursements from the trust account. [Tr. 29:14 – 30:20]

10 36. However, Respondent included several copies of checks that she wrote on the
11 firm's trust account on behalf of various clients during the month of May 2006. [SB Ex. 9, BS
12 52-81; Tr. 58:21 – 61:21]

13 37. Fifteen client ledgers were provided with Respondent's July 19, 2006
14 response, all of which lacked complete transaction dates, and running balances; some of the
15 ledgers contained negative balances that were not reflected on the ledgers. [SB Ex. 9: BS 90-
16 104]²

17
18 38. No Bank Fee/Administrative Funds ledger was provided to Ms. Barr with
19 Respondent's July 19, 2006 response. [SB Ex. 9, BS 24-105]

20 39. Notwithstanding the submission of the client ledgers with her July 19, 2006
21 response, Respondent did not know when they were prepared or who prepared them; she
22

23
24
25 ² Addition and subtraction of the deposits and withdrawals evidence negative balances. [SB
Ex. 9, BS 91, 93, 95, 98, 103]

1 never reviewed them and did not know where the information reflected in the ledgers was
2 obtained. [SB Ex. 9, BS 89-104; Tr. 61:22 – 63:07]

3 40. Mr. Steiner did not know when the ledgers were prepared or who prepared
4 them. [Tr. 94:18 – 96:6]

5 41. The ledgers submitted with Respondent's July 19, 2006 response were not in
6 compliance with the ethical rules. [SB Ex. 9, BS 89 –104; Tr. 182:24 – 183:19]

7 42. By letter dated July 28, 2006, Ms. Barr requested additional information from
8 Respondent, including: copies of individual client ledgers for twenty-five specific clients and
9 any other clients who had or should have had funds in the trust account in May 2006; a copy
10 of the May 2006 reconciliation; the amount of personal funds held on deposit in the firm's
11 trust account to cover miscellaneous bank fees and charges with a copy of the corresponding
12 ledger; and an explanation for the negative balances that appeared on certain client ledgers.
13 [SB Ex. 10, BS 106-107]

14 43. By letters dated August 4, 2006, and August 8, 2006, Respondent requested
15 and confirmed an extension of time with regard to her response; both letters stated "Dictated,
16 but not read" with Respondent's name typed below. [SB Ex. 11, BS 115; SB Ex. 12, BS 116]

17 44. By letter dated August 26, 2006, Respondent responded to Ms. Barr's request
18 and included two signatures: hers and Richard Steiner's, both of which were written by
19 Respondent. [SB Ex. 13, BS 118]

20 45. Respondent provided fifty-three client ledgers with said response, the majority
21 of which contained incomplete dates of transactions; several contained negative balances; and
22 some, incorrect running balances. [SB Ex. 13, BS 181-262]

1 46. Mr. Steiner initially claimed that the client ledgers provided with Respondent's
2 August 26, 2006 response were those used by the firm at the time; he subsequently
3 acknowledged they might not be. [Tr. 105:19 – 106:9]

4 47. The ledgers provided with Respondent's August 26, 2006 response were not
5 maintained in accordance with minimum standards; the negative balances indicated
6 conversion of client funds. [Tr. 185:22 – 186:11]

7 48. One client ledger, in particular, that of Client Castellano, contained twenty-
8 seven negative balances dating back to 2003. [SB Ex. 13: BS 187-191]

9 49. Although Client Castellano has had a professional relationship with the firm
10 since 2003, Respondent could not recall Client Castellano. [Tr. 68: 3-20]

11 50. Notwithstanding the brackets placed around Client Castellano's ledger balance
12 on 10/1, Respondent contended that she did not know what the brackets signified and that she
13 had never seen a negative number indicated in that manner. [SB Ex. 13, BS 187; Tr. 68:21 –
14 69:9]

15 51. A comparison of the ledgers submitted with Respondent's responses dated July
16 19, 2006, and August 26, 2006, indicated that the ledgers did not reflect accurate transactions.
17 [Tr. 187:2 – 188:4]

18 52. Ms. Barr requested further documentation to investigate the negative balances
19 further, but that information was not provided to her. [Tr. 214: 13-23]

20 53. The only financial data provided by Respondent concerning funds in client
21 accounts were the client ledgers previously described. [Tr. 208:25 – 209:3]

22 54. In response to Ms. Barr's request for the May 2006 reconciliation, Respondent
23 provided a "reconciliation", which was not a proper monthly three-way reconciliation; it
24
25

1 indicated bank balances, but did not consider a general ledger balance or individual client
2 ledger balances. [SB Ex. 13, BS 162; Tr. 184:19 – 185:8]

3 55. Without said ledgers, a proper monthly three-way reconciliation could not have
4 been conducted. [Tr. 185: 9–21]

5 56. Respondent failed to provide information concerning the amount of personal
6 funds held on deposit in the firm's trust account for miscellaneous bank fees and charges, a
7 corresponding ledger, and an explanation for the negative balances on certain client ledgers
8 wit her August 26, 2006 response. [SB Ex. 13, BS 119-299]

9 57. The firm did not maintain a ledger for miscellaneous bank fees and charges on
10 the firm's trust account, and the firm kept, at most, \$10.00 in the account to keep it open. [Tr.
11 113:24 – 114:12]

12 58. By letter dated September 14, 2006, Ms. Barr requested an explanation of the
13 amounts in the "Deficit" column on the monthly reconciliation Respondent had previously
14 submitted with her August 26, 2006 response. [SB Ex. 15, BS 302-303]

15 59. By letter dated September 29, 2006, Mr. Steiner provided a response to Ms.
16 Barr's September 14, 2006 letter on behalf of Respondent and explained that the firm deposits
17 all client funds into their trust account. [SB Ex. 16, BS 304]

18 60. Mr. Steiner further explained that the firm maintains four separate accounts,
19 including a collection account at Compass Bank for credit card receipts only. [SB Ex. 16, BS
20 304]

21 61. The collection account was not a trust account, but an office account in which
22 client funds and the firm's earned funds were held together. [Tr.161: 1-3]

1 62. In his letter, Mr. Steiner reported that the credit card payments are collected for
2 the firm by a third party agent and subsequently, deposited into the collection account at
3 Compass Bank. [SB Ex. 16, BS 305]

4 63. Mr. Steiner further reported that the third party agent withholds collection fees
5 for services provided, and that the withholding of these fees resulted in a shortfall being
6 deposited into the firm's trust account. [SB Ex. 16, BS 305]

7 64. Mr. Steiner informed that the firm failed to account for the withholding of
8 collection fees, and in so doing, erroneously credited each client the entire amount charged.
9 [SB Ex. 16, BS 305; Tr. 158:13 – 160:25]
10

11 65. Mr. Steiner discovered that between January and May 2006, as a result of the
12 collection fees being deducted, the firm received \$2,462.64 less than the amount credited to
13 their clients. [SB Ex. 16, BS 305]

14 66. An explanation of the amounts in the "Deficit" column on the reconciliation
15 sheet, which totaled \$124,864.01, previously requested by Ms. Barr, was not submitted with
16 Mr. Steiner's September 29, 2006 response. [SB Ex. 16, BS 304-306]

17 67. By letter dated December 13, 2006, Ms. Barr requested, in part, a copy of the
18 firm's complete trust account bank statements for the period of January 1, 2003 through April
19 28, 2006, and copies of individual client ledgers and the Bank Fee/Administrative Funds
20 ledger, or their equivalents, that corresponded to the referenced trust account bank statements.
21 [SB Ex. 18, BS 312]
22

23 68. By letter dated December 20, 2006, Respondent provided a response to Ms.
24 Barr's letter and signed her name to the response. [SB Ex. 19, BS 313]
25

1 69. In her response, Respondent explained that some of the information requested
2 by Ms. Barr was not readily available and Respondent informed that it was her understanding
3 that Ms. Barr was considering a meeting at which Ms. Nicholson and a "Partner" could
4 explain the operation of the firm's trust account. [SB Ex. 19, BS 313]

5 70. A meeting between Mr. Steiner, Ms. Nicholson and Ms. Barr occurred on
6 January 5, 2007. [Tr. 192: 7-12]³

7 71. At the meeting, Mr. Steiner did not inform Ms. Barr that he was the party
8 responsible for the firm's trust account or that the complaint filed by the State Bar should
9 have been directed at him; nor did he ask Ms. Barr why he was not included in the complaint
10 that was filed against Respondent. [Tr. 193: 14-19; Tr. 198: 2-6]

11 72. A discussion was held at said meeting regarding the negative balances on the
12 client ledgers; both Mr. Steiner and Ms. Nicholson told Ms. Barr that the brackets indicated
13 conversion of client funds. [Tr. 199:19 – 200:3]

14 73. At the meeting, Ms. Nicholson learned the difference between the two types of
15 funds being placed in the trust account. [Tr. 245:25 – 246:6]

16 74. On or about February 13, 2007, Respondent provided copies of the firm's trust
17 account bank statements for the period 2003 through 2005 to Ms. Barr. [SB Ex. 39, BS 376-
18 459]

19 75. The bank statements evidenced that NSF charges were assessed on three
20 separate checks in September 2005. [SB Ex. 39, BS 400]⁴

21
22
23
24 ³ Bar counsel was also present at the meeting.

25 ⁴ The bank never notified the State Bar about these NSF incidents.

1 76. On or about February 16, 2007, Respondent submitted her Response to the
2 State Bar's formal Complaint (the "Answer") in which she admitted all but three of the State
3 Bar's allegations [SB Ex. 46]

4 77. Unbeknownst to the State Bar until the time of the disciplinary hearing, held
5 on June 1, 2007, all of Respondent's responses to Ms. Barr were drafted by Mr. Steiner, who
6 also assembled all of the documents that were submitted with said responses. [SB Ex. 6, BS 9-
7 10; Tr. 36: 10-19; SB Ex. 9, BS 24; Tr. 37:23 – 38:6; SB Ex. 11, BS115; SB Ex. 12, BS 116;
8 Tr. 64:7 – 65:23; SB Ex. 13, BS 118; Tr. 66:22 – 67:9; SB Ex. 19: 313; Tr. 71: 18-25]

9 78. Upon receiving the initial screening letter, Ms. Nicholson gave the letter to
10 Respondent, who returned it to Ms. Nicholson with instructions to discuss it with Mr. Steiner
11 and to take care of it. [Tr. 245: 13-18]

12 79. Thereafter, Mr. Steiner and Ms. Nicholson assumed full responsibility for
13 meeting the requests for information from the State Bar. [Tr. 84:17 – 85:8; Tr. 245:19-22]

14 80. At the time Ms. Barr was receiving responses from Respondent, Ms. Barr
15 believed she was corresponding with Respondent; Ms. Barr received no information that Mr.
16 Steiner was preparing the responses signed and submitted by Respondent. [Tr. 181:13 –
17 182:23]

18 81. Notwithstanding the "correspondence" she carried on with Ms. Barr for six
19 months, Respondent never wrote to Ms. Barr to inform her that she was investigating the
20 wrong person. [Tr. 72:25 – 73:15]⁵

21
22
23
24 ⁵ Notwithstanding the admissions made in Respondent's Answer to the State Bar's
25 Complaint, by the time of the June 1, 2007 disciplinary hearing, Respondent had taken the
position that she was not the responsible party in this matter. Given that Respondent signed
the NSF check, it was appropriate that Respondent be the subject of investigation, which in

1 82. With regard to her failure to inform the State Bar that she was not the
2 responsible party, Respondent asserted that the Bar never asked her if she was responsible.
3 [Tr. 317: 17-20]

4 83. Additionally, Respondent claimed she had no duty to proactively tell the State
5 Bar who was in charge. [Tr. 323:21- 324:6]

6 84. Notwithstanding Mr. Steiner's claim that he informed Ms. Barr in his
7 September 29, 2006 letter that he was the person responsible for the trust account or that he
8 should be the subject of the State Bar's investigation, the letter did not do so. [SB Ex. 16, BS
9 304-306; Tr. 92:11- 93:13]

10 85. Unbeknownst to the State Bar prior to the disciplinary hearing held on June 1,
11 2007, Respondent did not prepare her Answer to the State Bar's formal Complaint;
12 Respondent merely signed it after it was prepared by Mr. Steiner. [SB Ex. 46; Tr. 77: 5-9]

13 86. Notwithstanding Respondent's assertion at the hearing that she was not the
14 responsible party in this matter, Respondent never submitted an Amended Answer prior to the
15 June 1, 2007 hearing. [Tr. 165: 1-8] The Hearing Officer finds that Respondent is a party
16 responsible for the maintenance of the Firm's Trust Account.
17

18 87. The firm maintains a credit card collection account from which merchant fees
19 and transaction fees are debited by the bank. The Firm did not debit these fees from the
20 collection account because the Firm lawyers, Respondent being one of them, were unaware of
21 these debits by the bank. The Firm would then transfer the entire amount received from the
22 client credit card payment to the Trust Account for later disbursement upon billing. The Firm
23

24
25 turn revealed the process of procedure and significant problems in the Firm's Trust
accounting

1 then sought to transfer from the collection account sums to cover a certain trust checks, which
2 triggered the investigation. However, the transfer of funds from the collection account did not
3 hit the Trust Account prior to Trust check number 1554 clearing. As a result, the bank issued
4 a NSF to the State Bar. [Tr. 279-282] Accordingly, the Hearing Officer finds that insufficient
5 funds existed in the Trust Account and by virtue of the failure to debit the credit card fees the
6 firm commingled client funds and failed to properly account for the bank fees.

7
8 88. This error in accounting an the failure to debit fees was discovered only after
9 Mr. Steiner and Ms. Nicholson met with the State Bar on January 5, 2007. [Tr. 282: 10-13]

10 89. When the NSF incident occurred; on that date, only \$424.09 was deposited in
11 the Trust Account. [Tr. 287:18 – 288:4]

12 90. Check # 1554, which attempted to pay against the firm's trust account on May
13 8, 2006, contained a notation regarding "Lavanway." [SB Ex. 6, BS 15]

14 91. At the time the check was written, the firm had only one client named
15 Lavanway. [Tr. 260:8 – 261:4]

16 92. Notwithstanding the fact that Respondent made a disbursement from the trust
17 account on behalf of Client Lavanway, Respondent knew nothing about the status of Client
18 Lavanway's funds in the firm's trust account or the processes and procedures the firm
19 undertook to assure there were funds in a client's account when a check was written on
20 behalf of a client. [Tr. 320: 9-19]

21
22 93. Notwithstanding the fact that Respondent made a disbursement on behalf of
23 Client Lavanway from the trust account, Respondent relied on Mr. Steiner and Ms. Nicholson
24 to know the status of Client Lavanway's funds in the firm's trust account. [Tr. 320: 20-22;
25 322: 10-21]

1 94. According to the Client Lavanway's ledger, as of May 3, 2006, she had
2 insufficient funds in the trust account when check # 1554 was written on her behalf. [SB Ex.
3 13, BS 220]

4 95. Additionally, none of the funds deposited in the trust account on May 8, 2006,
5 belonged to Client Lavanway. [Tr. 339:22 – 340:6]

6 96. Ms. Nicholson prepared the ledger submitted to the State Bar for Client
7 Lavanway. [SB Ex. 13, BS 220; Tr. 261: 5-14]

8 97. Ms. Nicholson reconstructed Client Lavanway's ledger, as well as all of the
9 other client ledgers submitted with Respondent's responses to the State Bar. [SB Ex. 13, BS
10 181 – 262; Tr. 261:17 – 262:5]

11 98. According to Ms. Nicholson, brackets around the balances on the Lavanway
12 ledger indicated a negative amount. [SB Ex. 13, BS 220; Tr. 272: 16–19]

13 99. Ms. Nicholson, however, could not confirm Client Lavanway's balance in the
14 firm's trust account on May 3, 2006, by reviewing her client ledger; the only way to ascertain
15 the amount of funds she had deposited was to review the billing file. [Tr. 262: 6-22; Tr. 263:
16 8-22]

17 100. Because all of the ledgers submitted to the State Bar were reconstructed from
18 information contained in the billing files, Ms. Nicholson could not confirm the reliability of
19 the ledgers submitted to the State Bar. [Tr. 262: 14-18; Tr. 272: 11-12] In this regards the
20 Hearing Officer finds the reconstruction as unreliable.
21

22 101. The reconstructed ledgers submitted to the State Bar were the only documents
23 provided by Respondent with regard to deposits and disbursements for clients,
24
25

1 notwithstanding Ms. Barr's request for client ledgers or their equivalents. [SB Ex. 10, BS 106;
2 Tr. 268: 16- 24]

3 102. At the time of the State Bar's investigation, the firm used time slips to
4 determine if a client had funds in the trust account. [Tr. 137:17 – 138:15]

5 103. According to Mr. Steiner, Respondent was in charge of handling the time slips
6 and billing. [Tr. 118: 4–15; Tr. 146: 13-23]

7 104. Notwithstanding her responsibilities at the firm, Respondent did not worry
8 about client funds in the trust account; that responsibility belonged to Mr. Steiner. [Tr. 147:25
9 – 148:4]

10 105. Mr. Steiner, however, never took it upon himself to verify clients' balances in
11 the firm's trust account by checking the firm's time slips. [Tr. 136: 19 – 137:6]

12 106. Mr. Steiner participated in the State Bar's Law Office Management Assistance
13 Program ("LOMAP"), beginning in 1999 for trust account violations. [SB Ex. 44, BS 487]

14 107. Respondent claimed that she never knew Mr. Steiner had participated in
15 LOMAP for trust account violations, notwithstanding the fact that Respondent was with the
16 firm from 1999 through 2001, the years during which Mr. Steiner participated in the program.
17 [Tr. 77:10 – 78:19]

18 108. Notwithstanding Respondent's original initial denial concerning her
19 knowledge of Mr. Steiner's participation in LOMAP, Respondent subsequently admitted that
20 she knew of his participation. [Respondent's Amended Answer, paragraph 46]

21 109. Notwithstanding Mr. Steiner's participation in LOMAP for trust account
22 violations, Respondent has never been concerned that he might not follow the trust account
23 rules after his participation terminated. [Tr. 329: 14-18]

1 110. Respondent relied on Mr. Steiner to ensure that trust account procedures at the
2 firm were complied with in accordance with the ethical rules. [Tr. 328: 8-14]

3 111. Respondent believes her reliance on Mr. Steiner has been entirely reasonable.
4 [328:25 – 329:9]

5 112. Respondent claims she has no obligation to supervise Mr. Steiner. [Tr. 329:
6 10-13]

7 113. Respondent contends that she “doesn’t have any reason to question much of
8 anything he does.” [Tr. 329: 21-23]

9 114. Respondent does not believe she has violated any ethical rules and does not
10 admit that any violations occurred, even with regard to Mr. Steiner’s actions. [Tr. 330: 8-14]

11 115. Respondent offered the testimony of a character witness, Jack Potts, a medical
12 doctor and psychiatrist who confirmed that Respondent is a good person, conducts herself
13 ethically, is of good character and cares about her clients and matters related to the Bar. The
14 Hearing Officer takes the testimony at face value as credible. [Tr. 43:14-50:19]

15
16 **III. CONCLUSIONS OF LAW**

17 Respondent violated ER 1.15 by failing to hold client property in her possession in
18 connection with a representation separate from her own property. Respondent also failed to
19 deposit her own funds in the client trust account for the sole purpose of paying bank service
20 charges in the account.

21 Respondent commingled retainer funds and earned funds with client funds in the
22 firm’s credit card collection account and trust account. Respondent also failed to deposit
23 sufficient personal funds to pay for NSF fees related to the trust account on May 8, 2006 and
24 in September 2005.
25

Respondent, as a partner of the firm, violated ER 5.1 by not making reasonable efforts to ensure that the firm had in effect measures giving reasonable assurance that all lawyers in the firm conformed to the Rules of Professional Conduct. Respondent failed to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that Mr. Steiner conformed to the rules, specifically those necessary to protect and account for client funds.

Respondent at all times relied on Mr. Steiner to oversee the trust account and to perform related tasks. As a result, the firm commingled retainer and earned funds with funds belonging to clients in both the firm's credit card collection account and the trust account. Client ledgers were not maintained in accordance with the ethical rules; nor was the trust account, resulting in negative balances in client accounts and conversion of client funds. No administrative ledgers were kept, making it impossible to conduct monthly three-way reconciliations. Funds totaling \$124,864.01 in the Deficit column of the reconciliation provided were not explained; neither was the \$18,330.26 in client funds that was missing from the trust account on May 4, 2006, according to the ledgers provided. However, there does not appear to be any actual harm to clients in this regard.

Respondent had a duty to be aware of the functioning of her firm. See: *In re Estrada*, SB-02-0044-4 (2002). Therefore, Respondent had a duty to assure that Mr. Steiner complied with his ethical obligations.

Respondent, as a partner of the firm, violated ER 5.3 by failing to make reasonable efforts to ensure that the firm had in effect measures giving reasonable assurance that non-lawyer assistant's conduct was compatible with Respondent's professional obligations. As a partner, Respondent was required to give the Firm's assistant appropriate instruction and

1 supervision concerning the ethical aspects of the assistant's employment. Additionally,
2 Respondent only supervises her paralegal with regard to work the paralegal does for
3 Respondent, notwithstanding Mr. Steiner's consistent and lengthy absences from the firm.

4 Respondent gave no instruction to her paralegal with regard to trust account matters.
5 The paralegal received no instruction in this area until some time after the State Bar began its
6 investigation in May 2006.

7
8 The State Bar claims that the Respondent violated ER 8.1 by failing to disclose a fact
9 necessary to correct a misapprehension known by Respondent to have arisen in the matter.
10 Respondent corresponded for approximately six months with the State Bar, submitting
11 responses to the inquiries made by the State Bar's Records Examiner, thereby indicating her
12 cooperation with the State Bar's investigation. Respondent also submitted an Answer to the
13 State Bar's formal Complaint, in which she admitted to all but three of the allegations made
14 by the State Bar. The State Bar learned at the disciplinary hearing, approximately one year
15 after the investigation began, that Respondent had never actively participated in the
16 investigation. Upon receiving the State Bar's initial screening letter, and all correspondence
17 thereafter, Respondent turned the matter over to her husband and partner, Richard Steiner, and
18 told him to take care of it. The State Bar also learned at the hearing that she had not prepared
19 her Answer to the State Bar's formal Complaint, as it too was prepared Mr. Steiner.
20 However, the Hearing Officer does not find by clear and convincing evidence that
21 Respondent violated ER 8.1.

22
23 Respondent violated Supreme Court Rule 43 by failing to maintain complete records
24 of the handling, maintenance, and disposition of all client funds that came into Respondent's
25 possession. Respondent failed to exercise due professional care in the performance of her

1 duties under this rule. Respondent failed to ensure that her paralegal, assisting Respondent in
2 the performance of such duties, was properly supervised. Respondent failed to establish
3 internal controls adequate under the circumstances to safeguard funds held in trust.
4 Respondent failed to record all transactions promptly and completely. Respondent failed to
5 maintain, on a current basis, records complying with ER 1.15 and Rule 43.

6 The records Respondent submitted to the State Bar were incomplete and unreliable.
7 The client ledgers were reconstructed by her paralegal and not maintained in accordance with
8 the rules, notwithstanding the fact that it became the paralegal's responsibility to maintain the
9 ledgers after Ms. Hoeffner's departure, three years earlier. Required ledgers, such as the
10 Administrative ledger, were not maintained. Retainer funds, earned funds and client funds
11 were held together in the trust account, as well as in the credit card collection account, which
12 was not a designated trust account. Personal funds were not deposited in either account for the
13 purpose of paying administrative fees and charges, thereby resulting in the commingling of
14 client funds. Respondent made disbursements from the Trust account on behalf of clients
15 when said clients did not have sufficient funds in the trust account for the disbursements,
16 resulting in the conversion of client funds. Respondent disbursed funds from the trust account
17 which were not collected funds and were not limited-risk uncollected funds, also resulting in
18 the conversion of client funds.
19

20 Respondent did not display due professional care in her duties; nor did she assure that
21 adequate internal controls existed within the firm to safeguard client funds held in trust.
22

23 Respondent violated Supreme Court Rule 44 by failing to deposit all funds of a client
24 paid to Respondent or the firm in a trust account maintained as provided in said rule, and by
25 failing to keep separate, funds belonging to Respondent or the firm. Respondent failed to

1 keep funds reasonably sufficient to pay service or other charges or fees imposed by the
2 financial institution in the Trust Account.

3 Respondent failed to keep the firm's funds separate from client funds in both the
4 firm's trust account and the credit card collection account. Respondent failed to deposit all
5 client funds into a trust account, as the credit card collection account was not designated a
6 trust account. Respondent failed to keep personal funds in the trust account for bank service
7 fees, as evidenced by the NSF incidents on May 8, 2006 and in September 2005. Respondent
8 failed to keep personal funds in the credit card collection account to pay the third party agent.
9 The firm was unaware that fees were being removed from the credit card payments made by
10 clients, resulting in a lack of knowledge of a shortfall in the credit card collection account
11 intended to be transferred to the Trust Account.
12

13 The State Bar claims Respondent violated Supreme Court Rule 53(f) by failing to
14 inform the State Bar that she was not preparing her responses to the State Bar's inquiries and
15 that she had not prepared the Answer she submitted in response to the State Bar's formal
16 complaint. The State Bar claims Respondent also failed to inform the State Bar that the
17 information she was providing might not be reliable. However, the Hearing Officer does not
18 find by clear and convincing evidence that Respondent violated Supreme Court Rule 53(f).
19

20 **IV. DISCIPLINARY RECOMMENDATION**

21 The hearing officer finds Respondent, Janet White-Steiner, has violated R.42 Ariz.
22 R.S.Ct., ER 1.15(a), ER 5.1, ER 5.3, and Rules 43, 44 Ariz. R.S.Ct, and accordingly applies
23 the American Bar Association Standards.

24 ABA standard for imposing lawyer discipline (hereafter referred to as "standards"),
25 provides under Standard 4.0; specifically to preserve client property. Standard 4.13 says that

1 reprimand "censure" in Arizona is generally appropriate for a lawyer who is negligent in
2 dealing with client property and causes injury or potential injury to the client.

3 There is evidence that Respondent's conduct was clearly negligent and Respondent's
4 conduct caused actual injury to clients by virtue of the use of "other client" funds to pay the
5 debt of another client.

6 The Respondent failed to oversee the maintenance and operation of the partnership
7 trust account, and there is evidence that Respondent could reasonably foresee that injury
8 could occur to the firm's clients.

9 The ABA Standards list the following factors to consider in imposing the appropriate
10 sanction:
11

- 12 (1) the duty violated;
- 13 (2) the lawyer's mental state;
- 14 (3) the actual or potential injury caused by lawyer's misconduct,
- 15 (4) the existence of aggravating or mitigating circumstances.

16 ABA Standard 3.0; *In re Peasley*, 208, Ariz. 27, 90 P.3d 764 (2004).

17 Standard 4.0 (Violations of Duties Owed to Clients) is applicable Standard in this
18 matter. A review of the ABA Standard 4.1 (Failure to Preserve Client's Property) indicates
19 that reprimand (censure in Arizona) is an appropriate sanction for Respondent's misconduct.
20 Standard 4.13 specifically provides:

21 Reprimand "censure" (1) is generally appropriate when a lawyer is negligent in
22 dealing with client property and causes injury or potential injury to a client.⁶

23
24 ⁶ Respondent cites *John Duke Harris*, filed May 12, 2006;
25 Respondent cites *Christopher J. Piekarski*, filed May 18, 2006 (sic);
Respondent cites *Ronald G. Saltsman*, filed October 24, 2006;
Respondent cites *Dean J. Werner*, filed March 5, 2007;

1 The purpose of lawyer discipline is not to punish the lawyer but to protect the public
2 and deter future misconduct as our court announced in *In re Fioramonti*, 176 Ariz. 182, 187
3 859 P.2d, 1315, 1320 (1993).

4 The Hearing Officer has considered the aggravating and mitigating factors in this case
5 pursuant to Standards 9.22 and 9.32 as follows:

6 As aggravating factors:

7 9.22 (c) - prior disciplinary in 2000.

8 9.22 (g) – refusal to acknowledge wrongful nature of conduct

9 As mitigating factors:

10 (a) 9.32(b) - absence of dishonest or selfish motive

11 (b) 9.32(g) - character and reputation

12 It is appropriate to consider the facts of this case and its proportionately of discipline
13 that has been imposed in analogous cases, *Matter of Bowen*, 178 Ariz. 283, 286, 872, P2d.
14 1235, 1238 (1994).

15 It is clear to the Hearing Officer that the Respondent was disengaged from the Trust
16 account management and unreasonably relied on her husband Richard Steiner in management
17 of Trust Account, its oversight and responding to the State Bar. It is also clear that Mr.
18 Steiner ostensibly the manager of the Trust Account process was absent from the practice and
19 did not do his job. Respondent's conduct was not intentional, but was severely deficient and
20 negligent. The Hearing Officer also expresses his concerns regarding Respondent's cavalier
21 attitude towards the management of the Firm's practices, especially the Trust Account issues.
22 Each of the Firm's lawyers have now experienced an investigation by the State Bar into their
23 Trust Account misfeasance. Giving the Respondent the benefit of the doubt that she will be
24 engaged in the future and properly monitor the practices and procedure at her firm, the

25

Werner received a censure, one-year probation, complete TAEERP and TAP.

1 Hearing Officer orders Respondent receive a censure and 2 years probation. During the term
2 of the probation Respondent shall participate in the State Bar's Law Office Management
3 Program, Trust Account Ethics Enhancement Program, and Trust Account Program.

4 Respondent is also ordered to pay the fees and costs associated with these
5 proceedings.

6 IT IS FURTHER ORDERED that Respondent's Motion Re: Sanctions Re: Failure to
7 Disclose is denied.

8 RESPECTFULLY SUBMITTED this 26th day of February, 2008.

9 **STANLEY R. LERNER**
10 **Hearing Officer 7V**

11 Stanley R. Lerner /s/
12 Stanley R. Lerner

13 Original filed this 2d
14 day of March, 2008, with:

15 Disciplinary Clerk of the
16 Supreme Court of Arizona
1501 West Washington Street
Phoenix, Arizona 85007

17 Copy of the foregoing
18 mailed this 4th day
of March, 2008, to:

19 Richard A. Steiner
20 Steiner & Steiner, P.C.
2025 North Third Street, Suite 155
21 Phoenix, Arizona 85004-1425
Respondent's Counsel

22 Patricia J. Ramirez
23 4201 N. 24th Street, Suite 200
24 Phoenix, Arizona 85016

25 By: 