BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **GARY W. KAZRAGIS,** **Bar No. 012215** RESPONDENT.	)	No. 08-1907, 09-0075, 09-0181, 09-0324, 09-0394, 09-1058 09-1395, 10-0458 and 10-0493 **HEARING OFFICER'S REPORT**

PROCEDURAL HISTORY

The Complaint in this matter was filed on April 16, 2010. The Hearing Officer was assigned on May 3, 2010. An Initial Case Management Conference was held on May 18, 2010. After the Hearing Officer granted the State Bar's Motion for Leave to File Amended Complaint, the State Bar filed the First Amended Complaint on July 30, 2010. The parties participated in a Settlement Conference on September 22, 2010. The parties filed a Notice of Settlement on September 23, 2010. The Tender of Admissions and Agreement for Discipline by Consent and the Joint Memorandum in Support of the Tender of Admissions and Agreement for Discipline by Consent were filed on October 15, 2010. The hearing on the Agreement was held on October 22, 2010.

FINDINGS OF FACT[1]

1. At all times relevant, Respondent was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in this State on October 21, 1988.

[1] The Facts are found in the Tender of Admissions unless otherwise noted

I. COUNT ONE (08-1907; Sharon Penz)

2. On or about April 12, 2005, Sharon Penz hired Respondent for representation in a breach of contract lawsuit against a cabinetry business ("Defendant") in Cottonwood, Arizona. (TR 8:6)

3. Mrs. Penz and Respondent signed a fee agreement, which called for an advance deposit against fees in the amount of $2,500.00. (TR 8:15)

4. Mrs. Penz paid $2,500.00 to Respondent.

5. Between April 2005 and December 2005, Mrs. Penz contacted Respondent via telephone and fax regarding the progress and status of her matter.

6. On December 29, 2005, Respondent, Mrs. Penz, and her husband, Lowell Penz, signed and verified the Complaint, which was also notarized by Respondent's office manager, Camille Sulli. (TR 8:18)

7. Between December 29, 2005, and March 22, 2006, Respondent failed to communicate with Mrs. Penz. (TR 8:24)

8. Respondent did not file the Complaint until March 21, 2006. (TR 9:7)

9. On July 6, 2006, Respondent's staff informed Respondent that Mrs. Penz's lawsuit was not dismissed due to lack of service pursuant to Rule 4(i), Ariz. R. Civ. Pro.

10. On August 17, 2006, the Court issued, via minute entry, a Notice of Impending Dismissal of Mrs. Penz's lawsuit.

11. The reason for the impending dismissal provided in the minute entry was that Respondent failed to accomplish service of the lawsuit upon the Defendant pursuant to Rule 4(i), Ariz. R. Civ. Pro. (TR 10:8)

12. When Mrs. Penz confronted Respondent with the Notice of Impending Dismissal, Respondent indicated that he would take care of it, but because of difficulties with a new Judge, he would be unable to expedite the process. (TR 10:10-22)

13. On September 23, 2006, Mrs. Penz's lawsuit was dismissed because Respondent failed to accomplish service upon the Defendant pursuant to Rule 4(i), Ariz. R. Sup. Ct. (TR 10:23)

14. Between late August 2006 and January 2007, Respondent failed to initiate communication with Mrs. Penz regarding the status of her matter. (TR 11:3-17)

15. On February 26, 2007, Mrs. Penz had a telephonic conference with Respondent wherein Respondent assured Mrs. Penz that her matter would be completed by May 2007. (TR 12:8)

16. On March 5, 2007, Mrs. Penz wrote to Respondent to confirm that Respondent had assured her that the matter would be completed by May 2007.

17. On March 19, 2007, Respondent replied to Mrs. Penz and confirmed his assurance that the lawsuit would be completed by May 2007.

18. On March 21, 2007, Respondent re-filed Mrs. Penz's lawsuit with the Court. (TR 12:13)

19. On May 7, 2007, Mrs. Penz wrote to Respondent about the status of her lawsuit. (TR 13:1)

20. Respondent failed to respond to Mrs. Penz's May 7, 2007, letter. (TR 13:8-11)

21. Between May 2007 and September 2007, Respondent failed to communicate with Mrs. Penz. (TR 13:13-18)

22. Between September 2007 and April 2008, Respondent failed to communicate with Mrs. Penz. (TR 13:13-18)

23. In April 2008, Respondent met with Mrs. Penz regarding a potential Motion for Summary Judgment. (TR 13:21)

24. On May 6, 2008, Mrs. Penz wrote to Respondent and asked whether the Motion for Summary Judgment had been filed. (TR 14:12)

25. Respondent failed to respond to Mrs. Penz's May 6, 2008, letter. (TR 14:15)

26. Between May 6, 2008, and October 2008, Respondent failed to communicate with Mrs. Penz. (TR 16:2)

27. At some point prior to October 2008, Mrs. Penz's lawsuit was dismissed for the second time for lack of prosecution. (TR 16:14)

28. On October 31, 2008, Respondent offered to refund Mrs. Penz's $2,500.00 advance deposit and to reopen her lawsuit against Defendant in another venue. (TR 16:19)

29. In reply, Mrs. Penz wrote to Respondent and requested a full refund of her $2,500.00 advance deposit in addition to requesting a payment of $5,227.00, which represents the total amount of her claim against Defendant.

30. As of February 5, 2010, Respondent still maintained possession of Mrs. Penz's $2,500.00 advance deposit. (TR 17:7-12)

a. Respondent performed no further work on Mrs. Penz's behalf. (TR 18:14-20)

b. Respondent did not reopen or re-file Mrs. Penz's lawsuit in any venue. (TR 18:25)

c. Respondent did not refund Mrs. Penz's $2,500.00 advance deposit. (TR 19:3)

II. COUNT TWO (09-0075; State Bar of Arizona Trust Account)

31. On January 13, 2009, $5,000.00 was debited from Respondent's client trust account ("trust account") when the balance in Respondent's trust account at the time was $1,071.76, causing Respondent's trust account to overdraft. (TR 28:18)

32. Based on Respondent's explanation, instead of a debit from Respondent's trust account, this $5,000.00 transaction was intended to be a credit to Respondent's trust account from a client credit card.

33. Respondent contacted American Express.

a. American Express reversed the initial $5,000.00 debit and credited it back to Respondent's trust account. (TR 29:2)

b. American Express then credited an additional and originally intended $5,000.00 to Respondent's trust account. (TR 29:8)

c. American Express made a total gross deposit of $10,000.00 into Respondent's trust account.

34. However, the net deposit into Respondent's trust account was only $9,675.00. (TR 29:17)

a. Pursuant to the terms of Respondent's contractual agreement with American Express, American Express charged a 3.25% fee on this transaction ("transaction fee"). (TR 29:21)

b. Respondent knew that American Express would charge this transaction fee when he began his contractual relationship with American Express in early 2005. (TR 30:1)

c. American Express deposited the full $10,000.00 into Respondent's trust account, and then debited 3.25% of the full amount, for a total debit of $325.00. (TR 31:8)

d. Thus, American Express deposited a net total of $9,675.00 into Respondent's trust account.

35. Because the mistaken debit transaction and the correcting credit transaction occurred on the same date, the bank records kept for Respondent's trust account do not show a negative balance.

36. On January 13, 2009, Respondent self-reported this overdraft to the State Bar of Arizona.

37. On January 15, 2009, the State Bar of Arizona received a Non-Sufficient Funds Notice from Respondent's trust account bank relating to the above incident.

38. During the screening investigation into the overdraft of Respondent's trust account, two additional negative balances were discovered on two separate client ledgers.

39. When Respondent identified these negative balances as data entry errors and the individual client ledgers were corrected, there were no negative balances on the individual client ledgers. (TR 32:14)

40. However, when the Administrative Funds ledger was corrected with an additional entry, the Administrative Funds ledger did balance in the negative, indicating that client funds were converted.

a. On January 1, 2009, Respondent held Administrative Funds in his trust account in the amount of $224.21.

b. When Respondent corrected this ledger to reflect a January 5, 2009, disbursement of $119.95, the Administrative Funds ledger balanced at $104.26.

c. On January 20, 2009, when American Express debited the $325.00 transaction fee, the Administrative Funds ledger balanced at -$220.74.

d. On January 23, 2009, when American Express debited a collection fee of $4.95, the Administrative Funds ledger balanced at -$225.69. (TR 33:16)

e. Because Respondent failed to hold sufficient funds in the trust account to cover these Administrative Funds disbursements, client funds were utilized to cover for this deficiency. (TR 33:19)

41. In January 2009, Respondent knew that he was under a duty to maintain a sufficient amount of Administrative Funds in his trust account to cover debits by credit card companies for transaction fees. (TR 34:6)

a. Between August 2007 and January 2008, State Bar of Arizona Staff Examiner Gloria Barr and Law Office Management Assistance Program ("LOMAP") Practice Management Advisors Tracy Ward and Susan Traylor conducted an extensive investigation into Respondent's trust account practices and procedures for the entire year of 2005. (TR 34:12)

b. One of the issues addressed with Respondent during that investigation was ensuring that Respondent was recording credit card company transaction fees on the Administrative Funds Ledger. (TR 35:4)

c. Respondent understood and knew that he had to continue to make periodic deposits into the trust account in anticipation that these transaction fees would be debited from the trust account. (TR 35:10)

42. Respondent's trust account was out of balance for eight days. (TR 35:24)

III. COUNT THREE (09-0181; Barak Speed)

43. On August 1, 2006, Respondent filed a lawsuit alleging Breach of Contract and Quiet Title claims in the case of *Donald L. Leonard and Lynn C. Leonard v. Cliff Valley LLC., Barak Speed, and Michelle Speed* before the Superior Court of the State of Arizona in Yavapai County ("the Court"). (TR 39:12)

44. Respondent represented the Leonards in this lawsuit. (TR 40:17)

45. Respondent included Barak Speed ("Mr. Speed") and Michelle Speed ("Mrs. Speed") as Defendants in this lawsuit because they were, at one point, purchasers and sellers of the land over which the dispute arose. (TR 40:12)

46. On August 16, 2006, Respondent accomplished service on Mr. and Mrs. Speed. (TR 40:18)

47. After being served, Mr. Speed contacted attorney David Wilhelmsen, who spoke with Respondent on Mr. Speed's behalf. (TR 40:21)

48. After the conversation, Mr. Speed was informed that both he and Mrs. Speed would be dismissed from the lawsuit and that Respondent would confirm that dismissal in writing. (TR 41:1)

49. In September 2006, after twenty (20) days to Answer Respondent's Complaint passed, Respondent failed to confirm the dismissal in writing to Mr. Speed. (TR 41:9)

50. Mr. Speed contacted Respondent himself.

51. Respondent told Mr. Speed that Respondent would obtain the dismissal of Mr. and Mrs. Speed from the lawsuit and would send paperwork confirming the dismissal. (TR 41:19)

52. Between September 2006 and February 2009, the lawsuit based on Respondent's Complaint proceeded with Hearings, Discovery, and Motion Practice. (TR 42:1)

53. At all times between September 2006 and February 2009, Mr. and Mrs. Speed remained named Defendants in the lawsuit. (TR 42:6)

54. Between September 2006 and October 2009, Respondent failed to file a Motion to Dismiss Mr. and Mrs. Speed from the lawsuit and failed to provide Mr. Speed with confirming documentation.

55. Respondent filed a Motion to Dismiss Mr. and Mrs. Speed from the lawsuit on October 14, 2009. (TR 42:13)

56. The Court dismissed Mr. and Mrs. Speed from the lawsuit on October 14, 2009. (TR 42:17)

IV. COUNT FOUR (09-0324; Amber Saravo)

57. On August 11, 2006, Amber Saravo signed a fee agreement and hired Respondent for representation in pursuit of a modification of child custody.

58. Although the rate of fee was an hourly rate, Respondent charged an advance deposit of $3,500.00 that was deemed immediately earned upon receipt. (TR 48:16)

59. Amber Saravo's parents, Terry and Margaret Saravo ("The Saravo Parents"), assisted their daughter by paying the majority of the money paid to Respondent. (TR 48:25)

a. On August 11, 2006, the Saravo Parents paid Respondent $1,000.00 of the $3,500.00 earned upon receipt advance deposit.

b. On September 1, 2006, the Saravo Parents paid Respondent the remaining $2,500.00 of the $3,500.00 earned upon receipt advance deposit.

60. Respondent did not file a Petition to Enforce Visitation until October 27, 2006. (TR 49:10)

61. On October 31, 2006, the Superior Court of Arizona in Yavapai County ("the Court") signed an Order to Appear to be served on Amber Saravo's ex-husband, Benjamin Heritage-Cluff ("Mr. Cluff"). (TR 49:19)

62. The October 31, 2006, Order to Appear noticed a scheduled Hearing date of December 27, 2006. (TR 49:23)

63. Respondent failed to accomplish service of the October 31, 2006, Order to Appear on Mr. Cluff and a second Order to Appear had to be obtained. (TR 50:1)

64. On December 28, 2006, the Court signed and filed a second Order to Appear to be served on Mr. Cluff, which noticed a hearing date of February 12, 2007. (TR 50:7)

65. On April 13, 2007, Amber Saravo paid Respondent $300.00 and the Saravo Parents paid Respondent $1,364.00. Respondent was paid a total of $1,664.00 on this date. (TR 50:11)

66. On April 19, 2007, Amber Saravo's Petition to Enforce Visitation was granted and she was given a set schedule of visitation with her child. (TR 50:15)

67. The Court also affirmed and set a specific amount of child support for Amber Saravo to pay to Mr. Cluff. It was Amber Saravo's position that the Court made a mistake in calculating the amount of child support to be paid to Mr. Cluff. (TR 50:24)

68. Amber Saravo instructed Respondent to pursue a correction to obtain a lower amount of child support to be paid to Mr. Cluff. (TR 51:7)

69. In May 2007, Respondent negotiated a flat-fee representation to appear on behalf of Amber Saravo. The agreement was that Respondent would charge a flat-fee of $3,050.00 for his services in pursuit of a modification of custody orders and a modification of child support. (TR 51:11)

70. On May 21, 2007, the Saravo Parents paid Respondent $3,050.00. (TR 51:17)

71. On June 7, 2007, Amber Saravo and Mr. Cluff signed a Parenting Plan that was negotiated through mediation. (TR 51:20)

72. Subsequently, Amber Saravo took the position that Mr. Cluff was not abiding by the Parenting Plan. (TR 52:1)

73. On July 20, 2007, Respondent filed a Motion to Compel Visitation/Enforce Mediation Agreement. (TR 52:4)

74. On August 20, 2007, although Respondent did not specifically address the issue of child support in the Motion to Compel Visitation/Enforce Mediation Agreement, the Court scheduled an Evidentiary Hearing for October 18, 2007, to address the Motion, as well as to address child support. (TR 52:8)

75. In October 2007, although Respondent entered into a flat-fee arrangement to pursue a modification of custody orders and a reduction in child support, and although no hearing had been held and no Orders had issued, Respondent requested that Amber Saravo pay more money to complete the representation. (TR 52:23)

76. On October 18, 2007, testimony was taken regarding the Mediation Agreement, but the Court mainly addressed Mr. Cluff's unauthorized removal of the child from the State of Arizona and ordered a custody evaluation to occur. (TR 53:10)

77. Another Evidentiary Hearing to address Mr. Cluff's desire to relocate to the State of Florida with the child was scheduled for December 20, 2007. (TR 53:18)

78. On November 19, 2007, the Court rejected the June 7, 2007, Mediation Agreement since it was impractical given Mr. Cluff's relocation. (TR 53:22)

79. On December 20, 2007, Amber Saravo and Mr. Cluff reached an agreement regarding custody, visitation/parenting time, and a reduction of child support. It was expressly understood that the parties were going to negotiate additional details and terms of the agreement that were not placed on the record. (TR 54:3)

80. The Court ordered that Mr. Cluff's attorney prepare a formal order. (TR 54:11)

81. From January 2008 through March 2008, the parties continued to negotiate on specific terms of the draft order prepared by Mr. Cluff's counsel, and the entire matter was re-assigned to different judicial divisions on several occasions.

82. On March 31, 2008, Respondent and Mr. Cluff's counsel told the Court that the draft Order had been prepared for signature and that the approved form of Order would be submitted to the Court within twenty (20) days.

83. Between March 31, 2008, and June 23, 2008, negotiations on the terms of the Order continued between the parties.

84. It was not until June 23, 2008, that Mr. Cluff's counsel filed a proposed Order with the Court. At that point, the parties still had not signed the proposed Order.

85. Between June 23, 2008, and October 1, 2008, the parties continued to negotiate and object to the opposing side's proposed Orders.

86. On October 1, 2008, the Court set a hearing to address the objections to the proposed forms of Order. (TR 55:17)

a. At the hearing, the parties were unable to reach an agreement on the modifications to the amended Order.

b. The Court ordered Respondent to prepare and submit for entry an approved form of Order within thirty (30) days of the Hearing, or October 31, 2008.[2] (TR 55:17-23)

c. On October 6, 2008, Respondent or Respondent's staff recorded and noted the Court's Order in the law office's Abacus system with a due date of October 31, 2008. (TR 56:6)

87. By November 19, 2008, Respondent failed to comply with the Court's Order to prepare and submit an approved form of Order. (TR 56:12-16)

88. On December 8, 2008, the Court held a hearing on the status of the proposed form of Order. Respondent and Mr. Cluff's counsel told the Court that they intended to approve the Order and send it to the Court within the week. (TR 56:22 through 57:4)

89. Respondent failed to ensure that an approved form of Order was submitted to the Court within the week. (TR 57:5)

90. By February 6, 2009, there still had been no approved form of Order submitted to the Court.

91. On February 24, 2009, Mr. Cluff's counsel submitted another proposed form of Order.

92. The Court scheduled an Evidentiary Hearing on a Motion to Modify Custody and Parenting Time for April 8, 2009.

[2] The Tender of Admissions contained an error at paragraph 86 (b) with the date of October 31, 2007. The parties agreed at the hearing to the corrections set forth as October 31, 2008.

93. On March 6, 2009, Mr. Cluff's counsel filed a Motion for Modification of Amber Saravo's Parenting Time and requested that the Court enter the proposed form of Order submitted on February 24, 2009.

94. By April 8, 2009, Respondent had faxed a proposed form of Order to the Court that addressed the fact that Amber Saravo had been paying Mr. Cluff child support at the rate of $365.00 per month since December 2007, not the $100 obligation that was agreed to at the hearing on December 20, 2007. (TR 57:20 through 58:4)

95. On April 8, 2009, the parties agreed to the terms of Respondent's proposed form of Order regarding the overpaid amount of child support. The Court signed the Order, which awarded to Amber Saravo the sum of $3,975.00, plus 10% interest. (TR 58:9)

V. COUNT FIVE (09-0394; Guy Grand)

96. In December 2006, Guy Grand and his Mother, Norma Willenberg, hired Respondent for representation in a then-existing civil lawsuit involving the flooding of their home ("the home") against the City of Sedona ("Defendant City"). (TR 65:1-12)

97. Although the rate of fee was an hourly rate, Respondent's fee agreement required an advance deposit of $20,000.00, which was deemed immediately earned upon receipt. (TR 65:13)

a. On December 27, 2006, Guy Grand paid Respondent $5,000.00 of the $20,000.00 advance deposit.

b. In January 2007, Guy Grand paid Respondent the remaining $15,000.00 of the $20,000.00 advance deposit.

98. On January 22, 2007, Respondent substituted in as counsel of record for Guy Grand and Norma Willenberg ("Plaintiffs").

Respondent's Failure to Disclose E-mails Resulting in Sanctions

99. On March 16, 2007, Third Party Defendant Bruce Bramblett and Bruce Bramblett Construction ("Defendant Bramblett") filed their Second Request for Production of Documents to Plaintiff. (TR 65:21)

a. Respondent sent a copy of this pleading to Plaintiffs.

b. In this pleading, Defendant Bramblett requested all email correspondence and all written correspondence between Guy Grand and the Law Firm of Esser Bradley & Associates, PLC. (TR 66:1)

100. On June 16, 2007, Guy Grand told Respondent via email, "I have found all of my emails with [Esser Bradley & Associates] and I certainly don't have any problem giving them to [Defendant Bramblett.]." (TR 66:5-18)

101. On June 16, 2007, Respondent told Guy Grand via email, "If the emails are truly ok, we can send them." However, Respondent then suggested that they "may not want to start a trend" with Defendant Bramblett, as Respondent sent a prior letter to Defendant Bramblett's counsel and received no response. (TR 66:19)

102. Guy Grand provided the emails to Respondent and reviewed them with Respondent. Guy Grand again indicated that he had no objection to providing this information to Defendant Bramblett.

103. On or about June 25, 2007, in a telephone call with Defendant Bramblett's counsel, Respondent took the position that the emails were protected by attorney-client privilege and refused to disclose the emails. (TR 67:1-5)

104. On or about July 18, 2007, Defendant Bramblett filed a Motion to Compel Documents from Plaintiff.

105. On October 11, 2007, the Superior Court of the State of Arizona in Yavapai County ("the Court") granted Defendant Bramblett's Motion to Compel Documents from Plaintiff. (TR 67:6)

106. On December 11, 2007, the Court ordered that Plaintiffs pay $1,190.00 in attorney's fees and $28.00 in costs for Defendant Bramblett's pursuit of the Motion to Compel Documents from Plaintiff. (TR 67:10-14)

a. Respondent did not charge Plaintiffs for the fees and costs awarded by the Court. (TR 67:15)

b. Respondent did charge for his services in objecting to Defendant Bramblett's Motion to Compel, despite Plaintiffs not objecting to the production of the materials. (TR 67:22)

Respondent's Failure to Disclose Expert Witnesses

107. In December 2006, Guy Grand provided to Respondent several items of information from persons that Guy Grand and Norma Willenberg considered to be potential expert witnesses on their behalf in the lawsuit. (TR 68:8)

a. Guy Grand gave Respondent a letter from Construction Cable, dated October 10, 2004, written by the Vice President, Mike Reynolds, regarding damages and costs to repair the home. (TR 68:12)

b. Guy Grand gave Respondent a letter from Southwestern Environmental Consultants, Inc., ("SEC Engineering") dated October 29, 2004, written by the

Vice President, Luke Sefton, regarding the causation of flooding to the home. (TR 68:14)

108. Between December 2006 and March 2008, Respondent did not disclose any of these proposed individuals as expert witnesses on behalf of Plaintiffs. Respondent testified that on July 7, 2008 he disclosed Mr. Reynolds as the damage witness after the deadline (June 8, 2008) for disclosing expert witnesses. The court precluded the witness as an untimely disclosed expert. (TR 68:8 through 72:20)

109. In March 2007, October 2007, November 2007, March 2008, and June 2008, Guy Grand spoke with Respondent via email and inquired as to the status of the disclosure and use of expert witnesses.

110. In March 2008, Respondent and Guy Grand began working with Native Environmental, LLC, to determine the costs of mold and asbestos remediation on the home.

111. On April 21, 2008, the Court filed a Scheduling Order. (TR 71:16)

a. The Court ordered that the disclosure of expert opinions had to occur on or before June 5, 2008.

b. The Court ordered that the deadline for discovery was August 5, 2008.

c. The Court ordered that the deadline for disclosure of all witnesses and exhibits was August 25, 2008. (TR 71:21)

112. On June 7, 2008, two days past the deadline for the disclosure of expert witnesses, Respondent and his staff were still working on the disclosure of expert witnesses.

113. Respondent only disclosed Luke Sefton of SEC Engineering as an expert witness on the issue of causation of the flood.

114. Respondent failed to disclose any expert witnesses on the issue of damages.

115. On July 7, 2008, one month past the deadline for the disclosure of expert witnesses, Respondent filed the Plaintiffs' Fifth Supplemental Disclosure. Respondent disclosed three new fact witnesses ("the three fact witnesses.")

a. Respondent listed Mike Reynolds of Construction Cable as a fact witness.
    i. Respondent disclosed that Mike Reynolds had been a general contractor in the Sedona area for 20 years.
    ii. Respondent disclosed that Mr. Reynolds' anticipated testimony was based off his inspection of the property and regarding the issue of repair and replacement costs.
    iii. Respondent disclosed that Mr. Reynolds was expected to testify whether the home was beyond repair due to the damage done to the home.
b. Respondent listed an unnamed representative of Native Environmental, LLC, as a fact witness.
    i. Respondent disclosed that the unnamed representative of Native Environmental was to testify based on a visual inspection of the home conducted on May 2, 2008.
    ii. Respondent disclosed that the unnamed representative was to testify on the issue of mold remediation and asbestos removal, and an estimate of costs to do so.
c. Respondent listed an unnamed representative of Sedona Rentals as a fact witness.

i. Respondent disclosed that the unnamed representative was to testify as to the rental value of the home from July 14, 2004, to the present day.

ii. There is no indication that Respondent ever contacted or dealt with any representative of Sedona Rentals.

iii. There was no disclosure of any opinion by any representative of Sedona Rentals.

116. Defendant City filed a Motion to Strike Plaintiff's Untimely Expert Designations, requesting that the three fact witnesses be precluded from testifying, as they were truly expert witnesses on the issue of damages.

117. On September 4, 2008, at oral argument on the Defendants' Motion to Strike, Respondent withdrew the unnamed representatives of Native Environmental, LLC, and Sedona Rentals as potential witnesses, expert or otherwise, and indicated that they would not be testifying.

118. On September 4, 2008, the Court found that Mike Reynolds was truly an expert witness on the issue of damages, and that Respondent failed to disclose Mike Reynolds as an expert witness in a timely manner.

119. The Court precluded Mike Reynolds from testifying on Plaintiffs' behalf.

VI. COUNT SIX (09-1058; Patricia Fontan and Gerre Grande)

120. On November 18, 2005, Patricia Fontan and Gerre Grande ("Defendants") hired Respondent for representation in a mediation regarding a dispute that arose over the sale of Defendants' old business to John DiBiasi ("Plaintiff"). (TR 75:1)

121. Although the rate of fee was an hourly rate, Respondent's fee agreement required an advance deposit of $2,500.00, which was deemed immediately earned upon receipt. (TR 75:15)

122. On or about November 16, 2005, Defendants paid Respondent for the $2,500.00 advance deposit.

123. Mediation between the parties was unsuccessful and litigation ensued. (TR 75:21)

124. On February 10, 2006, Defendants hired Respondent for representation in the civil lawsuit pursued by Plaintiff.

125. Although the rate of fee was an hourly rate, Respondent's fee agreement required an advance deposit of $7,500.00, which was deemed immediately earned upon receipt.

126. On or about July 26, 2006, Defendants paid Respondent the full amount of the $7,500.00 advance deposit.

127. Over the course of the entire representation, Defendants paid Respondent over $93,000.00.

Respondent's Violation of Court Discovery Orders

128. On October 27, 2006, Respondent received Plaintiff's First Non-Uniform Interrogatories and Request for Production of Documents.

a. Plaintiff wanted to verify the income and expenses of Defendants' old business, as well as seek information on Defendants' potential breach of contract provisions on competition. (TR 76:16)

b. Plaintiff requested copies of all credit card statements and account information ("credit card account information"). (TR 76:19)

c. Plaintiff requested copies of any and all articles, operating agreements, minutes, resolutions, or other documentation relating to Defendants' old business ("corporate information"). (TR 76:19)

d. Plaintiff requested copies of any and all advertising contracts, promotional material, correspondence, or any other related documents for Defendant's new business ("advertising information"). (TR 76:23)

129. In November 2006, Patricia Fontan notified Respondent that, when Patricia Fontan was moving from her home, an assistant had inadvertently thrown out many of the documents pertaining to Plaintiff's requests for the credit card account information, the corporate information, and the advertising information. (TR 77:4-16)

130. Respondent and Defendants decided to work to re-create the credit card account information. Respondent answered Plaintiff's requests by stating that the corporate and advertising information would be supplied at a later date.

131. Between May 2007 and July 2007, Plaintiff filed a Motion to Compel Discovery. (TR 77:17)

132. Respondent failed to respond to Plaintiff's Motion to Compel Discovery. (TR 77:20)

133. On July 26, 2007, Respondent filed a Motion for Protective Order. Respondent argued that Plaintiff was trying to establish his claim through discovery rather than investigating his claim prior to pursuing litigation. (TR 77:20)

134. On July 27, 2007, the Superior Court of the State of Arizona in Yavapai County ("the Court") granted Plaintiff's Motion to Compel Discovery. (TR 78:14)

a. The Court ordered Defendants to fully and adequately respond to Plaintiff's discovery requests on or before August 31, 2007. (TR 78:16)

b. Respondent received this Order via minute entry on August 2, 2007. (TR 78:18)

c. Respondent or Respondent's staff entered a reminder and deadline in Respondent's Abacus system for August 29, 2007, and August 31, 2007. (TR 78:19)

135. On August 7, 2007, Respondent filed a Motion for Reconsideration of the Court's Order granting Plaintiff's Motion to Compel Discovery on the grounds that Respondent did not receive a copy of Plaintiff's Motion to Compel Discovery. (TR 78:24 through 79:3)

136. On September 24, 2007, Plaintiff filed a Response to the Motion for Reconsideration in which Plaintiff did not object to providing Defendants more time to respond to the Motion to Compel. (TR 79:4)

137. On September 24, 2007, the Court granted Respondent's Motion for Reconsideration. (TR 79:8)

a. The Court granted Respondent's Motion for Protective Order over certain pieces of information. (TR 79:10)

b. However, the Court specifically denied Respondent's Motion for Protective Order over the credit card account information, corporate information, and advertising information. (TR 79:11)

c. The Court then granted Plaintiff's Motion to Compel Discovery for all information that was not protected by the Protective Order. (TR 79:15)

d. Respondent advised that the discovery, in accordance with the Court's rulings, would be provided to Plaintiff no later than October 15, 2007. (TR 79:21)

138. On October 15, 2007, Respondent failed to provide the discovery as ordered by the Court. (TR 79:25)

139. On November 7, 2007, Respondent told Plaintiff's Counsel that Respondent was in possession of most of the requested discovery. (TR 80:1-3)

140. On December 13, 2007, Plaintiff filed a Motion for Sanctions against Defendants for the failure to provide the discovery as ordered by the Court. (TR 80:4)

141. On February 22, 2008, Respondent filed a Response to Motion for Sanctions and opposed Plaintiff's Motion. (TR 80:5)

142. Between February 28, 2008, and March 10, 2008, Respondent and Plaintiff's Counsel met and drafted an exhibit of outstanding interrogatories and requests for production that Defendants had yet to produce pursuant to Plaintiff's requests. The exhibit included Plaintiff's requests for the credit card account information, the corporate information, and the advertising information. (TR 80:8-14)

143. On March 10, 2008, the Court signed an Order directing Defendants to provide full and complete responses to Plaintiff by March 24, 2008. (TR 80:25 through 81:1)

144. Respondent failed to provide the discovery as ordered by March 24, 2008. (TR 81:4) Respondent testified he never got the documents from his client. (TR 81:5)

145. On April 2, 2008, Respondent provided Defendants' Responses to Plaintiff's Request for Non-Uniform Interrogatories and Request for Production of Documents. (TR 81:7)

a. Respondent failed to provide the credit card account information as stipulated in the Court's March 10, 2008, Order. (TR 81:9)

b. Respondent failed to provide the corporate information as stipulated in the Court's March 10, 2008, Order. (TR 81:19)

c. Respondent failed to provide the advertising information as stipulated in the Court's March 10, 2008, Order. (TR 81:9)

146. On April 10, 2008, Plaintiff's counsel notified Respondent, via letter, of the insufficiencies of Respondent's Responses to the Requests for Production.

147. On April 16, 2008, Gerre Grande provided the best re-created credit card account information that she could to Respondent. (TR 81:11)

148. Respondent failed to supplement the Disclosure by providing the information given to him by Gerre Grande regarding the credit card account information. (TR 81:16-21)

149. On April 17, 2008, Plaintiff filed a Notice of Defendants' Non-Compliance with Order Re: Outstanding Discovery.

150. On June 3, 2008, the Court found that Defendants failed to fully respond to the discovery items listed in the Court's March 10, 2008, Order. (TR 81:22)

a. As a sanction for failure to provide the credit card information, and at Plaintiff's request, the Court deemed portions of Defendants business tax returns as accurate evidence of the income and expenses for Defendant's old business. (TR 81:25 through 82:2)

b. The Court also ordered Defendants to provide the advertising information to Plaintiff by June 12, 2008. (TR 82:4)

151. On June 12, 2008, Respondent provided the advertising material to Plaintiff. (TR 82:17)

152. On June 20, 2008, Plaintiff's counsel filed an Application for Award of Attorney's Fees and Costs, requesting the Court order Defendants to pay $2,992.50 in fees accrued in compelling Defendants disclosures. (TR 82:25 through 83:3)

153. Respondent did not object to Plaintiff's counsel's request for fees. (TR 83:2)

154. On July 14, 2008, the Court ordered Defendants to pay $2,992.50 in attorney's fees to Plaintiff within thirty (30) days, with interest at 10% per annum until paid. Respondent testified he thought his clients paid the fees. (TR 83:9-13)

Respondent's Failure to Investigate and Contact Witnesses

155. On October 4, 2007, Gerre Grand provided to Respondent a list of employees and clients from their business that would potentially testify as to how they were treated once the sale was complete.

156. Defendants wanted Respondent to contact these witnesses, investigate their potential testimony, and disclose these witnesses for use at trial. (TR 83:20)

157. Respondent failed to contact and investigate the potential testimony of these witnesses. Respondent testified he contacted some of the witnesses, but the witnesses did not want to testify. (TR 83:23 through 84:8)

158. In May 2008, Defendants inquired of Respondent as to whether they would receive a copy of witness statements that were being collected by John DiBiasi's counsel. Some of these statements were being collected from the very witnesses that Defendants wanted to disclose and use in their defense.

159. In September 2008, Defendants again asked Respondent if they would obtain a copy of the witness statements that were being collected by John DiBiasi's counsel.

160. Respondent failed to obtain copies of the witness statements that were being collected by John DiBiasi's counsel.

VII. COUNT SEVEN (09-1395; Thomas Geller)

161. In January 2007, Thomas Geller sold a home to Jeane Garth. (TR 87:1)

a. Prior to closing, the Home Owner's Association informed Thomas Geller that the air conditioning unit, located on the roof of the home, must be moved to the ground to comply with HOA rules.

b. Thomas Geller's realtor denied a request to delay the closing.

c. On January 9, 2007, Thomas Geller and Jeane Garth entered a "holdback agreement."

d. Thomas Geller and Jeane Garth chose First American Title Insurance Agency, Inc. ("First American"), as the escrow agent to hold funds pursuant to the "holdback agreement." (TR 87:18)

i. Thomas Geller deposited $9,765.00 of the proceeds from the sale of the home into an interest bearing escrow account.

ii. The work to move the air conditioning unit was to be completed in sixty (60) days, or by March 10, 2007.

iii. Upon completion of the work and written instructions to do so, First American would disburse the funds to the appropriate parties.

iv. If First American did not disburse the funds and had received no instructions to disburse the funds by March 10, 2007, then First American was to notify all parties of those facts.

v. If disbursement instructions were not received within fifteen (15) days of the date of that notice to the parties, then First American was to disburse the funds back to Thomas Geller without any further notice to the parties.

162. Once the work was completed, a dispute arose between Thomas Geller and Jeane Garth about the quality of the work. The parties were unable to resolve their dispute.

163. On January 16, 2007, Thomas Geller hired Respondent for representation in the dispute with Jeane Garth and with the other pertinent parties to the "holdback agreement."

164. Although the rate of fee was an hourly rate, Respondent's fee agreement required an advance deposit of $750.00, which was deemed immediately earned upon receipt.

165. On January 17, 2007, Thomas Geller and his wife paid Respondent the $750.00 advance deposit.

166. On April 25, 2007, pursuant to the terms of the "holdback agreement," Patricia Nelsen, Escrow Agent from First American, notified all parties via letter that First American had not disbursed the funds and had received no instructions for disbursement.

167. On May 24, 2007, Patricia Nelsen called Respondent and indicated that First American would like to disburse funds to the contractor for the work performed on Thomas Geller's home.

168. As of July 16, 2007, Thomas Geller and his wife had paid Respondent $11,494.70. (TR 88:11)

169. On July 26, 2007, Respondent filed a Complaint in the Superior Court of the State of Arizona in Yavapai County ("the Court") on behalf of Thomas Geller against First American,

William Clark[3] and his unidentified wife, Lon Walters[4] and his unidentified wife, and Jeane Garth and her unidentified husband. Respondent's Complaint alleged a Breach of Contract claim against each Defendant.

170. On August 3, 2007, Respondent filed an Amended Complaint with the Court against each Defendant.

171. On August 3, 2007, Respondent obtained a clerk-issued summons for each Defendant.

172. On August 8, 2007, Respondent sent each summons to his process server for service on each Defendant.

173. From September 24, 2006, until December 15, 2009, the statutory agent for First American was attorney Mark Drutz, located in Prescott, Arizona. (TR 88:22)

174. Between August 9, 2007, and August 11, 2007, Respondent was able to serve every Defendant except First American. (TR 89:2)

175. Respondent failed to serve First American with their summons.

176. On October 5, 2007, William Clark's realty company filed a Petition for Bankruptcy in Federal Court. The Federal Court issued an Order of Automatic Stay with respect to claims against William Clark's realty company.

177. On June 5, 2008, the Court issued a Notice of Pending Dismissal, indicating that service of process had not been made on a Defendant pursuant to the Rules of Civil Procedure.

178. On July 8, 2008, Respondent filed with the Court a Request to Extend Time for Service of Process. At this point in time, the only Defendant that Respondent failed to serve was First American.

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[3] William Clark was the realtor for Jeane Garth.
[4] Lon Walters was the realtor for Thomas Geller.

179. On July 10, 2008, the Court granted Respondent's Request to Extend Time for Service of Process. The Court granted Respondent thirty (30) more days in which to serve First American. (TR 89:20)

180. Respondent failed to serve First American. (TR 89:22)

181. On April 6, 2009, despite the fact that Respondent had failed to serve First American, Respondent filed a Motion to Set and Certificate of Readiness with the Court. (TR 89:24)

182. Also on April 6, 2009, despite the fact that Respondent had failed to serve First American, Respondent filed a Motion for Disbursement of Funds with the Court, in which he requested the Court to issue an Order for a telephonic hearing to release the funds to the contractor who performed the work. (TR 90:7)

183. On July 27, 2009, the Court dismissed the lawsuit without prejudice for lack of prosecution and failure to serve a Defendant. (TR 90:14)

184. On October 2, 2009, Respondent and his staff billed Thomas Geller for time expended in responding to the bar charge that Thomas Geller filed with the State Bar of Arizona. (TR 92:3)

185. On November 3, 2009, Respondent's staff billed Thomas Geller for time expended in responding to the bar charge that Thomas Geller filed with the State Bar of Arizona. (TR 92:8)

VIII. COUNT EIGHT (10-0458; Pamela Fine)

A. Respondent's Representation in Defense of a Landlord-Tenant Dispute.

186. Pamela Fine ("Ms. Fine") and Cheryl Charlesworth were part owners and operators of an Italian dessert and coffee business in a shopping center located in Sedona, Arizona. (TR 95:3)

187. In December 2008, the Italian dessert and coffee business closed and the business premises were vacated. (TR 95:6)

188. Ms. Fine and her business partners ("the Defendants") hired Respondent for representation in defense of a landlord-tenant breach of lease dispute. (TR 95:14)

Respondent's Failure to Inform the Client of Settlement Offers and an Upcoming Public Auction of Property

189. When they vacated the business premises, the Defendants left property and equipment behind at the business premises. (TR 96:11-14)

190. One of the points of contention was the ultimate disposition of and compensation for the property that had been left behind at the business premises. (TR 96:15)

191. During settlement negotiations, the value and ultimate disposition of this property were part of the discussions toward potential resolution of the dispute.

192. On March 13, 2009, Counsel for the Plaintiff notified Respondent via email that the Plaintiff was preparing to hold a public auction to sell certain items of the property and equipment left behind. (TR 96:22)

193. Respondent failed to notify the Defendants of these preparations for a public auction. (TR 97:6-12)

194. The March 13, 2009, email from Plaintiffs' Counsel also included terms of a proposed settlement offer that expired at 5:00 P.M. on that day. (TR 97:14 through 98:7)

195. Respondent failed to notify the Defendants of the terms of that proposed settlement offer.

196. On March 26, 2009, Cheryl Charlesworth emailed Respondent and asked for an update on negotiations with the Plaintiff. Ms. Charlesworth identified some specific pieces of property that could not be sold or used by the Plaintiffs.

197. Respondent still failed to notify Cheryl Charlesworth or other Defendants of the upcoming public auction. (TR 99:11-16)

198. On March 26, 2009, Plaintiff's Counsel wrote to Respondent via email with the terms of another proposed settlement offer. On this occasion, Plaintiff was willing to give the Defendants a $5,000.00 credit for the property towards the financial resolution of the breach of lease. (TR 98:17-23)

199. Respondent failed to diligently notify Defendants of the terms of this proposed settlement offer. (TR 98:24 through 99:5)

200. On March 31, 2009, Plaintiff's Counsel wrote to Respondent via email and inquired as to when the Defendants would respond to the settlement offer proposed in Plaintiff's Counsel's March 26, 2009, email.

201. In her March 31, 2009, email to Respondent, Plaintiff's Counsel informed Respondent that Plaintiff had received the contract from the auctioneer and that Plaintiff would proceed with the auction if settlement was not reached.

202. On April 7, 2009, Respondent notified Ms. Fine of the proposed settlement terms from Plaintiff's Counsel's March 26, 2009, email. (TR 99:11)

203. However, Respondent still failed to notify the Defendants of the upcoming public auction. (TR 99:16)

204. On April 27, 2009, Plaintiff filed a civil Complaint against the Defendants in the Superior Court of the State of Arizona in Coconino County.

205. Also on April 27, 2009, Plaintiff's Counsel informed Respondent of the exact date and time of the public auction, which was to be held the very next day, April 28, 2009, at 3:30 P.M. (TR 99:20)

206. Respondent failed to notify the Defendants of the upcoming public auction. (TR 99:24 through 100:10)

207. On June 11, 2009, Plaintiff's Counsel provided to Respondent via facsimile a list of the items that were auctioned and sold. (TR 100:11)

208. Respondent failed to provide the Defendants with the list of auctioned and sold items and failed to notify the Defendants that the property had been sold. (TR 100:16)

209. On July 16, 2009, during a telephone call in which Ms. Fine asked for an update on settlement negotiations in regard to the financial payment and the property disposition, Respondent indicated that the disposition of the property was still a term under negotiation. (TR 100:23 through 101:4)

210. Respondent's indication that the disposition of the property was still under negotiation was false, as Respondent knew that the property had already been sold. Respondent testified at the hearing that he thought he told the Defendants about the sale of the property could not remember if he did this. He explained, "This was a particularly bad time, in terms of my life, and I'd just love to tell you that something happened that did, but I can't." (TR 102:4-8)

211. Respondent still failed to inform the Defendants of the completed auction and sale of the property.

212. On September 17, 2009, Respondent sent to the Defendants a letter via email.

a. In the September 17, 2009, letter, Respondent communicated the terms of a proposed settlement offer.

b. Respondent told the Defendants that Plaintiff offered to settle the breach of lease claim for $20,000.00.

c. In addition to the monetary payment, Respondent stated, "that [the monetary payment] would settle all claims but the Plaintiffs would keep the property."

d. Respondent's statement that the "Plaintiffs would keep the property" was misleading, as Respondent knew that Plaintiff had already sold the property at auction.

e. Respondent still failed to inform the Defendants about the completed auction and sale of the property.

f. Respondent encouraged the Defendants to accept the new settlement offer due to the economic concerns and impact of going forward with litigation.

213. The third counterclaim that the Defendants filed as part of their Answer and Counterclaims on September 25, 2009, against the Plaintiff alleged that the Plaintiff wrongfully disposed of this property.

214. The Defendants added this third counterclaim when they proposed edits to Respondent's initial draft of the Answer and Counterclaim, which did not include this third counterclaim.

Respondent's Failure to Follow the Defendants' Instructions and Diligently Comply with Requests for Information

215. On June 16, 2009, Respondent told the Defendants that he would file the Answer and Counterclaims to the Plaintiff's April 27, 2009, Complaint.

216. As of July 8, 2009, Respondent had not filed the Answer and Counterclaim.

217. On or about July 8, 2009, Ms. Fine told Respondent to file the Answer and Counterclaim. (TR 103:6)

218. As of July 16, 2009, Respondent had not filed the Answer and Counterclaim. (TR 103:7)

219. On July 16, 2009, Ms. Fine emailed Respondent and informed him that she had not yet received a copy of the filed Answer. (TR 103:8)

220. Respondent did not respond to Ms. Fine's request for a copy of the filed Answer. (TR 103:9)

221. As of August 4, 2009, Respondent had not filed the Answer and Counterclaim.

222. On August 4, 2009, Ms. Fine asked Respondent via email for a copy of the filed Answer and Counterclaim.

223. Respondent did not respond to Ms. Fine's request for a copy of the filed Answer and Counterclaim.

224. As of August 7, 2009, Respondent had not filed the Answer and Counterclaim. (TR 103:14)

225. On August 7, 2009, Ms. Fine emailed Respondent and informed him that she was still looking for a copy of the filed Answer.

226. Respondent did not respond to Ms. Fine's request for a copy of the filed Answer. (TR 103:16)

227. On September 17, 2009, Respondent emailed to the Defendants a draft copy of the Answer and Counterclaim to be filed.

228. The Defendants made suggested edits to the draft Answer and Counterclaim.

229. On September 25, 2009, Respondent filed the Answer and Counterclaim.

230. Respondent failed to proofread and correctly edit the last draft version of the Answer and Counterclaim before filing it.

231. In September 2009, the Defendants hired new counsel to defend them in this litigation.

232. The Defendants incurred new fees with new counsel to file an Amended Answer and Counterclaims.

B. Respondent's Representation in the Prosecution of a Negligence and Breach of Contract Civil Matter.

233. In August 2007, Ms. Fine and her business partners ("the Plaintiffs") obtained and took delivery of a gelato-making machine for the Italian dessert and coffee business. (TR 104:14)

234. At the time of delivery, the gelato-making machine was damaged and inoperable. (TR 104:15)

235. On August 1, 2008, the Plaintiffs filed a Complaint against the seller of the gelato-making machine and the delivery company. (TR 104:21)

236. In February 2009, Respondent substituted in as counsel of record for the Plaintiffs in this civil lawsuit. (TR 105:7)

237. Due to confusion on the part of prior counsel, prior counsel believed that the Complaint in this matter had been served on the opposing parties. However, service had not been accomplished.

238. On February 17, 2009, the Superior Court of the State of Arizona in Yavapai County ("the Court") dismissed the Plaintiffs' Complaint for lack of service. (TR 105:20)

239. On February 23, 2009, prior counsel notified Respondent that the Complaint had been dismissed and provided Respondent with a copy of the Court's Minute Entry.

240. Respondent failed to diligently inform the Plaintiffs that the Court had dismissed their Complaint.

241. Respondent did not inform the Plaintiffs that their Complaint had been dismissed until April 15, 2009.

242. The Plaintiffs instructed Respondent to remove the delivery company, Old Dominion Trucking, as a Defendant from the lawsuit and Complaint in its entirety when it was re-filed because Old Dominion Trucking and the Plaintiffs had resolved their portion of the dispute. (TR 106:18-24)

243. On June 24, 2009, Respondent re-filed the Complaint.

244. While Respondent did remove Old Dominion Trucking from the caption of the Complaint, Respondent still identified Old Dominion Trucking as a "Defendant" in the text of the Complaint. (TR 107:1-7)

245. Specifically, Respondent continued to allege in the re-filed Complaint that Old Dominion Trucking failed to care for the gelato-making machine, and that Old Dominion's acts contributed to damages that the Plaintiffs suffered. (TR 107:8-14)

246. The Plaintiffs were concerned about service of the re-filed Complaint since the original inception of the lawsuit was dismissed for a lack of service.

247. On June 22, 2009, Respondent told Ms. Fine via email that he had sent the Complaint to the Court for filing and expected to receive a conformed copy for service on the Defendants within the next two days. (TR 107:22)

248. On June 30, 2009, Ms. Fine asked Respondent via email whether he had received the conformed copy of the Complaint back from the Court for service yet.

249. On August 27, 2009, Ms. Fine asked Respondent via email if service of the Complaint had been accomplished yet. (TR 108:4)

250. On September 2, 2009, during a telephone call with Ms. Fine, Respondent told Ms. Fine that service was completed. (TR 108:7-10)

251. Respondent's statement that service was completed was a false statement and Respondent knew it was false.

252. The opposing party had not been served with the Complaint.

253. On September 11, 2009, Ms. Fine asked Respondent to follow up with the process server because service had not been accomplished. Respondent did not respond to Ms. Fine's request. (TR 108:17-22)

254. On September 28, 2009, Respondent's staff informed Ms. Fine via email that the documents for service on the opposing party had not been sent out for service until sometime during the prior week of September 21, 2009. (TR 108:23 through 109:6)

255. On October 2, 2009, the opposing party was served with a copy of the Complaint.

The Fee Dispute and Respondent's Failure to Comply with the Agreed-Upon Resolution.

256. Ms. Fine and her business partners paid Respondent $6,500.00 in fees for the period of his representation in the two legal matters. (TR 109:9)

257. On February 20, 2010, Ms. Fine wrote to Respondent and demanded that Respondent refund the entire amount of the fees paid ($6,500.00) and also pay Ms. Fine and her business partners the estimated value of the property that was auctioned and sold without their knowledge ($5,000.00) for a total of $11,500.00. (TR 109:13-22)

258. On March 8, 2010, Respondent offered to pay $5,000.00 in settlement of the fee dispute.

259. On March 15, 2010, Ms. Fine rejected Respondent's $5,000.00 offer via email and provided a counteroffer in the amount of $6,500.00.

260. On March 17, 2010, Respondent's staff notified Ms. Fine via email that Respondent accepted the counteroffer of $6,500.00 and agreed to pay that amount within fourteen (14) days. (TR 109:23 through 110:5)

261. Respondent failed to comply with the agreed upon resolution of the fee dispute by paying $6,500.00 to Ms. Fine and her business partners. (TR 110:8)

262. Respondent never communicated any type of withdrawal from the resolution agreement to Ms. Fine and her business partners. Respondent testified at the hearing that he did not pay Ms. Fine $6500 because she informed Respondent that the payment would also terminate her bar complaint. Respondent thought that it would not be appropriate to pay her because she had made a bar charge and it was pending. (TR 112:13) There is some support for Respondent's position in this record. (TR 115:19 through 116:3) However, nothing prevented Respondent from paying Ms. Fine with a note that he could not agree to a dismissal of the bar complaint. (TR 116:4-25

263. On May 18, 2010, Ms. Fine reiterated her demand for $11,500.00 from Respondent.

IX. COUNT NINE (10-0493; Georgiana Parker)

264. In November 2007, Georgiana Parker ("Ms. Parker") hired Respondent for representation in a dispute with Ms. Parker's neighbors ("the Defendants") over the method by which the Defendants obtained an easement on Ms. Parker's property and the Defendants' use of that easement. (TR 119:20)

265. On April 15, 2008, Respondent and his associate, Stephen Ryan ("Mr. Ryan"), met for the first time to discuss a potential Motion for Summary Judgment to be filed on Ms. Parker's behalf.

266. On May 13, 2008, Mr. Ryan began his work on research and preparation for the filing of the Motion for Summary Judgment on behalf of Ms. Parker. (TR 121:4)

267. On July 22, 2008, the Defendants filed their own Motion for Summary Judgment adverse to Ms. Parker. (TR 121:8)

268. Between May 13, 2008, and July 22, 2008, Respondent billed Ms. Parker for no less than twenty-two hours (22.0) of time at a rate of $200.00 per hour for research and work done in preparation to file the Motion for Summary Judgment on Ms. Parker's behalf. Ms. Parker was charged no less than $4,400.00 for this research and work. (TR 121:13-19)

269. Respondent never filed a Motion for Summary Judgment on behalf of Ms. Parker. (TR 121:23 through 122:1)

270. On November 12, 2008, the Superior Court of the State of Arizona in Coconino County ("the Court") granted Defendants' Motion for Summary Judgment adverse to Ms. Parker. (TR 122:2-9)

271. Respondent failed to timely communicate to Ms. Parker that summary judgment had been granted against her and/or adequately explain the impact of that judgment.

272. On November 17, 2008, Counsel for Defendants submitted an itemized Statement of Costs and Notice of Taxation of Costs to the Court as part of a Motion for Attorney's Fees. The Motion for Attorney's Fees was denied.

273. However, on March 26, 2009, the Court entered an Order against Ms. Parker for costs in the total amount of $882.50. (TR 123:2)

274. Ms. Parker brought this Order to Respondent's attention shortly after it was issued.

275. Respondent told Ms. Parker that he would pay the Judgment of Costs.

276. Between approximately late March 2009 and early September 2009, Ms. Parker made several requests to Respondent to follow through and pay the Judgment of Costs.

277. On several occasions during that period of time, Respondent told Ms. Parker that he would pay the Judgment of Costs.

278. Respondent failed to pay the Judgment of Costs as he stated he would do. (TR 124:17)

279. On August 20, 2009, a Writ of Garnishment and Summons issued against Ms. Parker for the Judgment of Costs.

280. On September 1, 2009, Ms. Parker disbursed $1,019.77 via cashier's check to the Defendants for the total amount of the Judgment of Costs and accrued interest. (TR 124:18-23)

281. On September 1, 2009, Counsel for the Defendants filed a Satisfaction of Judgment and Notice of Dismissal of Garnishment Action before the Court.

282. On September 3, 2009, Respondent wrote to Ms. Parker and informed her that he would only pay the Judgment of Costs if Ms. Parker agreed to continue with Respondent's representation without further fees to pursue a remedy against the Defendants using a different theory. (TR 124:24 through 125:6)

CONDITIONAL ADMISSIONS/CONCLUSIONS OF LAW

Respondent conditionally admits that his conduct violates Rule 42, Ariz. R. Sup. Ct., specifically, ERs 1.2, 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.4(b), 1.5(a), 1.15(b)(2), 8.4(c), 8.4(d), as well as Rule 43(b)(2)(A), Rule 43(b)(3), and Rule 43(b)(4), Ariz. R. Sup. Ct. Respondent

tenders these admissions in exchange for the form of discipline stated below. Based on these admissions, the facts in the Tender of Admissions and the record of the hearing the Hearing Officer finds that violations set forth above have been established by clear and convincing evidence.

CONDITIONAL DISMISSALS

No Counts are being dismissed. The State Bar agrees to conditionally dismiss the following allegations that Respondent violated Rule 42, Ariz. R. Sup. Ct., specifically, ERs 1.5(b), 1.15(a), 1.16(d), and 3.2, as well as Rule 43(b)(1)(A), Rule 43(b)(1)(B), Rule 43(b)(1)(C), and Rule 43(b)(2)(B), Ariz. R. Sup. Ct. The State Bar makes this agreement in light of and in exchange for Respondent's conditional admissions as discussed above. The State Bar also believes that it is in the interests of justice in this matter to conditionally dismiss these specific allegations of violations of these ERs and Rules against Respondent. The facts delineating Respondent's conduct are more appropriately addressed with the ERs and Rules cited within Respondent's conditional admissions. The evidence also supports the more appropriate conclusions that Respondent violated the Rules cited with Respondent's conditional admissions.

RESTITUTION

Respondent agrees to pay full Restitution to Sharon Penz (Count One, 08-1907) in the amount of two thousand five hundred dollars ($2,500.00).

Respondent also agrees to pay full restitution to Thomas Geller (Count Seven, 09-1395) in the amount of eleven thousand four hundred ninety four dollars and seventy cents ($11,494.70).

Finally, Respondent agrees that he will initiate and submit to binding Fee Arbitration on the remainder of the client matters: Amber Saravo (Count Four, 09-0324); Guy Grand (Count

Five, 09-0394); Gerre Grande and Patricia Fontan (Count Six, 09-1058); Pamela Fine (Count Eight, 10-0458); and Georgiana Parker (Count Nine, 10-0493). Respondent agrees that he will initiate these Fee Arbitration matters by filing a Petition for Fee Arbitration with the State Bar of Arizona in each of these matters within one hundred and fifty days (150) of the Supreme Court's Final Judgment and Order. Respondent further agrees that he will timely comply with payment of any awards ordered as a result of the fee arbitrations.

The Hearing Officer recommends that the agreements regarding restitution are reasonable. Although a recommendation for a specific date by which restitution should be paid was considered, Bar Counsel at the hearing explained that if no date were selected the restitution would be due at the time of the Judgment and Order. If the restitution was not paid by that date then the complainants would be able to pursue claims with the Client Protection Fund. (TR 131:17 through 132:17) The Hearing Officer therefore does not recommend a specific date by which restitution would be due.

ABA STANDARDS[5]

In determining the appropriate sanction, the parties considered both the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") and Arizona case law. The *Standards* provide guidance with respect to the appropriate sanction in this matter. The Court and Commission consider the *Standards* a suitable guideline. *In Re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990); *In Re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274, 276 (1994).

In determining an appropriate sanction, both the Court and the Commission consider the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct,

[5] The material in this section comes from the Joint Memorandum in Support of the Tender of Admissions unless otherwise noted.

and the existence of aggravating and mitigating factors. *Matter of Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA *Standard* 3.0.

The Duty Violated

For the violations of Rule 42, Ariz. R. Sup. Ct., specifically, ERs 1.2, 1.3, and 1.4, it is appropriate to consider *Standard* 4.4, entitled Lack of Diligence. Given the conduct in this matter, it is appropriate to consider *Standard* 4.42. *Standard* 4.42 states, "Suspension is generally appropriate when a lawyer (a) knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."

In the present matter, Respondent's conduct was either knowing or, at the very least, constitutes a pattern of neglect that caused injury or potential injury to the clients. In Count One (Sharon Penz), for example, there were periods of time lasting months where Respondent did not communicate with his client. In Counts One (Penz) and Seven (Thomas Geller), by way of another example, Respondent failed to accomplish service of civil lawsuits on the appropriate parties, resulting in dismissals of those lawsuits on multiple occasions. In Count Eight (Pamela Fine), by way of a final example, Respondent failed to comply with requests for a copy of a filed Answer and Counterclaim pleading over the course of months, mainly because the pleading was never filed to begin with. The facts in these matters, again, at the very least, show a pattern of neglect resulting in actual and/or potential injury, if not a knowing mental state. The presumptive sanction for these violations is Suspension.

For Respondent's violation of Rule 42, Ariz. R. Sup. Ct., specifically, ER 1.5(a), it is appropriate to consider *Standard* 7.0, entitled Violations of Other Duties Owed as a Professional.

Specifically, *Standard* 7.4 states "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." Additionally, *Standard* 7.3 states, "Reprimand [Censure in Arizona] is generally appropriate when a lawyer negligently 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."

In the present matter, Respondent charged and collected an unreasonable fee on several occasions. For example, in Count One (Penz), even though the lawsuit was dismissed on two occasions and the matter never proceeded past the stage of service on the opposing party, Respondent never refunded any of the $2,500.00 that Mrs. Penz paid. Clearly, when one considers the results obtained for Mrs. Penz's money alone, the fee is an unreasonable one. The same could be said for Count Seven (Geller), as another example. A final example is when Respondent charged Guy Grand in Count Five (Guy Grand) for the efforts expended in objecting to the opposing party's Motion to Compel production of emails, despite the lack of objection to production from Mr. Grand. Respondent's mental state likely falls somewhere in between the negligent and knowing mental states, so the presumptive sanction for this particular violation falls between Censure and Suspension.

For Respondent's violation of Rule 42, Ariz. R. Sup. Ct., specifically, ER 1.15(b), and Rule 43(b)(3), and Rule 43(b)(4), Ariz. R. Sup. Ct., it is appropriate to consider *Standard* 4.1, entitled Failure to Preserve the Client's Property.

Specifically, *Standard* 4.12 states, "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."

In this current matter, Respondent knew or should have known that he was not keeping sufficient funds in the trust account to cover the necessary credit card transaction fees. This was an issue that the State Bar's staff addressed with Respondent between August 2007 and January 2008. Respondent also knew what the credit card transaction fee would be in terms of the percentage of each transaction. At the very least, given all of this information, Respondent should have known that his conduct was inappropriate in this regard. The presumptive sanction for the violations of these Rules is Suspension.

For Respondent's violation of Rule 42, Ariz. R. Sup. Ct., specifically, ER 8.4(c), it is appropriate to consider *Standard* 4.6, entitled Lack of Candor.

Specifically, *Standard* 4.63 states, "Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client."

In Count 8 (Fine), Respondent knowingly misrepresented to his clients the status of the property left behind by the clients in the landlord-tenant dispute. Knowing that the property had already been sold, Respondent made statements leading the clients to believe that the ultimate disposition of the property was still a term to be negotiated. Also in Count Eight (Fine), but in the second representation, Respondent told Ms. Fine that service of the lawsuit had been completed on the opposing party. Respondent knew that statement was false because Respondent knew the lawsuit had not been sent out for service at that time, let alone actually served on the opposing party. The presumptive sanction for this violation is Suspension.

Finally, for Respondent's violation of Rule 42, Ariz. R. Sup. Ct., specifically, ER 8.4(d), it is appropriate to consider *Standard* 6.2, Abuse of the Legal Process.

Specifically, *Standard* 6.22 states, "Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a

party, or interference or potential interference with a legal proceeding." Additionally, *Standard* 6.23 states, "Reprimand [Censure in Arizona] is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding."

In this current matter, there are violations of Rule 42, Ariz. R. Sup. Ct., specifically, ER 8.4(d), that fall under both *Standards*. For example, in Count Six (Fontan & Grande), Respondent's failure to provide the discovery requested by opposing counsel and as ordered by the Court was done with a knowing mental state. Respondent knew what the material was and when the material had to be disclosed. Respondent worked on the stipulated court order outlining both of those pieces of information with opposing counsel. Respondent told opposing counsel, after the agreed upon deadline to disclose had come and gone, that Respondent had most of the requested material in his possession. Still, no disclosure was done. There is clear and convincing evidence that Respondent's mental state was knowing in that regard.

However, in other violations of Rule 42, Ariz. R. Sup. Ct., specifically, ER 8.4(d), Respondent's mental state was likely negligent. For example, in Count Five (Grand), the failure to properly disclose expert witnesses, resulting in the preclusion and withdrawal of three potential expert witnesses and the imposition of financial sanctions, was likely a result of Respondent's negligence. As another example, in Count Four (Saravo), Respondent's failure to provide draft court orders pursuant to court order was likely a result of Respondent's negligence, as the parties appeared to disregard the deadlines in lieu of continued negotiations.

Since there is an example of a violation of this particular Rule that falls under both *Standards*, the presumptive sanction for these respective violations is both Suspension and Censure.

The Lawyer's Mental State

For the reasons stated above and for the purposes of this settlement, the Hearing Officer agrees with the parties that Respondent's mental state was knowing in regard to several violations of the Rules of Professional Conduct, and negligent with respect to other violations.

Actual or Potential Injury

Respondent's conduct caused actual and/or potential injury to his clients and an opposing party in these matters. For example, in Counts One (Penz) and Seven (Geller), the legal disputes never went past the stage of service on the opposing parties, yet despite that lack of any worthwhile result due to Respondent's representation, both clients paid money to Respondent that Respondent never refunded. In Count Two (State Bar), an unidentified client's funds were converted to cover the deficiencies in available funds paid by Respondent to cover the credit card transaction fees.

Also, there was injury in Count Three (Speed). Mr. Speed was a named Defendant in a civil lawsuit for over three (3) years, despite receiving Respondent's assurance early on that Mr. and Mrs. Speed would be dismissed from that lawsuit. Anyone conducting a check into Mr. Speed's potential liabilities for those three (3) years would have discovered that he was still a named Defendant in a civil lawsuit. In Count Four (Saravo), there was delay in moving Ms. Saravo's matter forward right from the beginning and on several occasions thereafter.

In Counts Five (Grand), Six (Fontan & Grande), and Nine (Parker), the Court presiding over the legal matters sanctioned each of those clients in some fashion financially. Finally, in Count Eight (Fine), Respondent misled his clients, and the clients were unaware as to the current status of their property and potential settlement offers.

In addition to the foregoing examples, it is clear that Respondent's conduct caused actual and/or potential harm to his clients in each of the nine (9) counts.

Presumptive Sanction

Based on the foregoing, the presumptive sanction for the admitted conduct is Suspension. The Hearing Officer agrees with the parties that the appropriate weight of the aggravating and mitigating factors, along with the analysis of proportional case law found below, is insufficient to deviate from the presumptive sanction in this case of a Suspension. The Hearing Officer agrees with the parties that the appropriate sanction in this matter is Suspension, plus probation upon reinstatement, restitution, mandated Fee Arbitration, and the imposition of costs.

Aggravation/Mitigation

After determining the presumptive sanction, it is appropriate to evaluate factors enumerated in the *Standards* that would justify an increase or decrease in the presumptive sanction.

The Hearing Officer agrees with the parties that, pursuant to *Standard* 9.22, five (5) aggravating factors should be considered in this matter.

Under *Standard* 9.22(a), Respondent has prior disciplinary offenses that should be considered in aggravation. In *In Re Gary W. Kazragis*, SB-03-0115-D (August 2003), Respondent was censured and placed on one year of probation for violations of Rule 42, Ariz. R. Sup. Ct., specifically, 1.15, and Rule 43 and Rule 44, Ariz. R. Sup. Ct. In that matter, Respondent did not monitor trust account disbursements and client ledgers were not accurately completed, which led to three (3) overdrafts. Respondent also commingled money by taking advanced payments via credit card into an operating account and then taking some time to

transfer that money to the trust account. Respondent also failed to maintain a general ledger and did not conduct a three-way reconciliation.

Additionally, in State Bar File No. 06-1653 (February 2008), Respondent was informally reprimanded for violations of Rule 42, Ariz. R. Sup. Ct., specifically, ERs 3.1 and 8.4(d). Respondent filed an Amended Complaint pursuant to a court order, but admittedly did not believe that his client's claim was supported by the facts. Respondent was also placed on probation in this matter for a term of one (1) year, which began on April 7, 2008. Respondent's probation was extended as the State Bar continued to receive bar complaints. Respondent's probation overlapped with several of the timelines of Respondent's conduct in the underlying counts in this formal matter.

Under *Standard* 9.22(b), Respondent had a dishonest or selfish motive for some of his ethical misconduct. Specifically, while Respondent misled his clients in Count Eight (Fine), Respondent was acting with a dishonest motive.

Under *Standard* 9.22(c), Respondent engaged in a Pattern of Misconduct. Respondent's misconduct spanned a period of over four (4) years and affected multiple clients.

Under *Standard* 9.22(d), Respondent committed Multiple Offenses. Respondent's conduct includes violations of thirteen (13) individual Rules of Professional Conduct.

Finally, under *Standard* 9.22(i), Respondent has substantial experience in the practice of law. Respondent has been practicing law since October 21, 1988; almost twenty-two (22) full years.

The Hearing Officer agrees with the parties that, pursuant to *Standard* 9.32, there are four (4) mitigating factors.

Under *Standard* 9.32(c), Respondent experienced several personal and emotional problems during relevant time periods. The evidence supporting this mitigating factor is included in a separate pleading that the Hearing Officer has sealed pursuant to a Protective Order due to the personal nature of that evidence. Respondent has entered into an agreement with the Members Assistance Program (MAP) and has been in complete compliance with that agreement. The significance of these issues are a major factor in the Hearing Officer's recommendation to accept the Agreement for Discipline reached by the parties.

Under *Standard* 9.32(e), Respondent has been cooperative in this disciplinary proceeding. Respondent has cooperated in the investigation of each of the nine (9) counts. Respondent self reported the trust account matter set forth herein.

Under *Standard* 9.32(g), Respondent has a reputation for good character within the legal community. Evidence supporting this mitigating factor was presented at the hearing on the consent agreement. (TR 148:15 through 149:17)

Finally, under *Standard* 9.32 (l), the Respondent has demonstrated remorse for the matters herein. Respondent through his counsel presented evidence of this mitigating factor at the hearing on this agreement for discipline by consent. (TR 150:17 through 153:7)

PROPORTIONALITY[6]

In the past, the Supreme Court has consulted similar cases in an attempt to assess the proportionality of the sanction recommended. *See In re Struthers,* 179 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept of proportionality review is "an imperfect process." *In re Owens,* 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases "are ever alike." *Id.*

[6] The material in this section comes from the Joint Memorandum in Support of the Tender of Admissions unless otherwise noted.

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

In *In Re David Bjorgaard,* SB-07-0081-D (2007), Bjorgaard was suspended for 2 years followed by 2 years of probation (LOMAP, MAP, Restitution). In a multiple count formal complaint, Bjorgaard was found to have failed to diligently pursue clients' cases (failed to respond to Motions, conduct discovery) and cases were dismissed for failure to prosecute. Bjorgaard failed to communicate with his clients. One client was financially sanctioned and Bjorgaard failed to pay the sanction. Bjorgaard failed to inform a client of court hearings. Bjorgaard told the father of a juvenile client that he had filed motions on behalf of the juvenile client, but the motions were not filed. Bjorgaard consented to discipline in light of violations of ERs 1.2, 1.3, 1.4, 1.16, 3.2, 3.4, 8.1, 8.4(c), 8.4(d). Aggravating factors included pattern of misconduct, multiple offenses, and the failure to respond to SBA initially. Mitigating factors included absence of prior discipline, personal and emotional problems, and the imposition of other penalties.

In *In Re Stephen J. Renard*, SB-10-0032-D (2010), Renard was suspended for 18 months followed by 2 years of probation (LOMAP). Renard defaulted on a multiple count formal complaint regarding several client matters. Renard was found to have failed to diligently represent his clients, failed to communicate with his clients, allowed several matters to be dismissed due to lack of prosecution, and failed to follow court orders. Renard was found to have violated ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15,1.16, 3.2, 3.4, 7.1, 7.5, 8.1, 8.4(c), 8.4(d). Renard had

two prior censures, along with a dishonest/selfish motive, pattern of misconduct, multiple offenses, failure to comply with rules of disciplinary organization, and refusal to acknowledge wrongful nature of conduct as Aggravating factors. There was no mitigation.

Finally, in *In Re Mendoza*, SB-03-0112-D (2003), Mendoza consented to an 18-month suspension for violations of 1.2, 1.3, 1.4, 1.15, 1.16, 3.2, 8.1, 8.4, and Rules 43, 44, and 51, all arising out of an eleven-count formal complaint. Three aggravating factors included pattern of misconduct, multiple offenses, and failure to cooperate. Mitigating factors included no prior discipline, no dishonest motive, personal problems, and withdrawal from private practice.

Attorneys who have engaged in the type of misconduct similar to Respondent's, affecting multiple clients as Respondent has done, generally receive a long-term suspension for a similar duration as the parties have agreed to here. This current agreement, therefore, provides for a sanction that is proportionate and meets the goals of the disciplinary system.

CONCLUSION/RECOMMENDATION

The objective of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, and the administration of justice. *In Re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Recognizing that it is the prerogative of the Disciplinary Commission, and the Supreme Court to determine the appropriate sanction, the Hearing Officer agrees with the State Bar and Respondent that the objectives of discipline will be met by the imposition of the proposed sanction of an 18-month Suspension, with a two-year term of Probation imposed upon reinstatement, restitution, mandated Fee Arbitration, and the imposition of costs.

Respondent can benefit from additional time away from the practice of law to address issues that are described in the sealed material (Exhibit 1, Respondent's Mitigation Memorandum). Unfortunately Respondent's clients in the matters in this case were very

dissatisfied with the results of his work. According to Respondent's counsel Respondent agreed to the discipline as set forth in the above paragraph in part because Respondent thought that with these clients he fell below the standards he set for himself. (TR 157:22) During the period of suspension and while Respondent is working on addressing the issues described in Exhibit 1, future clients will be protected. If Respondent is reinstated after the suspension the term of probation will assist Respondent toward his goal of efficiently and effectively representing all of his clients. The probation will also help the client public by monitoring Respondent's progress. Restitution and Fee Arbitration will hopefully lead to clients receiving monetary relief.

SANCTIONS

The Hearing Officer recommends that the appropriate disciplinary sanctions are as follows:

1. Respondent shall be suspended from the practice of law in the State of Arizona for a term of eighteen (18) months. Respondent's suspension shall commence thirty (30) days from the date of the Supreme Court's Final Judgment and Order.

2. Respondent shall pay full restitution in the amount of two thousand and five hundred dollars ($2,500.00) to Sharon Penz.

3. Respondent shall pay full restitution in the amount of eleven thousand four hundred ninety four dollars and seventy cents ($11,494.70) to Thomas Geller.

4. Respondent shall initiate and participate in binding Fee Arbitration with Amber Saravo (Count Four, 09-0324); Guy Grand (Count Five, 09-0394); Gerre Grande and Patricia Fontan (Count Six, 09-1058); Pamela Fine (Count Eight, 10-0458); and Georgiana Parker (Count Nine, 10-0493), within one hundred and fifty (150) days of the Supreme Court's Final Judgment and Order, and will timely pay any awards arising from the arbitrations.

5. Upon reinstatement pursuant to Rule 65, Ariz. R. Sup. Ct., Respondent agrees that he will submit and participate in a term of probation for two (2) years under conditions to be identified and decided at the time of formal reinstatement pursuant to Rule 65, Ariz. R. Sup. Ct.

6. Respondent shall pay all costs and expenses incurred by the State Bar in these proceedings within six (6) months of the Supreme Court's Final Judgment and Order.[7] [A statement of the State Bar's costs is attached as Exhibit A]. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court of Arizona, and the Disciplinary Clerk's Office in this matter.

Dated this 9 day of December, 2010.

Honorable Jonathan H. Schwartz
Hearing Officer 6S

[7] The parties initially agreed that Respondent would have eighteen (18) months from the Judgment and Order to pay all costs and expenses incurred in this matter. At the hearing the Hearing Officer stated that six months would be a more reasonable time to pay the costs and expenses. At the hearing the parties agreed to modify the Tender of Admissions so that all costs and expenses of the proceedings would be paid within six months from the Judgment and Order. (TR 141:7 through 145:12)

Original filed with the Disciplinary Clerk
this 9 day of December, 2010.

Copy of the foregoing mailed
this 10 day of December, 2010, to:

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by: Deanna Baker

/jsa

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Gary W Kazragis, Bar No. 012215, Respondent

File No(s). 08-1907 et al

Administrative Expenses

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

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

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

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

Staff Investigator/Miscellaneous Charges

02/24/09	Analysis of client ledgers, credit card debits and credits; Reconstruct trust account	$112.50
04/06/09	Review supplemental trust account documents	$ 18.75
07/07/09	Review Heartland Payment Systems documents; Call to HPS	$ 52.50
02/05/10	Atwood Reporting, Deposition of Respondent	$270.00

Total for staff investigator charges	$453.75
Total Costs and Expenses for each matter over 5 cases (4 over 5 cases x (20% x Gen. Admin cost)):	$960.00
TOTAL COSTS AND EXPENSES INCURRED	***$2,613.75***

Marek Kessella/fm
Sandra E. Montoya
Lawyer Regulation Records Manager

10/15/10
Date