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

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| IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA,<br><br>**JAMES M. SHINN,**<br>**Bar No. 020677**<br><br>RESPONDENT. | No. 09-1285, 09-1820<br><br>**HEARING OFFICER'S REPORT** |

## PROCEDURAL HISTORY

A Complaint was filed on May 17, 2010. The Hearing Officer was assigned on June 7, 2010. The Notice that assigned the Hearing Officer informed both Bar Counsel and Respondent that a telephonic Initial Case Management Conference (ICMC) was scheduled for June 17, 2010 at 10:00 am. The Notice of Assignment was mailed to Respondent at two addresses known to the Bar, 33640 Naranjo Dr. Lake Elsinore, California 92530-5749 and 8403 E. Los Feliz, Tempe, Arizona 85284. Respondent did not appear at the ICMC. Respondent's Answer was due on June 18, 2010. Respondent did not file the Answer. The Telephonic ICMC was continued to July 20, 2010. The Order setting the continued ICMC was mailed to Respondent at the two addresses above. A Notice of Default was filed on June 24, 2010 informing Respondent that he had 10 days from the service of the Notice by mail to file an Answer or a default would be entered. Respondent did not file an Answer within the prescribed time. Entry of Default was filed on July 15, 2010. On July 20, 2010 a Notice of Hearing was sent to Respondent at the same addresses

as set forth above, informing him that an Aggravation/Mitigation Hearing would be held on August 13, 2010. Respondent did not attend the Aggravation/Mitigation Hearing held on August 13, 2010.

## FINDINGS OF FACT[1]

## GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on May 24, 2001.

2. On February 26, 2010, Respondent was placed on summary suspension from the practice of law by the State Bar Board of Governors for failure to complete his MCLE obligation.

### COUNT ONE (File no. 09-1285)

### (Morrill)

3. Complainant is a lawyer practicing in Phoenix, Arizona.

4. Complainant's law firm hired Respondent as an associate attorney in November 2006. (TR 43:4)

5. One of the conditions of Respondent's employment was that he not provide legal services independently during his employment with Complainant's law firm.

6. Complainant never authorized Respondent to receive payments directly from clients for his own use and benefit.

7. On January 16, 2009, Respondent sent an e-mail message to David Anderson of Seattle, Washington with a draft fee agreement, using the firm's standard

[1] Pursuant to Rule 57 (d) of the Rules of the Supreme Court the entry of default means that the allegations of the Complaint are admitted. The facts are from the Complaint. If the witnesses at the Aggravation/Mitigation Hearing also addressed a fact a reference to the Hearing Transcript "TR" or an Exhibit will be added.

form; the message detailed the work Respondent agreed to perform for Mr. Anderson. (Exhibit 4)

8. Respondent represented to Mr. Anderson that his billing rate was $250 per hour; however, at that time, the firm was billing Respondent's time at $225 per hour.

9. In the message, Respondent instructed Mr. Anderson to wire transfer $2,000 to Respondent's "trust account" at Arizona Federal Credit Union; Mr. Anderson made the transfer to Respondent's bank account as instructed. (TR 18:21)

10. Respondent's account at Arizona Federal Credit Union was not an IOLTA trust account, and was not an account of the firm. (TR 45:7)

11. In his message, Respondent also agreed to return to Mr. Anderson "all original documents"; Respondent failed to return Mr. Anderson's original parent handbook, the contents of which have apparently become an issue in pending litigation.

12. On January 24, 2009, Respondent provided Mr. Anderson with a memorandum on the firm's memorandum letterhead, detailing the results of his research and analysis; the client's initial payment apparently covered the fees for that work. (TR 34:17)

13. On March 2, 2009, the client wired an additional $7,500 to Respondent's bank account; Respondent sent $5,000 of that money to a Scottsdale law firm for its services as counsel of record for the client in pending litigation. (TR 18:23; 28:6-21)

14. Respondent's employment terminated on April 30, 2009 for reasons unrelated to this matter. (TR 46:15 through 47:5)

15. Complainant's law firm did not receive any portion of the money Mr. Anderson paid Respondent, and had no knowledge of Respondent's activities until Mr.

Anderson contacted Complainant on June 8, 2009, inquiring about the $2,500 unused portion of the fees he had paid to Respondent. (TR 46:3; 49:5 through 51:13)

16. After Complainant's efforts to contact Respondent were unsuccessful, the firm sent Mr. Anderson $2,500, even though it had not received any part of the money he had sent to Respondent. (TR 44:8-25)

17. By letter dated August 17, 2009, Bar Counsel notified Respondent of Complainant's inquiry and requested a response within 20 days; the letter further informed Respondent that he has a duty pursuant to Ariz. R. Sup. Ct., Rules 53(d) & (f) to cooperate with disciplinary investigations.

18. Respondent failed to respond to the letter from the Bar.

19. By letter to Respondent dated September 14, 2009, Bar Counsel again notified Respondent of Complainant's inquiry and requested a response within 10 days; the letter further informed Respondent again of his duty pursuant to Ariz. R. Sup. Ct., Rules 53(d) & (f) to cooperate with disciplinary investigations.

20. Respondent continued to fail to respond to the State Bar's requests for information.

**COUNT TWO (File no. 09-1820)**

**(Church)**

21. In March 2005 Respondent agreed to give Complainant some legal help in his child support case; in exchange, Complainant installed a concrete drive and sidewalks at Respondent's house. (TR 76:22 through 77:3; 75:4)

22. There was no writing describing the scope of the representation and the basis or rate of the fee and expenses for which the client was responsible.

23. There was no writing describing the terms of the transaction and whether it was fair and reasonable to the client, or advising the client of the desirability of seeking independent legal advice on the transaction, or reciting that the client gave informed consent to the essential terms of the transaction, including whether Respondent was representing the client in the transaction.

24. At a hearing on August 16, 2005, the Court issued a final judgment against Complainant in the amount of $9,103.30; this was a reduced amount from the original claim of $32,718.54 by the Arizona Department of Economic Security, in the interest of settlement.

25. On November 14, 2007, complainant gave Respondent a cashier's check for $9,103.30; at Complainant's insistence, Respondent signed an acknowledgement that the funds were to satisfy the judgment, not for attorney fees. (Exhibit 10, TR 59:6)

26. Respondent failed to transmit the funds to the Court or to deposit them into his trust account, and instead converted the funds to Respondent's own use. (Exhibit 16, TR 70:24 through 73:6)

27. Complainant's efforts to contact Respondent were unsuccessful.

28. As a result of Respondent's conduct, Complainant was exposed to further liability and legal action on the child support matter; the Arizona DES reverted to the larger amount originally claimed.[2]

29. By letter dated January 12, 2010, Bar Counsel notified Respondent of Complainant's inquiry and requested a response within 20 days; the letter further informed

[2] At the Aggravation/Mitigation Hearing Bar Counsel stated that the Bar could not establish that ADES "reverted to the larger amount previously claimed." (TR 73:10-24)

Respondent that he has a duty pursuant to Ariz. R. Sup. Ct., Rules 53(d) & (f) to cooperate with disciplinary investigations.

30. Respondent failed to respond to the letter from the Bar.

## CONCLUSIONS OF LAW

31. The State Bar has proven by clear and convincing evidence that Respondent's conduct in Count One violated Ariz. R. Sup. Ct., Rule 42, ERs 1.15 [Failing to Keep Safe Client's Property], 1.16 [Upon Termination of Representation Failing to Return Client's Documents and Failing to Refund the Unused Portion of an Advanced Fee , 8.1(b) [Knowingly Failing to Respond to a Lawful Demand for Information by a Disciplinary Authority] and 8.4(b), (c) & (d) [Engaging in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation, and Engaging in Conduct that is Prejudicial to the Administration of Justice] and Rules 43 [Failure to Maintain Proper Records for a Trust Account] and 53(d) & (f) [Refusing to Cooperate with Officials and Staff at the State Bar and Failing to Furnish Information or to Respond to an Inquiry or Request from Bar Counsel].

32. The State Bar has proven by clear and convincing evidence that Respondent's conduct in Count Two violated Ariz. R. Sup.Ct., Rule 42, ERs 1.2 [Failing to Abide by the Client's Decisions Concerning the Objectives of the Representation], 1.3 [Failing to Act with Reasonable Diligence and Promptness in Representing the Client], 1.4 [Failing to Communicate with the Client] , 1.15 [Failing to Keep Safe Client's Property], 1.16 [Upon Termination of Representation Failing to Give Reasonable Notice to the Client], 8.1(b) [Knowingly Failing to Respond to a Lawful Demand for Information by a Disciplinary Authority] and 8.4(b), (c) & (d) [Committing a Criminal Act that Reflects Adversely on

Respondent's Honesty, Trustworthiness or Fitness as a Lawyer in Other Respects, Engaging in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation, Engaging in Conduct that is Prejudicial to the Administration of Justice] and Rules 43 [Failing to Maintain Trust Account Records] and 53(d) & (f) [Refusing to Cooperate with Officials and Staff at the State Bar and Failing to Furnish Information or to Respond to an Inquiry or Request from Bar Counsel]. The evidence on Count Two (see Paragraph 23 of the Complaint) supports the conclusion that Respondent violated ER 1.5 by not providing a written fee agreement for Mr. Church that described the scope of the representation. Yet the Complaint (paragraph 32) did not list ER 1.5 as a violation and the Probable Cause Order on Count Two did not mention ER 1.5. The Hearing Officer concludes that Respondent was on notice by the specific language of the paragraph 23 of the Complaint that an ER 1.5 violation was being alleged. By not answering the Complaint the allegations are deemed admitted. Therefore, the Hearing Officer finds that ER 1.5 has been violated in Count Two.

## RESTITUTION

The Bar has established that the law firm of Morrill & Anderson is entitled to restitution of $2500 that the firm paid to Mr. Anderson because of Respondent's refusal to communicate with his client Mr. Anderson or his former firm, Respondent's refusal to return the unused portion of the advance fee and due to Respondent's fraudulent scheme to divert firm funds from the firm. (TR 13:19-24)

Larry Church is entitled to restitution of $9100 which he gave to Respondent to use to pay Mr. Church's child support obligation, but which Respondent converted to his own use. (TR 14:3-5)

## ABA STANDARDS

The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying these factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. The court and commission consider the *Standards* a suitable guideline. *In re Peasley,* 208 Ariz. 27, 33, 35, 90 P.3d 764, 770, 772 (2004); *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 and the existence of aggravating and mitigating factors. *In re Tarletz,* 163 Ariz. 548, 789 P.2d 1049 (1990); ABA *Standard* 3.0.

In this case there are multiple charges of misconduct. "The standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct. Either a pattern of misconduct or multiple instances of misconduct should be considered as aggravating factors." (*Standards, p.7; In re Redekar,* 177 Ariz. 305, 868 P.2d 319 (1994)).

*Standards* 4.11, 4.12, 4.41, 4.42, 5.11 (a) and (b), 5.12, 7.1 and 7.2 are applicable to Respondent's conduct.

ER 1.15

***Standard* 4.1 Failure to Preserve the Client's Property**

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

4.12: 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.

ERs 1.2, 1.3, 1.4:

***Standard* 4.4 Lack of Diligence**

4.41: Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client: or

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42: Suspension is generally appropriate when:

(a) a lawyer 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.

***Standard* 5.1 Failure to Maintain Personal Integrity**

5.11 Disbarment is generally appropriate when:

(a) a lawyer engaged in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation or theft; . . .

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when:

A lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

ERs 1.5 & 1.16:

***Standard* 7.0 Violations of other Duties Owed as a Professional**

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

7.2: 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.

**Duty Violated**

In Count One Respondent violated his duty to his client Mr. Anderson when Respondent failed to place the client's funds in a trust account and when he failed to return the client's $2500 which Respondent had not earned. Respondent also violated a duty to the public and the profession when he engaged in a scheme to defraud his law firm of the client's fee. (TR 14:9)

In Count Two, Respondent violated duties to his client Mr. Church when he took the client's cashier's check for $9103.30 and did not transmit the money to the Arizona Department of Economic Security for Mr. Church's child support obligation. (TR 15:24)

**Mental State**

In Count One, Respondent intentionally took $2500 from his client Mr. Anderson and did not do the work for that money. Respondent intentionally created a scheme to defraud his law firm of all of the money he obtained from Mr. Anderson.

In Count Two, Respondent intentionally converted the cashier's check of $9103.30 from his client Mr. Church to his own use. He intentionally did not transmit this money to the Arizona Department of Economic Security for payment of Mr. Church's child support obligation.

**Injury**

In Count One, Respondent caused actual injury to the law firm of Morrill & Aronson because the firm had to pay $2500 to Mr. Anderson when Respondent did not return unearned portion of the fee to Mr. Anderson. Respondent also caused actual injury to Mr. Anderson when Respondent would not allow himself to be contacted by the client.

In Count Two, Respondent caused actual injury to Mr. Church by stealing $9103.30 that Respondent was to transmit to the Arizona Department of Economic Security for his client's child support payment.

**Aggravating Factors**

*Standard* 9.22(b): Dishonest or selfish motive. In Count One, Respondent quoted a fee higher than what his firm was charging for his services at that time; Respondent failed to forward the fee to the firm to be held in trust for the benefit of the client; Respondent kept for

himself the unused portion of the fee he collected from the client. In Count Two, Respondent converted for his own use funds entrusted to him by the client to satisfy a child support judgment. Over the following months, Respondent continued to mislead the client into believing that Respondent was going to apply the funds in the client's best interest.

*Standard* 9.22(d): Multiple offenses. Respondent victimized Mr. Anderson and the law firm of Morrill & Aronson in Count One. In Count Two Respondent converted $9103.30 from his client Mr. Church.

*Standard* 9.22(e): Bad faith obstruction of the disciplinary proceeding. Respondent intentionally failed to comply with rules or orders of the discipline agency to keep current his contact information, and to furnish information on request. Respondent has not contacted the Bar about any of these charges. His mail has been returned undeliverable.

*Standard* 9.22(i): Substantial experience in the practice of law. Respondent was admitted in Arizona in 2001. As a result, he has been in practice for nine years.

**Mitigating Factors**

*Standard* 9.32(a): absence of a prior disciplinary record.

## PROPORTIONALITY

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, 660 P.2d 454, 458 (1983)). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604, 615, 691 P.2d 695 (1984).

*In re Brian D'Pietro* –(2004) – 04-0012: A client was to pay $1,500.00 to Mr. D'Pietro's firm. The client took the $1500.00 (cash) to Mr. D'Pietro. The lawyer converted $700.00 and gave the firm $800.00. He prepared a false receipt stating the client had paid $800.00 When the client questioned his account and showed a receipt for $1,500.00, an office assistant confronted the lawyer. The lawyer left the office and after returning he suddenly "found" $500.00 in his desk. He admitted his misconduct. He received a two year suspension and 2 years of probation. The Hearing Officer stated: "Although the actual or potential harm resulting from Respondent's conduct was small, an intentional conversion of funds is of great concern and merits a severe sanction." The Hearing Officer also found that the lawyer cooperated with the Bar and admitted his act was wrong. The Hearing Officer found the misconduct was an isolated act and that it was not premeditated.

*In re Jason Bryn,* 9/26/06 – SB 06-0127D. In the first count, Respondent was hired by the clients to pursue an employment claim against University Medical Center. He failed to do this, despite repeated requests from the clients. In the second matter, Respondent was paid $2,000.00 to file an EEOC complaint. He obtained a "right to sue" letter on behalf of the client, but did nothing further despite repeated attempts by the client to contact him. The third matter also involved an employment dispute. Respondent accepted a retainer, and then did nothing on behalf of the client despite the client's repeated attempts to communicate with him. In all three matters, Respondent did not respond to State Bar inquiries. Respondent had a previous suspension based on lack of diligence; lack of communication and lack of competence. The Hearing Officer determined that disbarment was the presumptive sanction; he also found numerous aggravating factors, but no mitigating ones.

*In re John Morrison* – (2008) – 06-1931 – This was an eight count complaint against a lawyer who had been suspended previously. Several counts involved conversion or theft of client funds. The Disciplinary Commission ordered full restitution of over $50,000. Respondent did not appear at the Aggravation-Mitigation hearing. He was disbarred.

*In re Stewart Hoover,* 4/20/06-SB–06-0027D. Respondent had previously been disbarred. In this matter there were three counts. In each count, Respondent undertook representation of the client and then later abandoned them without refunding any money they may have paid. In each instance, the Hearing Officer found that they sustained potentially serious adverse consequences. The Hearing Officer found disbarment appropriate, based on neglect and abandonment.

The following three cases are examples of attorneys who were disbarred even though they had not been previously disciplined:

*In re Garza* SB-09-0026-D involved a multi-count complaint where Respondent took clients' money, failed to represent the clients and refused to refund unearned fees. Respondent was disbarred and ordered to pay total restitution of about $76,000 to nine clients.

*In re Mikel* DC No. 07-1604 resulted in disbarment for Respondent who failed to perform services for clients and converted client property to his own use. Respondent had been suspended for failing to complete MCLE requirements and he continued to practice while on suspension.

*In re Slate* DC Nos. 07-0499 et al. involved Respondent refusing to return to the client any part of the client's $25,000 fee. The client had terminated Respondent's services because Respondent had failed to provide adequate representation.

## RECOMMENDATION

The Hearing Officer is aware that Respondent had not been sanctioned before the events in the instant matter. The Bar is recommending disbarment. At first blush the Hearing Officer thought that disbarment was too severe a sanction for the first disciplinary violation. However, a closer review of Respondent's conduct in this matter leads to the conclusion that disbarment is the appropriate consequence. The purpose of discipline is not to punish the lawyer but to protect the public. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985) The client public would not be protected if Respondent were permitted to resume practicing law within the next five years. Respondent in Count Two stole more than $9000 from his client Mr. Church. In Count One Respondent engaged in intentionally devious conduct to defraud the law firm from collecting the client's fee. Respondent had to lie several times to accomplish this scheme. First, Respondent deliberately omitted to tell the client Mr. Anderson that the retainer should be transmitted to the firm's trust account for Morrill & Aronson. Second, Respondent lied by telling Mr. Anderson to send the retainer to Respondent's trust account, when in fact Respondent knew that the Arizona Federal Credit Union account was not an IOLTA account. Third, Respondent did not inform his law firm that he was representing Mr. Anderson or that he had taken a retainer from the client. As part of the deception Respondent did not create a file in the law firm, or even a pleading backer. (TR 55:25 through 56:8, Exhibit 4 SBA000004) By telling the client to wire transfer the retainer to the Credit Union account, Respondent was not only diverting the funds, but making sure that his law firm would not find out about the scheme. The amount of effort that Respondent used in devising the scheme and to assure that he would not be caught tells this Hearing Officer something significant about Respondent's thinking. He is simply too dangerous to be permitted to victimize the client public.

Respondent's theft of Mr. Church's $9103.30 in Count Two was more egregious than the conduct in Count One. Respondent acknowledged that the cashier's check was for child support when he signed the receipt for the check. (Exhibit 11) Mr. Church testified that he had performed concrete work for Respondent in exchange for Respondent's legal work on the child support issue. (TR 75:4) Therefore, Respondent would not have been entitled to any portion of the $9103.30 as an attorney fee. The records of the Arizona Department of Economic Security revealed that the $9103.30 payment was never made for Mr. Church's child support obligation. (Exhibit 20) Respondent negotiated the cashier's check almost immediately after it was issued. (Exhibit 16, SBA000051) He simply pocketed the money and refused to be contacted by Mr. Church.

Respondent also abandoned both clients, Mr. Anderson and Mr. Church. Respondent either ignored the disciplinary process in this matter or deliberately did not provide the Bar with a current address. In either case, Respondent has made it perfectly clear that he does not want to concern himself with these proceedings. The deliberate indifference to this process would not be enough to justify a recommendation for disbarment. However, when the refusal to participate is coupled with the scheme to defraud a law firm, the theft of money from a client, and the abandonment of two clients, the Hearing Officer cannot justify any other recommendation for sanction than disbarment.

In spite of the fact that several of the cases cited by the Bar for proportionality are distinguishable because those cases involved disbarments where the attorney had been previously sanctioned, the Hearing Officer is guided in this case by the ABA Standards and the case law concerning protection of the public. The Commentary to *Standard* 4.11 (which states that "disbarment is generally appropriate when a lawyer knowingly converts client property

and causes injury or potential injury to a client") quotes from the opinion in *In re Wilson*, 81 N.J. 451, 409 A.2d 1153 (1979),

"Like many rules governing the behavior of lawyers this one has its roots in the confidence and trust which clients place in their attorneys. Having sought his advice and relying on his expertise, the client entrusts the lawyer with the transaction – including the handling of the client's funds. Whether it be a real estate closing, the establishment of a trust, the purchase of a business, the investment of funds, the receipt of proceeds of litigation, or any one of a multitude of other situations, it is common-place that the work of lawyers involves possession of their client's funds.... Whatever the need may be for the lawyer's handling of the client's money, the client permits it because he trusts the lawyer.... [T]here are few more egregious acts of professional misconduct of which an attorney can be guilty than the misappropriation of a client's funds held in trust. [citing *In re Beckman*, 79 N.J. 402, 404-05, 400 A.2d 792, 793 (1979)]. ... Recognition of the nature and gravity of the offense suggests only one result – disbarment (81 N.J. at 454-55, 409 A.2d at 1154-55)."

*Standard* 5.11 (b) is applicable as well to Respondent's conduct. It calls for disbarment if "a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice". For reasons set forth above the Hearing Officer finds that Respondent's conduct in this case seriously adversely reflects on his fitness to practice law. He cannot be trusted with clients' money. He has perpetrated a scheme to defraud a law firm. He has abandoned two clients. If a lawyer cannot be trusted he is not fit to practice law. The Hearing Officer finds that the presumptive sanction is disbarment. In weighing the aggravating factors against the one mitigating factor, the Hearing Officer concludes that the factors do not support a variation from the presumptive sanction.

## SANCTION

The Hearing Officer recommends that Respondent be sanctioned as follows:

1. Respondent shall be disbarred;
2. Respondent shall be ordered to pay restitution as follows: a) to Morrill & Aronson $2500, b) to Larry Church $9100. The Order of Restitution should require payment in 90 days from the date of the Order;
3. Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court and the Disciplinary Clerk's Office in this matter.

DATED this 23RD day of September, 2010.

Hon. Jonathan H. Schwartz /ja
Jonathan H. Schwartz
Hearing Officer 6S

Original filed with the Disciplinary Clerk
this 23RD day of September, 2010.

Copy of the foregoing mailed
this 23 day of September, 2010, to:

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/jsa