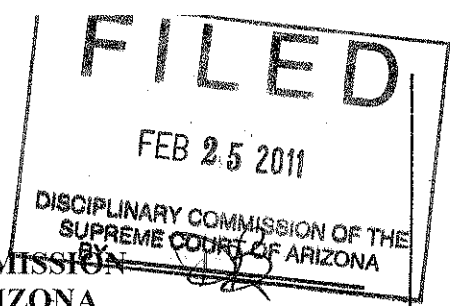




BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER) Nos. 09-1275, 10-0098, 10-0121,
OF THE STATE BAR OF ARIZONA) 10-0186, 10-0387, 10-0527,
) 10-0528, 10-0665, 10-1323
SAMUEL S. TIFFANY,)
Bar No. 018662) DISCIPLINARY COMMISSION
) REPORT
RESPONDENT.)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 22, 2011, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed January 7, 2011, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum ("Joint Memorandum") providing for a one (1) year suspension retroactive to November 30, 2010,¹ two (2) years of probation upon reinstatement with the State Bar's Member Assistance Program ("MAP"), Law Office Management Assistance Program ("LOMAP"), Trust Account Enhancement Program ("TAEPP"), and costs.

Decision

The seven members² of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law and recommendation for a one (1) year suspension retroactive to November 30, 2010, two (2) years of probation upon reinstatement (MAP, LOMAP and TAEPP), and costs of these

¹ The effective date of Respondent's interim suspension.
² Commissioner Belleau and Horsley did not participate in these proceedings.

1 disciplinary proceedings including any costs incurred by the Disciplinary Clerk's office.³

2 The terms of probation are as follows:

3 **Terms of Probation**

4 1. The probation period will begin to run at the time of reinstatement to the
5 practice of law;

6 2. Respondent shall contact the MAP director within thirty (30) days of the
7 reinstatement. Respondent shall submit to a MAP assessment. The MAP director shall
8 develop "Terms and Conditions of Probation" based on the assessment and the terms and
9 conditions shall be incorporated herein by reference;
10

11 3. Respondent shall contact the LOMAP director within thirty (30) days of the
12 reinstatement. The director of LOMAP shall develop "Terms and Conditions of
13 Probation" based on the assessment and terms and conditions shall be incorporated herein
14 by reference.
15

16 4. The LOMAP terms and conditions will include, but not be limited to, trust
17 account monitoring for a minimum of one year, to be extended, if needed, at the LOMAP
18 director's discretion. LOMAP will also specifically address complete and proper fee
19 agreement language; establishment of a proper IOLTA with Respondent's bank and
20 maintenance of all corresponding records required pursuant to trust account rules;
21 implementation of proper internal controls to safeguard client funds, and completion of
22 accurate monthly three-way reconciliations.
23

24
25
26
27 ³ A copy of the Hearing Officer's Report is attached as Exhibit A. The State Bar's costs total
28 \$2,488.35.

5. Respondent shall contact the TAEPP administrator within thirty (30) days of reinstatement to enroll in TAEPP. Respondent shall notify bar counsel upon successful completion of the class.

6. The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct., and a hearing may be held within thirty (30) days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

The Commission notes that Respondent's misconduct occurred while he was in therapy. However, the Commission is satisfied that the Tender will require Respondent to participate in formal reinstatement proceedings and demonstrate his rehabilitation and fitness to practice. The Commission therefore recommends that the Tender be accepted.

RESPECTFULLY SUBMITTED this 24 day of February 2011.

Pamela M. Katzenberg
Pamela M. Katzenberg, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 22 day of February, 2011.

Copy of the foregoing mailed
this 25 day of February, 2011, to:

Samuel S. Tiffany
Respondent
7321 North 16th Street
Phoenix, AZ 85020-5224

1 Harriet Bernick
2 Bar Counsel
3 State Bar of Arizona
4 4201 North 24th Street, Suite 200
5 Phoenix, AZ 85016-6288

6 Copy of the foregoing hand delivered
7 this 25 day of February, 2011, to:

8 Hon. Jonathan H. Schwartz
9 Hearing Officer 6S
10 1501 W. Washington, Suite 104
11 Phoenix, AZ 85007

12 by: 

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EXHIBIT A

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

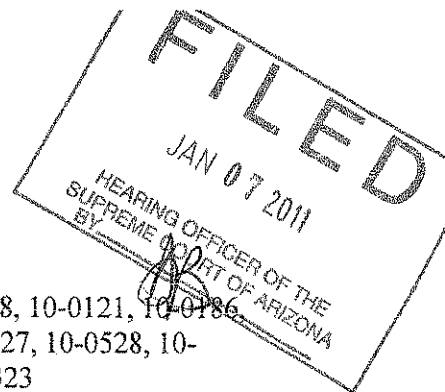
**IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,**

**SAMUEL S. TIFFANY,
Bar No. 018662**

Respondent.

Nos. 09-1275, 10-0098, 10-0121, 10-0186,
10-0387, 10-0527, 10-0528, 10-
0665 and 10-1323

HEARING OFFICER'S REPORT



PROCEDURAL HISTORY

A Complaint was filed in this matter on August 5, 2010. The Hearing Officer was assigned on August 13, 2010. The Initial Case Management Conference was held on August 30, 2010. On October 28, 2010 Settlement Officer Richard Goldsmith conducted a settlement conference. On November 2, 2010 the parties filed a Notice of Settlement. The Tender of Admissions and Agreement for Discipline by Consent and the Joint Memorandum in Support of Tender of Admissions were filed on November 22, 2010. A hearing on the Agreement was held on November 29, 2010. The parties have agreed to the sanction of a one year suspension to date from November 30, 2010 and upon reinstatement probation for two years to include participation in the Member Assistance Program (MAP), the Law Office Management Assistance Program (LOMAP) and the Trust Account Ethics Enhancement Program (TAEHP) and payment of the costs of the disciplinary proceeding. Respondent entered into a Stipulation for Interim Suspension to become effective November 30, 2010, which was adopted by the Supreme Court.

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 October 18, 1997.

COUNT ONE (File No. 09-1275/Everett)

2. Lidia Everett (Ms. Everett) and John Hager (Mr. Hager) hired Respondent on or about December 12, 2008, to provide legal advice and representation in connection with post judgment proceedings initiated against them in Maricopa Superior Court CV 2008-023589 *McKenzie Riverview LLC v. Hager etc. al.* (TR 6:21-24)

3. Respondent's Engagement Agreement, signed by Mr. Hager and Ms. Everett on December 15, 2008, stated the scope of representation and specifically identified the deadlines to file the Answer to the McKenzie Riverview Complaint as December 24, 2008, for Ms. Everett, and December 26, 2008, for Mr. Hager. (TR 6:25 through 7:4)

4. Ms. Everett and Mr. Hager paid a \$1000 retainer for the representation. (TR 7:5-7)

5. On or about December 30, 2008, Respondent contacted George U. Winney, counsel for McKenzie Riverview, and informed him that Respondent represented Ms. Everett and Mr. Hager. Respondent also inquired about McKenzie Riverview being amenable to a payment plan by Ms. Everett and Mr. Hager. Respondent informed Mr. Winney that he would contact him by the following Monday to further discuss the payment plan that could resolve the landlord's claims against Respondent's clients.

¹ The facts are found in the Tender of Admissions and Agreement for Discipline by Consent and in the transcript of the hearing.

6. On January 5, 2009, Respondent filed an Answer of behalf of Mr. Hager and Ms. Everett. Respondent also filed a Notice of Appearance and Request for Service as well as a Certificate of Agreement that the matter was subject to compulsory arbitration.

7. On January 6, 2009, Respondent advised Mr. Winney via email that he would contact him by the end of that week with the defendants' proposed payment plan/settlement offer.

8. Not having heard from Respondent, Mr. Winney emailed him on January 14, 2009, inquiring about the payment plan/settlement offer. However, Respondent failed to respond. (TR 7:12-17)

9. On February 14, 2010, Mr. Winney emailed Respondent inquiring whether a proposed payment plan/settlement offer was forthcoming or whether there should be discussion about stipulating to a judgment.

10. Respondent failed to file an Initial Disclosure Statement by its due date or to request an extension to file it later.

11. Not having received a response from Respondent, Mr. Winney sent another email to Respondent on February 17, 2010. Mr. Winney reminded Respondent that his client's Initial Disclosure Statement was due that day and informed Respondent that the plaintiff would be filing a Motion for Summary Judgment.

12. Respondent failed to respond to Mr. Winney's communication.

13. On February 26, 2009, Mr. Winney again emailed Respondent to advise him that his clients' Initial Disclosure Statement was past due and that Mr. Winney's client intended on filing a Motion for Summary Judgment.

14. Respondent failed to respond to the email and never filed an Initial Disclosure Statement. (TR 7:18-21)

15. On March 6, 2009, Mr. Winney emailed Respondent to inquire about available dates for an Arbitration hearing. Mr. Winney informed Respondent that the Arbitration hearing should be scheduled to allow sufficient time for the forthcoming Motion for Summary Judgment to be resolved in advance of the Arbitration hearing.

16. Respondent again failed to respond to Mr. Winney's email. (TR 7:22 through 8:1)

17. Mr. Winney filed a Motion for Summary Judgment on April 9, 2009. (TR 8:2)

18. On April 22, 2009, Respondent emailed Mr. Winney stating that the arbitrator advised him of a pending Motion for Summary Judgment and that Respondent had never received a copy of the motion. Respondent also stated that he would contact Mr. Winney that morning.

19. Mr. Winney provided Respondent with his availability in an emailed response to Respondent on the same day. Mr. Winney also asked his secretary to email a copy of the Motion for Summary Judgment and Statement of Facts to Respondent.

20. Respondent failed to call Mr. Winney that morning or any time thereafter.

21. On May 11, 2009, Respondent emailed Mr. Winney to inform him that he had not received a copy of the motion and his response was due that day. Respondent indicated that he would file the response the following day if Mr. Winney could provide a copy of the motion, which Mr. Winney personally emailed to Respondent shortly after receiving the request.

22. On May 13, 2009, Respondent again emailed Mr. Winney to request an extension until May 18, 2010, to respond to the Motion for Summary Judgment. Respondent indicated in

his email that he had just received the motion on May 11th and needed longer to respond than he had initially anticipated. Mr. Winney agreed to the requested extension.

23. Respondent never filed a response to the Motion for Summary Judgment. (TR 8:5)

24. The Court granted the Motion for Summary Judgment against Ms. Everett and Mr. Hager. (TR 8:6-9)

25. Ms. Everett and Mr. Hager left numerous messages for Respondent requesting their file and a final accounting on their case. However, Respondent failed to respond to these requests. (TR 8:10-14)

26. On July 13, 2009, Ms. Everett and Mr. Hager filed a charge against Respondent with the State Bar. Respondent was notified by letter of the investigation of the charge and asked to respond within twenty days.

27. On September 15, 2009, Respondent was notified by letter of his failure to respond to the State Bar's July 11, 2009, letter and was informed of the need to respond within ten days.

28. On October 21, 2009, Bar Counsel had a telephone conversation with Respondent wherein she informed Respondent of his failure to respond to Ms. Everett's charge and the need for a response to the bar charge prior to 1:00 p.m. on Monday October 26, 2009.

29. In his "informal response" dated October 26, 2009, Respondent stated that he was retained for the limited purpose of filing Answers to Complaints and that he attempted to negotiate a forbearance or payment plan. Respondent also informed the State Bar that, "my attempts to negotiate a forebearance agreement and prevent him from filing Motion for Summary

Judgment were not successful.” Respondent knew this statement was false when he made it. (TR 8:15-21)

30. On March 10, 2010 Bar Counsel mailed a letter to Respondent requesting additional information related to the Everett/Hager representation and provided a deadline of March 17, 2010 for Respondent’s response.

31. On March 24, 2010 Respondent contacted Bar Counsel to request an extension to respond. Bar counsel agreed to an extension to Friday, March 26, 2010.

32. Respondent failed to respond. (TR 8:15-25)

COUNT TWO (File No. 10-0098/Rana)

33. Mario Rana (“Mr. Rana”) met with Respondent on May 14, 2009, to discuss legal issues related to investments made in a restaurant partnership. (TR 9:1-5)

34. Mr. Rana paid Respondent \$3,000 as a retainer but was not provided with a written document memorializing the scope of the representation and the basis or rate of fees in this case. (TR 9: 6-10)

35. On July 17, 2009, Respondent filed a Complaint in Maricopa County Superior Court against Mr. Rana’s business partner, Stephanie Losasso (“Ms. Losasso”) and others. (TR 9:11-14)

36. Respondent informed Mr. Rana that after the Complaint and Answer were filed that there would be depositions scheduled in November and from there forward the litigation would move quickly.

37. In anticipation of the upcoming events previously described by Respondent, Mr. Rana began contacting Respondent during the first week of November to request updates on the scheduled deposition dates.

38. Respondent failed to respond to Mr. Rana's emails and calls until December 9, 2009. (TR 9:15-19)

39. In response to an email sent on December 9, 2009, Respondent informed Mr. Rana that he would "email a copy of the lawsuit" that night and that he had twice made calls to Brian Foster, Ms. Losasso's attorney, but had not heard back from Mr. Foster. Respondent also informed Mr. Rana that if he did not hear from Mr. Foster, Respondent would notice Ms. Losasso's deposition. (TR 9:20)

40. Respondent failed to notice Ms. Losasso's deposition or otherwise pursue Mr. Rana's litigation against Ms. Losasso. (TR 9:21-24)

41. On or about December 20, 2009, Mr. Rana began leaving detailed messages for Respondent in hopes that the information would bring a sense of urgency to the lawsuit. However, Respondent failed to respond to Mr. Rana's calls. (TR 9:25 through 10:2)

42. On January 19, 2010, Mr. Rana filed a charge against Respondent with the State Bar. (TR 10:3)

43. On February 8, 2010, the State Bar notified Respondent of the bar charge filed by Mr. Rana and requested a response within ten days of the date of the notification letter.

44. Respondent failed to respond. (TR 10:4-7)

45. On March 10, 2010, Bar Counsel notified Respondent of the investigation into Mr. Rana's bar charge and requested a response, along with a request for a copy of the client file, within ten days from the date of the letter.

46. Respondent failed to respond.

47. On June 9, 2010, Mr. Rana informed the State Bar that he was completely unaware that an Answer/Counterclaim had been filed or that there was an order scheduling the dismissal of his lawsuit.

48. Mr. Rana attempted to contact Respondent to ask him to respond to the lawsuit by June 10, 2010 but did not receive a response.

49. On June 11, 2010, Mr. Rana filed a *pro per* Motion to Extend Time to keep the matter on the inactive calendar. The Court granted Mr. Rana's motion. The matter was placed on the Inactive Calendar for dismissal on September 15, 2010 and eventually dismissed without prejudice by the Superior Court for lack of prosecution. (TR 10:8-15)

COUNT THREE (File No. 10-0121/Curosh)

50. In early March 2009, William Curosh, ("Mr. Curosh"), retained Respondent to litigate several collection matters for the Curosh Law Group, specifically:

- a. *Curosh & Williams Ltd. v. Bruvold*, Maricopa County Superior Court case number CV2009-019300;
- b. *Curosh & Williams Ltd. v. Zefillipo Investments, LLC*, Maricopa County Superior Court case number CV2008-026915;
- c. *Curosh & Williams Ltd. v. Lyscio*, Dreamy Draw Justice Court case number CC2006187994;
- d. *William Curosh Esq. v. Chadderton*, Dreamy Draw Justice Court case number CC2009362407;
- e. *William Curosh Esq. v. O'Brien*, Arcadia Biltmore Justice Court case number CC2007103131. (TR 10:20 through 11:9)

51. On April 6, 2009, Ms. Taylor, Mr. Curosh's paralegal, emailed Respondent and requested updates on the cases that Respondent was handling for the law firm since a review of the dockets did not reflect any activity.

52. Respondent informed Ms. Taylor on April 6, 2009, that the remaining cases would be filed the following day.

53. After not hearing from Respondent, Mr. Curosh sent a letter dated May 14, 2009, requesting status. Respondent responded by assuring Mr. Curosh that all cases were being handled. (TR 11:10-14)

54. On October 27, 2009, Mr. Curosh sent to Respondent a letter expressing his displeasure at the lack of communication. Mr. Curosh also informed Respondent that Ms. Bruvold, a defendant in one of the cases, had passed away, therefore corrective action needed to be taken. (TR 11:15-20)

55. During a visit to Mr. Curosh's office on October 27, 2009, Respondent informed Mr. Curosh that he was waiting on the Court to sign a Judgment in the *Bruvold* matter.

56. On several occasions throughout November and December 2009, Mr. Curosh requested that his case files be returned. Respondent finally returned the Bruvold, Chadderton and O'Brien files on February 1, 2010.

57. On November 12, 2009, Mr. Curosh requested that Respondent execute Stipulations to Withdraw, but Respondent failed to do so. (TR 12:1-4)

58. Based on information and belief, little to no substantive work of any value was done by Respondent on the cases.

59. On January 11, 2010, Mr. Curosh sent Respondent a letter to inform him that he had learned that a Judgment of Dismissal had been filed in the *Zefillipo* matter. Mr. Curosh

demanded that the *Zefillipo* file be made ready for pick up by Mr. Curosh on January 15, 2010. (TR 12:9-16)

60. On February 17, 2010, the Court dismissed the *Zefillipo* lawsuit. Mr. Curosh hired another attorney to file a Motion for Relief from Judgment of Dismissal in order to pursue reinstatement of the case. (TR 12:17-22)

61. Mr. Curosh filed a bar charge against Respondent on January 20, 2010. (TR 12:23)

62. Respondent was asked to respond to the charge by letter dated January 27, 2010.

63. Respondent failed to respond. (TR 12:23 through 13:1)

64. On March 10, 2010 Bar Counsel notified Respondent of the investigation into Mr. Curosh's charge and requested a response, along with a request for a copy of the client file, within ten days from the date of the letter.

65. Respondent failed to respond.

COUNT FOUR (File No. 10-0186/Chamley)

66. Gary Chamley ("Mr. Chamley") retained Respondent in January 2009 to obtain a refund of a rent payment on a vacation home. (TR 13:2-5)

67. Mr. Chamley signed Respondent's Engagement Agreement on January 22, 2009, and paid a \$1,000 retainer. (TR 13:6-9)

68. Respondent failed to respond to Mr. Chamley's multiple telephone calls made to Respondent in order to obtain a status on his case. (TR 13:10-13)

69. While in Arizona during the week of March 30, 2009, Kelly Rud ("Ms. Rud"), Mr. Chamley's daughter, left a message for Respondent in an attempt to get a status on her father's case. (TR 13:14)

70. On April 13, 2009, Ms. Rud sent Respondent a fax asking whether he had sent a letter of representation to the landlord since they continued to communicate directly with Mr. Chamley. Ms. Rud asked Respondent to contact her or Mr. Chamley regarding the work Respondent was retained to do for her father.

71. On June 12, 2009, Ms. Rud faxed Respondent another request for a progress report since the last communication with Respondent had been two months prior.

72. On July 28, 2009, Respondent informed Ms. Rud that he filed the lawsuit two days earlier and that the landlords had twenty days to respond. Respondent knew that this statement was false as he had not done any work on the case, had not had any communications with the landlords, and had not filed a lawsuit on behalf of Mr. Chamley. (TR 13:23 through 14:4)

73. Not having heard from Respondent Ms. Rud left telephone messages for Respondent on September 2, 2009, and in October 2009.

74. On January 4, 2010 Ms. Rud faxed Respondent another status request and demanded a refund of the retainer fee as well as an itemized expense report.

75. Respondent failed to respond. (TR 14:5-12)

76. Mr. Chamley filed a charge with the State Bar against Respondent on February 1, 2010. (TR 14:13)

77. Bar Counsel informed Respondent of Mr. Chamley's charge by letter dated March 10, 2010. The letter requested a response and a copy of the client file within ten days.

78. Respondent failed to respond. On June 17, 2010, Bar Counsel informed Respondent that he still had not provided a copy of the response to Mr. Chamley's bar charge. (TR 14:15)

79. Respondent provided bar counsel with a copy of Mr. Chamley's client file on the morning of Respondent's deposition, June 18, 2010. (TR 14:15-19)

COUNT FIVE (File No. 10-0387/Kunselman)

80. On February 2, 2009, Tim Kunselman ("Mr. Kunselman") spoke to Respondent regarding possible representation of his company Sun Valley Towing in seeking damages against Bridge Terminal Transport, Inc. ("BTT"). (TR 14:20-24)

81. Mr. Kunselman signed an Engagement Agreement on February 5, 2009 and paid Respondent a \$300 retainer. (TR 14:25 through 15:2)

82. Respondent filed the Complaint against BTT on March 4, 2009 in Maricopa County Superior Court. (TR 15:3-6)

83. Respondent attempted to negotiate a settlement with BTT for a short time and then advised Mr. Kunselman that he would no longer be assisting him in negotiating a settlement with BTT but would remain as attorney of record so when a settlement was reached Respondent would accept the settlement check and would subtract his fees prior to remitting the balance to Mr. Kunselman. (TR 15:7-14)

84. Eventually, Mr. Kunselman negotiated a settlement with BTT's attorneys on his own behalf, without assistance from Respondent. (TR 15:15-18)

85. On April 22, 2009, Mr. Kunselman paid Respondent his outstanding fees and received the balance of the \$15,000 settlement. (TR 15:19)

86. Mr. Kunselman filed a charge with the State Bar against Respondent on June 5, 2009. Mr. Kunselman's charge involved allegations that Respondent was not diligent, Respondent failed to answer letters or phone calls, Respondent had a conflict of interest,

Respondent improperly handled money, Respondent failed to keep him informed of the progress of the case and Respondent did not follow instructions. (TR 15:23 through 16:5)

87. The State Bar's Attorney Consumer Assistance Program ("A/CAP") notified Respondent of the charge on June 12, 2009. ACAP Bar Counsel Patricia Ramirez ("Ms. Ramirez") asked Respondent to submit a response to Mr. Kunselman's bar charge.

88. In a response letter dated June 25, 2009, Respondent stated that he had been responsible for the settlement of the lawsuit against BTT. (TR 16:11-16)

89. Mr. Kunselman disagreed with Respondent's version of the events and informed Ms. Ramirez that he had been the one who had settled the lawsuit with BTT's counsel. (TR 16:17-21)

90. When questioned by Ms. Ramirez about his statement that he settled the lawsuit with BTT, Respondent then admitted to Ms. Ramirez that Mr. Kunselman had negotiated the settlement. (TR 16:22 through 17:1)

91. Respondent knew that the statement he made in response to the bar charge that settled the BTT litigation was false. (TR 16:22 through 17:5)

COUNT SIX (File No. 10-0527/Macklin)

92. In February 2009, Michelle and Jay Macklin, ("the Macklins"), retained Respondent to represent them in a landlord-tenant matter involving the termination of a lease. (TR 17:6-10)

93. Respondent failed to provide a written document to the Macklins memorializing the scope of representation and the basis or rate of fees within a reasonable time frame in this case. (TR 17:11-15)

94. Respondent's attempts to settle the dispute with the Macklins' landlord were unsuccessful and a two count Complaint alleging a violation of the Arizona Landlord Tenant Act and misrepresentation was filed in Maricopa County Superior Court on March 27, 2009. The case was to be tried before an Arbitrator. (TR 17:16-24)

95. The opposing party hired counsel and filed a Counterclaim and a Motion to Dismiss. The misrepresentation count was subsequently dismissed.

96. Respondent noticed the depositions of the opposing party on two occasions and then after discussing the issue with opposing counsel decided that it would not be worth the expense to depose them. (TR 18:5-9)

97. A number of settlement offers were proposed, including a "walk away" offer, and were discussed with the Macklins. Ms. Macklin refused this offer because she wanted the landlord to be responsible for her attorneys' fees. (TR 18:10-14)

98. Before the Arbitration Hearing, Respondent failed to timely disclose documents to the opposing party and the Arbitrator refused to admit them as a sanction. (TR 18:15-18)

99. The Arbitration occurred on December 3, 2009, with Respondent appearing for the Macklins. (TR 18:19-21)

100. On December 4, 2009, an Arbitration Award was issued. The Arbitrator ruled against the Macklins and awarded \$1,588.50 to the opposing party and also awarded approximately \$18,163.50 in attorneys fees and \$223 in costs. (TR 18:22 through 19:2)

101. Respondent failed to inform the Macklins about the deadline for filing the appeal which was February 23, 2010. As a result, the Macklins failed to file a Notice of Appeal and therefore, the Arbitration Award was converted to a Judgment. (TR 19:3-12)

102. The Macklins hired other attorneys, Dax Watson and Chad Koffer, who eventually settled the case. (TR 19:13-15)

103. Throughout the course of the case, Respondent did not timely respond to voicemails or emails to the Macklins. (TR 19:16-20)

COUNT SEVEN (File No. 10-0528/Jackson)

104. On March 23, 2010, Stephanie Jackson, filed a bar charge against Respondent regarding a dispute she was having with her neighbors regarding the height of a backyard fence. Respondent was representing the neighbors. (TR 19:21 through 20:2)

105. On April 1, 2010, the State Bar sent Respondent the bar charge and requested a response. Respondent was required to send a response to the bar charge within 10 days or by April 11, 2010. (TR 20:3)

106. Bar Counsel also left a message for Respondent on April 1, 2010, notifying him about the receipt of the bar charge involving this case.

107. Respondent failed to respond to the bar charge in this case. (TR 20:6-8)

COUNT EIGHT (File No. 10-0665/State Bar)

108. On October 8, 2009, Respondent was notified by letter that his Mandatory Continuing Legal Education Affidavit ("MCLE") had not been received by the State Bar. (TR 20:9-13)

109. On January 5, 2010, Respondent was notified by certified letter by the State Bar that his name was going to be presented to the Board of Governors for summary suspension due to his failure to comply with his MCLE requirement. Respondent signed for this letter on January 6, 2010. (TR 20:14-19)

110. On February 18, 2010, Lori Daily, a State Bar staff member, emailed Respondent to call her regarding the suspension letter sent to him on January 5, 2010. Lori Daily also left Respondent a voice-mail on this date. (TR 20:20-25)

111. On February 26, 2010, Respondent was placed on administrative suspension from the practice of law for failure to comply with the MCLE requirement. (TR 21:1-5)

112. On February 26, 2010, Respondent was notified by certified letter by the State Bar that he was summarily suspended and that he was no longer eligible to practice Arizona law. (TR 21:6-9)

113. On April 9, 2010, Lori Daily called Respondent and informed him that he was summarily suspended. (TR 21:10-13)

114. Respondent was reinstated by the State Bar on April 13, 2010. (TR 21:14-16)

115. On April 2, 2010, Respondent engaged in the unauthorized practice of law by filing an Answer and Counterclaim in *Stephanie Jackson v. Williams et al.*, CV 2010-007309. (TR 21:17-23)

116. On April 12, 2010, Respondent engaged in the unauthorized practice of law by filing an Answer on behalf of the defendants in *Curosh & Williams, LTD, v. Samuel Tiffany et. al.* CV2010-000179 indicating that he was the attorney for the Defendants. Respondent could answer for himself, but he could not represent his wife or the company Samuel Tiffany Ltd. (TR 23:13 through 25:7)

COUNT NINE (File Nos. 09-1275, 10-0098, 10-0121, 10-0186)

117. On March 10, 2010, Bar Counsel mailed letters to Respondent requesting additional information related to the Everett/Hager investigation and notifying Respondent of new inquiries submitted by Mario Rana, William Curosh, and Gary Chamley.

118. Bar counsel requested that Respondent provide a response to the Everett/Hager matter by March 17, 2010.

119. Bar counsel requested responses to the Rana, Curosh and Chamley inquiry letters within 10 days of March 10, 2010. (TR 25:8-12)

120. On April 1, 2010, Bar Counsel mailed a reminder letter to Respondent regarding the additional request for information in Everett as well as the requests for responses on the Rana, Curosh, and Chamley matters. In addition, bar counsel informed Respondent of the receipt of two new charges submitted by Jay Macklin and Stephanie Jackson. (TR 25:13)

121. Bar counsel informed Respondent that he if failed to provide responses to all six cases by April 11, 2010, she would seek an Order of Probable Cause for his failure to respond. (TR 25:16-20)

122. On April 21, 2010, Bar counsel's assistant, Michelle Ball, left a voice message for Respondent asking for a return telephone call regarding the discipline cases. However, Respondent failed to return the call or otherwise respond. (TR 25:21-24)

123. Due to Respondent's lack of cooperation and failure to respond, Bar counsel scheduled Respondent's deposition and served Respondent with a Subpoena Duces Tecum for Respondent's client files for Everett, Chamley, Curosh, Kunselman, Macklin and Jackson. (TR 25:25 through 26:5)

124. The State Bar's investigator served Respondent with a subpoena to appear at deposition and a subpoena duces tecum on May 12, 2010, at Respondent's office. (TR 26:24 through 27:2)

125. The subpoena duces tecum required Respondent to deliver the subpoenaed records to the State Bar by May 28, 2010. (TR 27:2-5)

126. Respondent failed to deliver the subpoenaed documents in a timely manner. (TR 27:9-11)

127. By letter dated June 8, 2010, Bar counsel informed Respondent of the possible consequences to his failure to timely provide the subpoenaed records.

128. Respondent requested a continuance of the June 14, 2010, deposition date due to a court conflict. Bar counsel granted a continuance to June 18, 2010.

129. Respondent assured Bar counsel that he would provide the subpoenaed files by Friday, June 11, 2010. (TR 27:12-15) However, Respondent did not provide copies of some of the subpoenaed documents until June 15, 2010, and other information was not provided until the day of the deposition, June 18, 2010. (TR 27:16-21)

CONDITIONAL ADMISSIONS/CONCLUSIONS OF LAW

Based on the conditional admissions set forth below, the findings of fact and the evidence at the hearing, the Hearing Officer concludes that the State Bar has proven by clear and convincing evidence that Respondent violated the ethical rules listed after each Count below.

COUNT ONE (File No. 09-1275/Everett)

Respondent conditionally admits that he failed to competently represent his client, failed to abide by his clients' decisions concerning the objectives of the representation, failed to act with reasonable diligence and promptness, failed to keep his clients informed and failed to comply with reasonable requests for information. Respondent conditionally admits that he failed to return the clients' file and failed to provide an accounting upon request, failed to expedite the clients' litigation, knowingly made a false statement of fact in connection with the investigation of this matter and engaged in conduct prejudicial to the administration of justice.

Respondent conditionally admits that his conduct as described in this count violated Rule 42, Ariz. R. Sup. Ct., specifically, ERs1.1, 1.2, 1.3, 1.4, 1.16(d), 3.2, 8.1(a) and 8.4(d).

COUNT TWO (File No. 10-0098/Rana)

Respondent conditionally admits that he failed to competently represent his client, failed to abide by his client's decisions concerning the objectives of the representation, failed to act with reasonable diligence and promptness, failed to keep his client reasonably informed about the status of the litigation and failed to comply with reasonable requests for information. Respondent conditionally admits that he failed to communicate in writing the scope of the representation and his basis or rate of fees, failed to return the client's file, failed to provide an accounting upon the client's request, failed to expedite the client's litigation and engaged in conduct prejudicial to the administration of justice.

Respondent conditionally admits that his conduct as described in this count violated Rule 42, Ariz. R. Sup. Ct., specifically, ERs1.1, 1.2, 1.3, 1.4, 1.5(b), 1.16(d), 3.2 and 8.4(d).

COUNT THREE (File No. 10-0121/Curosh)

Respondent conditionally admits that he failed to competently represent his client, failed to abide by his client's decisions concerning the objectives of the representation, failed to act with reasonable diligence and promptness, failed to keep his client reasonably informed about the status of the litigation and failed to comply with reasonable requests for information. Respondent conditionally admits that he failed to return the client's file, failed to provide an accounting upon the client's request, failed to expedite the client's litigation and engaged in conduct prejudicial to the administration of justice.

Respondent conditionally admits that his conduct as described in this count violated Rule 42, Ariz. R. Sup. Ct., specifically, ERs1.1, 1.2, 1.3, 1.4, 1.16(d), 3.2 and 8.4(d).

COUNT FOUR (File No. 10-0186/Chamley)

Respondent conditionally admits that he failed to competently represent his client, failed to abide by his client's decisions concerning the objectives of the representation, failed to act with reasonable diligence and promptness, failed to keep his client reasonably informed about the status of the litigation and failed to comply with reasonable requests for information. Respondent conditionally admits that he failed to return the client's file, failed to provide an accounting upon the client's request, failed to expedite the client's litigation and engaged in conduct prejudicial to the administration of justice.

Respondent conditionally admits that his conduct as described in this count violated Rule 42, Ariz. R. Sup. Ct., specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.16(d), 3.2 and 8.4(d).

COUNT FIVE (File No. 10-0387/Kunselman)

Respondent conditionally admits that a statement he made in response to the State Bar charge indicating that he had settled the BTT litigation for his client Mr. Kunselman was a false statement.

Respondent conditionally admits that his conduct as described in this count violated Rule 42, Ariz. R. Sup. Ct., specifically, ER 8.1(a).

COUNT SIX (File No. 10-0527/Macklin)

Respondent conditionally admits that he failed to competently represent his client, failed to abide by his client's decisions concerning the objectives of the representation, failed to act with reasonable diligence and promptness, failed to keep his client reasonably informed about the status of the litigation and failed to comply with reasonable requests for information. Respondent conditionally admits that he failed to communicate in writing the scope of the representation and his basis or rate of fees, failed to return the client's file, failed to provide an

accounting upon the client's requests and engaged in conduct prejudicial to the administration of justice.

Respondent conditionally admits that his conduct as described in this count violated Rule 42, Ariz. R. Sup. Ct., specifically, ERs 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.16(d) and 8.4(d).

COUNT SEVEN (File No. 10-0528/Jackson)

Respondent conditionally admits that he initially failed to respond to the State Bar charge or cooperate with the State Bar's investigation.

Respondent conditionally admits that his conduct as described in this count violated Rules 53(d) and (f), Ariz. R. Sup. Ct.

COUNT EIGHT (File No. 10-0665/State Bar)

Respondent conditionally admits that he knew he was summarily suspended from the practice of law in Arizona at the time he filed Answers on behalf of himself and others in *Stephanie Jackson v. Williams, et al.*, CV2010-007-309 and in *Curosh & Williams v. Tiffany, et al.*, CV2010-000179.

Respondent conditionally admits that his conduct as described in this count violated Rule 42, Ariz. R. Sup. Ct., specifically, ER 5.5.

COUNT NINE (File Nos. 09-1275, 10-0098, 10-0121, 10-0186)

Respondent conditionally admits that he failed to cooperate with the investigation into the Rana, Curosh, Chamley, and Everett/Hager matters and failed to respond in a timely manner to lawful demands for information from bar counsel.

Respondent also failed to deliver subpoenaed documents in a timely manner.

Respondent conditionally admits that his conduct as described in this count violated Rule 42, Ariz. R. Sup. Ct., ER 8.1(b), and Rules 53(d) and (f), Ariz. R. Sup. Ct.

(File No. 10-1323/Trust Account)

No Formal Complaint has been filed in State Bar File No. 10-1323 (Trust Account). Respondent conditionally admits that throughout the representation of clients (Everett, Rana, Curosh, Chamley, Kunselman and Macklin) he failed to establish and maintain a client trust account separate from his business account. Respondent also conditionally admits that refunds of retainers to clients Everett, Rana and Chamley were paid out from Respondent's business operating account since no funds were deposited and maintained in a client trust account, in violation of Rule 43, Ariz. R. Sup. Ct. (TR 28:3-17)

Respondent conditionally admits that this conduct violated Rule 43, Ariz. R. Sup. Ct.

RESTITUTION

Respondent has already refunded fees paid by clients Everett/Hager (Count One), client Rana (Count Two); client Chambley (Count Four) and has settled a malpractice case filed against him by client Curosh (Count Three). (TR 6:2-5) Regarding clients Macklin (Count Six) and Kunselman (Count Five), Respondent did work for these clients and, therefore, no fees will be refunded as part of a restitution agreement. (TR 6:6-8) However, Respondent agrees to participate in the State Bar Fee Arbitration program with clients Macklin (Count Six) and Kunselman (Count Five). Clients Macklin (Count Six) and Kunselman (Count Five) are required to initiate Fee Arbitration Petitions. (TR 6:8-12) Counts Seven, Eight and Nine do not involve fee disputes with clients and, therefore, restitution is not an issue. Restitution is not involved in the trust account case (10-1323).

ABA STANDARDS²

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.

Duty, Mental State and Injury

As reflected in the Tender of Admissions Respondent engaged in professional misconduct that violated his duties to his clients, the legal system and the public, as well as other duties owed as a professional. (TR 28:23 through 29:3) Respondent's conduct was "knowingly" and he caused actual injury to his clients. (TR 29:4-23)

Applicable Standard

Given the conduct in this matter, the most applicable *Standard* is 4.42 "Lack of Diligence". The Hearing Officer agrees with the parties that the most serious misconduct

² The material in this section comes from the Joint Memorandum in Support of the Tender of Admissions unless otherwise noted.

involves Respondent's lack of diligence and Respondent's failure to keep his clients informed and his failure to comply with reasonable request for information. (TR 29:24 through 30:9)

Standard 4.4 Lack of Diligence

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.

Having determined the presumptive sanction is suspension, the Hearing Officer next considered the applicable aggravating and mitigating circumstances as set forth in the *Standards* and agrees with the parties that the following factors apply in this case:

Aggravating Factors:

Standard 9.22(c) Pattern of Misconduct: Respondent failed to diligently address and pursue the clients' legal matters in several matters referenced in the complaint.

Standard 9.22 (d) Multiple Offenses: See 9.22 (c) mentioned above.

Standard 9.22(e) Bad Faith Obstruction of the Disciplinary Proceeding: Although Respondent eventually cooperated with bar counsel, Respondent initially failed to respond to many of the bar charges and all discovery requests during the litigation of these disciplinary proceedings.

Standard 9.22 (f) Submission of False Evidence: Respondent made false statements to bar counsel, Patricia Ramirez, during the investigation of the Kunselman matter. In addition, Respondent consistently would inform bar counsel that he would take certain actions or provide requested information but would fail to follow through.

Standard 9.22 (i) Substantial Experience in the Practice of Law: Respondent has been admitted to the practice of law in Arizona since 1997.

Mitigating Factors:

Standard 9.32 (a) Absence of Prior Disciplinary Record: Respondent has had no disciplinary charges since his admission to the practice of law in Arizona in 1997.

Standard 9.32 (b) Absence of Dishonest or Selfish Motive: Respondent contends that he did not ultimately gain or profit financially or otherwise from his conduct. As mentioned, Respondent has already refunded fees paid by clients Everett/ Hager (Count One); client Rana (Count Two); client Chamley (Count Four) and has settled a malpractice case filed against him by client Curosh (Count Three). Regarding clients Macklin (Count Six) and Kunselman (Count Five), Respondent did work for these clients and therefore, no fees will be refunded as part of a restitution agreement. However, Respondent agrees to participate in the State Bar Fee Arbitration program with clients Macklin (Count Six) and Kunselman (Count Five).

Standard 9.32 (c) Personal or Emotional Problems: In or around January of 2009, Respondent began suffering from a tremendous amount of personal turmoil, stress, anguish, and exhaustion brought on by a pending foreclosure on his personal residence, separation of his wife of 13 years, and the diagnosis of his father's cancer, which had spread from his prostate to his spine and ribs. Respondent does not make any excuses for his conduct, admits his mistakes and acknowledges that the factors listed above created a situation in which Respondent simply lacked the physical capacity and mental wherewithal to sufficiently handle the most simple and routine tasks. (See attached sealed information from Dr. Jones, Respondent's psychiatrist (Exhibit 1), and his marriage counselor, Marcia Cortese (Exhibit 2)).³ In sum, Respondent's misconduct was a

³ At the request of the State Bar and Respondent this information has been sealed from the public pursuant to Rule 70(g), Ariz. R. Sup. Ct. See Protective Order, November 29, 2010.

direct result of family issues and his condition that he was attempting to address during the representation of these clients.⁴

Standard 9.32 (l) Remorse: Respondent sincerely regrets his actions and the anxiety, stress, and difficulties they have caused his former clients. The Hearing Officer noted that throughout the hearing Respondent did not attempt to minimize or rationalize his conduct. In this Hearing Officer's two years of experience Respondents, even in Agreement cases such as this, tend to back away from accepting full responsibility for their actions. This was not the case with Respondent. There is not one paragraph in the Tender of Admissions that is even equivocal as to Respondent's conduct. Although his conduct is certainly egregious enough to warrant a one year suspension, the fact that his remorse is so complete is a good sign that his rehabilitation should hopefully be successful.

In evaluating the aggravating and mitigating factors, the Hearing Officer agrees with the parties that a one year suspension retroactive to November 30, 2010, with two years of probation upon reinstatement is the appropriate sanction in this matter.

PROPORTIONALITY ANALYSIS⁵

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).

⁴ The Joint Memorandum described the Respondent's condition. Out of an abundance of caution for Respondent's privacy the Hearing Officer has substituted the word "condition" in this sentence.

⁵ The material in this section comes from the Joint Memorandum unless otherwise noted.

In *In re Forsyth*, SB 08-0034-D, (2008). Respondent engaged in a pattern of neglect with respect to the handling of client matters by failing to adequately communicate and diligently represent them. Respondent failed to perform legal services for which he was retained, failed to surrender client property and documents, failed to return unearned fees and in two instances, failed to respond to the State Bar's investigations. Respondent received a six month suspension and two years of probation with fee arbitration for violations of ERs 1.2(a), 1.3, 1.4(a), 1.4(b), 1.16(d), 8.1(b), and Rules 53(d) and (f), Ariz. R. Sup. Ct. Aggravating factors were: prior disciplinary offenses; a pattern of misconduct; and substantial experience in the practice of law. Factors found in mitigation were: absence of a dishonest or selfish motive; personal or emotional problems; character or reputation; and remorse. Respondent's mental state was found to be "knowingly" and his conduct caused potential injury to the clients.

In *In re Bjorgard*, SB 07-0081-D et al., (2007) Respondent received a two year suspension. Respondent failed to pursue his client's cases diligently and failed to keep in contact with his clients in eight separate cases. This caused several cases to be dismissed causing harm to the clients. Respondent failed to appear at a court ordered hearing regarding his failure to pay a sanction. Respondent also failed to cooperate with the State Bar. Respondent was found to have violated ERs 1.2, 1.3, 1.4, 1.16(d), 3.2, 3.4, 8.1(b), 8.4 (c), and Rules 53 (c) and (f). Factors found in aggravation were: a pattern of misconduct; multiple offenses; and bad faith obstruction of the disciplinary proceeding. Factors found in mitigation were: absence of a prior disciplinary record; personal and emotional problems; and imposition of other penalties or sanctions.

In *In Re Weich*, SB-07-0156 (2007). Respondent received a two-year suspension with two years of probation (LOMAP) and restitution for violations of ERs 1.1, 1.2, 1.3, 1.4, 1.5, and Rule 53(d), (e), and (f). Respondent failed to diligently represent clients, failed to adequately

communicate with multiple clients, failed to return phone calls from clients, and failed to abide by clients' requests. Respondent further failed to cooperate and respond to the State Bar's investigation. The court found in aggravation the following factors: a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding; substantial experience in the practice of law; and indifference to making restitution. In mitigation the court considered that Respondent did not have a prior disciplinary record.

The above listed cases all involved patterns of misconduct and all relate to failures to abide by the clients decisions, lack of diligent representation of clients, and failure to communicate with clients.

Based on the *Standards* and case law, the Hearing Officer and the parties believe that a one year suspension and two years probation upon reinstatement are within the range of appropriate sanctions in this case and will serve the purposes of lawyer discipline. A one-year period of suspension will allow Respondent to establish a sustained period of rehabilitation and fitness to practice prior to being reinstated. The sanction will serve to protect the public, instill confidence in the public, deter other lawyers from similar misconduct, and maintain the integrity of the bar.

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 it is the prerogative of the Disciplinary Commission and the Supreme Court to determine the appropriate sanction, the Hearing Officer asserts that the objectives of discipline will be met by the imposition of the proposed sanction of one year suspension, effective November 30,

2010, probation for two years following reinstatement with MAP, LOMAP and TAEPP terms and payment of the costs of the disciplinary proceedings.

Respondent's personal and emotional problems were significant. The sealed material explains his challenges.⁶ Although Respondent has never been sanctioned his violations involved numerous clients in 2009 and 2010. He lied in several instances to cover up the fact that he simply was not doing the work for clients or to make himself look better to Bar Counsel. (See Count One paragraph 29, Count Four paragraph 72 and Count Five paragraph 91) By stipulating to an Interim Suspension Respondent has recognized that it is not safe for his clients that he continue to practice law at present. A year away from practice effective from his Interim Suspension will protect the public and allow Respondent time to work on his personal issues. If he is reinstated the probation will further assist him in maintaining a competent and trustworthy practice.

SANCTION

The Hearing Officer recommends that Respondent should be sanctioned as follows:

1. Respondent shall be suspended for one year, effective November 30, 2010.
2. Respondent will be placed on probation for a period of two years, under the following terms and conditions:
 - a. The probation period will begin to run at the time of reinstatement to the practice of law;
 - b. Respondent shall contact the director of the State Bar's Member Assistance Program (MAP) within 30 days of the reinstatement. Respondent shall submit to

⁶ At the request of Bar Counsel the Hearing Officer has sealed a portion of the transcript of the hearing, from TR 37:7 through 48:9.

a MAP assessment. The director of MAP shall develop "Terms and Conditions of Probation" based on the assessment and the terms and conditions shall be incorporated herein by reference;

c. Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP) within 30 days of the reinstatement. The director of LOMAP shall develop "Terms and Conditions of Probation" based on the assessment and terms and conditions shall be incorporated herein by reference.

d. The LOMAP terms and conditions will include, but not be limited to, trust account monitoring for a minimum of one year, to be extended, if needed, at the LOMAP director's discretion. LOMAP will also specifically address complete and proper fee agreement language; establishment of a proper IOLTA with Respondent's bank and maintenance of all corresponding records required pursuant to trust account rules; implementation of proper internal controls to safeguard client funds, and completion of accurate monthly three-way reconciliations.

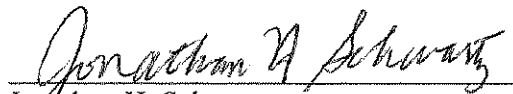
e. Respondent shall contact the Trust Account Ethics Enhancement Program (TAEHP) administrator within 30 days of the reinstatement to enroll in TAEHP. Respondent shall notify bar counsel upon successful completion of the class.

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

Judge, pursuant to Rule 60(a)(5).⁷ The Presiding Disciplinary Judge may conduct the hearing within 30 days after receipt of notice, to determine if the terms of probation have been violated and if an additional sanction should be imposed. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

3. Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings. An Itemized Statement of Costs and Expenses is attached as Exhibit "A," and incorporated herein. 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 7 day of January, 2011


Jonathan H. Schwartz
Hearing Officer 6S

Copy of the foregoing mailed
This 7 day of January, 2011

Samuel S Tiffany
Samuel S Tiffany Ltd
7321 North 16th Street
Phoenix, AZ 85020-5224

⁷ Rule 60 (a) (5), as revised. effective January 1, 2011

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

Copy of the foregoing hand-delivered
This 7 day of January, 2011

Honorable Jonathan Schwartz
Hearing Officer 6S
1501 W Washington, Suite 104
Phoenix, AZ 85007

By: Deann Baul

EXHIBIT A

[illegible]

In the Matter of a Member of the State Bar of Arizona,
Samuel S Tiffany, Bar No. 018662, Respondent

File No(s). 09-1275 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.

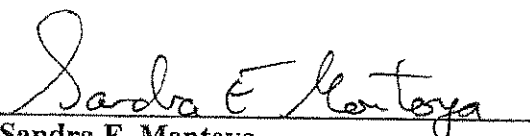
Staff Investigator/Miscellaneous Charges

01/22/10	Attempt to locate Respondent	\$ 4.00
03/12/10	Consult with bar counsel; Attempt to contact Respondent; Call from Respondent	\$ 8.75
05/12/10	Travel and mileage service of subpoenas on Respondent	\$ 30.95
05/20/10	Computer investigation	\$ 8.75
06/18/10	Alliance Reporting Solutions, Deposition of Respondent	\$502.30
06/22/10	Computer investigation; Email to bar counsel	\$ 8.75
07/08/10	Attempt to contact Woodhouse for service	\$ 8.75

1	07/12/10	Consult with bar counsel; Call to Respondent; Review	
2		engagement agreements; Request additional information;	
3		Email to Respondent	\$ 63.75
4	07/13/10	Email to Respondent	\$ 7.50
5	07/14/10	Consult with Lawyer Assistance Program	\$ 7.50
6	07/15/10	Review supporting documents; Request additional	
7		information	\$ 56.25
8	08/18/10	Prepare subpoena duces tecum's	\$ 15.00
9	08/26/10	Attempt to contact Respondent; Travel and mileage to	
10		attempt to serve Respondent	\$ 30.75
11	08/27/10	Attempt to contact Respondent; Travel and mileage to	
12		attempt to serve Respondent	\$ 33.25
13	08/30/10	Travel and mileage for service of subpoena	\$ 4.50
14	09/15/10	Mutual of Omaha Bank investigation	\$ 62.25
15	09/23/10	Wells Fargo Invoice - subpoena documents	\$ 24.10
16	09/27/10	Reconstruct bank accounts; Reconstruct Individual Client	
17		Ledgers; Email to bar counsel	\$288.75
18	09/30/10	Travel and mileage for serve of subpoena	\$ 40.00
19	10/22/10	Prepare affidavit	\$ 37.50
20	11/09/10	Consult with bar counsel	\$ 7.50
21	11/10/10	Review complainant files; Update trust account	
22		reconstruction; Email to bar counsel	\$ 37.50

17	Total for staff investigator charges	\$1,288.35
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18	<u>TOTAL COSTS AND EXPENSES INCURRED</u>	<u>\$2,488.35</u>
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21 Sandra E. Montoya

22 Lawyer Regulation Records Manager

11-22-10

Date