

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

RODRICK S. CARTER,
Bar No. 017961

Respondent.

PDJ 2018-9055

**FINAL JUDGMENT AND
ORDER OF SUSPENSION**

[State Bar File Nos. 17-1594 &
17-1914]

FILED FEBRUARY 26, 2019

This matter came for hearing before the hearing panel which rendered its Decision and Order Imposing Sanctions (Decision) on February 4, 2019, ordering suspension and costs. The Decision of the hearing panel is final under Rule 58(k), Ariz. R. Sup. Ct. No appeal has been filed pursuant to Rule 59(a), Ariz. R. Sup. Ct., and the time to appeal having expired,

IT IS ORDERED Respondent, **RODRICK S. CARTER, Bar No. 017961,** is suspended from the practice of law for six (6) months and one (1) day for his conduct in violation of the Arizona Rules of Professional Conduct effective March 6, 2019.

IT IS FURTHER ORDERED Mr. Carter shall immediately comply with the requirements relating to notification of clients and others and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED Mr. Carter shall pay all costs and expenses of the State Bar of Arizona in the amount of \$5,183.80 pursuant to Rule 60(b), Ariz. R. Sup. Ct. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 26th day of February 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
February 26, 2019, to:

Rebecca N. Kennelly
Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Nancy A. Greenlee
821 East Fern Drive North
Phoenix, AZ 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

by: AMcQueen

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**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar Nos. 17-1594 &
17-1914]

FILED FEBRUARY 4, 2019

I. SUMMARY

Rodrick S. Carter knowingly allowed his half-brother, D’wan Brown, (“Brown”) to use his law office name, phone number, email address and trust account to assist Brown with financial transactions. Brown apparently earned fees by arranging bridge loans and/or the funding of projects by joining borrowers and/or lenders with other lenders. Mr. Carter was directly involved in funding at least one such project.

Mr. Carter permitted his half-brother to state in the remittance instructions of those funding agreements that Mr. Carter was the account holder for the funds. The address and phone number listed was the “Law Office Address” and the Account was named “The Law Offices of Rodrick S. Carter P. C. IOTA-Trust Account.” The contact email listed was Rodrick.carter@azbar.org. Mr. Carter was knowingly involved in multiple transactions that involved such efforts to raise capital. Mr.

Carter improperly allowed Brown to directly deposit various monies involving these transaction into the law firm trust account of Mr. Carter. He followed the unilateral directions of his half-brother regarding disbursements from those funds. Brown did not confer with Mr. Carter prior to distributing the trust account instructions.

When investors/lenders called or wrote Mr. Carter, he refused to respond to them. Mr. Carter never communicated with the investors/lenders depositing money into his law firm trust account to determine if they had any expectations of him as the holder of the account, nor did he ask Mr. Brown what was relayed to the investors/lenders regarding Mr. Carter's role in the transactions. Mr. Carter knowingly retained some of the investor funds for his own financial benefit and failed to promptly respond to the State Bar's inquires. When he responded, Mr. Carter failed to provide the State Bar with all the requested records and documents.

By engaging in this conduct, Mr. Carter violated ER 1.5(b) (fees), ER 8.4(c) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), and Rules 43(a) (duty to deposit client funds and funds belonging to a third person), 43(b)(1)(A) (trust account standards of performance), 43(b)(1)(C) (trust account internal controls), 43(b)(2)(A) (trust account records requirements), 43(b)(2)(B) (trust account records requirements), 43(b)(2)(C) (trust account records requirements), 43(b)(2)(D) (trust account records requirements), 43(b)(5) (trust account methods of disbursement), 43(d)(3) (trust account rebuttable presumption),

54(d)(2) (failure to furnish information), 54(d)(2)(A) (shall furnish complete response), and 54(d)(2)(C) (shall furnish all requested copies of records).

II. PROCEDURAL HISTORY

This matter proceeded to a contested hearing before the assigned hearing panel. Presiding Disciplinary Judge (“PDJ”) William J. O’Neil was joined by volunteer attorney member Donna F. Williams, and volunteer public member Howard M. Weiske. Bar Counsel Rebecca N. Kennelly represented the State Bar. Nancy Greenlee represented Mr. Carter. Exhibits 1-28 were admitted. Exhibits 13-18, 20-22, 26-27 were sealed.

III. ESTABLISHED FACTS AND RULE VIOLATIONS

STIPULATED FACTS DEEMED MATERIAL¹

1. At all times relevant, Mr. Carter was a lawyer licensed to practice law in Arizona having been first admitted to practice in Arizona on May 17, 1997.
2. Mr. Carter is a solo practitioner in Phoenix, Arizona. Mr. Carter’s practice primarily comprises indigent criminal defense representation in Maricopa County through a contract with the Office of Public Defense Services (OPDS).

¹ Joint Prehearing Statement.

3. Mr. Carter assisted his half-brother, D'wan Brown, with financial transactions. At an earlier time, Mr. Carter had provided Mr. Brown with instructions on how to deposit funds directly into Mr. Carter law firm trust account.

4. Lenders associated with Mr. Brown deposited money directly into Mr. Carter's law firm trust account where the money was held for short a period of time. Mr. Carter distributed those funds to his operating account, to Mr. Brown, and to third parties.

5. Mr. Carter had no attorney client relationship with any of the lenders, and he provided no legal services to those individuals.

6. The State Bar of Arizona trust account examiner reviewed Mr. Carter's law firm trust account activity from February 1, 2016, through June 30, 2017.

7. Transactions related to Mr. Brown and Mr. Brown's lenders constitute the only activity in Mr. Carter's law firm trust account during the period of review.

8. Mr. Carter failed to maintain a general ledger, individual client ledger, and monthly three-way reconciliations for the period of review.

9. The trust account held funds in the amount of \$7.61 at the beginning of the period of review.

10. All disbursements made during the period of review were completed by withdrawal or by electronic transfer. Mr. Carter did not have any checks associated with his trust account.

11. During the period of review, several transfers were made from Mr. Carter's law firm trust account to an account ending in 9947. Mr. Carter's records did not identify the name of the account holder for account 9947.

12. On September 7, 2017, the State Bar requested additional information. The request included, but was not limited to, an explanation of the account ending 9947, a copy of any written agreement for various lenders, disbursement instructions, and explanations for disbursement irregularities.

13. On September 21, 2017, the due date of the response, Mr. Carter left a voicemail for the examiner requesting an extension. The examiner returned the call that day and left a voicemail for Mr. Carter. Mr. Carter had no further communication with the examiner and failed to provide a response to the request for additional information and non-response letter.

14. The State Bar subpoenaed the 9947 account records from the associated financial institution.

15. The State Bar also subpoenaed Mr. Carter to provide responses to the questions addressed in the September 7, 2017 request for information letter.

16. The bank account records for the account ending 9947 reflect that the account is registered to "The Law Offices of Rodrick S. Carter, P.C.," and Mr. Carter is the only signer on the account.

17. In response to the subpoena, Mr. Carter provided some of the written instructions that he received from Mr. Brown regarding the disbursement of each lender funds. The disbursement instructions for some of the financial transactions do not account for the total amount of funds deposited, resulting in a portion of money being left in Mr. Carter's law firm trust account.

18. Mr. Carter informed the Bar that he did not retain any funds related to Mr. Brown's business associates and that he did not receive any fee related to disseminating funds on behalf of Mr. Brown.

19. The first deposit reflected in Mr. Carter's law firm trust account in the review period was made on May 3, 2016, in the amount of \$30,000.00 as a transfer on behalf of lender, Gro With Us, LLC.

20. Records show Gregg and Associates "D'wan A. Brown," ("Mr. Brown") as the borrower and Gro with Us, LLC "Raymond F. Connelly" as the lender. Mr. Brown provided written instructions to Mr. Carter for the disbursement of the funds, which reflect \$9,000.00 to Shawn Sheffield, \$10,000.00 to Mutual Heritage Group, and \$10,500.00 to Mr. Brown, for a total in the amount of \$29,500.00.

21. Mr. Carter did not draft the agreement or consult with Mr. Brown about the language of the agreement.

22. On that same day, Mr. Carter withdrew funds in the amount of \$10,500.00 from the trust account. Mr. Carter did not provide any written records of how the funds were distributed but he informed the State Bar that amount was given to Mr. Brown who was physically present in Phoenix at that time.

23. On May 4, 2016, the wire transfers were completed to the other parties in the requested amounts, leaving a balance of \$500.00 remaining in the trust account.

24. On May 16, 2016, a deposit in the amount of \$65,000.00 was made into the trust account as a book transfer credit from Matri Holdings, LLC, bringing the account balance to \$65,507.61.

25. Records reflect Mr. Brown as the borrower and Matri Holdings, LLC “Michael Matrisciani” as the lender.

26. Raymond F. Connelly and Gro With Us, LLC was the Guarantor.

27. Mr. Carter did not draft the agreement or consult with Mr. Brown about the language of the agreement.

28. The written instructions provided to Mr. Carter by Mr. Brown direct a disbursement of \$20,000.00 to Gregg and Associates, \$5,000.00 to Sylvia Baker, \$10,000.00 to National Financial Services LLC for further credit to Kelley T. Oliver, and \$20,000.00 to Mr. Brown, for a total of \$55,000.00.

29. Those disbursements were made to the requested parties on the same day the funds were deposited into Respondent's law firm trust account. After the disbursements were made, \$10,000.00 in funds received from the lender agreement with Matri Holdings remained in Mr. Carter's law firm trust account.

30. On May 23, 2016, a transfer in the amount of \$5,500.00 was made to Mr. Carter's operating account.

31. On May 23, 2016, May 26, 2016, and June 1, 2016, funds were transferred to Mr. Brown through Chase Quickpay in the amounts of \$3,000.00, \$1,000.00, and \$1,000.00, respectively, exhausting the funds deposited by the first two lenders, Gro With Us, and Matri Holdings, and returning Mr. Carter's law firm trust account balance to \$7.61.

32. On July 8, 2016, a deposit in the amount of \$10,000.00 was made as a transfer from account ending 7783. Records show Mr. Brown of Brown Bag Pictures LLC and Malcolm Kelly Oliver of Writer's Block Media Films LLC as borrowers and "Dr. Artis Woodward" as the lender.

33. Mr. Brown's written distribution instructions directed Mr. Carter to distribute \$4,500.00 to Mr. Brown and \$5,000.00 to Mr. Oliver.

34. Mr. Carter did not draft the agreement or consult with Mr. Brown about the language of the agreement.

35. On the same day as the deposit, funds in the amount of \$4,500.00 were transferred to Mr. Brown, and two cash withdrawals were made from the trust account in the amounts of \$4,400.00 and \$1,100.00.

36. The cash withdrawal in the amount of \$4,400.00 was deposited into the requested account for Mr. Oliver.

37. Chase reversed the \$4,400.00 deposit made into the account of Mr. Oliver.

38. Mr. Brown subsequently directed Mr. Carter to send the reversed funds to Mr. Brown on behalf of Mr. Oliver. Mr. Carter completed the transfer to Mr. Brown the following day, exhausting the funds deposited by lender, Dr. Woodward, and returning the trust account balance to \$7.61.

39. On October 14, 2016, a deposit in the amount of \$25,000.00 was made on behalf of Reubs Record, LLC. Records reflect ADF Unit Trust Inc., ADF Energy Trust, Inc., Joan R. Phoenix-French, President/CEO as the borrower, and “Reuben Cannon” as the lender.

40. Mr. Carter did not draft the agreement or consult with Mr. Brown about the language of the agreement.

41. Mr. Brown’s written distribution instructions directed Mr. Carter to distribute \$11,750.00 to Eugene Fletcher and \$6,750.00 to Mr. Brown, for a total of \$18,500.00.

42. On October 14, 2016, \$5,000.00 was transferred to Mr. Brown and \$1,500.00 was transferred to Mr. Carter's operating account.

43. On October 17, 2016, a cash withdrawal was made in the amount of \$18,500.00.

44. After the withdrawal on October 17, 2016, the funds deposited by lender, Mr. Cannon were exhausted, and Mr. Carter's law firm trust account balance returned to \$7.61.

45. On December 22, 2016, funds in the amount of \$3,500.00 were transferred into Mr. Carter's law firm trust account from account ending 8827 by Dr. Eugene Fletcher. Dr. Fletcher is an associate of Mr. Brown.

46. The following day the funds were transferred to Mr. Carter's operating account.

47. Mr. Carter provided no legal services to Dr. Fletcher.

48. Mr. Jimenez entered into a \$125,000.00 private loan agreement with Gregg and Associates. Mr. Brown was acting as "Legal Facilitator" on behalf of Gregg and Associates.

49. The contract included Remittance Instructions that directed Mr. Jimenez to deposit funds in the amount of \$125,000.00 into Respondent's "IOTA [sic] -Trust Account".

50. The agreement provided to Mr. Jimenez was titled “Private Loan Assignment, Unconditional Guarantee, & Promissory Note,” and lists Gregg and Associates as the borrower and Corporativo House, LLC as the lender. The agreement includes that “said funds shall be utilized as asset participation in the delivery of securities instrument from ADF Unit trust. This is not a securities offering and the series E bonds will bear an interest at 6.75%. The funds are to be utilized as proof of funds for the collateralization of the monetization of said Bonds.” The loan amount is \$125,000.00, a term of 15 banking days, and a maturity date of March 17, 2017. The agreement reflects a rebate of \$65,000.00, due February 28, 2017, a return on investment of 300% and a participation return of \$565,000.00.

51. Mr. Carter did not draft the agreement or consult with Mr. Brown about the language of the agreement.

52. On February 24, 2017, \$125,000.00 was deposited into Mr. Carter’s trust account by Corporativo House LLC. That same day, at the direction of Mr. Brown, Mr. Carter sent \$61,000.00 to Dr. Eugene Fletcher at Optimum Management Group and \$55,000.00 to Mr. Brown.

53. On February 27, 2017, a book transfer from Lapere Madeleine was made into the trust account in the amount of \$65,000.00. On March 1, 2017, at the direction of Mr. Brown, Mr. Carter sent \$65,000.00 to Mr. Jimenez for the rebate.

54. Mr. Carter transferred \$4,000.00 to his operating account on February 27, 2017. Throughout March 2017, the remaining funds were disbursed by seven transfers to Mr. Brown in the total amount of \$4,500.00, and one transfer to Mr. Carter's operating account in the amount \$500.00; exhausting the funds deposited by lenders and returning Mr. Carter's law firm trust account balance to \$7.61.

55. Mr. Brown and Karla Alvarez entered into a business contract in April 2017.

56. Ms. Alvarez was to provide \$17,000.00 in relation to a business deal. Mr. Carter did not represent Ms. Alvarez in the transaction.

57. Mr. Brown gave Mr. Carter a copy of Mr. Brown's agreement with Ms. Alvarez, titled "Private Loan Assignment and Promissory Note." It lists MPM Services, LLC, as the borrower and Ms. Alvarez as the lender.

58. The agreement states that the funds will be "utilized as operating capital to pay for 'underwriting' fees for an American Express line of credit," and includes remittance instructions listing Mr. Carter, his law office, and his trust account information.

59. The agreement lists a loan amount of \$17,000, a term of one banking day, and a return on investment of \$100,000.00. The agreement has a blank next to the phrase "Maturity Date" and states, "Borrower Agrees to pay Debt . . . of

\$117,000.00 by the Maturity Date at the Lender's Address or to be determined by Lender.”

60. Mr. Carter did not draft the agreement or consult with Mr. Brown about the language of the agreement.

61. On April 24, 2017, Ms. Alvarez deposited \$17,000.00 into Mr. Carter's law firm trust account.

62. Mr. Carter did not communicate with Ms. Alvarez about the distribution of the funds that Ms. Alvarez had deposited into his law firm trust account.

63. On April 26, 2017, funds in the amount of \$10,000.00 were transferred to Mr. Carter's operating account. Subsequently, Mr. Carter transferred \$5,000.00 to Mr. Brown on April 26, 2017, and \$2,000.00 to Mr. Brown on April 27, 2017, exhausting the funds that were deposited into the trust account by Ms. Alvarez and returning the trust account balance to \$7.61.

64. On May 4, 2017, funds were wired into Mr. Carter's law firm trust account in the amount of \$25,000.00 on behalf of Paul Zook. Records reflect WP Financial, LLC, as the borrower, and Mr. Zook as the lender.

65. Mr. Carter did not draft the agreement and did not consult with Mr. Brown about the language of the agreement.

66. On May 4, 2017, through two transactions, Mr. Carter disbursed the \$25,000 to Mr. Brown and the trust account balance returned to \$7.61.

67. Mr. Carter had no transactions in his law firm trust account between May 5, 2017, and February 28, 2018. Mr. Carter closed his trust account with Chase Bank on September 24, 2018.

FINDINGS OF FACT

I. Overview

A. Mr. Carter's Background Experience as a Lawyer.

Mr. Carter is an experienced lawyer and sole practitioner who has been practicing law for 21 years. We find Mr. Carter has substantial experience in the practice of law. He opened a trust account with Bank of America after going into private practice in 2000. He testified that he failed to ever familiarize himself with the trust account rules before opening the account. (Carter's Testimony, 12/5/18 Recording at 11:13:00-11:13:40). Mr. Carter never used his Bank of America trust account, but when the County issued checks from Chase Bank, he opened a new trust account at Chase Bank.

B. Mr. Carter was Mr. Brown's Attorney.

Mr. Carter testified in the hearing that in 2014 or 2015, when he permitted Mr. Brown to have funds deposited directly into his Chase Bank law firm trust account, he was not acting as Mr. Brown's attorney in connection with the funds in

question. (Carter's testimony 12/10/2018 at 11:14:25). However, Mr. Carter also testified that he justified his action of providing Mr. Brown with access to his law firm trust account by saying that Mr. Brown was his client. Mr. Carter would then act on Mr. Brown's behalf as his attorney by distributing the funds from the trust account at Mr. Brown's direction. (Carter's Testimony, 12/5/18 Recording at 11:15:21-11:16:44; *see also* Deposition of Rodrick S. Carter November 7, 2018, at SBA000050).

In his response to the State Bar's inquiries, Mr. Carter admitted that he had no fee agreement with Mr. Brown and he acknowledged that Mr. Brown was his client. (Exhibit 12 at SBA000197; *see also* Carter's Testimony, 12/5/18 Recording at 10:55:40-10:56:26). Mr. Carter testified that before 2016, he joined Mr. Brown in a meeting with a Georgia landlord in Florida. Mr. Carter also testified that during the meeting, he was introduced as an attorney, and he provided general counsel and legal advice to Mr. Brown regarding a potential business transaction involving a movie theater. (Carter's Testimony, 12/5/18 Recording at 11:05:40-11:09:16).

Mr. Carter further declared that Mr. Brown was his client in written responses to the State Bar dated July 10, 2017, July 30, 2017, July 31, 2017, and December 17, 2017. Mr. Carter also confirmed that Mr. Brown was his client during his deposition on November 7, 2018. Mr. Carter claimed to have "had a long-standing relationship with Mr. Brown as his attorney" and "provided consultation to him regarding a

variety of legal matters including his past and current business interest when requested. That has included receiving funds on his behalf in the Trust account associated with [Mr. Carter's] firm.” (Exhibit 2 at SBA000022). Mr. Brown also testified that he considered himself Mr. Carter's client in the use of his trust account. (Brown's Testimony, 12/5/18 Recording at 4:04:30-4:04:35).

We find that Mr. Carter had an attorney-client relationship with Mr. Brown, violated ER 1.5(b) by failing to have a written fee agreement, and directly acted as Mr. Brown's attorney during the Florida meeting.

C. Mr. Carter's Failure to Timely Respond to the State Bar.

As stipulated in Mr. Carter's Proposed Findings of fact, Mr. Carter failed to respond promptly to the request for information sent by the SBA trust account examiner, Ms. Sochor, on September 7, 2017 and October 11, 2017. Mr. Carter further stipulated that he failed to give a full and complete response to the State Bar and that he failed to furnish copies of all requested records.

It is stipulated that on September 21, 2017, the due date of the response to the State Bar's requests, Mr. Carter left a voicemail for the examiner requesting an extension. We find the examiner returned the call that day and left a voicemail for Mr. Carter. Mr. Carter failed to respond to the request for additional information. (JPS ¶ 13; *see also* Ms. Sochor's Testimony, 12/5/18 Recording at 9:51:13-9:51:40).

On October 11, 2017, the examiner mailed another letter reflecting that a response had yet to be received from Mr. Carter and provided Mr. Carter an additional 10 days within which to respond. (Exhibit 9; *see also* Ms. Sochor's Testimony, 12/5/18 Recording at 9:51:50-9:52:23). Mr. Carter did not respond to the October 11th letter, prompting the State Bar to subpoena the 9947 records from the associated financial institution. (JPS ¶ 14; Exhibit 10; *see also* Ms. Sochor's Testimony, 12/5/18 Recording at 9:52:29-9:53:12). The State Bar also subpoenaed Mr. Carter to provide responses to the questions addressed in the September 7, 2017, request for information letter. (JPS ¶ 15; Exhibit 11).

As further stipulated above, Mr. Carter provided some of the written instructions that he received from Mr. Brown regarding the disbursement of each lender/investor funds on December 17, 2017, in response to the subpoena. However, the disbursement instructions for some of the financial transactions did not account for the total funds deposited, resulting in a portion of money being left in Mr. Carter's law firm trust account. (JPS ¶ 17; Exhibit 12).

We find Mr. Carter failed to timely respond to the State Bar, failed to give a full and complete response to the State Bar, and failed to furnish copies of all requested records in violation of 54(d)(2), 54(d)(2)(A), and 54(d)(2)(C).

II. The Trust Account

A. Mr. Carter's Improper Use and Failure to Maintain Trust Records

Mr. Carter swears he initially informed Mr. Brown that the law firm trust account was only to be used for Mr. Brown's commission funds, but eventually the trust account was used to pay Mr. Brown's bills and bridge loans. We find this not credible. We find Mr. Carter never denied a request from Mr. Brown to have funds deposited into his law firm trust account. (Carter's Testimony, 12/5/18 at 11:22:10-11:23:04).² When funds were received or expected to be deposited into the trust account, Mr. Carter would ask Mr. Brown to provide documentation to establish what the money was for and who the money was from. (Id. 11:23:12-11:23:56). Mr. Brown would not confer with Mr. Carter prior to distributing the trust account instructions. (Id. at 3:54:46-3:54:55). Mr. Carter did not actively try to prevent his law firm from being involved in anything illegal or criminal. (Id. at 11:24:04-11:24:14).

The SBA trust account examiner requested Mr. Carter's law firm trust account statements and records from February 2016 to June 2017. (Exhibit 4).³ Mr. Carter

² Mr. Carter changed his testimony on December 10, 2018, from that of December 5, 2018. He swore that when first asked by Mr. Brown if the bridge loans could be deposited into the law firm trust account, Mr. Carter said "no." Mr. Carter had previously stated that he never denied a request from Mr. Brown regarding use of the trust account. (Carter's Testimony, 12/10/18 Recording at 11:18:05-11:18:39). This affected his credibility.

³ The SBA Trust Account Examiner, Jaime Sochor, erroneously testified that she requested statements for the period spanning February 2016 thru May 2017. (Jaime Sochor's Testimony, 12/5/18 Recording at 9:16:50-9:17:10).

provided his law firm trust account bank statements to the State Bar on July 30, 2017, and he also “enclosed information received from Mr. Brown regarding the dissemination of said funds and the corresponding documents.” (Exhibit 5 at SBA000058).

As stipulated, Mr. Carter did not maintain or provide deposit records for the period of review to sufficiently identify client funds. Mr. Carter could not and did not identify the owner of the funds for \$7.61 held in the law firm trust account at the beginning of the period of review because he failed to maintain adequate records.

As further stipulated, all disbursements from Mr. Carter’s law firm trust account made during the period of review were completed by withdrawal or by electronic transfer and he had no checks associated with his trust account. (JPS ¶ 10; Exhibit 5 at SBA000058; and Carter’s Testimony, 12/5/18 Recording at 11:25:22-11:25:25). Mr. Carter admitted that he did not have the required trust account records, including an administrative ledger, general ledger, individual client ledger, or monthly three-way reconciliations for the period of review.

Mr. Carter admits he violated the requirements of Rule 43 but maintains that his violation is immaterial because the funds wired into his trust account were not client funds. We find an attorney-client relationship existed between Mr. Carter and Mr. Brown. We further find that because Mr. Carter acted as Mr. Brown’s attorney,

the funds transferred into the trust account by the “investors” were funds in connection with a representation.

Regardless, Rule 43(d) carries a presumption that when a lawyer fails to maintain trust account records required by that Rule or ER 1.15, or fails to provide trust account records to the state bar upon request that there is a rebuttable presumption that the lawyer failed to properly safeguard client or third person’s funds or property, as required by this Rule and ER 1.15.

We find Mr. Carter violated ER 1.15, Rule 43(a) (duty to deposit client funds and funds belonging to a third person), 43(b)(1)(A) (trust account standards of performance), 43(b)(1)(C) (trust account internal controls), 43(b)(2)(A) (trust account records), 43(b)(2)(B) (trust account records), 43(b)(2)(C) (trust account records), 43(b)(2)(D) (trust account records), and 43(b)(5) (trust account methods of disbursement).

B. Mr. Carter Retained Funds Transferred into the Trust Account.

Mr. Carter certified to the Bar that he retained no funds related to Mr. Brown’s business associates and that he received no fee related to disseminating funds on behalf of Mr. Brown. (JPS ¶ 18; Exhibit 12 at SBA000198). But Mr. Carter failed to inform the State Bar of a law office account ending in 9947. The evidentiary record reflects that the bank account ending in 9947 is registered to “The Law Offices of Rodrick S. Carter, P.C.,” and Mr. Carter is the only signer on the account. (JPS ¶ 16;

Sealed Exhibit 13). We find Mr. Carter distributed funds deposited into his law firm trust account to that law firm operating account, to Mr. Brown, and to third parties. (JPS ¶ 4; Exhibit 5; and Sealed Exhibit13).

Mr. Carter could not explain why he failed to inform the State Bar in any of his written responses that he was the owner of the account ending in 9947. (Carter's Testimony, 12/5/18 Recording at 2:15:00-2:15:30). We find it significant that Mr. Carter could not explain why he did not inform the State Bar that he was the owner of the account. We find that Mr. Carter's failure to inform the State Bar that he was the owner of the account was dishonest and designed to intentionally mislead the State Bar and conceal his retention of some of the funds.

Ms. Sochor testified that all disbursements made from Mr. Carter's operating account were completed by electronic transfer or check, making it possible for Ms. Sochor to identify the recipient of all funds disbursed from the account. (Ms. Sochor's Testimony, 12/5/18 Recording at 10:04:12-10:04:25). Ms. Sochor reviewed Mr. Carter's operating account bank records and noted that his account became overdrawn on July 12, 2016. She found that prior to that negative balance, there had been a transfer of funds from the trust account into the operating account for \$5,500.00 on May 23, 2016. Ms. Sochor noted that all possible disbursements made to Mr. Brown between May 23rd and July 12th totaled \$600.00. Mr. Carter had previously stated in his written responses to the State Bar that all of the funds

received from the investors, including the \$5,500.00 received in May 2016, were paid to third parties as instructed or were paid to Mr. Brown. However, of the \$5,500.00 transferred into Mr. Carter's operating account from his trust account, only \$600.00 went to Mr. Brown. (Id. 10:05:15-10:06:08; *see also* Sealed Exhibit 14 at SBA000303).

Ms. Sochor used Mr. Carter's operating account bank statements to create a spreadsheet of all transactions and resulting account balance. (Sealed Exhibit 14 at SBA000300-303). Ms. Sochor then made a final spreadsheet to separate out the funds that Mr. Carter transferred from his trust account to his operating account, which totaled \$25,000.00, and the disbursements that Mr. Carter made from his operating account to Mr. Brown, which totaled \$6,085.00. Of the \$25,000.00 that Mr. Carter had moved from his trust account to his operating account, he retained \$18,915.00. (Sealed Exhibit 14 at SBA000306; *see also* Ms. Sochor's Testimony, 12/5/18 Recording at 10:07:18-10:08:35)

Mr. Carter previously told Ms. Sochor that \$3,500.00 was given to him by Dr. Fletcher on behalf of Mr. Brown as repayment for a loan. Subtracting the \$3,500.00 from the \$18,915.00, still left a balance of \$15,415.00 in Mr. Carter's operating account with no explanation of how those funds were paid to Mr. Brown. (Ms. Sochor's Testimony, 12/5/18 Recording at 10:08:43-10:09:02). We find Mr. Carter's operating account statements reflect regular payments for office rental,

utilities, and some transfers to Mr. Carter's personal Bank of America account. The statements also reflect that some of the transfers from the trust account coincided with low balances or near overdrafts, including a transfer made on March 17, 2017, for \$500.00 from the trust account, which permitted two debits made on the say day to clear the account. (Id. at 10:09:35-10:11:55).

The client trust account is only to be used in relation to representation of a client, not for the collection and distribution of personal funds. (Ms. Sochor's Testimony, 12/5/18 Recording at 9:55:20-9:56:00). We find that Mr. Carter's insistence to the State Bar that he retained none of the funds was misleading and dishonest. We find that Mr. Carter attempted to keep from the State Bar and this Panel, and that he retained some of the "investor" funds for his own financial benefit.

III. Investor Financial Transactions

A. Mr. Carter's personal raising of investor funds for his brother-client.

We find significant that Mr. Carter was told by Mr. Brown that Mr. Brown was fundraising for a film. Fundraising is gathering voluntary contributions of money or other resources, by requesting donations. It does not require repayment of funds as required by the Assignment. Mr. Carter initially testified that he had personally invested \$50,000.00 in a deal with Mr. Brown but was never repaid. His brother impeached him and swore that Mr. Carter raised the money from investors. Mr. Carter changed his testimony and said he refunded the monies from all the

investors and so he felt he personally invested the money. His credibility was affected. Regardless, Mr. Carter has a long and personal knowledge that Mr. Brown does not handle finances well. (Carter's Testimony, 12/5/18 Recording at 11:10:57-11:12:27 and 11:12:35-11:12:47).

B. Remittance Instructions and References to Mr. Carter as Escrow Agent.

Each of the Assignments that were accompanied with Remittance Instructions, indicated an account holder name of Rodrick S. Carter, a law office address of 649 N. 4th Ave Phoenix, AZ 85003, an office telephone number of 602-606-4660, bank name of Chase Bank, account name of The Law Offices of Rodrick S. Carter P.C. IOTA – Trust Account, beneficiary of Brown Bag Pictures / Dwan Brown, and wire confirmation & contact email as Rodrick.carter@azbar.org. The Remittance Instructions for each Assignment also included Mr. Carter's law firm trust account number and routing number. (Exhibit 5 at SBA000081). Mr. Carter, however, has not been at the 649 N. 4th Avenue address since his move to the Luhr's building in 2015. (Id. at 11:19:05-11:19:20 and 11:20:55-11:21:02). Mr. Carter knowingly allowed for the remittance instructions to continuously misrepresent to the investors the location of his law firm office location without correcting the misrepresentation.

Close in time to the investor transactions, Mr. Brown forwarded emails to Mr. Carter, and some of the emails referred to Mr. Carter acting as an escrow agent

and/or Mr. Carter's the law firm trust account being an escrow account. Mr. Brown testified that he referred to Mr. Carter's law firm trust account as an escrow account. (Mr. Brown's Testimony, 12/5/18 Recording at 4:13:20-4:13:30). Mr. Carter did nothing to correct Mr. Brown's characterizations even though Mr. Carter swore he was not an escrow agent and his trust account is not an escrow account. (Id. 11:24:40-11:25:12; *see also* Exhibit 5 at SBA000115 and SBA000147). We find that Mr. Carter knowingly misled the investors by failing to correct misrepresentations of references to Mr. Carter as an escrow agent or his trust account as an escrow account.

C. Findings re: Mr. Connelly's Funds

The first deposit reflected in Mr. Carter's law firm trust account in the review period was made on May 3, 2016, for \$30,000.00 under a Private Loan Assignment and Promissory Note between borrower, Mr. Brown, and lender, Gro With Us, LLC. (JPS ¶ 19; Exhibit 5 at SBA000065 and SBA000082). Mr. Carter testified that he recalled being told by Mr. Brown that he had secured a loan in relation to a mine in Arizona owned by Ms. French. Mr. Brown told Mr. Carter that he was fundraising, along with Dr. Fletcher and Ron Gregg, and if the deal went through, Mr. Brown's film would be funded. (Carter's Testimony, 12/5/18 Recording at 11:28:10-11:29:07). The "Private Loan Assignment & Promissory Note" ("Assignment") is Exhibit 5 at SBA000076.

Mr. Brown signed the Assignment as the Legal Facilitator on May 3, 2016. (Exhibit 5 at SBA000080). Mr. Carter reviewed the Assignment and saw that Mr. Brown signed an agreement to pay Mr. Connelly \$330,000.00 in 15 business days. Mr. Carter said he spoke to Mr. Brown about the terms and was made to understand that Mr. Brown could pay with the funds he was to receive from the bigger deal. Mr. Carter also acknowledged that the terms were outrageous and that he spoke about the terms with Mr. Brown. (Carter's Testimony, 12/5/18 Recording at 11:31:05-11:32:17).

In reviewing the Assignment, Mr. Carter saw that the funds provided by Mr. Connelly were to be utilized to secure the letter of credit and that the return due in 15 business days was to be paid from "Agent Escrow." Mr. Carter knew that Mr. Connelly was instructed to deposit the funds into Mr. Carter's law firm trust account but said he was unsure of the identity of the "Agent Escrow." Mr. Carter also said that he believed that the funds he distributed were used to secure a letter of credit even though Mr. Carter split the funds into thirds and was unsure how that distribution would cause a letter of credit to be secured. (Id. at 11:32:55-11:35:45).

On May 4, 2016, Mr. Carter made wire transfers, as stipulated above, in the amounts of \$9,000 and \$10,000, respectively, to the other parties per Mr. Brown's instructions, leaving \$500.00 in the account from the initial deposit, and a balance of \$507.61 remaining in the trust account. (Ms. Sochor's Testimony, 12/5/18

Recording at 9:37:25-9:37:42). However, Mr. Carter withdrew funds for \$10,500.00 and provided no written records of how the funds were distributed, despite Mr. Brown's instructions to disburse the funds into Mr. Brown's bank account. Mr. Carter provided no records of the instructions he was given regarding the intended distribution for the remaining \$500.00. (Respondent's Testimony, 12/5/18 Recording at 11:38:24-11:38:52).

Mr. Carter did nothing to safeguard the monies in trust. Mr. Connelly received no return on his investment or a refund of his \$30,000.00 loan amount. (Carter's Testimony, 12/5/18 Recording at 11:38:58-11:39:05; Mr. Brown's Testimony, 12/5/18 Recording at 4:18:28-4:18:32). Mr. Carter said nothing to Mr. Brown about the maturity date of May 20, 2016, coming and going without Mr. Brown paying Mr. Connelly the return on his investment of \$330,000.00. Mr. Carter is unsure of how Mr. Connelly's \$30,000.00 was spent, but he believes that the deal did not close successfully. (Carter's Testimony, 12/5/18 Recording at 11:39:15-11:40:06).

Mr. Carter knew that the terms of the Assignment were outrageous. We find that Mr. Carter knowingly participated in Mr. Brown's scheme to convince Mr. Connelly he would safeguard the funds in trust. We further find that Mr. Carter knowingly failed to repay Mr. Brown the \$10,500.00 and personally retained the funds.

D. Findings re: Mr. Matrisciani's Funds.

On May 16, 2016, as stipulated above, a deposit for \$65,000.00 was made into the trust account under a promissory note between Mr. Brown as borrower and Matri Holdings LLC "Michael Matrisciani" as lender. Records reflect that Raymond F. Connelly and Gro With Us, LLC was the Guarantor. (JPS ¶ 24-26; Exhibit 5 at SBA000093 and SBA000065). The "Promissory Note" ("Assignment") is Exhibit 5 at SBA000093. As apparently with all the assignments, Mr. Carter reviewed it and spoke to Mr. Brown about its terms. (Carter's Testimony, 12/5/18 Recording at 11:46:50-11:47:12).

On May 16, 2016, Mr. Brown emailed Mr. Carter confirmation of the incoming wire of \$65,000.00, and the email included the email addresses of Raymond Connelly and Michael Matrisciani. Mr. Carter contacted neither investor to discuss the transactions or discuss their expectations of him considering they had deposited \$30,000.00 and \$65,000.00, respectively, into his law firm trust account. (Exhibit 5 at SBA000084-85; and Carter's Testimony, 12/5/18 Recording at 11:41:25-11:42:02)

Mr. Carter disbursed \$55,000.00 to the requested parties per Mr. Brown's instructions on the same day the funds were deposited into his law firm trust account. (JPS ¶ 29; Exhibit 5 at SBA000065-66). Mr. Carter could not explain why he could transfer \$20,000.00 into Mr. Brown's checking account on May 16, 2016 but had

not made a transfer to the same checking account for Mr. Brown on May 3, 2016, and instead, withdrew \$10,500.00 (Carter's Testimony, 12/5/18 Recording at 2:13:10-2:13:24).

Mr. Carter could not explain how disbursing \$55,000.00 of \$65,000.00 to four parties assisted with securing the letter of credit as specified in the Assignment. (Id. at 2:13:50-2:14:30). After the disbursements were made, \$10,000.00 received from the lender agreement with Matri Holdings remained in Mr. Carter's law firm trust account. (JPS ¶ 29; *see also* Ms. Sochor's Testimony, 12/5/18 Recording at 9:42:25-9:42:46). When Mr. Carter transferred \$5,500.00 to his operating account on May 23, 2016, he did not track the funds that he transferred from the trust account to his operating account, nor did he track any funds that were subsequently transferred into his personal account. (Carter's Testimony, 12/5/18 Recording at 2:19:48-2:20:10) (JPS ¶ 30; Exhibit 5 at SBA000065; and Sealed Exhibit 13 at SBA000237).

On May 23, 2016, and May 26, 2016, Mr. Carter transferred funds from his trust account to Mr. Brown through Chase Quickpay in the amounts of \$3,000.00 and \$1,000.00, respectively. (Exhibit 5 at SBA000065). However, Mr. Carter did not provide the State Bar with the relevant instructions to accompany those disbursements. (Ms. Sochor's Testimony, 12/5/18 Recording at 9:43:05-9:44:05).

After transferring \$5,500.00 from the trust account to his operating account, Mr. Carter did not make another deposit into his operating account until June 7,

2016, and his operating account balance dropped to \$1,322.29 by June 3, 2016. Even with other deposits going into the operating account, the operating account balance dropped to \$225.62 by June 14, 2016. (Sealed Exhibit 13 at SBA237-241).

In June 2016, Mr. Carter used his operating account to pay his Chase Card for \$1,114.41, transfer \$1,000.00 into his personal account, transfer \$600.00 to Mr. Brown, and pay a Cox Communication bill for \$550.00. Mr. Carter also paid out three checks totaling \$5,732.87. (Sealed Exhibit 13 at SBA000241). When asked what happened to the \$5,500.00 that was placed into his operating account, Mr. Carter said that the funds made their way to Mr. Brown, but he said that he did not keep records of money given or spent on Mr. Brown. (Carter's Testimony, 12/5/18 Recording at 2:24:15-2:26:20).

In July 2016, Mr. Carter's operating account balance went into the negative, but he could not explain why. (Sealed Exhibit 13 at SBA000244-247; and Carter's Testimony, 12/5/18 Recording at 2:26:55-2:27:30). As for the funds remaining in his law firm trust account, Mr. Carter transferred to Mr. Brown, through Chase Quickpay, on May 23, 2016, May 26, 2016, and June 1, 2016, in the amounts of \$3,000.00, \$1,000.00, and \$1,000.00, respectively, exhausting the funds deposited by the first two lenders, Gro With Us, and Matri Holdings, and returning his law firm trust account balance to \$7.61. (JPS ¶ 31; and Ms. Sochor's Testimony, 12/5/18 Recording at 9:45:10-9:45:40).

Mr. Matrisciani testified that he met with Attorney Ron Gregg at his law office prior to signing the Assignment and wiring the \$65,000.00 into Mr. Carter's trust account. Mr. Matrisciani added that the fact that Mr. Gregg was also an attorney held great weight with him. Mr. Matrisciani also testified that it was important to him that his funds were to be deposited into an attorney's trust account. (Mr. Matrisciani's Testimony, 12/10/18 Recording at 9:07:35-9:09:00).

Mr. Matrisciani was not told that his investment was to immediately be split up and distributed to Mr. Brown, Mr. Gregg, Mr. Oliver, and Ms. Baker, and then some funds would be held by Mr. Brown for incidentals and some funds would be retained by Mr. Carter. Mr. Matrisciani said he would not have wired the funds if he knew of that plan because the deal, as it was explained to him, was that the funds would be a placeholder for a line of credit. (Id. 9:13:30-9:14:21).

Mr. Carter did nothing to safeguard the monies in trust with him. Mr. Matrisciani received no refund of his \$65,000.00 or the return on investment of \$100,000,000.00. (Mr. Matrisciani Testimony, 12/10/18 Recording at 9:11:50-9:12:00; Mr. Brown's Testimony, 12/5/18 Recording at 4:25:41-4:25:55). Mr. Matrisciani also attempted to contact Mr. Carter for several months after not receiving a refund or a return, but even after leaving messages, Mr. Carter did not call him back. (Mr. Matrisciani's Testimony, 12/10/18 Recording at 9:12:00-

9:12:30). Mr. Matrisciani testified that he was harmed by losing his funds. (Id. 9:12:28-9:13:25).

Mr. Carter said nothing to Mr. Brown about the maturity date of June 25, 2016, coming and going without Mr. Brown paying Mr. Matrisciani the return on his investment of \$100,000,000.00. (Carter's Testimony, 12/5/18 Recording at 2:17:09-2:17:56). Mr. Carter testified that he returned no calls even just to say that the funds he held in his law firm trust account had all been distributed. (Id. at 2:18:00-2:19:40).

We find that Mr. Carter knowingly, if not intentionally, continued to help Mr. Brown perpetuate his scheme and that Mr. Carter personally retained some of Mr. Matrisciani's funds.

E. Findings re: Dr. Woodward's Funds.

On July 8, 2016, a deposit into Mr. Carter's law firm trust account for \$10,000.00 was made as a transfer from account ending 7783. Records show Mr. Brown of Brown Bag Pictures LLC and Malcolm Kelly Oliver of Writer's Block Media Films LLC as borrowers and Dr. Artis Woodward as the lender. (JPS ¶ 32; Exhibit 5 at SBA000104 and SBA000109). The "Private Loan Assignment & Promissory Note" ("Assignment") is Exhibit 5 at SBA000109-110.

Mr. Brown signed the Assignment as the Director on July 8, 2016. (Exhibit 5 at SBA000114). Mr. Carter reviewed the Assignment and saw that, according to the

terms, Mr. Brown was borrowing an extra \$10,000.00, having already borrowed \$30,000.00, and was agreeing to pay the lender a total amount of \$1,020,000.00 by the maturity date of July 22, 2016. Mr. Carter reviewed the remittance instructions but had no conversations with Mr. Brown about the term “Escrow Agent” on a document that provides instructions on how to deposit funds into Mr. Carter’s law firm trust account. (Carter’s Testimony, 12/5/18 Recording at 2:32:25-2:33:25)

On July 8, 2016, Mr. Brown emailed Mr. Carter and attached the Assignment. In the body of the email, Mr. Brown said “The issue is I need to get him some funds via Walmart asap for at least \$1000.00 because the funds won’t clear. He’s owed \$5500.00 so if you can put \$1100.00 in my account and transfer \$4,400.00 in his this would be great.” (Exhibit 5 at SBA000108). On the same day, Mr. Carter transferred \$4,500.00 to Mr. Brown and made two cash withdrawals from his trust account in the amounts of \$4,400.00 and \$1,100. (JPS ¶ 35; Exhibit 5 at SBA000104).

The \$4,400.00 cash withdrawal was deposited into the requested account for Mr. Oliver and Mr. Carter provided a receipt to the State Bar as proof of the transaction. (Exhibit 12, SBA000230). Mr. Carter did not provide the required documentation to the State Bar to show the disposition of the cash withdrawal for \$1,100.00 made on July 8th. (Carter’s Testimony, 12/5/18 Recording at 2:36:00-2:36:10; 12/10/18 Recording at 12:12:40-12:12:47; and sealed Exhibit 14 at SBA000302).

On July 11, 2016, when Chase reversed the \$4,400.00 deposit that Mr. Carter had attempted to make into Mr. Oliver's account and Mr. Brown then directed Mr. Carter to transfer the reversed funds to Mr. Brown, Mr. Carter did not contact Mr. Oliver to discuss the deposit that had been reversed or to confirm that Mr. Oliver's portion could be transferred to Mr. Brown. (Exhibit 12 at SBA000231; and Carter's Testimony, 12/5/18 Recording at 2:37:50-2:38:00). However, the next day Mr. Carter used Chase Quickpay to transfer \$4,400.00 from the law firm trust account to Mr. Brown's account, exhausting the funds deposited by lender Dr. Woodward and returning the trust account balance to \$7.61. (JPS ¶ 38; and Exhibit 5 at SBA000104).

On July 12, 2016, Mr. Carter's operating account became overdrawn when there were insufficient funds to cover a check he had issued. On July 13, 2016, Mr. Carter transferred funds from his personal account into the operating account for \$1,000.00. (Sealed Exhibit 13 at SBA000245). We find that Mr. Carter knowingly and intentionally continued to participate in helping Mr. Brown perpetuate his scheme. We find that Mr. Carter failed to deposit funds in the amount \$1,100.00 into Mr. Brown's bank account as instructed. We additionally find that Mr. Carter retained \$1,100.00 for his personal use.

F. Findings re: Mr. Cannon's Funds.

On October 14, 2016, a deposit for \$25,000.00 was made into Mr. Carter law firm trust account on behalf of Reubs Record, LLC. Records reflect ADF Unit Trust Inc., ADF Energy Trust, Inc., Joan R. Phoenix-French, President/CEO as the borrower, and Reuben Cannon as the lender. (JPS ¶ 39; Exhibit 5 at SBA000120 and Exhibit 12 at SBA000200). The “Private Loan Assignment & Promissory Note” (“Assignment”) is Exhibit 12 at SBA000200.

The Remittance Instructions that accompanied the Assignment indicated an amount of \$25,000.00. Mr. Carter did not provide the Assignment and Remittance Instructions to the State Bar until after service of the subpoena in November 2017. (Exhibit 12). Unlike the other Assignments, the October 2016 Assignment did not reflect that Mr. Brown was a borrower or a party to the transaction. (Exhibit 12 at SBA000200-204).

Mr. Carter testified that Mr. Brown directed that \$5,000.00 be transferred to Mr. Brown, and \$1,500.00 be transferred to Mr. Carter's operating account. On October 14, 2016, the same day as the deposit, Mr. Carter used Chase Quickpay to transfer \$5,000.00 from his law firm trust account to Mr. Brown's account, and Mr. Carter transferred \$1,500.00 from his law firm trust account to his operating account. (Exhibit 5 at SBA000120). Mr. Carter also testified that he did not keep the \$1,500 for his own personal use. (Carter's testimony 12/10/2018 at 11:33:53; and JPS ¶ 42).

Mr. Carter did not provide SBA with written disbursement instructions regarding the October 14th transfer of \$5,000.00 to Mr. Brown or transferring \$1,500.00 into Mr. Carter's operating account. (Sealed Exhibit 14 at SBA000302; *see also* Carter's Testimony, 12/5/18 Recording at 2:45:25-2:45:50). The only transfers to Mr. Brown from the operating account in October 2016 were made on the 11th for \$300.00 and on the 26th for \$200.00. (Carter's Testimony, 12/5/18 Recording at 2:45:50-2:46:12; Sealed Exhibit 13 at SBA000257).

Mr. Brown emailed Mr. Carter on October 15, 2016, stating "I have a million things going on so I wanted to put the coordinates at the top of your email. When you make it to the bank please make sure they credit the accounts for today (Chase to Chase) as always everything is in a spin zone. I will bring you up to speed tomorrow so you understand exactly whats [sic] going on. Thanks again bro. Send me a text when finished...." Mr. Brown directed Mr. Carter to distribute \$11,750.00 to Eugene Fletcher and \$6,750.00 to Mr. Brown, for \$18,500.00. (Exhibit 5 at SBA000123).

On October 17, 2016, Mr. Carter made a cash withdrawal for \$18,500.00 from his law firm trust account. (JPS ¶ 43; and Exhibit 5 at SBA000120). Mr. Carter did not provide SBA with documentation showing the disposition of the \$18,500.00 cash withdrawal. (Carter's Testimony, 12/5/18 Recording at 2:47:20-2:47:52; and 12/10/18 Recording at 12:12:48-12:13:06). Following the withdrawal on October

17, 2016, the funds deposited by lender Mr. Cannon were exhausted, and Mr. Carter's law firm trust account balance returned to \$7.61. (JPS ¶ 44).

Mr. Cannon was the only investor/lender to receive a refund of his loan. (Mr. Brown's Testimony, 12/5/18 Recording at 4:28:30-4:28:40). Mr. Carter received a copy of the Settlement Agreement and Mutual General Release from Mr. Brown, but Mr. Carter said he was not involved in any settlement with Mr. Cannon and did not refund Mr. Cannon any funds from his trust account. (Carter's Testimony, 12/5/18 Recording at 2:43:05-2:44:30). We find that Mr. Carter knowingly and intentionally retained some of Mr. Cannon's funds. That Mr. Cannon received a refund of his loan is irrelevant regarding Mr. Carter's case because Mr. Carter did not refund Mr. Cannon the funds he retained for his personal use. By continuing to participate in his client's plan, we find that Mr. Carter knowingly acted improperly.

G. Findings re: Dr. Fletcher's Funds.

As mentioned in the stipulated facts above, on December 22, 2016, Dr. Eugene Fletcher, an associate of Mr. Brown, transferred \$3,500.00 into Mr. Carter's law firm trust account. (JPS ¶ 45; Exhibit 5 at SBA000126; *see also* Carter's Testimony, 12/5/18 Recording at 2:48:55-2:53:33). Mr. Carter did not initially provide an explanation to the State Bar for the deposit of the \$3,500.00 into his trust account on December 22, 2016, and the subsequent transfer of \$3,500.00 into his

operating account on December 23, 2016. (Ms. Sochor's Testimony, 12/5/18 Recording at 9:49:05-9:49:35).

In Mr. Carter's response to the State Bar's subpoena, he wrote: "Dr. Eugene Fletcher placed those funds into my trust account on behalf of D'wan Brown as repayment to myself for a previous personal loan." (Exhibit 12 at SBA000198). However, Mr. Carter testified that the funds were not meant to repay Mr. Carter for a prior loan made to Mr. Brown. Instead, Mr. Carter testified that he was told by Mr. Brown that he could keep the funds that Mr. Brown was to receive from Mr. Fletcher. Mr. Carter never spoke to Mr. Fletcher about the deposit and did not know Mr. Fletcher's intent regarding the funds and whether Dr. Fletcher meant for Mr. Carter to keep the funds. (Carter's Testimony, 12/5/18 Recording at 2:48:58-2:50:15).

Mr. Brown testified that the \$3,500.00 was only to be held by Mr. Carter, not kept by Mr. Carter, and that his exact words were "hold it for me." (Mr. Brown's Testimony, 12/5/18 Recording at 4:49:20-4:49:30). Before Mr. Carter transferred \$3,500.00 from his law firm trust account to his operating account, his balance in the operating account was \$92.42. After the transfer, Mr. Carter moved \$1,000.00 from his operating account to his personal account. Mr. Carter could not explain the timing of appearance of the \$3,500.00 in his trust account when his operating account balance was low. (Carter's Testimony, 12/5/18 Recording at 2:55:00-2:56:00). We find that Mr. Carter was not meant to keep the \$3,500.00 for his own

use, but only hold it for his client. We further find that Mr. Carter kept the \$3,500.00 for his personal use.

H. Mr. Connelly Added Legitimacy to the Scheme.

Mr. Brown has participated in multiple transactions over the last fifteen years that involved his efforts to raise capital. Mr. Carter knew throughout that virtually none of the transactions were successful. (Carter's Testimony, 12/5/18 Recording of Hearing at 11:10:40-11:10:55; and Mr. Brown's Testimony, 12/5/18 Recording at 4:10:28-4:10:32). Mr. Carter testified that by December 2016, he had given Mr. Brown thousands of dollars for living expenses besides the \$50,000.00 previously given to Mr. Brown, so Mr. Carter did not believe that Mr. Brown would ever be able to fully repay Mr. Carter. (Id. 2:50:15-2:51:51).

In January 2017, Mr. Carter's operating account became overdrawn, and Mr. Carter transferred \$3,300.00 from his personal account. (Sealed Exhibit 13 at SBA000270). By February 2017, Mr. Carter was made aware of the setting of an "investor summit" in Arizona. Mr. Brown told Mr. Carter that this would be a meeting at the Arizona Grand to discuss the deal that everyone had been working toward, and it would be attended by several people involved in the deal, including Dr. Fletcher and Ron Gregg and investors like Raymond Connelly. Mr. Brown invited Mr. Carter to come by the summit so that he could meet everyone. (Carter's Testimony, 12/5/18 Recording at 2:56:35-2:58:10).

Mr. Carter went to the Arizona Grand and met with Mr. Connelly, Dr. Fletcher, Mr. Gregg, Mr. Brown, and Mr. Brown's fiancé. Mr. Carter stayed for anywhere between 30 minutes to a couple hours. Mr. Carter said that he was introduced to everyone, and the people in the room knew he was an attorney. While there Mr. Brown discussed the deal, including that the parties had visited Ms. French's mine. (Id. at 2:58:12-3:01:25). Mr. Carter could not recall if there were any discussions about needing more money to finish the deal, but that Mr. Brown may have mentioned that. (Id. at 3:01:45-3:02:40). Mr. Brown testified that additional funds were collected after the summit and after the parties had viewed the mine property. (Mr. Brown's Testimony, 12/5/18 Recording at 4:32:58-4:34:20).

We find it significant that by the time the summit took place and Mr. Carter met the investors, he had already transferred investor funds from his trust account into his operating account. Mr. Carter testified that he believed Mr. Brown could never fully repay the money Mr. Carter previously gave him. Yet Mr. Carter not only furthered Mr. Brown's scheme by meeting with the investors, but he also personally benefited financially from those investments by retaining investor funds. We find that Mr. Carter knowingly, if not intentionally, added legitimacy to Mr. Brown's scheme by participating in the summit.

I. Findings re: Mr. Jimenez's Funds.

In February 2017, Victor Hugo Jimenez, CEO of Corporativo House LLC, was invited by Mr. Brown to invest \$125,000.00 to register securities to finance a humanitarian project. Following a conference call with Mr. Brown, the legal facilitator for the deal, and someone who identified himself as Mr. Gregg, the attorney for the transaction, Mr. Jimenez said he would invest the funds if changes were made to the contract and if Mr. Gregg also signed the contract. (Exhibit 3 at SBA000035).

Changes were made between the first draft of the Assignment, which was dated "February , 2017," with a maturity date of April 21, 2017, and the second draft of the Assignment, which was dated February 24, 2017, with a maturity date of March 17, 2017. (Exhibit 3 at SBA000037-42 and SBA000044-49). Besides including Mr. Gregg's signature, the second Assignment included a rebate of \$65,000.00. (Exhibit 3 at SBA000044-49). Though Mr. Gregg's signature is on the second Assignment, Mr. Gregg did not sign the second Assignment or authorize the use of his signature. Instead, Mr. Brown copied Mr. Gregg's signature and included it on the contract without Mr. Gregg's knowledge or permission. (Mr. Brown's Testimony, 12/5/18 Recording at 4:35:30-4:36:30).

The Remittance Instructions for the first Assignment and second Assignment were also different because the first Assignment called for funds to be deposited into

Optimum Management Group's account and the second Assignment provided instructions for depositing funds into Mr. Carter's law firm trust account. (Exhibit 3 at SBA000043 and SBA000050). Mr. Jimenez signed the second Assignment and arranged for transferring funds. (Exhibit 3 at SBA000035 and SBA000049, Exhibit 5 at SBA000147).

On February 24, 2017, a deposit for \$125,000.00 was made into Mr. Carter's law firm trust account on behalf of Corporativo House, LLC. Records reflect Gregg and Associates as the borrower, and Corporativo House LLC as the lender. (JPS ¶ 52; Exhibit 5 at SBA000130). The "Private Loan Assignment, Unconditional Guarantee, & Promissory Note" ("Assignment") is Exhibit 5 at SBA000139. *See also* JPS ¶ 50. Mr. Brown signed the Assignment as the Legal Facilitator on February 24, 2017. (Exhibit 5 at SBA000144). The Remittance Instructions that accompanied the Assignment indicated an amount of \$125,000.00.

On February 24, 2017, the same day as the deposit, Mr. Brown emailed Mr. Carter with instructions to distribute funds to Optimum Management Group and \$55,000.00 to Mr. Brown. Mr. Carter provided the printed email to SBA and handwrote \$61,000.00 on the email in the space next to Optimum Management Group. (Exhibit 5 at SBA000135). On February 24, 2017, Mr. Carter withdrew \$55,000.00 in cash from his law firm trust account, deposited \$55,000.00 in cash into Mr. Brown's Chase account, and then withdrew \$61,000.00 in cash from his

law firm trust account and deposited \$61,000.00 in cash into the Chase account for Dr. Eugene Fletcher at Optimum Management Group. (Exhibit 5 at SBA000137-138).

Mr. Carter was unaware of how the distribution of the funds assisted with the delivery of a securities instrument as specified in the Assignment. (Carter's Testimony, 12/5/18 Recording at 3:27:40-3:27:52). Mr. Carter acknowledged these withdrawals were the largest to come out of his law firm trust account. Mr. Carter never contacted Mr. Jimenez to ascertain what Mr. Jimenez believed would happen with his \$125,000.00. (Carter's Testimony, 12/5/18 Recording at 3:26:20-3:26:40).

Mr. Carter testified that when he received the Assignment, he could see that this deal differed from the ones before. It included a rebate for \$65,000.00 due on February 28, 2017, and Mr. Carter received a deposit for \$65,000.00 in his trust account on February 27, 2017. (Carter's Testimony, 12/5/18 Recording at 3:19:25-3:21:10). Mr. Carter knew that Mr. Jimenez was informed a \$65,000.00 wire was already pending and that meant there would be funds available to pay Mr. Jimenez the rebate as promised. Mr. Carter explained the \$65,000.00 wire that was expected was held up longer than anticipated, and because Dr. Fletcher was desperate to get the funds, Mr. Brown made what he later called a "bad deal" to convince Mr. Jimenez to participate. (Id. at 3:22:10-3:24:17).

Mr. Carter understood that money from one lender or investor would be used to pay back some portion to a prior lender or investor. (Id. at 3:24:17-3:24:35). Mr. Brown testified he provided the wire confirmation of the \$65,000.00 expected out of Belgium to Corporativo as proof that the rebate could be paid. (Mr. Brown's Testimony, 12/5/18 Recording at 4:36:40-4:36:45). According to the terms of the Assignment Mr. Carter reviewed for this transaction, Mr. Carter understood Corporativo expected to receive a return for \$565,000.00 by March 17, 2017. (Id. at 3:25:00-3:25:10).

We find that Mr. Carter knowingly was involved in Mr. Brown's scheme by assisting him in distributing Mr. Jimenez's funds in a way not specified in the Assignment. We find Mr. Carter's behavior deceitful and dishonest. Mr. Carter knew of Mr. Brown's unreliable financial history and knew of the large sum of money that would be owed to Corporativo, yet knowingly continued to assist Mr. Brown in using his trust account.

On March 1, 2017, Mr. Brown emailed Mr. Carter the bank account information for the \$65,000.00 rebate owed to Mr. Jimenez. In the email thread is an email to Mr. Jimenez dated February 24, 2017, stating: "Please find the final revised copy of the contract as we discussed. Please reply to all upon return so that Mr. Gregg's agent Mr. Brown may get a copy to the escrow agent immediately." (Exhibit 5 at SBA000147). On March 1, 2017, Mr. Carter transferred \$65,000.00

from his law firm trust account to the account for Corporativo House LLC. (JPS ¶ 53, Exhibit 5 at SBA000156).

Mr. Jimenez attempted to contact Mr. Carter when the maturity date of March 17, 2017, came and went and there had been no return on his investment. Mr. Carter did not call him back. (Carter's Testimony, 12/5/18 Recording at 3:26:45-3:27:00). Mr. Jimenez testified he was not made aware that the funds he deposited into Mr. Carter's trust account would immediately be paid out to Optimum Management Group and Mr. Brown or that Mr. Carter would retain a portion of the funds. Instead, the funds were to be used to cover the expenses for banking instruments, and it would not make sense to split up the funds. (Mr. Jimenez's Testimony, 12/10/18 Recording at 9:27:08-9:28:55). Following the maturity date of his investment, all communications with Mr. Jimenez stopped. (Exhibit 3 at SBA000035; Mr. Jimenez's Testimony, 12/10/18 Recording at 9:29:40-9:30:05).

Mr. Carter did nothing to safeguard his trust account funds. Mr. Jimenez received no return on his investment of \$565,000.00 or a refund of the remainder of his loan of \$60,000.00. (Mr. Jimenez's Testimony, 12/10/18 Recording at 9:22:40-9:22:55; Mr. Brown's Testimony, 12/5/18 Recording at 4:37:24-4:37:30). Mr. Jimenez filed a police report and then submitted the bar charge. (Mr. Jimenez's Testimony, 12/10/18 Recording at 9:31:20-9:32:35; Exhibit 3). Mr. Jimenez testified that he was harmed by losing his funds because he could not fund his humanitarian

project. (Mr. Jimenez’s Testimony, 12/10/18 Recording at 9:34:45-9:35:45). Mr. Jimenez also testified he believes that Mr. Carter is responsible because he was the attorney tasked with holding the funds in escrow. (Id. at 9:35:55-9:36:55). We find that Mr. Carter knowingly participated in Mr. Brown’s scheme that caused financial harm to Mr. Jimenez.

I. Findings re: Ms. Madeleine’s Funds.

On February 27, 2017, a book transfer from Lapere Madeleine was made into the law firm trust account for \$65,000.00. (JPS ¶ 53). Mr. Carter did not provide the State Bar with an Assignment related to Lapere Madeleine’s deposit. (Carter’s Testimony, 12/5/18 Recording at 3:28:50-3:29:00).

On February 22, 2017, Mr. Brown emailed Mr. Carter and attached confirmation of the \$65,000.00 wire transfer made by Ms. Madeleine into Mr. Carter’s law firm trust account. In the body of the email, Mr. Brown states: “See wire receipt attached. I assume it should post sometime around 2 eastern or so. Maybe if you can check around noon or if you get a quick break. If it does post than [sic] I could use a quick 5k. I will print the agreement for your records...” (Exhibit 5 at SBA000150 and SBA000153).

The email thread that accompanied the email included a message from Mr. Brown to an associate of the lender named Dirk that stated: “thank you very much for your participation, please see executed agreement attached. Once you’ve

executed the agreement and sent the wire to the coordinates enclosed in the attached agreement will shall [sic] send a written receipt [sic] and will provide an update twice a week. We expect a very quick turnaround at this point and we look forward to a long term and progressive relationship.” (Exhibit 5 at SBA000151).

Mr. Carter remains unsure of what Ms. Madeleine intended of her \$65,000.00 that she deposited into his law firm trust account. Mr. Carter was only told by Mr. Brown that this was related to the deal with Ms. French. (Carter’s Testimony, 12/5/18 Recording at 3:29:28-3:29:40). Mr. Brown testified that Ms. Madeleine did not provide \$65,000.00 so that it could be given to another investor. (Mr. Brown’s Testimony, 12/5/18 Recording at 4:36:45-4:37:20). Ms. Madeleine received no return on her investment or a refund of her loan. (Id. at 4:37:30-4:37:35.) We find that Mr. Carter willfully and knowingly participated in Mr. Brown’s scheme that caused financial harm to Ms. Madeleine.

Mr. Carter transferred \$4,000.00 from his law firm trust account to his operating account on February 27, 2017. Throughout March 2017, the remaining funds in the law firm trust account were disbursed as stipulated above, exhausting the funds deposited by lenders/investors and returning Mr. Carter’s law firm trust account balance to \$7.61. (JPS ¶ 54; Exhibit 5 at SBA000130 and SBA000156; Sealed Exhibit 14 SBA000302). Mr. Carter did not provide the distribution

instructions to cover the \$9,000.00 described above that was disbursed to himself and Mr. Brown. (Carter's Testimony, 12/5/18 Recording at 3:27:57-3:58:13).

Between February 14th and February 24th, Mr. Carter used Chase Quickpay to transfer funds to Mr. Brown for a total amount of \$575.00. (Exhibit 13 at SBA000273). As of February 27, 2017, Mr. Carter's operating account balance was \$205.42. Following his transfer of \$4,000.00 from his law firm trust account to his operating account on February 27, 2017, the balance became \$4,205.42. (Exhibit 13 at SBA000273-274). On March 15, 2017, Mr. Carter's operating account would have become overdrawn based on an issued check and an electronic payment to Cox Communications, but Mr. Carter transferred \$500.00 from his law firm trust account, bringing his operating account balance to \$332.13. (Sealed Exhibit 13 at SBA000277, Sealed Exhibit 14 at SBA000305). We find that Mr. Carter retained \$4,000 of investor funds for his personal use.

J. Findings re: Ms. Alvarez's Funds.

In April 2017, Karla Alvarez entered into a business contract with Mr. Brown. Ms. Alvarez was told that if she loaned Mr. Brown \$17,000.00, Mr. Brown would use the funds to secure a business loan for \$1,200,000.00, and Ms. Alvarez would receive a return of \$117,000.00. (Exhibit 1). Mr. Brown provided Mr. Carter with a copy of the agreement with Ms. Alvarez, listing MPM Services, LLC, as the borrower and Ms. Alvarez as the lender. (JPS ¶ 57; Exhibit 2 at SBA000024-28).

The “Private Loan Assignment & Promissory Note” (“Assignment”) is Exhibit 1 at SBA000003. *See also* JPS ¶ 59.

Mr. Brown signed the Assignment on April 22, 2017, as the legal facilitator. (Exhibit 1 at SBA000009). On April 24, 2017, Ms. Alvarez deposited \$17,000.00 into Mr. Carter’s law firm trust account. (JPS ¶ 61; Exhibit 5 at SBA000158). Mr. Carter provided no distribution instructions to the State Bar for this transaction. (Carter’s Testimony, 12/5/18 Recording at 3:35:00-3:35:18).

On April 24, 2017, Mr. Carter transferred funds for \$2,000.00 from his personal account to Kristoff Taylor, a friend and/or business associate of Mr. Brown. On April 25, 2017, Mr. Carter wrote a check from his personal account to Mr. Taylor for \$8,000.00. (Carter’s Testimony, 12/10/18 Recording at 12:13:10-12:13:20). Mr. Carter could not recall why he was asked to pay Mr. Taylor \$10,000.00, but he believed that it was because Mr. Brown’s bank accounts were unavailable. (Respondent’s Testimony, 12/5/18 Recording at 3:47:15-3:47:50).

Mr. Brown testified that portions of Ms. Alvarez’s funds were used to pay his rent. (Mr. Brown’s Testimony, 12/5/18 Recording at 4:41:25-4:41:40). Mr. Carter did not inform the State Bar of the funds going to Mr. Taylor for Mr. Brown’s benefit until after the Answer to the Complaint was filed, though Mr. Carter was contacted by the State Bar approximately one month after the funds were moved. (*Id.* at 3:48:07-3:48:55).

On April 26, 2017, Mr. Carter transferred funds of \$10,000.00 from his law firm trust account to his operating account. Subsequently, Mr. Carter used Chase Quickpay to transfer \$5,000.00 and \$2,000.00 to Mr. Brown, respectively, exhausting the funds that were deposited into the trust account by Ms. Alvarez and returning the trust account balance to \$7.61. (JPS ¶ 63; Exhibit 5 at SBA000158). Mr. Carter falsely avowed to the Bar that all of the funds provided by Ms. Alvarez were disseminated to Mr. Brown, when instead \$10,000.00 was given to Mr. Taylor. (Exhibit 2 at SBA000023; and Sealed Exhibit 27 at SBA000343-344). We draw unfavorable conclusions from the failure of Mr. Carter to mention that some of the funds were given to Mr. Taylor.

Between April 7th and April 21st, prior to the Alvarez deposit that occurred on April 24th, Mr. Carter used Chase Quickpay to transfer funds to Mr. Brown from his operating account for a total amount of \$2,150.00. Mr. Carter's operating account balance as of April 21, 2017, was \$430.96. On April 26, 2017, Mr. Carter transferred \$10,000.00 from his law firm trust account to his operating account, bringing his operating account balance to \$10,430.96. (Sealed Exhibit 13 at SBA000281 and Sealed Exhibit 14 at SBA000305). Also on April 26, 2017, the same day that Mr. Carter transferred \$10,000.00 from his law firm trust account to his operating account, Mr. Carter transferred \$7,000.00 from his operating account to his personal

account. (Sealed Exhibit 13 at SBA000281). We find that Mr. Carter knowingly retained some of the funds for his personal use.

Mr. Carter had reviewed the Assignment, understood what one banking day meant, and never discussed with Mr. Brown the return of Ms. Alvarez's investment for \$117,000.00 that was due by April 25, 2017. (Carter's Testimony, 12/5/18 Recording at 3:36:00-3:36:30). On May 3, 2017, Mr. Brown emailed Ms. Alvarez and attached a Settlement Agreement and Mutual Release ("Agreement"). In the body of the email, Mr. Brown stated: "I have already sent the coordinate to Carter to get the wire out. Also be a bit patient as the wire will go after his court proceedings today." (Exhibit 1 at SBA000010).

The Agreement which was attached referenced a "breach/default of a private loan assignment executed on April 2017" and notes that a dispute has arisen due to an "in-ability to legally 'close' said transaction." Therefore, "[t]his agreement shall hold harmless the following parties and or assigns: **LAW OFFICES OF RODRICK S. CARTER, (RODRICK CARTER), MPM SERVICES (DWAN A. BROWN).**" (Emphasis in original). After a section regarding mutual releases, the Agreement provides that MPM Services would make a payment to Ms. Alvarez in the amount of \$17,000.00 on or before May 5, 2017. (Exhibit 1 at SBA000011-12).

On May 4, 2017, Mr. Brown emailed Ms. Alvarez and said “Sorry for my delayed response As discussed, the merchant transaction was placed on hold by American Express primarily due to the amount the card was ran for. We are currently waiting for a response from the legal department indicating when the funds will be made available for disbursements. Meanwhile your 17K investment remains protected in escrow and will be disbursed to the coordinates you provided. I will know in a couple hours the status of the hold. I believe we should be ok at which point we can move forward according to plan.” (Exhibit 1 at SBA000015).

Ms. Alvarez’s “investment” was not protected in escrow. By the time Mr. Brown had sent the email on May 4th, Mr. Carter had already transferred \$10,000.00 to his operating account and had paid Mr. Brown \$7,000.00, exhausting the funds deposited by Ms. Alvarez. (Exhibit 5 at SBA000158-159).

On May 11, 2017, Mr. Brown emailed Ms. Alvarez a falsified wire transfer confirmation that purported to show that the “LAW OFFICES OF RODRICK S CARTER PC sent you money through Chase QuickPay” in the amount of \$17,200.00. Mr. Brown wrote “Let me know you got this... The wire goes out in the morning it was 5 minutes passed cut off. Really apologize crazy days but almost over.” (Exhibit 1 at SBA000016). Mr. Carter did not send the funds to Ms. Alvarez as the confirmation claimed. Mr. Carter did not have \$17,200.00 in either his

operating account or his law firm trust account on May 11, 2017. (Exhibit 5 at SBA000160 and Sealed Exhibit 13 at SBA000285).

Ms. Alvarez sent another email on May 24, 2017, and received confirmation that Mr. Brown read the email at 1:48 p.m. on the day it was sent. The email stated “Dear Attorney Rodrick Carter I am AGAIN reminding you of the previous Request for the 17k in escrow held in your office. I have officially requested the return of the funds forwarded to your IOLTA A[sic].” (Exhibit 1 at SBA000021).

Mr. Carter intentionally failed to respond. Mr. Carter did nothing to safeguard his trust account funds. Ms. Alvarez never received a refund of her principal or a return on her investment. (Mr. Brown’s Testimony, 12/5/18 Recording at 4:44:00-4:44:10). Ms. Alvarez testified she believes Mr. Carter is responsible because he was responsible for keeping the funds safe. (Ms. Alvarez’s Testimony, 12/10/18 Recording at 10:04:20-10:04:40).

We do not believe, nor does the State Bar allege, Mr. Carter helped create the false document. We find that Mr. Carter knowingly played a role in Ms. Alvarez’s financial loss, and the financial losses of the other investors whose funds were not protected in trust. Mr. Carter was a knowing participant who ensured there was a lack of safekeeping of funds by his client, Mr. Brown.

K. Findings re: Mr. Zook's Funds.

On May 4, 2017, funds were wired into Mr. Carter's law firm trust account for \$25,000.00 on behalf of Paul Zook. Records reflects WP Financial, LLC, as the borrower, and Mr. Zook as the lender. (JPS ¶ 64; Exhibit 5 at SBA000160). The "Private Loan Assignment & Promissory Note" ("Assignment") is Exhibit 12 at SBA000213.

Mr. Carter received an email on May 4, 2017, from Malcolm Oliver stating, "Dear Roderick, Here is a copy of the signed contract. I am giving full fiduciary responsibility for the funds to be transferred to Dwan Brown. Sincerely, Malcolm Oliver." (Exhibit 5 at SBA000163). Mr. Carter testified this was the first email he received with this type of language. Mr. Carter did not attempt to contact Mr. Oliver to clarify his intentions and, at the time of the email, the only attachment was the confirmation of the wire transfer of \$25,000.00 from Mr. Zook to Mr. Carter's law firm trust account. Mr. Carter received no contract or Assignment when he received the \$25,000.00 into his trust account or paid out the \$25,000.00 to Mr. Brown, which occurred on the same date. (Carter's Testimony, 12/5/18 Recording at 3:45:05-3:46:24).

On May 4, 2017, through two transactions, Mr. Carter disbursed the \$25,000.00 to Mr. Brown and the trust account balance returned to \$7.61. (JPS ¶ 66; Exhibit 5 at SBA000160). Mr. Zook received no refund of his \$25,000.00 or a return

on his investment of \$50,000.00. (Mr. Zook's Testimony, 12/5/18 Recording at 4:54:00-4:54:10). Mr. Zook testified that he did not authorize for his \$25,000.00 investment to be immediately turned over to Mr. Carter's client, Mr. Brown. (Id. at 4:53:20-4:53:25). Mr. Zook forwarded an email to the State Bar on November 8, 2018. (Exhibit 19 at SBA000319; and *see also* Mr. Zook's Testimony, 12/5/18 Recording at 4:53:55-4:53:59). Mr. Zook testified that he believed that Mr. Carter's role was to hold the funds in his account and that the funds were protected. Mr. Zook also testified he believed that the person that received the funds should be responsible for safeguarding them. (Mr. Zook's Testimony, 12/5/18 Recording at 4:55:00-4:56:40).

Mr. Zook further explained that he did not believe this was a risky transaction because the funds were only to be held in a trust to show that they were available. (Id. at 4:58:00-4:59:00.) Mr. Carter did nothing to safeguard the funds entrusted to him. Mr. Brown testified that none succeeded, including the deal with Mr. Zook, but he is currently working on a deal that will close in December 2018, and when this deal closes, he will pay back all of the investors. (Mr. Brown's Testimony, 12/5/18 Recording at 4:44:40-4:45:40). We find Mr. Carter knowingly continued to participate in Mr. Brown's scheme that caused financial harm to Mr. Zook.

L. Conclusion re: the various funds.

We find Mr. Carter violated ER 8.4(c) by his participation in multiple schemes designed to convince investors their funds would be protected in the law office trust account of Mr. Carter. Mr. Carter knew the funds would not be held in his trust but rather would be typically immediately distributed to his client-brother, third parties, and even Mr. Carter. In these several years, Mr. Carter knew that the funds of the investors would not be held in trust and yet he continued to allow Mr. Brown to perpetuate this scheme, using Mr. Carter's law firm trust account to legitimize the transactions. His refusal to return the calls of the investors is telling.

M. Findings re: Mr. Carter with the State Bar.

On May 15, 2017, Mr. Carter transferred \$10.00 to Mr. Brown from his operating account. By May 31, 2017, Mr. Carter's operating account balance was \$189.95. (Sealed Exhibit 13 at SBA000285). In June 2017, despite the exhaustion of the investor funds as evidenced by the low balances in both Mr. Carter's law firm trust account and operating account, Mr. Carter testified he located receipts to show that some of the funds were paid back to Mr. Brown in the form of a hotel room, car rental, and airline tickets. (Carter's Testimony, 12/10/18 Recording at 11:46:26-11:48:10; *see also* Exhibits 16-18). Mr. Carter had no transactions in his law firm trust account between May 5, 2017, and February 28, 2018. Mr. Carter closed his trust account with Chase Bank on September 24, 2018. (JPS ¶ 67).

As the examiner, Ms. Sochor, collected and reviewed Mr. Carter's trust account bank statements and accompanying documentation as provided by Mr. Carter, and Mr. Carter's operating account bank statements, Ms. Sochor created several spreadsheets. (Sealed Exhibit 14). One of those spreadsheets sorted the transactions by investor and focused on the trust account bank statements, the available Assignments, and the available distribution instructions.

After plugging in the separate investment deposits and the disbursement instructions related to the deposits, Ms. Sochor plugged in the remaining disbursements, which were those disbursements where instructions were never provided to the State Bar, as unknowns. The unknowns included the transfers to account ending in 9947, which was later determined to be Mr. Carter's operating account, and the Chase Quickpay transfers to Mr. Brown. Ms. Sochor moved the \$3,500.00 deposit from Dr. Fletcher into the administrative section of the spreadsheet since Mr. Carter had explained those funds. (Sealed Exhibit 14 at SBA000300-302; *see also* Ms. Sochor's Testimony, 12/5/18 Recording at 9:58:00-9:59:05).

When Ms. Sochor created the spreadsheet sorted by investor, she had only been provided the Assignments for seven transactions—Ms. Alvarez, Mr. Cannon, Mr. Jimenez, Dr. Woodward, Mr. Connelly, Mr. Matrisciani, and Mr. Zook. Ms. Sochor was not provided with the Assignment for Lepere Madeleine, an individual

who deposited \$65,000.00 into Mr. Carter's trust account on February 27, 2017. Because those funds were paid to Mr. Jimenez on March 1, 2017, as a "rebate" for his investment, Ms. Sochor included that information in the same section as the Mr. Jimenez investment. (Sealed Exhibit 14 at SBA000301; *see also* Ms. Sochor's Testimony, 12/5/18 Recording at 10:00:58-10:02:10).

We find Mr. Carter was knowingly misleading with the State Bar regarding his retention of investor funds. We further find that Mr. Carter knowingly withheld information from the State Bar regarding the investor funds that were deposited into his trust account in further violation of Rule 54.

IV. State of Mind and Aftermath

A. The Actual Knowledge of Mr. Carter.

Mr. Carter reviewed all the Assignments. He knew of the large sums of money the investors would be owed in short periods of time and put in trust with him. He knew of Mr. Brown's financial struggles. He knew all the investors, except for one, received no refund or a return on their investment and that the funds were not being held in trust by him. We find Mr. Carter knowingly participated in Mr. Brown's scheme to convince investors to deposit funds into Mr. Carter's trust account. Mr. Carter knew his client, Mr. Brown, or he would benefit financially from the scheme.

B. Lack of Remedial Measures Taken by Mr. Carter.

In his Proposed Findings of Fact, Mr. Carter accepts responsibility for allowing Mr. Brown's funds to be deposited into his trust account and claims his conduct is only an "error." Mr. Carter further acknowledges he should have responded to the State Bar during the screening investigation and claims he has had a blind spot where his brother is concerned. We disagree with the characterization of "error" but agree with the latter. Mr. Carter should have been forthcoming with the State Bar and he has a blind spot regarding his step-brother.

Mr. Carter knowingly ignored those investors who attempted to contact him regarding the funds they deposited into his trust account. The improper use of his trust account was intentional by him. He wanted to help his brother. He knew his brother was his client in the transactions. Yet, Mr. Carter contacted none of the investors regarding their funds or regarding their expectations of his client who he knew had a questionable past. Mr. Carter always knew of his brother's schemes, and knowingly participated in them anyway. Even after Mr. Carter closed his client trust account, he knowingly withheld information from the State Bar during its investigation. We find Mr. Carter took no remedial or corrective actions.

C. Rehabilitative Measures Taken by Mr. Carter.

Mr. Carter presented evidence through his counselor, Hal M. Nevitt, that he has started working on his boundary issues with Mr. Brown. (Hal Nevitt's

Testimony, 12/5/18 Recording at 1:22:50—1:24:10). Mr. Nevitt testified that Mr. Carter was asked about contact with Mr. Brown during the second session, and Mr. Carter affirmatively said “no.” (Id. at 1:29:30-1:31:00).

However, Mr. Carter testified he has had contact with Mr. Brown and has given money to Mr. Brown after his first counseling session, yet did not inform Mr. Nevitt of this contact in subsequent sessions. Mr. Carter said he is seeing Mr. Nevitt to help him work through his boundary issues with Mr. Brown, yet the communication and exchange of funds did not “come up.” (Carter’s Testimony, 12/5/18 Recording at 3:56:40-3:58:40).

Remorse is best defined by deeds. We find that despite Mr. Carter’s counseling, he is not remorseful for his actions nor has he successfully worked out his “boundary issues” with Mr. Brown. Remorse requires Mr. Carter to acknowledge the harm or potential harm. It requires him to recognize the facts and to take steps which assist in his rehabilitation. We acknowledge Mr. Carter’s effort to seek out counseling; however, Mr. Carter exhibits lack of remorse by concealing from his counselor his communication and exchange of funds with Mr. Brown.

D. Harm to Mr. Carter’s Client and to the Legal System.

Mr. Carter clearly and knowingly harmed the public, the profession, and the legal system, and by having no fee agreement, created no boundaries of his representation which might have aided the conduct of his brother and thereby even

injured his client. Mr. Carter admittedly failed to provide a fee agreement or representation agreement to Mr. Brown, though he considered him to be his client and he considered the funds received in the law firm trust account as funds received on behalf of Mr. Brown. Mr. Carter also knowingly retained funds that he had received on behalf of Mr. Brown, but he had not communicated the basis or rate of his fees and expenses in writing to Mr. Brown.

Mr. Carter knowingly failed to inform Mr. Brown that he was transferring funds from his law firm trust account to his operating account, where the balance subsequently disappeared. Mr. Carter did not keep records of the funds and could not provide an accounting to show that he somehow repaid Mr. Brown. We find that by failing to communicate the scope of his representation and the basis for the funds he retained, Mr. Carter harmed his client. We further find that Mr. Carter harmed his client by failing to repay Mr. Brown the funds he transferred from his trust account to his operating account.

Mr. Carter caused harm to the legal system by knowingly using his law firm trust account as a tool to assist Mr. Brown, failed to safeguard over \$300,000 thereby causing financial harm to the individuals in questions. As an attorney, Mr. Carter holds a unique position in society because his actions may lessen public confidence in the legal system. We find Mr. Carter's use of his law firm trust account to assist in Mr. Brown's scheme was unethical and injured the legal profession. The financial

harm suffered by the investors, partly because of Mr. Carter's participation in these schemes, by not safeguarding funds in trust was also a harm to the legal system. Mr. Carter knowingly undermined public confidence in the legal system by placing the legal system at risk of public blame for Mr. Carter's actions.

Analysis

Mr. Carter argued he acted negligently. We disagree. We are not unsympathetic to the unique relationship Mr. Carter shares with Mr. Brown. Yet, even considering the evidence in a light most favorable to Mr. Carter, we find that Mr. Carter was motivated by potential financial gain for himself and his brother-client. He intended to succeed in that financial gain for his client and/or himself. Mr. Carter maintained his negligence arose from his ignorance of the rules governing client trust accounts.

Mr. Carter had a responsibility to obtain a working knowledge of and compliance with his trust account obligation including how the client trust account may or may not be used. However, Mr. Carter continuously facilitated Mr. Brown by the use of his trust account, even after he learned third parties were injured financially with that use. Mr. Carter's lack of knowledge of the ethical rules regarding trust accounts, therefore, did not constitute negligence. It constituted willful blindness.

Mr. Carter knowingly accepted investor funds into his law firm trust account and distributed those funds as directed by Mr. Brown or, as needed, by Mr. Carter, in direct contradiction to the terms in the contracts he had received and reviewed. Mr. Carter knowingly accepted additional funds from new investors despite knowing that prior investors had not received returns or refunds and were actually harmed due to financial losses. We find Mr. Carter knowingly and intentionally perpetuated a scheme designed to convince investors to deposit funds into Mr. Carter's trust account in furtherance of his own personal capacities.

Mr. Carter argues that the State Bar must amend its Complaint and specifically allege dishonesty to the State Bar as a violation of Ethical Rule 8.4(c), and that he is not subject to discipline for Rule 43(a) violations that occurred prior to 2016 because the State Bar did not allege rule violations for those transactions in its Complaint. We disagree.

Both parties raised the issue regarding 8.4(c) in their pleadings. Both parties also raised the issue of dishonesty in Mr. Carter's interaction with the State Bar. The State Bar gave notice that this issue was a contested fact deemed material by the State Bar. As importantly, Mr. Carter in his Complaint alleged that he was not dishonest with the State Bar. The issue was further brought out during the hearing, with no objection by Mr. Carter. Rule 47 (b)(1) is dispositive.

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, but failure so to amend does not affect the result of the hearing on these issues.

We find these issues were tried by the express or implied consent of the parties and they are treated in all respects as if they had been raised in the pleadings.

We find Mr. Carter violated ER 1.5(b), ER 8.4(c), and Rules 43(a), 43(b)(1)(A), 43(b)(1)(C), 43(b)(2)(A), 43(b)(2)(B), 43(b)(2)(C), 43(b)(2)(D), 43(b)(5), 43(d)(3), 54(d)(2), 54(d)(2)(A), and 54(d)(2)(C).

SANCTIONS

The American Bar Association Standards for Imposing Lawyer Sanctions (“*Standards*”) and Arizona Supreme Court case law guide the imposition of sanctions for lawyer misconduct. “The purpose of professional discipline is twofold: (1) to protect the public, the legal profession, and the justice system, and (2) to deter others from engaging in misconduct.”⁴ *In re Abrams, citations omitted.* Upholding the integrity of the legal system, assuring the fair administration of

⁴ See also Annot. to (A) (1.1), ABA Annotated *Standards for Imposing Lawyer Sanctions* (2015).

justice, protecting the public and deterring other lawyers from similar conduct are the primary purposes of lawyer discipline. When imposing a sanction after a finding of lawyer misconduct, the Court must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

Standard 3.0 – Duty, Mental State, and Injury

Duty: Mr. Carter violated his duties to his client, the public, the legal system, and the legal profession by violating ERs 1.5(b), 8.4(c), and Rules 43(a), 43(b)(1)(A), 43(b)(1)(C), 43 (b)(2)(A), 43(b)(2)(B), 43(b)(2)(C), 43(b)(2)(D), 43(b)(5), 43(d)(3), 54(d)(2), 54(d)(2)(A), and 54(d)(2)(C).

Mental State: The *Standards* state the following definitions. “‘Intent’ is the conscious objective or purpose to accomplish a particular result.” “‘Knowledge’ is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” Mr. Carter acted knowingly if not intentionally.

Injury: There was actual harm to the client, the legal system and harm to the public. The most important ethical duty is owed to the client.⁵ Lawyers, as officers of the court, owe a duty to the legal system not to engage in conduct prejudicial to

⁵ *Standards*, Theoretical Framework, (4), p. 5.

the administration of justice or conduct that involves dishonesty, fraud, deceit, or misrepresentation to a court. *In re Peasley*, 90 P.3d 764, 773 (Ariz. 2004).

Standards 4.0-5.0 – Presumptive Sanction

As the theoretical framework of the *Standards* notes, “[t]he 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.” The Panel determined suspension is the presumptive sanction.

Standard 4.62 provides that suspension is generally appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client. Mr. Carter knowingly failed to provide a fee agreement or representation agreement to Mr. Brown, though he considered him to be his client and he considered the funds received in the law firm trust account as funds received on behalf of Mr. Brown. Mr. Carter also knowingly retained funds he had received on behalf of Mr. Brown, but he had not communicated the basis or rate of his fees and expenses in writing to Mr. Brown. By failing to communicate the scope of his representation and the basis for the funds he retained, Mr. Carter caused injury to his client.

Standard 4.12 provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. Mr. Carter knowingly failed to inform

Mr. Brown that funds were being transferred from Mr. Carter's law firm trust account to his operating account, where the balance quickly disappeared. Neither Mr. Carter nor Mr. Brown kept records of the funds, so Mr. Carter cannot provide an accounting to show that the funds he spent were somehow repaid to Mr. Brown. Mr. Carter's conduct caused actual harm to his client as summarized above.

Standard 5.12 provides that 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. Mr. Carter knowingly used his law firm trust account as a tool to assist his brother, whom Mr. Carter called his "longstanding client", in a scheme to strip individuals of over \$300,000.00. Mr. Carter was in a unique situation due to his personal knowledge of Mr. Brown. Mr. Carter knew that Mr. Brown had a bank account in such disarray that it often could not be used due to holds and overdrafts. Mr. Brown had regularly asked Respondent for money to cover basic necessities such as food and shelter. Mr. Brown had previously lost \$50,000.00 from investors whose monies were raised through the direct efforts of Mr. Carter for his brother whom he says he reimbursed. Mr. Carter also knew that Mr. Brown had attempted several deals over the last decade and a half and yet not a single transaction succeeded.

Even with this knowledge of Mr. Brown's abysmal financial history, Respondent intentionally allowed his brother to hide from his prior bank overdrafts and create a sham trustor relationship with investors by giving his trust account wiring details to Mr. Brown. He knew Mr. Brown would persuade others to deposit funds into Respondent's law firm trust account believing they would be safeguarded. While the deposits were initially to be based on commissions wholly earned by Mr. Brown, the deposits evolved into investment funds placed into Mr. Carter's trust account by investors/lenders. Mr. Carter's client gave him the legal documents associated with these monies he was to safeguard, and he reviewed the contents but did nothing except follow his brother's directions.

Mr. Carter was also forwarded emails that referred to Mr. Brown's escrow agent and he was provided with remittance instructions that referred to his law firm trust account as an escrow account. Mr. Carter did nothing to correct these inaccurate statements or clarify his role because he was a willing participant. Mr. Carter further embedded himself in the scheme, and added legitimacy to the scheme, by attending an investor summit at the Arizona Grand Resort in February 2017. Mr. Carter was known to the group to be an attorney, and he was present for discussions of the latest developments of a deal involving an Arizona mine. There was only one occasion when Mr. Carter knowingly accepted \$65,000.00 from one investor to pay a "rebate" to a prior investor.

Mr. Carter allowed the transactions to continue until the State Bar became involved. Prior to the first bar charge, multiple investors attempted to contact Respondent at his office or via email to ask about the return of their funds. Mr. Carter avoided these individuals, never returned calls, and continued to use his trust account to collect more funds from more investors, adding to the harm and causing real injury to the public.

Standard 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the presumptive sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.⁶ Four aggravating factors are present here: Mr. Carter’s dishonest or selfish motive (*Standard 9.22(b)*); a pattern of misconduct by allowing Mr. Brown to continuously use his trust account and by retaining client funds or funds in connection with a representation for personal use (*Standard 9.22(c)*); bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with ethical rules (*Standard 9.22(e)*); and Mr. Carter has substantial experience in the practice of law having been admitted in 1997 (*Standard 9.22*)).

Mitigation includes any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

⁶ *Standards 9.21 & 9.31.*

Standard 9.32(a), absence of a prior disciplinary record. Mr. Carter has never previously been disciplined by the State Bar.

Standard 9.32(g), character or reputation. Three of Mr. Carter's close friends and colleagues testified about his good character and his reputation within the legal community. (Exhibits 23-25; Christopher Flores Testimony, 12/5/18 Recording at 1:42:34-1:51:45; Cary Lackey's Testimony, 12/5/18 Recording at 1:56:10-2:08:30; and Corwin Townsend's Testimony, 12/10/18 Recording at 10:57:33-11:03:50). We give this mitigation great weight.

CONCLUSION

The hearing panel knows of the Arizona Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors. It has considered that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases." *In re Attorney F.* 285 P.3d 322, 327 (Colo. 2012.) Though prior cases are helpful by way of analogy, the Panel is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

The State Bar requested a long-term suspension. We measured both the testimony and the exhibits and find the evidence warrants the imposition of a suspension. *Standard 2.3* states that "Generally, suspension should be for a period of time equal to or greater than six months...."

The Panel orders:

- 1) Mr. Carter shall be suspended from the practice of law for six (6) months and one (1) day effective thirty (30) days from the date of this order.
- 2) Mr. Carter shall immediately comply with the requirements of Rule 72, Ariz. R. Sup. Ct. which include, but are not limited to, notification of clients and others and filing all notices and affidavits required.
- 3) Mr. Carter shall pay the State Bar's costs and expenses in this matter. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

A Final Judgment and Order shall follow.

DATED this 4th day of February 2019.

Signature on File

William J. O'Neil, Presiding Disciplinary Judge

Signature on File

Donna F. Williams, Volunteer Attorney Member

Signature on File

Howard M. Weiske, Volunteer Public Member

Copy of the foregoing emailed/mailed
this 5th day of February 2019, to:

Rebecca N. Kennelly
Bar Counsel
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Nancy A. Greenlee
821 E. Fern Dr. North
Phoenix, AZ 85014
Email: nancy@nancygreenlee.com
Respondent's Counsel

by: AMcQueen

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

JUN 28 2018

FILED

BY _____

Rebecca Nicole Kennelly, Bar No. 025597
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7247
Email: LRO@staff.azbar.org

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**RODRICK S. CARTER,
Bar No. 017961,**

Respondent.

PDJ 2018- 9055

COMPLAINT

[State Bar Nos. 17-1594 and
17-1914]

Complaint is made against Respondent as follows:

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 17, 1997.

2. Respondent is a solo practitioner in Phoenix, Arizona. Respondent's practice primarily consists of indigent criminal defense representation in Maricopa County through a contract with the Office of Public Defense Services (OPDS).

3. In addition to OPDS cases, Respondent facilitated financial transactions for his half-brother, D'wan Akili Brown. These financial transactions did not relate to the provision of legal services. In order to facilitate the transactions, Respondent provided Mr. Brown with instructions on how to deposit funds directly into Respondent's IOLTA account. Mr. Brown then distributed the instructions to unknown individuals referred to as "investors" that had no attorney client relationship with Respondent.

4. Investors associated with Mr. Brown deposited money directly into Respondent's IOLTA account where the money was held for short a period of time. Respondent distributed those funds to himself, Mr. Brown, and to third parties.

5. Respondent had no attorney client relationship with Mr. Brown or any of the investors.

6. Respondent did not provide any legal services to the "investors" and had no basis to retain any portion of their funds.

COUNT ONE (Trust Account)

7. The State Bar of Arizona trust account examiner reviewed Respondent's IOLTA activity from February 1, 2016, through June 30, 2017.

8. Transactions related to Mr. Brown and Mr. Brown's "investors" constitute the only activity in Respondent's IOLTA during the period of review.

9. Respondent failed to maintain a general ledger, individual client ledger, and monthly three-way reconciliations for the period of review.

10. Not all of the deposit records provided for the period of review sufficiently identify the client.

11. The trust account held funds in the amount of \$7.61 at the beginning of the period of review. The identity of the owner of the funds cannot be determined because Respondent failed to maintain adequate records.

12. All disbursements made during the period of review were completed by withdrawal or by electronic transfer. Respondent did not have any checks associated with his trust account.

13. During the period of review several transfers were made from Respondent's IOLTA to an account ending in 9947. Respondent's records did not identify the name of the account holder for account 9947.

14. On September 7, 2017, the State Bar requested additional information. The request included, but was not limited to, an explanation of the

account ending 9947, a copy of any written agreement for various investors, disbursement instructions, and explanations for disbursement irregularities.

15. On September 21, 2017, the due date of the response, Respondent left a voicemail for the examiner requesting an extension. The examiner returned the call that day and left a voicemail for Respondent. Respondent had no further communication with the examiner and failed to provide a response to the request for additional information and non-response letter.

16. The State Bar subpoenaed the 9947 account records from the associated financial institution.

17. The State Bar also subpoenaed Respondent to provide responses to the questions addressed in the September 7, 2017, request for information.

18. The bank account records for the account ending 9947 reflect that the account is registered to "The Law Offices of Rodrick S. Carter, P.C.," and Respondent is the only signer on the account.

19. In response to the subpoena, Respondent provided the instructions that he received from Mr. Brown regarding the disbursement of each investor's funds. The disbursement instructions do not account for the total amount of funds

deposited, resulting in a portion of investor money being left in Respondent's IOLTA.

20. Respondent informed the Bar that he did not retain any funds related to Mr. Brown's investors. However, on several occasions investor funds were disbursed from Respondent's trust account to his operating account ending 9947.

21. Respondent's conduct in this count violated Rule 42, Ethical Rules 1.5(b), 8.4(c); Rule 43(a); Rule 43(b)(1)(A); Rule 43(b)(1)(C); Rule 43(b)(2)(A); Rule 43(b)(2)(B); Rule 43(b)(2)(C); Rule 43(b)(2)(D); Rule 43(b)(5); Rule 43(d)(3); Rule 54(d)(2); Rule 54(d)(2)(A); and Rule 54(d)(2)(C).

Count Two (Investor Financial Transactions)

Grow With Us / Matri Holding

22. The first deposit reflected in Respondent's IOLTA in the review period was made on May 3, 2016, in the amount of \$30,000.00 as a transfer on behalf of investor Grow With Us, LLC.

23. Records show Gregg and Associates "D'wan A. Brown," ("Mr. Brown") as the borrower and Grow with Us, LLC "Raymond F. Connelly" as the lender. Mr. Brown provided written instructions to Respondent for the disbursement of the funds, which reflect \$9,000.00 to Shawn Sheffield,

\$10,000.00 to Mutual Heritage Group, and \$10,500.00 to Mr. Brown, for a total in the amount of \$29,500.00.

24. On that same day, Respondent withdrew funds in the amount of \$10,500.00 from the trust account. Respondent did not provide any records of how the funds were distributed.

25. On May 4, 2016, the wire transfers were completed to the other parties in the requested amounts, leaving Grow With Us with a balance of \$500.00 remaining in the trust account.

26. On May 16, 2016, a deposit in the amount of \$65,000.00 was made into the trust account as a book transfer credit from Matri Holdings, LLC, bringing the account balance to \$65,507.61.

27. Records reflect Mr. Brown as the borrower and Matri Holding, LLC "Michael Matrisciani" as the lender.

28. Raymond F. Connelly and Grow With Us, LLC was the Guarantor.

29. The written instructions provided to Respondent by Mr. Brown direct a disbursement of \$20,000.00 to Gregg and Associates, \$5,000.00 to Sylvia Baker, \$10,000.00 to National Financial Services, and \$20,000.00 to Mr. Brown, for a total of \$55,000.00.

30. Those disbursements were made to the requested parties on the same day the funds were deposited into Respondent's IOLTA. After the disbursements were made, \$10,000.00 in investor funds remained in Respondent's IOLTA.

31. On May 23, 2016, a transfer in the amount of \$5,500.00 was made to Respondent's operating account.

32. On May 23, 2016, May 26, 2016, and June 1, 2016, funds were transferred to Mr. Brown through Chase Quickpay in the amounts of \$3,000.00, \$1,000.00, and \$1,000.00, respectively, exhausting the funds deposited by the first two investors, Grow With Us and Matri Holding, and returning the trust account balance to \$7.61.

Dr. Artis Woodward

33. On July 8, 2016, a deposit in the amount of \$10,000.00 was made as a transfer from account ending 7783. Records show Mr. Brown and Malcolm Kelly Oliver as borrowers and Dr. Artis Woodward as the lender.

34. Mr. Brown's written distribution instructions directed Respondent to distribute \$5,600.00 to Mr. Brown and \$4,400.00 to Mr. Oliver.

35. On the same day as the deposit, funds in the amount of \$4,500.00 were transferred to Mr. Brown, and two cash withdrawals were made from the trust account in the amounts of \$4,400.00 and \$1,100.00.

36. The cash withdrawal in the amount of \$4,400.00 was deposited into the requested account for Mr. Oliver.

37. Respondent failed to provide documents showing the disposition of the other cash withdrawal in the amount of \$1,100.00.

38. Chase reversed the \$4,400.00 deposit made into the account of Mr. Oliver.

39. Mr. Brown subsequently directed Respondent to send the reversed funds to Mr. Brown on behalf of Mr. Oliver. Respondent completed the transfer to Mr. Brown the following day, leaving no additional investor funds in the trust account and returning the trust account balance to \$7.61.

Reuben Cannon

40. On October 14, 2016, a deposit in the amount of \$25,000.00 was made on behalf of Reubs Record, LLC. Records reflect ADF Unit Trust Inc., ADF Energy Trust, Inc., Joan R. Phoenix-French, President/CEO as the borrower, and Reuben Cannon as the lender.

41. Mr. Brown's written distribution instructions directed Respondent to distribute \$11,750.00 to Eugene Fletcher and \$6,750.00 to Mr. Brown, for a total of \$18,500.00.

42. On October 14, 2016, \$5,000.00 was transferred to Mr. Brown and \$1,500.00 was transferred to Respondent's operating account.

43. On October 17, 2016, a cash withdrawal was made in the amount of \$18,500.00. Respondent failed to provide documentation showing the disposition of that cash withdrawal.

44. After the withdrawal October 17, 2016, no investor funds remained in Respondent's IOLTA account. The balance returned to \$7.61.

Dr. Eugene Fletcher

45. On December 22, 2016, funds in the amount of \$3,500.00 were transferred into Respondent's trust account from account ending 8827 by Dr. Eugene Fletcher. Dr. Fletcher is an associate of Mr. Brown.

46. The following day the funds were transferred to Respondent's operating account.

47. Respondent provided no legal services to Dr. Fletcher.

Victor Jimenez (File No. 17-1914)

48. Victor Jimenez is the CEO of Corporativo House LLC, a registered corporation in Nevada. Mr. Jimenez entered into a \$125,000.00 investment contract with Mr. Brown. Mr. Brown was acting on behalf of the company Gregg and Associates. Mr. Gregg of Gregg and Associates is Respondent's and Mr. Brown's godfather. Mr. Brown did not disclose the familial relationship to Mr. Jimenez.

49. Mr. Jimenez was hesitant to proceed with the investment until Mr. Jimenez received an offer for a rebate on the investment in the amount of \$65,000.00 if he agreed to move forward. Mr. Jimenez agreed to move forward with the deal only if the contract was also signed by Mr. Gregg.

50. The newly-drafted contract directed Mr. Jimenez to deposit funds in the amount of \$125,000.00 into an escrow account in Respondent's name.

51. The agreement provided to Mr. Jimenez was titled Private Loan Assignment, Unconditional Guarantee, & Promissory Note and lists Gregg and Associates as the borrower and Corporativo House, LLC as the lender. The agreement includes that "said funds shall be utilized as asset participation in the delivery of securities instrument from ADF Unit trust. This is not a securities

offering and the series E bonds will bear an interest at 6.75%. The funds are to be utilized as proof of funds for the collateralization of the monetization of said Bonds.” The loan amount is \$125,000.00, a term of 15 banking days, and a maturity date of March 17, 2017. The agreement reflects a rebate of \$65,000.00, due February 28, 2017, a return on investment of 300% and a participation return of \$565,000.00.

52. On February 24, 2017, \$125,000.00 was deposited into Respondent’s trust account by Corporativo House LLC. That same day, at the direction of Mr. Brown, Respondent sent \$61,000.00 to Dr. Eugene Fletcher at Optimum Management Group and \$55,000.00 to Mr. Brown.

53. On February 27, 2017, a book transfer from Lapere Madeleine was made into the trust account in the amount of \$65,000.00. On March 1, 2017, at the direction of Mr. Brown, Respondent sent \$65,000.00 to Mr. Jimenez for the rebate.

54. Throughout the next month the remaining funds were disbursed by seven transfers to Mr. Brown in the total amount of \$4,500.00 and two transfers to Respondent’s operating account in the amounts of \$4,000.00 and \$500.00; leaving

no remaining investor funds in the trust account and returning the trust account balance to \$7.61.

55. After the maturity date of March 17, 2017, all communication with Mr. Jimenez stopped.

56. Mr. Jimenez has still not received the return of funds that was agreed upon in the contract.

Karla Alvarez (File No. 17-1594)

57. Mr. Brown and Karla Alvarez entered into a business contract in April 2017.

58. Ms. Alvarez was to provide \$17,000.00 in relation to a business deal, but Respondent did not represent Mr. Brown or Ms. Alvarez in the transaction.

59. Mr. Brown gave Respondent a copy of Mr. Brown's agreement with Ms. Alvarez, titled "Private Loan Assignment and Promissory Note." It lists MPM Services, LLC as the borrower and Ms. Alvarez as the lender.

60. The agreement states that the funds will be "utilized as operating capital to pay for 'underwriting' fees for an American Express line of credit," and includes remittance instructions listing Respondent, his law office, and his trust account information.

61. The agreement lists a loan amount of \$17,000, a term of one banking day, and a return on investment of \$100,000.00. The agreement has a blank next to the phrase "Maturity Date" and states, "Borrower Agrees to pay Debt . . . of \$117,000.00 by the Maturity Date at the Lender's Address or to be determined by Lender."

62. Respondent did not draft the agreement or consult with Mr. Brown about the language of the agreement.

63. On April 24, 2017, Ms. Alvarez deposited \$17,000.00 into Respondent's trust account.

64. Respondent did not communicate with Ms. Alvarez about the distribution of the funds that Ms. Alvarez had deposited into his IOLTA.

65. On April 26, 2017, funds in the amount of \$10,000.00 were transferred to Respondent's operating account. Subsequently two transfers were completed to Mr. Brown on April 26, 2017, in the amount of \$5,000.00 and on April 27, 2017, in the amount of \$2,000.00, leaving no additional funds in the trust account on behalf of Ms. Alvarez and returning the trust account balance to \$7.61.

66. Respondent falsely avowed to the Bar that all of the funds provided by Ms. Alvarez were disseminated to Mr. Brown.

Paul Zook

67. On May 4, 2017, funds were wired into Respondent's trust account in the amount of \$25,000.00 on behalf of Paul Zook. Records reflects WP Financial, LLC as the borrower and Mr. Zook as the lender.

68. On the same day all investor funds were disbursed to Mr. Brown and the trust account balance returned to \$7.61.

69. Respondent had no transactions in his trust account between May 5, 2017, and February 28, 2018.

70. Respondent's conduct in this count violated Rule 42, Ethical Rules 1.5(b), 8.4(c); Rule 43(a); Rule 43(b)(1)(A); Rule 43(b)(1)(C); Rule 43(b)(2)(A); Rule 43(b)(2)(B); Rule 43(b)(2)(C); Rule 43(b)(2)(D); Rule 43(b)(5); Rule 43(d)(3); Rule 54(d)(2); Rule 54(d)(2)(A); and Rule 54(d)(2)(C).

DATED this 28th day of June, 2018.

STATE BAR OF ARIZONA


Rebecca Nicole Kennelly
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 28th day of June, 2018.

by: Karen E. Alcarazo
RNK:kec

FILED

MAY 04 2018

BY



**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

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

**RODRICK S. CARTER,
Bar No. 017961,**

Respondent.

No. 17-1594

PROBABLE CAUSE ORDER

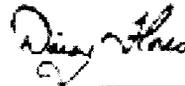
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 13, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 17-1594.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 3rd day of May, 2018.



Daisy Flores, Vice Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee member Judge Lawrence F. Winthrop did not participate in this matter.

Original filed this 4th day
of May, 2018, with:

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

Copy mailed this 7th day
of May, 2018, to:

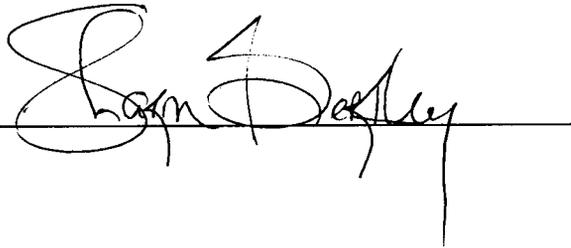
Rodrick S. Carter
The Law Offices of Rodrick S. Carter, P.C.
45 W. Jefferson Street, Suite 501
Phoenix, Arizona 85003-2316
Respondent

Copy emailed this 7th day
of May, 2018, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

by:

A handwritten signature in black ink, appearing to read "Sam Deakley", is written over a horizontal line. The signature is cursive and somewhat stylized.

FILED

MAY 04 2018

BY



**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

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

**RODRICK S. CARTER,
Bar No. 017961,**

Respondent.

No. 17-1914

PROBABLE CAUSE ORDER

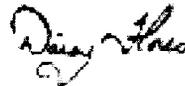
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By a vote of 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 17-1914.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 3rd day of May, 2018.



Daisy Flores, Vice Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee member Judge Lawrence F. Winthrop did not participate in this matter.

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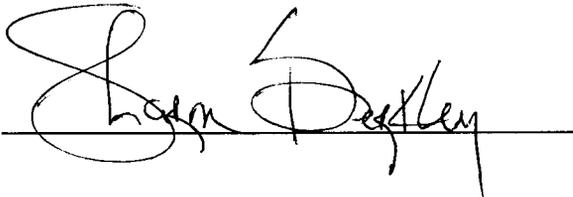
Rodrick S. Carter
The Law Offices of Rodrick S. Carter, P.C.
45 W. Jefferson Street, Suite 501
Phoenix, Arizona 85003-2316
Respondent

Copy emailed this 7th day
of May, 2018, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

by:

A handwritten signature in black ink, appearing to read "Logan Dwyer", is written over a horizontal line.