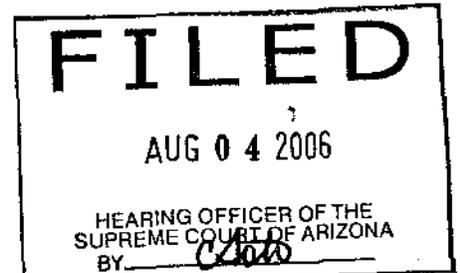


**BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA**

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

**KEITH R. LALLISS**  
Bar No. 002293

Respondent



Nos. 04-1887 and 05-1124

**REPORT  
OF THE HEARING OFFICER**

The State Bar filed its complaint in this matter on December 30, 2005. Respondent filed his answer on January 30, 2006. Respondent filed a motion for summary judgment on March 31, 2006; the State Bar filed its response on April 25, 2006; respondent responded on May 3, 2006. Oral argument was heard on the motion for summary judgment on May 11, 2006 and the motion was denied on May 18, 2006.

This matter came for hearing on June 5 and 6, 2006. Ariel Worth and Amy Rehm appeared on behalf of the State Bar. Keith R. Lalliss appeared pro per. Witnesses appearing were James Hamel, Bret Hamel, Joseph Collins, Jonathan Collins, Robert Collins, Suzanne Joseph and Keith Lalliss.

Based upon the pleadings, the testimony, and the documentary evidence, the following findings of fact, conclusions of law and recommendations are made.

1. Respondent is an attorney licensed to practice law in the state of Arizona since April 12, 1969.

**COUNT ONE (04-1887)**

2. In the early 1970's, Respondent met James H. Hamel (hereinafter "Jim"), and Jim's family through association in the same church. Jim and Respondent became good friends. (Reporter's Transcript Vol. I, pp. 19, 36) On May 8, 1982, Respondent's daughter, Linda Lalliss, (hereinafter "Linda"), married Jim's son, Bret J. Hamel (hereinafter "Bret"). (R. T., Vol. 1, pp. 20, 59)

3. Respondent provided legal services for Jim and his wife, Diane, periodically from the mid 1970's until 2004. (R.T., Vol. 1, pp 21)

4. Bret worked for his parents from the mid 1970's until November 2004, except for a period of time when Bret was in treatment for drug addiction, January 3, 2001 through June 28, 2001. (R.T., Vol. 1, pp., 25, 76)

5. Over the years of Bret's marriage to Linda, most of Bret's income came from family business operations of the Hamel family. (R.T., Vol., pp. 27)
6. At some point in time prior to 2001, Jim and Diane began a divestment of assets to their children; however, Respondent was not involved in any of those transactions. (R. T., Vol. 1, pp. 35)
7. While Bret was in treatment in other states for drug addiction, Linda filed an action, in Maricopa County Superior Court, which resulted in the dissolution of their marriage. That action was given the number FC2001-091735 and will be referred to, hereafter, as "the divorce action". (State Bar's exhibit 8)
8. Virtually all of Bret's income came from Jim and Diane's business operations. (R.T., Vol. 1, pp. 39, 41, 46, 52)
9. During the divorce proceedings, Jim and Respondent met on more than one occasion to discuss possible settlement of the issues between their children in the divorce action. (R.T., Vol. 1, pp. 36, 39)
10. Bret's attorney, C. Robert Collins, objected to the meetings between Jim and Respondent and those meetings were discontinued without any progress. (R.T., Vol. 1, pp. 36, 39, 40)
11. During the progress of the divorce action, Bret filed a Chapter 7 Bankruptcy Petition with the United States Bankruptcy Court for the District of Arizona, in April 2003. (R.T., Vol. 1, pp 69)
12. During the trial in the divorce action, Bret testified as to his earning ability and the history of his employment. (R.T., Vol. 1, pp. 51; Respondent's exhibit 45, pp. 118-125)
13. Bret did not have any ownership of any of the real properties, built or acquired, by his parents. Bret's income came from family partnerships that had some relationship to the ownership and operation of those buildings. (R.T., Vol. 1, pp. 73-75, 101-103)
14. During the proceedings in the divorce action, the bankruptcy action was concluded by the sale of Bret's assets in two partnerships, known as BTRPJ and HFBTRPJ, to Bret's parents. Bret's parents paid \$74,000 to the Bankruptcy Trustee and subrogated a claim for \$1,000,000 against Bret in exchange for all of Bret's non-exempt assets. (R.T., Vol. 1, pp. 70, 72, 95)

15. Bret did not have any discussions before or during the divorce proceedings with Respondent having to do with Bret's income. (R.T., Vol. 1, pp. 75-77)
16. Bret's father, Jim, and Respondent never had any conversations concerning the specific income of Bret. (R.T., Vol. 1, p. 43, in which the word "impact" should be "income.")
17. Bret called Respondent, while Bret was in treatment out of state, regarding service of process of the divorce action upon him. That telephone call, however, pertained to issues regarding saving the marriage of Bret and Linda, and did not involve any discussion of the issues of the divorce or any financial matters pertaining to the divorce. (R.T., Vol. 1, pp. 77-79, 82)
18. The divorce action was concluded by decree, entered by the Superior Court, on October 8, 2004. (State Bar's exhibit 2)
19. In the decree, the judge in the divorce action made the following findings of fact:

15. "During the marriage, the primary family provider was the Respondent." (Bret).
16. "The party's community income was derived from Respondent's salary and investment income from the various business entities that they owned together or with Respondent's family."
17. "The average monthly income of the parties between 1998 and 2001 was \$17,300."
18. "The income and investments allowed the parties to enjoy an upper-class lifestyle."
19. "Their net worth and assets in 1999 ranged from \$5,447,283 to \$8,310,352."
20. "At one time, their total real estate holdings were valued at \$10,139,000."
21. "As a result of the bankruptcy, certain community assets may have been sold, to wit: 'all non-cash non-exempt assets of the estate of Bret Hamel' ."
22. "The parties have been separated since January 2001, when Respondent sought treatment for mental health, substance abuse, and sexual disorders issues."
23. "Respondent is employed and currently earning \$4,400 per month. Respondent's earning capacity is substantially greater than his current earnings. Respondent may be a principal in Stage-Coach Property and Development, L.L.C."

The divorce action judge awarded spousal maintenance to Linda in the amount of \$2,300 per month for an indefinite period of time, but for no less than 10.5 years.

The parties were referred to Expedited Services, for calculations of child support, Retroactive to July 1, 2001. (State Bar exhibit 2)

20. On October 29, 2004, Respondent was substituted as attorney for Linda in the divorce action, in place of Barry Dickerson. (Respondent's exhibit 2)

21. On November 4, 2004, Bret's attorney filed a motion with the divorce action judge to disqualify Respondent as attorney for Linda. (State Bar exhibit 1)

22. The judge in the divorce action summarily denied the motion to disqualify Respondent, by minute entry November 2004, without argument. (State Bar exhibit 3: R. T., Vol. 1, pp. 47, 83)

23. Respondent represented Linda in two Expedited Services proceedings in late 2004 and early 2005 pertaining to child support paid by Bret and calculation of arrearages in prior payments of child support and spousal maintenance. (R. T., Vol. 1, pp. 133-153)

24. Although neither party presented to the hearing officer a transcript of the proceedings at the Expedited Services conferences, the arguments made by the Respondent at those proceedings were consistent with the findings of the judge in the divorce action. (R.T., Vol. 1, pp. 133-167)

25. A resolution management conference was held before the divorce action judge on March 3, 2005. At that hearing, Respondent argued that that portion of the decree, requiring retroactive calculation of support, was contrary to law, in that judgments could not be retroactively modified under the circumstances. Respondent also argued that the court's award of spousal maintenance, in the amount of \$2,300 per month, was inconsistent with the argument of Bret's counsel that his income was only \$4,400 per month. Respondent further argued that case law provides that regular gifts from a third party to a litigant in a divorce action are considered as income. (State Bar exhibit 12)

26. Respondent, prior to his appearance in the divorce action, did not represent Bret in any same or similar action, factually or as that term is broadly interpreted under the ethical rules. Respondent represented Bret in 1979 in a DUI in California. (R.T., Vol. 1, pp. 59), in an action before the Arizona Registrar Contractors, for Hamelot, Inc., in the early 1990's. (R. T., Vol. 1, pp. 60, 66), a personal injury case in the mid 1990's, (R. T., Vol. 1, p. 63), a matter pertaining to a beneficial interest under a deed of trust in 1995, (R. T., Vol. 1, p. 62), and in a business that was defunct at the time of the divorce action, HHH Auto Sales. (R. T., Vol. 1, p. 65)

27. No witness testified that Bret had given Respondent any information at any time prior to October 2004, pertaining Bret's income, either in the course of

representation or outside their professional relationship.

28. No credible evidence was presented as to any violation by Respondent of Rule 42 Arizona Rules of Court, ER 1.7, ER 1.9, or ER 8.4 (d).

COUNT TWO (05-1124)

29. Respondent was the attorney of record for Ms. Suzanne Joseph in her dissolution of marriage proceeding, FN2002-09157, Maricopa County Superior Court, State of Arizona. A final decree was entered in that matter on June 27, 2003. (Joint Pre-Hearing Statement (JPHS), Uncontested Material Facts, para. 9).

30. As part of the dissolution representation, Respondent agreed to attempt to obtain a qualified domestic relations order ("QDRO"), as ordered in the June 27, 2003 final dissolution decree. (JPHS., Uncontested Material Facts, para. 11).

31. In August 2003, Ms. Joseph delivered \$400 to Respondent for her half of the QDRO preparation fee. Ms. Joseph's ex-husband was required to pay the remaining half of the fee pursuant to the terms of the final dissolution decree. (JPHS., Uncontested Material Facts, para. 12).

32. On August 18, 2003, Respondent applied the \$400 QDRO preparation fee on account. (R.T., Vol. 2, p. 284; JPHS., Uncontested Material Facts, para. 13., SBA Exh. 23, Bates No. 0000150).

33. The \$400 QDRO payment was deposited into Respondent's operating account as a payment for fees. The \$400 QDRO payment was not put in Respondent's client trust account. (SBA Ex. 31, Bates. No. 0000243).

34. The QDRO, while prepared by Respondent, (R.T., Vol2, pp. 282, 284), did not get finalized because Ms. Joseph's ex-husband did not cooperate, the matter was stayed by bankruptcy proceedings in Texas, (R.T. Vol 1, pp. 203, 240, 243-44), and the ex-husband's attorney withdrew. (R.T., Vol 2, p. 296).

35. Respondent separately agreed to represent Ms. Joseph in settling some debts owed to credit card companies. (JPHS., Uncontested Material Facts, para. 10).

36. On November 30, 2004, Ms. Joseph delivered \$2,500.00 to Respondent for the specific purpose of funding a settlement of Ms. Joseph's credit card debt. (JPHS., Uncontested Material Facts, para. 15, R.T., Vol.1, pp. 204,205, R.T., Vol.2, p.292-293., R.Ex. 25).

37. The \$2,500 was put in Respondent's trust account. (R.T., Vol. 1, pp. 250-1, Vol. 2, p. 311).
38. Respondent could not complete a settlement with any of Ms. Joseph's credit card account holders on the terms Ms. Joseph expected or thought they would or had agreed to. (R.T., Vol. 1, pp. 248-250, Vol. 2, pp. 306-7, 309-311).
39. After November 30, 2004, Ms. Joseph continued to receive collection notices regarding the credit card debt. (JPHS., Uncontested Material Facts, para. 17).
40. Ms. Joseph learned that the creditors had not settled and by letter dated May 20, 2005, Ms. Joseph terminated the services of Respondent and demanded the return of the \$2,500.00 settlement money. (JPHS., Uncontested Material Facts, para. 18; SBA Ex. 22-A, Bates No. 0000119-120; R.T., Vol.1, p. 207-208).
41. By letter dated June 3, 2005, Ms. Joseph again demanded the return of her \$2,500.00. Ms. Joseph further stated that she needed this money in order to re-offer this money to her creditor. (SBA Ex. 22-B, Bates No. 0000123; R.T., p. 208).
42. Respondent refused to return the settlement money to Ms. Joseph, (JPHS., Uncontested Material Facts, para. 19; SBA Ex. 22-D, Bates No. 0000126; R.T., Vol. 1, pp. 208, 209), claiming a retaining lien for outstanding attorney's fees, (R.T., Vol. 2, pp. 292, 308), which Respondent, after some diligence, thought was ethical. (R.T., Vol. 2, pp. 307-8, 312-315).
43. By letter dated June 7, 2005, Respondent advised Ms. Joseph that he would not return her funds to her. Respondent further stated that if Ms. Joseph would agree to pay the funds over to Respondent for unpaid legal fees, that Respondent would waive the outstanding balance that Ms. Joseph owed to Respondent for his work on the dissolution proceeding. (JPHS., Uncontested Material Facts, para. 20., SBA Ex. 22-D, Bates No. 0000126).
44. Ms. Joseph felt she was unable to pursue further settlement negotiations with her creditors as a result of Respondent's refusal to return the \$2,500.00. (R.T., Vol.1, p. 210).
45. The \$2,500 in trust for the specific purpose of funding a settlement should have been returned to Ms. Joseph on demand.

#### CONCLUSIONS OF LAW AND RECOMMENDATION

As to Count One, there has been no showing by clear and convincing evidence that Respondent's limited representation of his daughter in a post-dissolution child support matter was unethical by way of conflict of interest with

prior representation of his son-in-law, Bret Hamel, considering the totality of the circumstances, the broad and lengthy nature of the familial relationships and the issues involved in the prior matters of representation of Bret. Moreover, this ethical complaint appears to be overlaid with the emotional distress of the divorce between the children, even between the two families. No other ethical violations are supported either.

As to Count Two, the \$400 QDRO money paid by Ms. Joseph was for attorney fees, whether for services performed by Respondent or someone at Respondent's direction. Respondent in fact did prepare the QDRO, but its finalization was prohibited by circumstances outside of his control. There is no ethical violation in the handling of the \$400 payment.

Further as to Count Two, regarding the \$2500 given by Ms. Joseph to Respondent for the specific purpose of funding settlements with creditors, which funds were placed in Respondent's trust account, Respondent, by clear and convincing evidence, violated Rule 42, *Ariz. R. S. Ct.*, 1.15(d), 1.16(d) and Rule 44(b)(4), *Ariz. R. S. Ct.*, when he failed to return the funds to Ms. Joseph on her demand or when he was terminated. Notwithstanding a retaining lien, if one existed, Respondent was under a duty under the circumstances of this case to return Ms. Joseph's property which was no longer useful for the purposes entrusted. No other ethical violations are found in connection with the handling of this \$2500 or the representation of Ms. Joseph.

The *ABA Standards*, to which we give deference, provide:

4.1 Failure to Preserve the Client's Property

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

4.11.

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

4.12.

Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4.13.

Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

4.14.

Admonition informal reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

To these Standards, aggravating and mitigating circumstances are to be applied. Respondent has no prior disciplinary record after many years of service in the profession, and demonstrated cooperation, candor and contriteness in these proceedings (R.T., Vol. 2, pp. 293-4, in which he, during evening recess, found and disclosed to Bar Counsel additional records which were not exculpatory; R.T., Vol. 2, p. 306, where Respondent acknowledged the seriousness of the conduct upon which a violation was found).

It is difficult to conclude, under the Standards, that Respondent was negligent, and he certainly was not acting with malice nor intent to convert or steal. Indeed, Respondent researched the ethical issue and sought advice, but the plain language of the Rule was circumvented in favor of Respondent's own misguided interests.

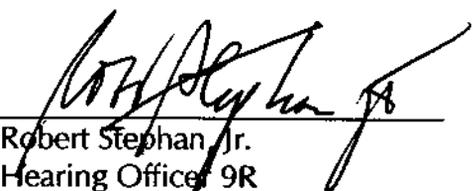
It would be difficult to truly weigh the impact of Respondent's actions on Ms. Joseph. Her former spouse had already filed for bankruptcy for the community debts, Ms. Joseph's financial affairs were turning for the worse with the insolvency of her investment fund, and she was deeply in debt. (R.T., Vol. 1, pp. 219-220, 236-7, 208-210).

Therefore, it is recommended that Respondent be given an informal reprimand and assessed all costs of these proceedings. The reprimand may read:

Respondent accepted client funds for the specific designated purpose of funding the settlement of debts and placed those funds in his trust account. After failure to settle any debts, and on termination of Respondent by the client and demand for return of the funds, Respondent refused to give the funds back to the client, asserting a retaining lien for attorney fees on another matter. This violated Rule 42, *Ariz. R. S. Ct.*, 1.15(d) and 1.16(d) and Rule 44(b)(4), *Ariz. R. S. Ct.*

Dated August 1, 2006.

Respectfully submitted,

  
Robert Stephan, Jr.  
Hearing Officer 9R

Original filed with the Disciplinary Clerk  
this 4<sup>th</sup> day of August, 2006.

Copy of the foregoing mailed this  
11<sup>th</sup> day of August, 2006 to:

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