

**FILED**  
FEB 23 2011  
DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA

BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA

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IN THE MATTER OF A MEMBER ) No. 10-0715  
OF THE STATE BAR OF ARIZONA )  
)  
**BRET H. HUGGINS,** )  
**Bar No. 007535** ) **DISCIPLINARY COMMISSION**  
) **REPORT**  
)  
RESPONDENT. )  
\_\_\_\_\_ )

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 22, 2011, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed December 6, 2010, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum ("Joint Memorandum") providing for censure, one year of probation with the State Bar's Trust Account Ethics Enhancement Program ("TAEEP") and the State Bar's Law Office Management Assistance Program ("LOMAP") and costs.

**Decision**

The five members<sup>1</sup> of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law and recommendation for censure, one year of probation (TAEEP and LOMAP) and costs of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk's office.<sup>2</sup> The terms of probation are as follows:

<sup>1</sup> Commissioner Belleau and Horsley did not participate in this proceeding. Commissioners Flores and Houle recused.



Copy of the foregoing mailed  
this 24 day of February, 2011, to:

Eleanor L. Miller  
Respondent's Counsel  
3610 N. 15<sup>th</sup> Avenue  
Phoenix, AZ 85016

Russell J. Anderson  
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State Bar of Arizona  
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Copy of the foregoing hand delivered  
this 24 day of February, 2011, to:

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

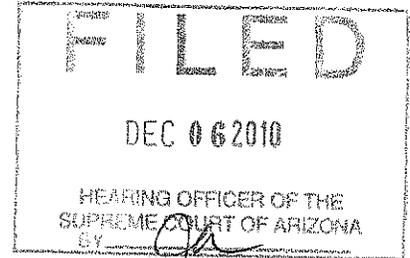
by: Deann Baker

/mps

# **EXHIBIT**

**A**

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



IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
)  
**BRET H. HUGGINS,** )  
**Bar No. 007535** )  
)  
RESPONDENT. )  
\_\_\_\_\_ )

No. 10-0715

**HEARING OFFICER REPORT**

**PROCEDURAL HISTORY**

The State Bar and Respondent filed a Tender of Admissions and Agreement for Discipline by Consent and a Joint Memorandum in Support of the Tender of Admissions and Agreement for Discipline by Consent on September 16, 2010 pursuant to Rule 56(a), Ariz.R.Sup.Ct. No Complaint has been filed. The Hearing Officer was assigned on September 22, 2010. The hearing on the agreement was held on October 19, 2010.

**FINDINGS OF FACT<sup>1</sup>**

1. At all times relevant, Respondent was a licensed attorney authorized to practice law in the State of Arizona, having been admitted to so practice on October 23, 1982.

**COUNT ONE**

2. On or about February 2007, Respondent opened a lawyer trust account with National Bank of Arizona, account number ending in 167, ("Respondent's trust account") for the purpose of maintaining client funds during his representation of clients. (TR 4:24 through 5:4)

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<sup>1</sup> The facts are found in the Tender of Admissions and in the transcript (TR) of the hearing.

3. At all times relevant, Respondent was responsible for the management of Respondent's trust account.

4. Between February 2007 and April 16, 2010, Respondent did not maintain individual ledgers for each of Respondent's clients who had funds in Respondent's trust account. (TR 5:12)

5. Between February 2007 and April 16, 2010, Respondent used his billing system to track client funds that were in Respondent's trust account. (TR 5:15)

6. Respondent's billing system tracked charges and time for each of his individual clients. (TR 5:20)

7. Respondent relied on his billing system in lieu of maintaining individual client ledgers. (TR 5:24)

8. Respondent's billing system did not record the payor of each receipt of client funds. (TR 6:6)

9. Respondent's billing system did not record the payee of each disbursement of client funds. (TR 9:11)

10. Respondent's billing system did not maintain a record of unexpended (or running) balances of client funds. (TR 9:21)

11. On or before June 30, 2008, Respondent's client Abbott ("Abbott") provided Respondent with \$10,000.00, representing an unearned advanced fee that should have been placed into Respondent's trust account. (TR 10:9)

12. On or before June 30, 2008 Respondent either used the entire \$10,000.00 advance fee or deposited it into his General Operating Account ("General Account"). (TR 14:14)

13. On or about June 30, 2008, Abbott had no funds in Respondent's trust account.

14. On or about July 1, 2008, Respondent paid himself fees for services rendered to client Abbott with check no. 1042 in the amount of \$4,575.00. (TR 15:6)

15. On or about January 26, 2009, Respondent paid himself fees for services rendered to client Abbott with check no. 1062 in the amount of \$5,425.00. (TR 15:6)

16. On or about April 16, 2010, Respondent paid himself fees for services rendered to client Abbott with check no. 1126 in the amount of \$2,300.00. (TR 15:11)

17. On or between June 30, 2008 and April 16, 2010 no funds were deposited into Respondent's trust account for services related to Abbott. (TR 16:9)

18. On or about June 30, 2008, no funds were maintained in Respondent's trust account relating to his representation of his client Avelar ("Avelar"). (TR 16:15)

19. On or about July 1, 2008, Respondent paid himself fees for services rendered to client Avelar with check no. 1041 in the amount of \$525.00. (TR 16:22)

20. On or between June 30, 2008 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Avelar. (TR 17:1)

21. On or about June 30, 2008, no funds were maintained in Respondent's trust account relating to his representation of his client Baird ("Baird"). (TR 19:17)

22. On or about July 1, 2008, Respondent paid himself fees for services rendered to client Baird with check no. 1040 in the amount of \$5,000.00. (TR 19:21)

23. On or between June 30, 2008 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Baird. (TR 20:1)

24. On or about July 1, 2008, no funds were maintained in Respondent's trust account relating to his representation of his client Ballard ("Ballard"). (TR 20:7)

25. On or about October 15, 2009, Respondent paid himself fees for services rendered to client Ballard with check no. 1104 in the amount of \$1,600.00. (TR 20:15)

26. On or between July 1, 2008 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Ballard. (TR 20:12-24)

27. In four separate transactions occurring on and between August 6, 2008 through September 19, 2008, Respondent deposited \$1,600.00 for unearned advanced fees into his General Operating Account. (TR 20:14)

28. The fees referred to in paragraph 27, above, should have been deposited into Respondent's trust account. (TR 20:12-24)

29. On or about June 30, 2008, no funds were maintained in Respondent's trust account relating to his representation of his client Barnes ("Barnes").

30. On or about July 1, 2008, Respondent paid himself fees for services rendered to client Barnes with check no. 1038 in the amount of \$910.00.

31. On or between June 30, 2008 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Barnes.

32. On or about September 30, 2009, no funds were maintained in Respondent's trust account relating to his representation of his client Calderon ("Calderon").

33. On or about October 15, 2009, Respondent paid himself for services rendered to client Calderon with check no. 1105 in the amount of \$650.00.

34. On or between September 30, 2009 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Calderon.

35. On or about July 1, 2008, \$1,329.00 was maintained in Respondent's trust account relating to his representation of his client Castillo ("Castillo"). (TR 21:14)

36. On or about October 15, 2009, Respondent paid himself for services rendered to client Castillo with check no. 1106 in the amount of \$1,525.00. (TR 21:18)
37. On or between July 1, 2008 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Castillo. (TR 21:24)
38. On or about January 5, 2010, \$2,370.00 was maintained in Respondent's trust account relating to his representation of his client Dreiling ("Dreiling"). (TR 22:10-18)
39. On or about January 6, 2010, Respondent returned \$2,475.00 to Dreiling with check no. 1117. (TR 22:20)
40. On or about April 16, 2010, Respondent paid himself for services rendered to client Dreiling with check no. 1125 in the amount of \$1,000.00. (TR 23:14)
41. On or between January 5, 2010 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Dreiling. (TR 23:21)
42. On or about February 5, 2010, \$218.00 was maintained in Respondent's trust account relating to his representation of his client Goddard ("Goddard"). (TR 24:4)
43. On or about February 8, 2010, Respondent paid himself for services rendered to client Goddard with check no. 1120 in the amount of \$1,159.00. (TR 24:9)
44. On or between February 5, 2010 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Goddard. (TR 24:11)
45. On or about June 30, 2008, \$464.00 was maintained in Respondent's trust account relating to his representation of his client Gonzales ("Gonzales"). (TR 24:20)
46. On or about July 1, 2008, Respondent paid himself for services rendered to client Gonzales with check no. 1028 in the amount of \$700.00. (TR 24:24)

47. On or about August 19, 2008, Respondent deposited \$250.00 into Respondent's trust account for his representation of Gonzales. (TR 25:3)

48. On or about November 12, 2008, Respondent deposited \$250.00 into Respondent's trust account for his representation of Gonzales. (TR 25:11)

49. On or about October 15, 2009, Respondent paid himself for services rendered to client Gonzales with check no. 1110 in the amount of \$500.00. (TR 25:13)

50. Between June 30, 2008 and April 16, 2010, no additional funds were deposited into Respondent's trust account for Respondent's representation of Gonzales other than the \$500.00 deposited as referenced in paragraphs 47 and 48, above. (TR 26:3, 27:20)

51. On or about June 30, 2008, \$750 was maintained in Respondent's trust account for Respondent's representation of his client Gray ("Gray").<sup>2</sup> (TR 27:25)

52. On or about July 1, 2008, Respondent paid himself for services rendered to client Gray with check no. 1027 in the amount of \$5,275.00. (TR 28:4)

53. On or between June 30, 2008 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Gray. (TR 28:8)

54. On or about June 30, 2008, \$2,000.00 was maintained in Respondent's trust account for Respondent's representation of his client Loftis ("Loftis"). (TR 28:13)

55. On or about July 30, 2008, Respondent paid himself for services rendered to client Loftis with check no. 1054 in the amount of \$2,340.00. (TR 28:18)

56. On or between June 30, 2008 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Loftis. (TR 28:24)

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<sup>2</sup> Originally this paragraph in the Tender of Admissions read that there were no funds in the trust account for client Gray. At the hearing Bar Counsel corrected this to reflect that \$750 was in the trust account for client Gray. (TR 29:21)

57. On or about June 5, 2009, \$1,129.00 was maintained in Respondent's trust account for Respondent's representation of his client Lopez ("Lopez"). (TR 30:25)

58. On or about August 24, 2009, Respondent paid himself for services rendered to Lopez with check no. 1074 in the amount of \$1,250.00. (TR 31:3)

59. On or between June 5, 2009 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Lopez. (TR 31:7)

60. On or about February 2, 2009, \$4,750.00 was maintained in Respondent's trust account for Respondent's representation of his client Schimenti ("Schimenti"). (TR 31:23)

61. On or about May 6, 2009, Respondent paid himself \$7,250.00 for services rendered to client Schimenti with check no. 1067. (TR 32:1)

62. Check no. 1067 was written in the amount of \$13,750.00, but was a split payment with another client, Ortiz. (TR 32:7-16)

63. On or about October 15, 2009, Respondent paid himself for services rendered to client Schimenti with check no. 1111 in the amount of \$1,450.00. (TR 32:18)

64. On or between February 2, 2009 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Schimenti. (TR 32:22)

65. On or about October 15, 2009, no funds were maintained in Respondent's trust account for Respondent's representation of his client Singleton ("Singleton"). (TR 33:5)

66. On or about October 15, 2009, Respondent paid himself for services rendered to client Singleton with check no. 1112 in the amount of \$5,000.00. (TR 33:10)

67. On or between October 15, 2009 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Singleton. (TR 33:14)

68. On or about May 29, 2009, \$1,510.00 was maintained in Respondent's trust account for Respondent's representation of client Tugade ("Tugade"). (TR 33:21)

69. On or about July 10, 2009, Respondent paid himself for services rendered to client Tugade with check no. 1072 in the amount of \$1,790.00. (TR 34:1)

70. On or between May 29, 2009 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Tugade. (TR 34:4)

71. On or about September 30, 2009, \$4,947.00 was maintained in Respondent's trust account for Respondent's representation of client Wolfe ("Wolfe"). (TR 34:8)

72. On or about October 15, 2009, Respondent paid himself for services rendered for client Wolfe with check no. 1114 in the amount of \$5,400.00. (TR 34:13)

73. On or between September 30, 2009 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Wolfe. (TR 34:17)

74. On or about February 26, 2009, \$121.00 was maintained in Respondent's trust account of Respondent's representation of client Zapata ("Zapata"). (TR 35:1)

75. On or about August 24, 2009, Respondent paid himself for services rendered to client Zapata with check no. 1075 in the amount of \$921.00. (TR 35:4)

76. On or between February 26, 2009 and April 16, 2010, no funds were deposited into Respondent's trust account for Respondent's representation of Zapata. (TR 35:8)

77. On or between June 30, 2008 and April 16, 2010, the money in Respondent's trust account that he was paying himself for earned fees belonged to clients other than those described in paragraphs 11 through 76, above. (TR 38:19 through 39:1)

78. On or about April 16, 2010, check no. 1125, as referenced in paragraph 40, above, was presented to the National Bank of Arizona when the total balance available in Respondent's trust account was \$53.81. (TR 44:9-18)

79. On or about April 16, 2010, the National Bank of Arizona cashed check no. 1125 leaving a negative \$946.19 balance in Respondent's trust account. (TR 44:19)

80. As a result of the overdraft on Respondent's trust account, the National Bank of Arizona charged Respondent's trust account a \$32.00 fee for maintaining insufficient funds on or about April 19, 2010. (TR 44:24 through 45:2)

81. On or about April 19, 2010, Respondent's administrative funds ledger reflected that he only had \$27.31 available as administrative funds. (TR 45:4)

82. On or about April 19, 2010, the National Bank of Arizona issued an insufficient funds notice to Respondent and the State Bar. (TR 45:12)

### **RESTITUTION**

Following the receipt of the insufficient funds notice, Respondent contacted an accountant who reconstructed Respondent's trust account to locate the cause of the overdraft. The accountant's reconstruction showed that no clients were due a refund. The State Bar's Staff Examiner conducted an independent reconstruction that verified the accountant's reconstruction. Therefore, there is no restitution due in this matter. (TR 35:13 through 36:24)

### **CONDITIONAL ADMISSIONS/CONCLUSIONS OF LAW**

Respondent conditionally admits that his conduct violated Rule 42, ER 1.15 Ariz. R. Sup. Ct. [safekeeping client property], and Rules 43(a) [depositing funds in a trust account], 43(b)(1)(C) [maintaining internal controls in the office to safeguard funds held in trust], 43(b)(2)(A) [maintaining records of the handling and disposition of funds], 43(b)(2)(B)

[maintaining an account ledger for each client showing dates and amounts of receipt of funds, disbursement of funds and unexpended balance and 43(b)(2)(C) [conducting a three-way reconciliation of client ledgers, trust account general ledger and trust account bank statement], Ariz. R. Sup. Ct. Respondent's admissions are being tendered in exchange for the form of discipline stated below. Based on the admissions and the findings of fact the Hearing Officer concludes that there is clear and convincing evidence of the violations set forth above.

### ABA STANDARDS<sup>3</sup>

The *Standards* provide guidance with respect to an appropriate sanction in this matter. The Supreme Court and Disciplinary Commission consider the *Standards* a suitable guideline. *See In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.2d 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P. 2d 1037, 1040 (1990).

In determining an appropriate sanction, the Supreme Court and the Disciplinary Commission consider the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *See, Peasley*, 208 Ariz. at 35, 90P.3d at 772; *Standard 3.0*.

#### 1. Applicable Standard

The Hearing Officer agrees with the parties that Respondent's conduct, in violation of Rule 42, ER 1.15(a), Ariz. R. Sup. Ct., implicates *Standard 4.13*. *Standard 4.13* provides that a censure "is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client."

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<sup>3</sup> Information in the ABA Standards and Proportionality Review sections of this report come from the Joint Memorandum in Support of the Tender of Admissions and the hearing transcript.

### **Duty**

The most serious misconduct in this case is Respondent's conversion of client funds. Respondent violated his duty to his clients to safeguard their property.

### **Mental State**

The Hearing Officer agrees with the parties that Respondent acted negligently in his conversion of client funds because he failed to maintain proper client account ledgers. Respondent instead relied on his billing system to provide him with information about his clients' funds within his trust account. The billing system, however, did not provide running balances or denote payor and payee information for deposits and disbursements within each client account.

### **Injury**

As a result, Respondent paid himself fees for work he performed for several clients who had no funds in his trust account, causing the conversion of funds from other clients who did have funds in the trust account. This conversion ultimately lead to a negative overall balance within Respondent's trust account, and caused actual injury to those clients whose accounts had funds removed from them to pay for work done for other clients.

However, the parties clarified at the hearing that there were no allegations that Respondent did not perform the work for which he billed the clients. Both counsel affirmed the following statement by the Hearing Officer, "He did the work. He would have deserved the payment, but his bookkeeping wasn't keeping track of the amount of money that should have been in the trust account to cover these payments?" (TR 29:4-17)

Additionally, Respondent negligently deposited \$1,600.00 in unearned advance fees for client Ballard into his general operating account when the money should have been placed into his client trust account. Client Ballard suffered actual injury by the misplacement of his funds, and

other clients who had money in Respondent's trust account suffered actual injury when their funds were used to pay for Respondent's services rendered to Ballard. It is important to note as a consequence of Respondent's actions in relation to the 18 clients in the Tender, none of the other clients with funds in Respondent's trust account had a negative balance or even a zero balance. However their balances would have been reduced. (TR 43:10 through 44:4)

Respondent immediately (upon learning of the overdraft) hired accountant Dave Garcia to find out the problem. Respondent put \$2300 into his trust account and then thinks he reimbursed the account approximately \$10,200, so that no client would suffer in any way from his negligence. (TR 41:18 through 43:1)

The presumptive sanction in this matter appears to be censure. Application of the aggravating and mitigating factors assists in determining the appropriate sanction as well as the length of the suspension.

## 2. Aggravating Factors

The following factors should be considered in aggravation:

- *Standard 9.22(a) Prior Disciplinary Offenses.*
  - Respondent received an informal reprimand on March 23, 1987 for violations of Rule 42, ERs 1.2 and 1.6(a), Ariz. R. Sup. Ct. in State Bar File No. 86-1107. At the hearing Respondent described this matter as involving his defense of a former police officer charged with certain crimes. The client had instructed Respondent not to mention that he had once been a police officer. Respondent mentioned this fact to the judge at the change of plea proceeding. (TR 53:21 through 54:8)
  - Respondent received an informal reprimand on June 27, 1989 for a violation of Rule 42, ER 1.9(a), Ariz. R. Sup. Ct. in State Bar File No. 89-0305. In this matter

Respondent stated that he was visited by a man who wanted some forms to modify his child support. The man did not want Respondent to represent him. Respondent charged the man a \$25 consultation fee. Six months later a woman came to see Respondent and to hire him on the same child support matter. (TR 56:3-13)

- Respondent received an informal reprimand on April 15, 2002 for a violation of Rule 42, ER 8.4(d), Ariz. R. Sup. Ct. in State Bar File No. 01-2361. Respondent testified at the hearing that in 2002 he was representing a man on a probation violation who had AIDS. The prosecutor wanted the judge to revoke the man's probation and sentence him to prison. Respondent thought that a prison sentence would operate as a death sentence. In final argument Respondent referred to the judge when he argued that if the judge sentenced the man to prison, "...may God have mercy on your soul." Respondent described this comment as being disrespectful to the court. (TR 57:15 through 58:6)

- *Standard 9.22(i) Substantial Experience in the Practice of Law*

- Respondent was admitted to the practice of law in Arizona in 1982.

### 3. Mitigating Factors

The Hearing Officer finds that the following factors should be considered in mitigation:

- *Standard 9.32(b) – Absence of a Dishonest or Selfish Motive*
  - Respondent did not intentionally convert client funds in his trust account and did not attempt to cover up his accounting mistakes.

- *Standard 9.32(d) – Timely Good Faith Effort to Rectify Consequences of Misconduct*

- Respondent immediately hired an independent accountant familiar with lawyer trust accounts to reconstruct his trust account and bring it into compliance with the Rules. Respondent hired the accountant before he was contacted by the Bar about the overdraft notice. (TR 36:8-21) Respondent made immediate reimbursements once the reconstruction was concluded and the source of the overdraft was found. Respondent has engaged the accountant to continue handling his trust account and is now using QuickBooks to properly record, monitor, and reconcile his trust account. (TR 59:6-14)
- *Standard 9.32(e) – Cooperative Attitude toward Proceedings*
  - Respondent has timely provided all documents to the State Bar as requested during its investigation and engaged in the process to help correct the misconduct.
- *Standard 9.32(l) – Remorse*
  - Respondent realizes his inattention to his trust account was the root cause of the misconduct, and has expressed regret for not keeping his records in order. He accepts full responsibility for his conduct. Respondent’s remorse is also proven by the actions he has taken. Before he was contacted by the Bar he hired the accountant to help him correct the problem. He made immediate reimbursements to the trust account. He has hired the accountant to regularly assist him in managing his trust account. Respondent’s expression of remorse at the hearing is thoroughly believable, “I feel very bad. I didn’t intend to steal any money from anybody, but it had the same identical effect as doing that. It’s my job to be professional, to not allow that to happen, and to protect my clients. Nothing is worse than harming your clients in this profession, and I feel terrible about it.” (TR 62:21 through 63:1)
- *Standard 9.32(m) – Remoteness of Priors*

- Two of Respondent's Informal Reprimands are 24 and 21 years-old, respectively.

His most recent Informal Reprimand is 9 years old.

Having reviewed the aggravating and mitigating factors, the Hearing Officer agrees with the parties that a Censure is appropriate in this matter.

### **PROPORTIONALITY REVIEW**

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

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *Peasley, supra*, 208 Ariz. at ¶ 33, 90 P.3d at 772. However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

The cases set forth below demonstrate that a Censure is an appropriate sanction in this matter.

In *In re Stoltman*, SB-10-0006-D (2010), Stoltman consented to a Censure and one-year of probation for trust account violations. Stoltman used her billing statements as her client ledgers, was unable to conduct a monthly three-way reconciliation, and dispersed funds for some clients who had no funds in her trust account. Stoltman also failed to properly log a deposit, causing a negative balance to appear in her trust account. There were no aggravating factors found. The three

mitigating factors considered were a lack of disciplinary history, the absence of a dishonest or selfish motive, and a cooperative attitude with the proceedings. Stoltman was found to have acted negligently and to have caused potential injury.

In *In re: Klausner*, SB-08-0124-D (2008), Mr. Klausner was censured and placed on one (1) year of probation for trust account violations. In count one, Mr. Klausner issued numerous checks from his trust account to pay personal expenses. A review of his records revealed Mr. Klausner commingled personal and/or business funds, failed to maintain complete client records and have adequate internal controls regarding his trust account. In count two, a check was presented for payment against insufficient funds in Mr. Klausner's trust account. A review of Mr. Klausner's trust account records revealed that Mr. Klausner failed to exercise due professional care in maintaining his trust account and failed to maintain adequate internal controls. In count three, a check was presented against a zero balance in Mr. Klausner's trust account. The bank honored the check and charged an overdraft fee, which left a negative balance in the account. The overdraft was the result of a bookkeeping error whereby the funds were erroneously deposited into his operating account rather than the trust account. Two aggravating factors were found: multiple offenses and substantial experience in the practice of law. Three mitigating factors were found: absence of prior disciplinary record, absence of a dishonest or selfish motive and cooperative attitude toward the proceedings.

In, *In re: Hersch*, SB-08-0046-D (2008), Mr. Hersch was censured and placed on probation for one year. An examination of Mr. Hersch's trust account for a three and one-half year period revealed multiple bookkeeping errors, which led to Mr. Hersch negligently disbursing funds on behalf of clients who did not have enough money in the trust account to cover disbursements made on their behalf. Mr. Hersch also incurred bank fees on his trust account on 11 separate occasions

between January 2003 and April 2005, when Mr. Hersch did not hold his own funds in the account designated for that purpose. As a result, other client funds inadvertently offset the payment of bank fees and administrative service charges. After discovering these fees in his monthly statement, Mr. Hersch deposited funds to cover them, but the fees had already been collected. Three aggravating factors were found: prior discipline, pattern of misconduct, and substantial experience in the practice of law. Six mitigating factors were found: timely good-faith effort to rectify the consequences of misconduct, cooperation with the State Bar, remorse, character and reputation, and remoteness of prior discipline.

Respondent's conduct is similar to *Stoltman, Klausner, and Hersch*. Like these three lawyers, Respondent failed to maintain adequate trust account records that caused the unintentional conversion of client funds within the trust account. Like *Stoltman*, Respondent relied on his billing records to track the funds within his trust account contributing to the unintentional conversion. Like all three lawyers, Respondent was cooperative with the State Bar during its investigation and made no attempts to cover-up his mistakes.

#### CONCLUSION/RECOMMENDATION

The Hearing Officer recommends that based on the Standards and relevant case law, a Censure with one (1) year of probation is an appropriate sanction in this matter. In addition, Respondent shall pay the State Bar's costs and expenses incurred in this disciplinary proceeding, as set forth in Exhibit "A". In addition, Respondent agrees to pay all costs incurred by the Disciplinary Commission, the Supreme Court, and the Disciplinary Clerk's office in this matter. Respondent's conduct was negligent, not intentional in failing to keep appropriate records and failing to properly manage his trust account. He acted quickly to correct the situation and to make sure no client suffered any monetary loss. He has hired an accountant to assist him in making sure

that nothing like this case ever occurs again. The probation will include more training on trust account management when Respondent completes the State Bar's Trust Account Ethics Enhancement Program (TAEEP) and his law practice is monitored through the Bar's Law Office Management Assistance Program (LOMAP).

Two of Respondent's prior disciplinary matters were long ago and the third matter was eight years ago. None of these cases involved trust account issues or any impropriety involving the handling of clients' funds.

The Court and the Commission have repeatedly stated that the purpose of lawyer discipline is not to punish the offender but to protect the public, the profession and the administration of justice. *See Peasley*, 208 Ariz. at 41, 90 P.3d at 778; *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1988). The Hearing Officer agrees with the parties this agreement provides for a sanction that meets the goals of the disciplinary system. The terms of the agreement serve to protect the public, instill confidence in the public, deter other lawyers from similar conduct and maintain the integrity of the bar.

### SANCTION

The Hearing Officer recommends the appropriate disciplinary sanction as follows:

1. Respondent shall be Censured.
2. Respondent shall be placed on a term of probation for one (1) year under the following conditions:
  - a. Respondent shall participate and complete the State Bar's Trust Account Ethics Enhancement Program (TAEEP). Respondent shall be responsible for paying all costs and expenses related to TAEEP.

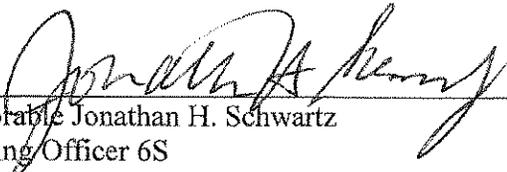
- b. Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP) within 30 days of the date of the Judgment and Order. Respondent shall submit to a LOMAP audit of his office. The director of LOMAP shall develop a probation contract, and its terms shall be incorporated herein by reference. The probation period will begin to run at the time of Judgment and Order, and will conclude one (1) year from that date.<sup>4</sup>
- c. Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other rules of the Supreme Court of Arizona.
- d. In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz. R. S. Ct.. The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practicable date, but in no event later than 30 days after receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend appropriate action and response. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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<sup>4</sup> The Tender of Admissions originally stated that the probation would begin to run from the date of the Judgment and Order and would end one year from the date that all parties signed the Terms and Conditions of Probation. The Hearing Officer was concerned that the period of probation would then be more than one year. At the hearing the parties did not object to modifying the Tender of Admissions so that the probation would commence at the time of the Judgment and Order and would conclude one year from that date. (TR 48:3 through 49:10)

3. Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings within thirty (30) days of the Supreme Court's Final Judgment and Order. An Itemized Statement of Costs and Expenses is attached as Exhibit A and incorporated herein. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court, and the Disciplinary Clerk's office in this matter.

DATED this 6 day of December, 2010.

  
Honorable Jonathan H. Schwartz  
Hearing Officer 6S

Original filed with the Disciplinary Clerk  
this 6 day of December, 2010.

Copy of the foregoing mailed  
this 7 day of December, 2010, to:

Eleanor L. Miller  
Respondent's Counsel  
3610 N. 15<sup>th</sup> Avenue  
Phoenix, AZ 85016

Russell J. Anderson  
Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 200  
Phoenix, AZ 85016-6288

by: 

/jsa

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**EXHIBIT A**

1 **Statement of Costs and Expenses**

2 In the Matter of a Member of the State Bar of Arizona,  
3 Bret H Huggins, Bar No. 007535, Respondent

4 File No(s). 10-0715

5 **Administrative Expenses**

6  
7 The Board of Governors of the State Bar of Arizona has adopted a schedule  
8 of administrative expenses to be assessed in disciplinary proceedings. The  
9 administrative expenses were determined to be a reasonable amount for those  
10 expenses incurred by the State Bar of Arizona in the processing of a disciplinary  
11 matter. An additional fee of 20% of the administrative expenses is also assessed  
12 for each separate matter over and above five (5) matters due to the extra expense  
13 incurred for the investigation of numerous charges.

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

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

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

24 **Staff Investigator/Miscellaneous Charges**

25 06/11/10 Reconstruct trust account	\$225.00
06/14/10 Reconstruct trust account	\$150.00
06/15/10 Reconstruct trust account	\$225.00
Total for staff investigator charges	\$ 600.00

**TOTAL COSTS AND EXPENSES INCURRED \$1,800.00**