

FILED
APR 15 2005
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: *William*

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

1
2
3
4
5 IN THE MATTER OF A MEMBER) No. 03-1114
6 OF THE STATE BAR OF ARIZONA,)
7)
8 **VICTORIA R. MIRANDA,**)
9 **Bar No. 018511**)
10) **HEARING OFFICER'S REPORT**
11)
12) **RESPONDENT.**)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

PROCEDURAL HISTORY

The State Bar filed a Complaint on November 30, 2004. Respondent filed an Answer on December 27, 2004. A settlement conference was held on February 1, 2005. The parties were able to reach an agreement and agreed that the Settlement Officer in this matter would prepare the report in this matter. The parties filed a Tender of Admissions and Agreement for Discipline by Consent and a Joint Memorandum in Support of Agreement for Discipline by Consent on March 16, 2005. A telephonic status conference was held on March 30, 2005. The parties then filed a Revised Tender of Admissions and Agreement for Discipline by Consent (Revised Tender) and a Revised Joint Memorandum in Support of Agreement for Discipline by Consent (Revised Joint Memo) on March 31, 2005. No hearing has been held.

1 **FINDINGS OF FACT**

2 1. At all times relevant hereto, Respondent was an attorney licensed to
3 practice law in the State of Arizona, having been admitted to practice in Arizona on
4 October 18, 1997.
5

6 2. A formal complaint was filed on November 30, 2004. A hearing has not
7 been held.
8

9 3. In or about February 2002, Johnny Chandler, Jr. retained Respondent's
10 services to represent him in a child custody matter. The parties entered into an
11 hourly fee agreement calling for an initial retainer of \$2,000 to be billed against at
12 an hourly rate of \$125.
13

14 4. Johnny Chandler, Jr.'s father, Johnny Chandler, Sr., paid the legal fees on
15 behalf of his son. In addition to the initial retainer of \$2,000, Johnny Chandler, Sr.
16 paid an additional \$2,000 in fees later in the representation.
17

18 5. On or about September 3, 2002, Johnny Chandler, Sr. sent Respondent a
19 separate cost check in the amount of \$3,000 to be utilized for the specific purpose of
20 retaining a mental health evaluator to conduct custodial evaluations.
21

22 6. On or about October 4, 2002, Respondent deposited the cost check into her
23 client trust account.
24
25

1 7. On or about November 13, 2002, a trial was conducted on the custody
2 issue. At that time, Johnny Chandler, Jr., and Johnny Chandler, Sr., decided not to
3 proceed with the mental health evaluations.
4

5 8. Thereafter, Respondent did not timely refund the cost monies. Neither
6 Johnny Chandler, Jr. nor Johnny Chandler, Sr. immediately requested a return of
7 any cost funds because the judge indicated that the matter of the mental health
8 evaluation might be revisited in the future and the representation of Johnny
9 Chandler, Jr., continued.
10

11 9. On or about April 10, 2003, Johnny Chandler, Sr., sent and/or faxed a
12 letter to Respondent specifically requesting a refund of the cost monies as no
13 evaluations had been conducted. He also requested an accounting at that time.
14 Respondent failed to timely respond to Johnny Chandler, Sr.'s letter.
15

16 10. Thereafter, on or about May 21, 2003, June 3, 2003, and June 12, 2003,
17 Johnny Chandler, Sr. sent and/or faxed additional letters to Respondent specifically
18 requesting a refund and an accounting. Respondent failed to timely respond to the
19 letters. Respondent asserts that she attempted on repeated occasions to obtain
20 permission from the client to return the funds. Respondent asserts that she promptly
21 refunded the cost funds upon receiving permission from the client to do so.
22
23

24 11. On or about June 18, 2003, Respondent provided Johnny Chandler, Sr.
25 with a refund of the cost monies, and with an accounting.

1 12. Respondent did not refund the entire \$3,000. Instead, she refunded
2 \$2,770.85. In her letter accompanying the refund, Respondent stated that she
3 withheld \$229.15 as “expenses incurred on the subject of the private mental health
4 provider.” The letter does not indicate the nature of the expenses.
5

6 13. Thereafter, Johnny Chandler, Sr. sent Respondent a letter requesting
7 documentation to substantiate the \$229.15 in expenses withheld from the cost
8 monies. In response, Respondent stated, by letter, that the expenses deducted from
9 the cost funds were for “services provided by me on the subject of a private mental
10 health provider.”
11

12 14. In or about June and July of 2003, Johnny Chandler, Sr. submitted a bar
13 charge against Respondent concerning the timeliness of the refund of cost monies.
14

15 15. During the investigation of the bar charge, Respondent was asked to
16 provide trust account records to establish that the advanced cost monies had been
17 held in trust from the time of the initial deposit until the refund to Johnny Chandler,
18 Sr.
19

20 16. The records revealed that the cost monies were not consistently held in
21 Respondent’s trust account during the time period in question.
22

23 17. A subsequent review of Respondent’s trust account records, along with
24 Respondent’s responses, revealed that Respondent did not comply with the trust
25 account rules and guidelines. Specifically, Respondent:

- 1 a. Failed to safe-keep the property of a client or third party. The
2 records indicate that the balance in Respondent's trust account
3 was less than it should have been on numerous occasions during
4 the relevant time periods both concerning the advanced cost funds
5 in the Chandler matter, as well as the correct amounts that should
6 have been in the account for other clients based on the billing
7 information provided by Respondent.
- 8 b. Failed to keep her funds separate from that of client or third party
9 funds. Respondent removed portions of the cost monies from her
10 trust account into her operating account thereby failing to keep
11 third party funds separate from her funds.
- 12 c. Failed to maintain complete trust account records. Respondent
13 failed to maintain complete individual client ledgers.
- 14 d. Failed to record all transactions to the trust account properly and
15 completely by failing to maintain complete client ledger cards.
- 16 e. Failed to consistently conduct a monthly reconciliation of her
17 trust account.
- 18 f. Failed to exercise due professional care and maintain proper
19 internal controls.

20 18. Respondent asserts that the trust account violations listed above
21 were the result of negligence, and not intentional wrongdoing. For purposes of
22 this agreement, the State Bar does not dispute that assertion.
23
24
25

1 **CONDITIONAL ADMISSIONS**

2 Respondent, in exchange for the stated form of discipline, conditionally
3 admits that her conduct, as set forth herein, violated the following Rules of
4 Professional Conduct and Rules of the Supreme Court: Rule 42, specifically
5 ERs 1.5, 1.15, and Rule 43 and Rule 44, Ariz. R. S. Ct.
6

7 **DISMISSED ALLEGATIONS**

8
9 The State Bar has agreed to dismiss its allegation of a violation of ER
10 1.16(d) in this matter. That allegation concerned Respondent's release of the
11 client's file to subsequent counsel. Respondent has asserted that the file was
12 eventually released to Mr. Chandler's new attorney. Respondent asserts that the
13 file was prepared and ready for pick-up on a certain date, and that the file was
14 not picked up on the date arranged. Based on Respondent's anticipated
15 testimony concerning that allegation, as well as in exchange for this consent
16 agreement, the State Bar will no longer pursue that allegation.
17
18

19 **ABA STANDARDS**

20 The ABA *Standards* list the following factors to consider in imposing the
21 appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the
22 actual or potential injury caused by the lawyer's misconduct, and (4) the
23 existence of aggravating or mitigating circumstances. *ABA Standard 3.0.*
24
25

1 The parties indicated that given the conduct in this matter the most
2 applicable *Standard* is 4.1. A review of *Standard* 4.0 (Violation of Duties Owed
3 to Clients), specifically *Standard* 4.1 (Failure to Preserve the Client's Property)
4 indicates that censure is the presumptive sanction for Respondent's misconduct.
5
6 *Standard* 4.13 provides that Reprimand (censure in Arizona) is generally
7 appropriate when a lawyer is negligent in dealing with client property and causes
8 injury or potential injury to a client. In this matter, Respondent has asserted, and
9 the State Bar has agreed to accept, that her misconduct with her trust account was
10 negligent. Respondent acknowledges that clients suffered at least potential harm
11 by her negligent misappropriation of the monies.
12

13 AGGRAVATING AND MITIGATING FACTORS

14
15 This Hearing Officer then considered aggravating and mitigating factors in
16 this case, pursuant to *Standards* 9.22 and 9.32, respectively. This Hearing Officer
17 agrees with the parties that one aggravating factor applies and should be
18 considered in this matter: (a) prior disciplinary offenses - In SB 02-0090-D,
19 Respondent was censured and placed on probation in June of 2002 for violation of
20 ERs 3.3, 8.1, and 8.4(c) and (d), and Rule 51(h) and (i). The misconduct in that
21 case involved falsely notarizing a signature on a document, and making a false
22 statement during the State Bar's investigation. In File No. 01-0276, Respondent
23 was placed on probation in December of 2002 for violation of ERs 1.16, 3.4 and
24
25

1 3.5. The misconduct in that case involved ex parte communication with the court
2 during a domestic relations matter. Although the State Bar views Respondent's
3 disciplinary history as significant, it notes that the prior misconduct is
4 distinguishable from that in the present matter as it did not involve trust account
5 issues.
6

7 This Hearing Officer agrees with the parties that three factors are present in
8 mitigation: (b) absence of a dishonest or selfish motive - Respondent's conduct
9 was negligent. There is no evidence indicating that she intended to misappropriate
10 client funds. (c) personal or emotional problems - Respondent's mother passed
11 away in November of 2003. Prior to that time, Respondent was the primary
12 caregiver for her mother, who had numerous physical and mental infirmities and
13 was confined to a wheelchair. Attached as Exhibit A to the Revised Joint Memo is
14 a statement from Respondent detailing this situation. Attached as Exhibit B to the
15 Revised Joint Memo is a statement from Respondent's mother's personal physician,
16 who is also Respondent's physician. (e) full and free disclosure to disciplinary
17 board or cooperative attitude toward proceedings - Respondent was forthcoming
18 and cooperative throughout the investigative stage of these proceedings and
19 continued to be cooperative after the filing of a formal complaint. In addition,
20 Respondent provided all trust account records requested during the investigation.
21
22
23
24
25

1 **PROPORTIONALITY REVIEW**

2 To have an effective system of professional sanctions, there must be
3 internal consistency, and it is appropriate to examine sanctions imposed in cases
4 that are factually similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567
5 (1994) (quoting *In re Wines*, 135, Ariz. 203, 207 (1983)). However, the
6 discipline in each case must be tailored to the individual case, as neither
7 perfection nor absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604,
8 615 (1984).
9

10
11 In terms of proportionality, there are several similar cases. In *In re*
12 *Vingelli*, SB-03-0161-D (January 13, 2004), Mr. Vingelli represented a client, who
13 at the time was a minor, in a personal injury matter. After the matter settled, Mr.
14 Vingelli agreed to contest the claim by the parents' insurer for reimbursement.
15 Mr. Vingelli notified the insurer that the client was contesting the claim and that
16 the disputed money would be held in his client trust account until the matter was
17 resolved. The dispute went on for almost three years. The disputed funds did not
18 always remain in the trust account and the balance dipped below the disputed
19 amount on some occasions. Mr. Vingelli did not resolve the dispute in a timely
20 manner as he received the funds in May 1997 but did not file an interpleader
21 action with the court until September 2002. Mr. Vingelli also did not have all of
22 the trust account records he was required to maintain. Mr. Vingelli was found to
23
24
25

1 have violated ER 1.15(a), (b) and (c), Rule 42, Ariz. R. S. Ct., and Rules 43 and
2 44, Ariz. R. S. Ct., and was censured by consent and placed on two years of
3 probation, including participation in the Law Office Member Assistance Program.
4

5 Similarly, in *In re Delozier*, SB 04-0034-D (2004), Mr. Delozier received a
6 censure and one year of probation for trust account violations. In that matter, Mr.
7 Delozier failed to safeguard client funds, and commingled personal funds with
8 client funds. He also failed to conduct monthly reconciliations, and failed to
9 maintain complete records.
10

11 In *In re Romo-Vejar*, SB 04-0145-D (2004), Mr. Romo-Vejar was censured
12 and placed on one year of probation for trust account violations. In that matter,
13 Mr. Romo-Vejar negligently misappropriated funds belonging to a lien-holder
14 that had been placed in his trust account. He also commingled personal funds
15 with client funds, failed to maintain complete records, and failed to conduct
16 monthly reconciliations.
17

18 Other recent trust account cases also support the imposition of a censure
19 and probation in this matter. See *In re Randall*, SB-02-0146-D (2002); *In re Hall*,
20 SB 02-0122-D (2002); and *In re Inserra*, SB 02-0144 (2002).
21

22 **RECOMMENDATION**

23
24 The purpose of lawyer discipline is not to punish the lawyer, but to protect
25 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859

1 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
2 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
3 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
4 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
5 (1994).
6

7 In imposing discipline, it is appropriate to consider the facts of the case, the
8 American Bar Association's *Standards for Imposing Lawyer Sanctions*
9 ("*Standards*") and the proportionality of discipline imposed in analogous cases.
10 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
11

12 Upon consideration of the facts, application of the *Standards*, including
13 aggravating and mitigating factors, and a proportionality analysis, this Hearing
14 Officer recommends acceptance of the Tender of Admissions and Agreement for
15 Discipline by Consent and the Joint Memorandum in Support of Agreement for
16 Discipline by Consent providing for the following:
17
18

- 19 1. Respondent shall receive a censure.
- 20 2. Respondent shall be placed on probation for a period of one year upon
21 the signing of the probation contract. The terms of probation are as follows:
 - 22 a. Respondent shall contact the director of the State Bar's Law
23 Office Management Assistance Program (LOMAP) within 30
24 days of the date of the final judgment and order. Respondent
25

1 shall submit to a LOMAP audit of her office's trust account
2 procedures and calendaring procedures. The director of LOMAP
3 shall develop a probation contract, and its terms shall be
4 incorporated herein by reference.
5

6 b. The LOMAP contract will also include a practice monitor for
7 Respondent.
8

9 c. Respondent shall refrain from engaging in any conduct that
10 would violate the Rules of Professional Conduct or other rules
11 of the Supreme Court of Arizona.
12

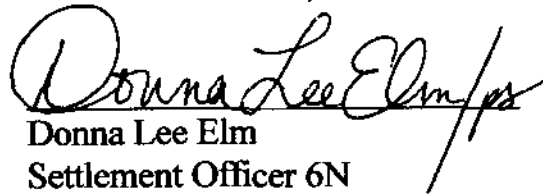
13 d. Respondent will contact the State Bar's fee arbitration program
14 to initiate a fee arbitration process with Johnny Chandler, Jr. and
15 Johnny Chandler Sr. within 30 days of the final judgment and
16 order in this matter.
17

18 e. In the event that Respondent fails to comply with any of the
19 foregoing conditions, and the State Bar receives information,
20 bar counsel shall file with the Hearing Officer a Notice of Non-
21 Compliance, pursuant to Rule 60(a)5, Ariz. R. S. Ct. The
22 Hearing Officer shall conduct a hearing within thirty days after
23 receipt of said notice, to determine whether the terms of
24 probation have been violated and if an additional sanction
25

3 State Bar of Arizona to prove non-compliance by clear and
4 convincing evidence.
5

6 3. Respondent shall pay the costs and expenses incurred in this
7 disciplinary proceeding.
8

9 DATED this 15th day of April, 2005.

10 
11 Donna Lee Elm
12 Settlement Officer 6N
13

14 Original filed with the Disciplinary Clerk
15 this 15th day of April, 2005.

16 Copy of the foregoing was mailed
17 this 15th day of April, 2005, to:

18 John Pressley Todd
19 Hearing Officer 7X
20 *Office of the Attorney General*
21 1275 West Washington
Phoenix, AZ 85007-2997

22 Ralph Adams
23 Respondent's Counsel
24 714 North Third Street, Suite 7
Phoenix, AZ 85004
25

1 Amy K. Rehm
2 Senior Bar Counsel
3 State Bar of Arizona
4 4201 North 24th Street, Suite 200
5 Phoenix, AZ 85016-6288

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
by: *PWilliams*