

**FILED**

NOV 23 2009

**BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA**

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA  
BY: *[Signature]*

1  
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3  
4 IN THE MATTER OF A MEMBER ) No. 08-2276  
OF THE STATE BAR OF ARIZONA )  
5 )  
6 **STEPHANIE C. STOLTMAN,** )  
**Bar No. 021344** ) **DISCIPLINARY COMMISSION**  
7 ) **REPORT**  
8 )  
RESPONDENT. )  
\_\_\_\_\_ )

9 This matter came before the Disciplinary Commission of the Supreme Court of  
10 Arizona on November 14, 2009, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of  
11 the Hearing Officer's Report filed October 21, 2009, recommending acceptance of the  
12 Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint  
13 Memorandum ("Joint Memorandum") providing for censure, one year of probation with  
14 the State Bar's Law Office Management Assistance program ("LOMAP), participation in  
15 the State Bar's Trust Account Ethics Enhancement Program ("TAEEP") and costs within  
16 30 days of the date of the final Judgment and Order.  
17

18 **Decision**

19 Having found no facts clearly erroneous, the eight members<sup>1</sup> of the Disciplinary  
20 Commission unanimously recommend accepting and incorporating the Hearing Officer's  
21 findings of fact, conclusions of law, and recommendation for censure, one year of  
22 probation (LOMAP and TAEEP), and costs of these disciplinary proceedings within 30  
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<sup>1</sup> Commissioner Osborne did not participate in these proceedings.

days from the date of the final Judgment and Order including any costs incurred by the  
1 Disciplinary Clerk's office.<sup>2</sup> The terms of probation are as follows:

2 **Terms of Probation**

3 1. The probation period shall begin to run at the entry of the Judgment and  
4 Order, and will conclude one year from the entry of the Judgment and Order.

5 2. Respondent shall contact the director of LOMAP within 30 days of the date  
6 of the final Judgment and Order. Respondent shall submit to a LOMAP examination of  
7 her office procedures, including, but not limited to, compliance with trust accounting  
8 requirements. The director of LOMAP shall develop "Terms and Conditions of Probation"  
9 and those terms shall be incorporated as part of the final Judgment and Order. Respondent  
10 shall be responsible for any costs associated with LOMAP.

11 3. Respondent shall deposit \$1,043.00 into her trust account to cure the  
12 balance of the deficiency.

13 4. Respondent shall attend a half day of TAEEP. Respondent shall contact  
14 Rose Riley, Program Coordinator of the State Bar of Arizona, within 20 days from the date  
15 of the Judgment and Order. Respondent shall be responsible for the cost of attending the  
16 program.

17 5. Respondent shall refrain from engaging in any conduct that would violate  
18 the Rules of Professional Conduct or other Rules of the Supreme Court of Arizona.

19 6. In the event that Respondent fails to comply with any of the foregoing  
20 probation terms, and information thereof is received by the State Bar of Arizona, Bar  
21 Counsel shall file a Notice of Noncompliance with the imposing entity pursuant to Rule  
22 60(a)(5), Ariz.R.Sup.Ct.. The imposing entity may refer the matter to a Hearing Officer to  
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<sup>2</sup> The Hearing Officer's Report is attached as Exhibit A. The State Bar's costs total \$1,350.00.

1 conduct a hearing at the earliest practicable date, but in no event later than 30 days after  
2 receipt of notice, to determine whether a term of probation has been breached and, if so, to  
3 recommend an appropriate sanction. If there is an allegation that Respondent failed to  
4 comply with any of the foregoing terms, the burden of proof shall be on the State Bar of  
5 Arizona to prove noncompliance by a preponderance of the evidence.

6 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of November, 2009.

7  
8   
9 Jeffrey Messing, Chair  
10 Disciplinary Commission

11 Original filed with the Disciplinary Clerk  
12 this 23<sup>rd</sup> day of November, 2009.

13 Copy of the foregoing mailed  
14 this 23 day of November, 2009, to:

15 Hon. H. Jeffrey Coker  
16 Hearing Officer 6R  
17 P.O. Box 23578  
18 Flagstaff, AZ 86002-0001

19 Stephanie C. Stoltman  
20 Respondent  
21 *Law Office of Stephanie C. Stoltman*  
22 P.O. Box 2250  
23 Cortaro, AZ 85652

24 Stephen P. Little  
25 Bar Counsel  
26 State Bar of Arizona  
4201 North 24th Street, Suite 200  
Phoenix, AZ 85016-6288

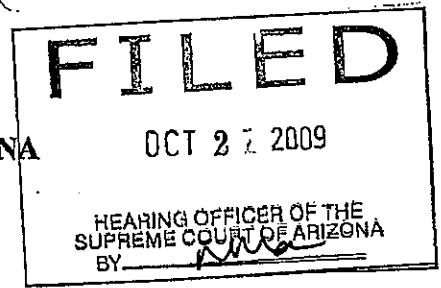
by: Deann Barker

/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, )  
)  
STEPHANIE C. STOLTMAN, )  
Bar No. 021344 )  
)  
Respondent. )  
\_\_\_\_\_ )

No. 08-2276

HEARING OFFICER'S REPORT

**PROCEDURAL HISTROY**

1. Probable cause was found in this matter on May 13, 2009. Thereafter there was a direct file of a Joint Memorandum and Tender, filed on July 29, 2009. The matter was assigned to the undersigned on July 31, 2009, and a hearing was held on the agreement on September 25, 2009. Present at the hearing was Bar Counsel, Respondent, and the undersigned Hearing Officer.

**FINDINGS OF FACT**

2. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona, having been first admitted to practice in Arizona on October 29, 2001.

**COUNT ONE (File No. 08-2276)**

3. At all times relevant, Respondent maintained an IOLTA trust account ("trust account") at Bank of America.<sup>1</sup>

<sup>1</sup> Unless otherwise noted, all facts cited herein are taken from the Tender of Admissions filed in this matter.

4. Respondent utilized billing statements for each client as her trust account individual client ledgers.
5. These billing statements did not contain the necessary information to qualify as individual client ledgers, such as running balances of funds on deposit by the client.
6. Respondent was not conducting a monthly, three-way reconciliation on the trust account.
7. On January 24, 2008, a \$32 new check order fee was debited from the trust account.
8. There were no corresponding deposits or administrative funds present in the trust account to offset this new check order fee.
9. On June 5, 2008, Respondent disbursed \$198 from the trust account via check number 1152 for filing fees in client Duchene's matter.
10. The disbursement was an error, as client Duchene had no funds on deposit in the trust account, and no corresponding deposit was made to offset the \$198 disbursement.
11. On June 11, 2008, Respondent disbursed \$605 from the trust account via check number 1153 to herself for fees.
12. The disbursement was proper, however, Respondent failed to record the \$605 disbursement on the trust account general ledger.
13. On August 22, 2008, Respondent disbursed \$600 from the trust account via check number 1154 to herself for fees.
14. This disbursement was an error, and should not have been made.

15. On December 23, 2008, Respondent disbursed \$1,500 from the trust account via check number 1158 to herself for fees in client Washburn's matter.
16. This disbursement was an error, as client Washburn's balance in the account was only \$1,087, resulting in over disbursement of \$413.
17. On December 23, 2008, check number 1158 in the amount of \$1,500 attempted to pay against the trust account when the balance at the time was only \$1,350.79.
18. The bank paid check number 1158 and did not charge an overdraft fee, thereby leaving the trust account with a negative balance of -\$149.21.
19. The discrepancy between Respondent's perceived balance of the trust account and the actual balance was due to the disbursement and accounting errors as described above.
20. On January 8, 2009, Respondent deposited \$200 of her personal funds into the trust account in an attempt to remedy the overdraft.
21. According to the Staff Examiner's reconstruction, Respondent's trust account is still \$1,043 ( $\$32 + \$198 + \$600 + \$413 - \$200$ ) short of what should be on deposit.
22. Subsequent to the events described herein, Respondent voluntarily contacted the State Bar's Law Office Management Assistance Program and is in the process of receiving trust account assistance, Transcript of Hearing "T/H" 10:25-11:8.
23. The errors in Respondent's trust account were not intentional, nor did she intend to keep money that was not hers, T/H 6:11-10.
24. Respondent's practice is 99.9% contract work and she seldom has need of a trust account, T/H 8:9-11. Respondent claims to have a form of "math dyslexia" wherein she does not see numbers correctly, T/H 8:21-25. Respondent was also

trying to work with an old software program that could not perform sufficiently to comply with the Rules, T/H 8:13-9:4. She also admits to having been too busy and not paying attention, T/H 9:1.

25. Respondent concedes that there is \$1,043 owed to her trust account, but she cannot say to which clients and/or fees without the assistance of the State Bar which she expects shortly, T/H 14:23- 15:5, and the State Bar agrees, T/H 15:5-22.
26. Respondent committed to have the \$1,043 placed into her trust account within one week of the hearing on September 25, T/H 16:25-17:8

#### **CONCLUSIONS OF LAW**

27. Based upon the Tender of Admissions and the testimony given at the hearing on the agreement, the Hearing Officer finds that there is clear and convincing evidence that Respondent violated the following Rules of Professional Conduct:

ER 1.15

Rule 43(a) and (d)

Rule 44(a) and (b)

#### **ABA STANDARDS**

28. ABA *Standard* 3.0 provides that four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; (4) the existence of aggravating and mitigating factors.



### **The Duty Violated**

29. The parties submit that the most serious misconduct in this case is Respondent's failure to safeguard client funds in her trust account in violation of ER 1.15 and Rules 43 and 44. This conduct implicates *Standard 4.1*. *Standard 4.13* provides that “[censure] is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.” The presumptive sanction therefore is censure.

### **The Lawyer’s Mental State**

30. The parties submit, and this Hearing Officer could find no evidence to the contrary, that Respondent's mental state was negligent.

### **Injury Caused**

31. The parties submit, and the Hearing Officer could find no evidence to the contrary, that there was no actual injury caused to any client as a result of Respondent's conduct. All clients received their funds when due, and the Respondent is in the process of making up the shortages to her trust account.

### **Aggravating and Mitigating Factors**

#### **Aggravating Factors:**

32. The parties submit, and the undersigned Hearing Officer finds, that there are no aggravating factors in this case.

#### **Mitigating Factors:**

33. *Standard 9.32(a)*, Absence of Prior Discipline  
*Standard 9.32(b)*, Absence of Dishonest or Selfish Motive  
*Standard 9.32(e)*, Cooperative Attitude Toward Proceedings

### PROPORTIONALITY REVIEW

34. The Supreme Court has held that one of the goals of attorney discipline should be to achieve consistency when imposing discipline. It is also recognized that the concept of proportionality is “an imperfect process” because no two cases are ever alike, *In re Struthers*, 179 Ariz. to 16, 887 P.2d 789 (1994), *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1993). In order to achieve internal consistency, it is appropriate to examine sanctions imposed in cases that are factually similar, *In re Peasley*, 208 Ariz. 90, 90 P.3d 772 (2004). It is also the goal of attorney discipline that the discipline imposed be tailored to the individual case and that neither perfection nor absolute uniformity can be achieved, *Peasley*, supra.
35. In this case the State Bar is recommending, and the Respondent has accepted, a censure coupled with one year of probation.
36. In *In re Cochran*, SB-07-0204-D (2008), Cochran was censured with two years of probation, LOMAP and TAEPP for failing to properly manage and supervise other lawyers in the firm, and failing to safeguard client property in the firm's possession, resulting in considerable funds being embezzled by his law partner. Cochran further failed to adhere to trust account rules and guidelines in the overall management of the trust account in violation of ERs 1.15, 5.1, and Rules 43 and 44.
37. In *In re Fealk*, SB-08-0179-D (2008), Fealk was censured with one year of probation, LOMAP and TAEPP for failing to adhere to the rules and guidelines governing the treatment of client trust account funds by transferring unearned fees

to himself, and by failing to maintain adequate trust account and time keeping records. Fealk further failed to memorialize his fee agreement in writing in violation of ERs 1.5, 1.15, Rules 43 and 44.

38. In *In re Guitierrez*, SB-08-0147-D (2008), Guitierrez was censured for failing to exercise due professional care in the operation and maintenance of his trust account. Gutierrez failed to safeguard client property and failed to promptly disperse funds belonging to a client or third-party in violation of ERs 1.15, Rules 43 and 44.

#### RECOMMENDATION

39. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct, *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also the objective of lawyer discipline to protect the profession and the administration of justice, *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in the Bar's integrity, *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).
40. In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's *Standards for Imposing Lawyer Sanctions* and the proportionality of discipline imposed in analogous cases, *Matter of Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994).
41. Respondent struck this Hearing Officer as honest and trying to do the best she can in an area that she has little knowledge in. The vast majority of her work is contract work for the courts for which she is paid very little, but paid directly by the court, not her clients. It appears that Respondent got in over her head with a

very few private clients and did not know how to comply with the trust account rules. It appears that no clients suffered any harm, and if they did it was not intentional.

42. Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and the proportionality analysis, this Hearing Officer recommends the following in conformance with the Joint Agreement and Tender:

1. Respondent shall receive a censure.
2. Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings within 30 days of the Supreme Court's Final Judgment and Order. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court, and the Disciplinary Clerk's office in this matter.

3. Respondent shall be placed on probation for a period of one year on the following terms and conditions:

- A. The probation period shall begin to run at the entry of the Judgment and Order, and will conclude one year from the entry of the Judgment and Order.

- 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 final Judgment and Order. Respondent shall submit to a LOMAP examination of her office procedures, including, but not limited to, compliance with trust accounting requirements. The director of LOMAP

shall develop "Terms and Conditions of Probation" and those terms shall be incorporated as part of the final Judgment and Order. Respondent shall be responsible for any costs associated with LOMAP.

- C. Respondent shall deposit \$1,043 into her trust account to cure the balance of the deficiency.
- D. Respondent shall attend a half day Trust Account Ethics Enhancement Program ("TAEHP"). Respondent shall contact Rose Riley, Program Coordinator of the State Bar of Arizona, within 20 days from the date of the Judgment and Order. Respondent shall be responsible for the cost of attending the program.
- E. 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.
- F. In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance with the imposing entity pursuant to Rule 60(a)(5), Ariz.R.Sup.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 an appropriate sanction. 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.

DATED this 21<sup>st</sup> day of October, 2009.

Hon. H. Jeffrey Coker / NM  
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk  
this 21<sup>st</sup> day of October, 2009.

Copy of the foregoing mailed  
this 21 day of October, 2009, to:

Stephanie C. Stoltman  
Law Office of Stephanie C. Stoltman  
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State Bar of Arizona  
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Phoenix, AZ 85016-6288

by: Deann Barker