

FILED
FEB 16 2010
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

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

1
2 IN THE MATTER OF A MEMBER OF)
3 THE STATE BAR OF ARIZONA,)
4)
5 **ARTHUR PAUL BLUNT,**)
6 **Bar No. 006304**)
7)
8 **RESPONDENT.**)

No. 08-0265, 08-2194

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

9 No Complaint has been filed in this matter. The parties filed a Tender of Admissions
10 and Agreement for Discipline by Consent and a Joint Memorandum in Support of
11 Agreement for Discipline by Consent on December 9, 2009. The Hearing Officer was
12 assigned on December 10, 2009. The Hearing was held on January 8, 2010.

FINDINGS OF FACT¹

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15 1. At all times relevant hereto, Respondent was an attorney licensed to practice law
16 in the State of Arizona, having been admitted to practice in Arizona on October 4, 1980. (TR
17 5:21)

COUNT ONE (File No. 08-0265)

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20 2. In or about 2001, Respondent was appointed to serve as personal representative
21 and trustee for the Kenneth and Sonja Graham Revocable Family Trust (hereinafter "the
22 trust"). (TR 6:14)

23
24 _____
25 ¹ The facts are found in the Tender of Admissions and the Joint Memorandum and in the transcript of the hearing.

1 3. On or about July 30, 2006, Respondent closed his Phoenix law practice and
2 moved to Bisbee, Arizona. (TR 10:3)

3 4. At that time, Respondent was suffering from debilitating depression, and
4 believed that he should close his law practice at least for the short –term. (TR 11:5-24)

5 5. Although Respondent did not continue at that time to practice law, he remained
6 as personal representative and trustee for the trust as the matter was near conclusion. (TR
7 10:9 through 11:4)

8 6. The trust had bank accounts at several different banks including two accounts at
9 Bank of America—a checking account and a money market account. (TR 18:18; 19:13)

10 7. The Bank of America accounts for the trust were both titled as accounts for the
11 Kenneth and Sonja Graham Revocable Family Trust with A. Paul Blunt as trustee. (TR
12 26:25 through 27:3)

13 8. Separate from the trust accounts above, Respondent also maintained a number of
14 personal accounts at Bank of America titled solely in his own name. (TR 20:8-22; 23:9-18)

15 9. Among Respondent’s personal accounts at Bank of America was a money market
16 account. Respondent had routinely utilized that account for remodeling his Bisbee house.
17 At time periods during the remodel, from approximately 2004 until 2006, Respondent had in
18 excess of \$200,000 in his personal money market account. (TR 20:8-18)

19 10. In August of 2007, Respondent needed to make a college tuition payment for his
20 daughter. At that time, Respondent accessed his personal bank accounts at Bank of America
21 online in order to transfer funds for the payment. (TR 21:14 through 24:7)

22 11. When Respondent accessed his personal accounts, one of the accounts listed was
23 a money market account with an approximate balance of \$285,000. (TR 23:16 through 24:7)
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1 12. Respondent acknowledged his surprise at the balance in the money market
2 account, but believed that the funds were his personal funds from his personal money market
3 account. Respondent had not checked the balance in his personal money market account for
4 a long time. (TR 23:24 through 24:7)

5 13. Respondent transferred, online, \$2,550 from the money market account to his
6 daughter's account.

7 14. Thereafter, until approximately late November 2007, Respondent utilized a total
8 of \$46,350.00 of funds from the money market account for personal use. (TR 24:8-21)

9 15. In November of 2007, Respondent discovered that the money market account
10 from which he had withdrawn funds was actually the money market account for the trust,
11 and not his own personal money market account. (TR 32:15)

12 16. Respondent discovered the true nature of the money market account from the
13 bank teller when he was discussing general financial matters one day when he was in the
14 bank. (TR 25:4-10)

15 17. Respondent immediately deposited \$42,084.37 of personal funds into the trust's
16 money market account. (TR 32:15)

17 18. Respondent contends that his use of the trust's money market funds was
18 negligent and that he believed that the funds were his own personal funds.

19 19. Respondent provided computer print-outs of his bank account records which
20 show that the bank inadvertently listed the trust's money market account with Respondent's
21 personal accounts. The other trust account does not appear in the list of Respondent's
22 personal accounts. (TR 28:4-19)

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1 20. Respondent's personal money market account had been closed unilaterally by the
2 bank in early 2006 with a balance of \$32.52. (TR 33:21 through 35:6)

3 21. Respondent contends that he was unaware that his personal money market
4 account had been closed and for purposes of this Agreement for Discipline by Consent, the
5 State Bar accepts that contention that Respondent was unaware that his personal money
6 market account had been closed. (TR 34:6 through 35:6)

7 22. Respondent acknowledges that during this time period, he was suffering from
8 debilitating depression and therefore did not attend to personal or business matters in a
9 timely or thorough manner, including failing to open his mail for a prolonged period of time.
10 (TR 13:7 through 15:15; 34:8 through 35:6)

11 23. Subsequent to replacing the misappropriated trust monies, Respondent self-
12 reported his conduct to the State Bar by letter dated February 11, 2008. (TR 37:22)

13 24. The State Bar immediately contacted the attorneys for the beneficiaries of the
14 trust concerning Respondent's misuse of the funds. (TR 38:3)

15 25. Thereafter, the attorney for the beneficiaries moved to have Respondent removed
16 as trustee and personal representative of the trust and to have a complete accounting of all of
17 the trust's assets conducted. The court granted the motions and set a hearing regarding the
18 matter for May 16, 2008, ordering Respondent to personally attend. The court further
19 ordered that Respondent provide all trust records to the successor trustee within 14 days, and
20 to provide a full accounting of all of the trust assets. (TR 38:6-16)

21 26. Respondent failed to attend the May 16, 2008 hearing in person, but did appear
22 telephonically. Respondent also failed to timely deliver the trust documents. At the hearing,
23 the court found Respondent in contempt for failing to personally appear. The court further
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1 ordered that Respondent should deliver the trust documents to the successor trustee on or
2 before May 22, 2008. The court then set the matter for a review hearing on June 27, 2008.

3 (TR 39:9 through 40:5)

4 27. Respondent mailed trust records on or about May 23, 2008. Ultimately, outside
5 accounting services were necessary to perform an accounting of the trust assets. Upon
6 conclusion, it was established that no other trust assets were compromised.

7 28. By judgment dated July 8, 2008, Respondent was ordered to pay: \$5,204.37 for
8 amounts withdrawn from the trust and not yet repaid, along with 10% interest; and a
9 sanction in the amount of \$81,775.03 for misuse of the trusts funds and failure to timely
10 provide accountings, along with 10% interest. In that same judgment, the court ordered the
11 other attorneys involved to file petitions for awards of attorney's fees. (TR 53:17 through
12 54:5)

13 29. On or about July 25, 2008, Respondent was ordered to pay an additional
14 \$22,957.91 as further attorney's fees. (TR 54:9-24)

15 30. Respondent has paid, in full, all of the judgments entered against him in
16 connection with the trust matter. (TR 54:25 through 55:6)

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19 **COUNT TWO (File No. 08-2194)**

20 31. On May 20, 2007, Respondent engaged in a confrontation with approximately six
21 or seven other persons on a sidewalk in Bisbee.

22 32. During the confrontation, Respondent pointed his handgun at another man.

23 33. Respondent contends that he only pointed his weapon after the other man first
24 threatened him with a knife. (TR 52:5-9)
25

1 34. Respondent was arrested and charged with Aggravated Assault, a class three
2 felony. (TR 45:21)

3 35. Respondent subsequently entered into a plea agreement whereby the class three
4 felony was dismissed in exchange for Respondent pleading guilty to Disorderly Conduct
5 involving the display of a weapon, a class six undesignated offense. (TR 53:3-11)

6 36. On or about November 16, 2007, Respondent was sentenced to 18 months of
7 unsupervised probation for the offense. (TR 46:17-21)

8 37. Respondent successfully completed his probation, and the matter was designated
9 a misdemeanor by order dated June 8, 2009. (TR 46:17-21)

10 38. By the above, Respondent committed a criminal act that reflects adversely on the
11 lawyer's trustworthiness or fitness as a lawyer in other respects.

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13 **CONDITIONAL ADMISSIONS**

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15 **COUNT ONE (File No. 08-0265)**

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18 Respondent conditionally admits that he engaged in the negligent misappropriation
19 of funds in his capacity as a fiduciary of those funds and that he knowingly violated a court
20 order by failing to personally appear for a hearing and failing to timely remit the trust
21 documents and accountings to the successor trustee.

22 Respondent conditionally admits that his conduct as described in this count violated
23 Rule 42, Ariz.R.Sup.Ct., specifically, ERs 3.4(c) and 8.4(d).
24
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COUNT TWO (File No. 08-2194)

1
2 Respondent conditionally admits that he pled guilty to disorderly conduct, a class 6
3 undesignated offense which, upon successful completion of probation was designated a
4 misdemeanor, as set forth above.

5 Respondent conditionally admits that his conduct as described in this count violated
6 Rule 42, Ariz.R.Sup.Ct., specifically, ERs 8.4(b).

7
8 **CONCLUSIONS OF LAW**

9 In Count One Respondent violated in ER 3.4 (c) when he knowingly disobeyed the
10 order of the Probate Court Commissioner to appear in person at the hearing on May 16,
11 2008. Respondent also disobeyed the order of the Commissioner to promptly return Trust
12 documents. Respondent engaged in conduct that was prejudicial to the administration of
13 justice under ER 8.4 (d) by negligently misappropriating Trust funds. The Comment to ER
14 8.4 states that lawyers who hold a public office assume responsibilities beyond those of
15 other citizens. The Comment notes, "The same is true of abuse of positions of private trust
16 such as trustee, executor, administrator, guardian, agent and officer, director or manager of a
17 corporation or other organization".

18
19 The Hearing Officer agrees with the stipulation of the parties that Respondent was
20 acting as a person in a position of private trust in relation to the Trust in question.
21 Respondent is a lawyer. Therefore, technically ER 8.4 (d) applies to Respondent in this case
22 even though Respondent was not representing a client as a lawyer. ER 3.4 is applicable to
23 Respondent even though he was not acting as a lawyer in probate court in this situation.
24 Instead he was in a position of private trust. However, he was still an attorney when he
25

1 appeared telephonically before the Commissioner. As an attorney he owed a higher duty to
2 obey court orders even when he was not representing a client before the court.

3 RESTITUTION

4 The Hearing Officer agrees with the parties that restitution is not applicable in this
5 case. Respondent has paid back to the trust account all monies that he negligently
6 misappropriated. He has complied with the court orders to pay attorney fees to counsel for
7 the parties in the probate court matter.

8 ABA STANDARDS

9 The *Standards* are designed to promote consistency in the imposition of sanctions by
10 identifying relevant factors that courts should consider and then applying these factors to
11 situations where lawyers have engaged in various types of misconduct. *Standards* 1.3,
12 Commentary. The *Standards* provide guidance with respect to an appropriate sanction in
13 this matter. The Court and Commission consider the *Standards* a suitable guideline. *In re*
14 *Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990); *In re Kaplan*, 179 Ariz. 175, 177,
15 877 P.2d 274, 276 (1994). In determining an appropriate sanction, both the Court and the
16 Commission consider the duty violated, the lawyer's mental state, the actual or potential
17 injury caused by the misconduct and the existence of aggravating and mitigating factors. *In*
18 *re Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA *Standard* 3.0.

19
20 According to the *Standards* and *In re Cassalia*, 173 Ariz. 372, 843 P.2d 654 (1992),
21 where there are multiple acts of misconduct, a lawyer should receive one sanction consistent
22 with the most serious instance of misconduct, and the other acts should be considered as
23 aggravating factors. The parties have agreed that the most serious instance of misconduct in
24 this matter was Respondent's misappropriation of funds. The Hearing Officer thinks that it
25

1 is a close question of whether Respondent's guilty plea to Disorderly Conduct with a
2 Weapon is more serious than the negligent misappropriation of funds. The parties have
3 agreed to the sanction of a censure with probation. *Standard 5.23* would call for a censure,
4 while *Standard 5.12* would call for a suspension. *Standard 5.12* states,

5 Suspension is generally appropriate when a lawyer knowingly
6 engages in criminal conduct which does not contain the elements
7 listed in *Standard 5.11* and that seriously adversely reflects on the lawyer's
8 fitness to practice.

9 Respondent pointed a gun at individuals on a street in Bisbee, Arizona in May 2007.
10 Respondent stated that an individual pulled a knife on him before he pointed the gun. The
11 comment to *Standard 5.12* indicates that not every lawyer who commits a criminal act
12 should be suspended. Citing the Model Rules of Professional Conduct, the comment notes
13 that, "Although a lawyer is personally answerable to the entire criminal law, a lawyer should
14 be professionally answerable only for offenses that indicate lack of those characteristics
15 relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or
16 serious interference with the administration of justice are in that category." It is reasonable
17 to conclude that a lawyer who points a gun at an individual has committed an offense
18 involving violence.

19 However, Bar Counsel stated at the hearing that she did not conclude that the
20 criminal offense was the more serious matter for a number of reasons. First, she noted that
21 the prosecutor offered a plea agreement that reduced the charge from a class III felony
22 Aggravated Assault to a class VI undesignated felony Disorderly Conduct with a Weapon.
23 Second, the court suspended Respondent's sentence and placed him on summary probation.
24 Third, Respondent successfully completed the probation. Fourth, the offense was designated
25 a misdemeanor. Fifth, Bar Counsel developed the impression from her review of the

1 criminal court records and her deposition of Respondent that the prosecution may not have
2 been able to prove the original charge beyond a reasonable doubt. Sixth, Bar Counsel
3 verified by reviewing medical records Respondent's assertion that this incident occurred
4 when he was suffering from depression. (TR 46:4 through 53:16) For the foregoing reasons,
5 the Hearing Officer agrees with the parties that in the specific circumstances of this case the
6 negligent misappropriation of funds qualifies as the more serious matter.

7 Standard 5.23 is applicable to Respondent's negligent misuse of funds while he was
8 serving in the fiduciary capacity as trustee:

9 Reprimand [Censure in Arizona] is generally appropriate
10 when a lawyer in an official or governmental position
11 negligently fails to follow proper procedures or rules,
12 and causes injury or potential injury to a party or to the
13 integrity of the process.

14 The Hearing Officer thinks that Respondent fits the description of a lawyer in an
15 official position. Although the comment to *Standard 5.22* describes a prosecutor in several
16 of its examples, the comment to ER 8.4 (d) clearly includes a lawyer acting as a trustee
17 within its obligation not to prejudice the effective administration of justice. Respondent
18 negligently failed to follow the proper procedures for administering the Trust, when he used
19 Trust money for his personal benefit.

20 **Duty**

21 In Count One Respondent violated his duty to the court system when he did not
22 personally appear in court and when he failed to remit trust documents in a timely manner.

23 In Count Two Respondent violated his duty to the public when he did not obey the criminal
24 law.

25 **Mental State**

1 In Count One Respondent negligently misappropriated trust funds. The Bar was able
2 to verify Respondent's assertion that he did not knowingly use trust funds for his personal
3 benefit. The bank made the mistake of listing the trust bank accounts on Respondent's
4 personal online banking page. (TR 28:9-25) Respondent established that at one time he had
5 over \$200,000 in his personal banking account. The Bar also verified that at the time of
6 these events Respondent was suffering from a substantial depressive episode. (TR 67:10-17)
7 Respondent had not opened his mail for a long period of time. Therefore he did not discover
8 that his personal money market account had been closed by the time he accessed funds from
9 the trust bank account. The Hearing Officer concludes that the evidence supports a finding
10 that Respondent did not knowingly misappropriate the funds. However the term "negligent"
11 accurately describes the fact that Respondent should have been opening his mail and
12 therefore should have known that his personal money market account had been closed and
13 that he was accessing someone else's funds.

14
15 In Count One, Respondent knowingly failed to appear personally in court and failed
16 to timely remit the trust documents.

17 In Count Two, Respondent recklessly displayed a weapon.

18 **Injury**

19 In Count One there was a potential for injury to the trust if the money had not been
20 returned by Respondent. In Count Two the public confidence in the legal profession is
21 affected when an attorney violates the criminal law.

22 The parties agree that the presumptive sanction in this matter is a censure. In deciding
23 what sanction to impose the following aggravating and mitigating circumstances should be
24 considered:
25

1 **Aggravating Factors:**

2 Standard 9.22(d): Multiple offenses. This discipline case involves two separate
3 unrelated matters, making this an applicable factor. The parties have agreed instead of
4 treating the criminal offense as the more serious matter for purposes of the *Standards* it will
5 be used as an aggravating factor under multiple offenses. (TR 58:11-20)

6 Standard 9.22(i): Substantial experience in the practice of law. Respondent has been
7 an attorney since 1980.

8 Standard 9.22(k): Illegal conduct. Respondent was convicted of Disorderly
9 Conduct with a Weapon, a class 6 undesignated offense, for which he was placed on
10 unsupervised probation for a period of eighteen months. Respondent has successfully
11 completed probation and the offense has been designated a misdemeanor.
12

13 **Mitigating Factors:**

14 Standard 9.32(a): Absence of a prior disciplinary record. Respondent has never
15 been disciplined during his 28 years of practice. (TR 62:3-8)

16 Standard 9.32(c): Personal or emotional problems. Respondent has been diagnosed
17 with depression. Attached as Appendix A hereto, under seal, are records supporting his
18 diagnosis. Respondent was evaluated at the request of Bar Counsel by a psychologist, Dr.
19 Lett. His report is sealed. He has concluded that if Respondent continues his current
20 program Respondent is fit to practice law. (TR 64:23 through 65:16) The sealed matter
21 contains important information related to this case.
22

23 Standard 9.32 (d) – Timely good faith effort to make restitution or to rectify
24 consequences of misconduct. Although the parties did not list this factor in the Tender of
25 Admissions the Hearing Officer finds that it has been established by the evidence. As soon

1 as Respondent learned that he had been using trust funds he refunded the amount of money
2 he thought he had used. He later learned that he miscalculated and that he underpaid the
3 trust. He paid the balance due. He reported himself to the Bar before anyone involved with
4 the trust knew that he had negligently misappropriated funds. He paid all of the attorney fees
5 (in excess of \$100,000) he was ordered to pay by the probate court Commissioner.

6 Standard 9.32 (e) – Full and free disclosure to disciplinary board or cooperative
7 attitude toward proceedings. Although not listed in the Tender of Admissions, this factor has
8 been established. Respondent gave documents to the Bar, cooperated with a deposition, and
9 eventually admitted misconduct. The Hearing Officer agrees with counsel for Respondent
10 that his attitude and his actions have been cooperative. (TR 71:18)

11 Standard 9.32 (g) – Character or reputation. Again, this factor was not listed in the
12 Tender of Admissions, but it was established at the hearing. Bar Counsel described
13 Respondent as follows, “He enjoyed a very good reputation as a distinguished lawyer,” (TR
14 68:9) and he had a “... very distinguished legal career...” (TR 68:6) Respondent contributed
15 to the development of the State Bar’s Law Office Management Program (LOMAP) when it
16 began. (TR 68:10)

17 Standard 9.32(i) - Imposition of other penalties or sanctions. Respondent was
18 sentenced to probation in the criminal matter. In addition, and more significantly,
19 Respondent was sanctioned in the amount of approximately \$100,000 in the underlying trust
20 matter, all of which has been personally paid by Respondent.

21 Standard 9.32 (l) – Remorse. Although this factor was not listed by the parties in the
22 Tender of Admissions, the Hearing Officer finds that it has been established. During his
23 testimony Respondent was close to tears when he described his reasons for reporting himself
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1 to the Bar. He stated that in struggling with the decision to report himself he finally
2 concluded that he had to report his violation because, " ... if I had known another lawyer
3 that had done that, I would report them. Therefore, I had the duty to report it -- to report
4 myself. I've tried to act in the best interests of the profession. What I did, I regret deeply.
5 You can't imagine. But I've tried to act in the best and highest standards of the profession
6 ever since. I've never had a Bar complaint. I've never had a malpractice suit. And I was
7 never sanctioned by any judge, anything, anywhere." (TR 60:18 through 61:7) Respondent
8 has demonstrated by his actions his remorse. He quickly refunded monies mistakenly taken
9 from the trust bank account. He is addressing the issue of depression. He has biweekly
10 meetings with MAP group sessions. He sees a psychotherapist once a week. (TR 16:8
11 through 17:22)

12
13 In evaluating the aggravating and mitigating factors, the Hearing Officer agrees with
14 the parties that the mitigating factors weigh in favor of imposing a censure in this matter. In
15 particular, in supporting the imposition of a censure, the Hearing Officer and the parties rely
16 on: the imposition of other sanctions; Respondent's lack of a prior discipline history;
17 Respondent's mental health issues as well as the fact that Respondent self reported his conduct
18 to the State Bar and according to Respondent's calculation, which was unknowingly short by
19 \$4,265.63, that Respondent had paid back the trust for funds that had been negligently misused.

20 **PROPORTIONALITY ANALYSIS**

21 To have an effective system of professional sanctions, there must be internal
22 consistency, and it is appropriate to examine sanctions imposed in cases that are factually
23 similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994) (quoting *In re Wines*,
24 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)). However, the discipline in each case must
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1 be tailored to the individual case, as neither perfection nor absolute uniformity can be
2 achieved. *In re Riley*, 142 Ariz. 604, 615, 691 P.2d 695 (1984).

3 In terms of proportionality, there are several cases that provide guidance in this
4 matter, although there is no case directly on point.

5 There are very few cases involving a lawyer's mishandling of monies when acting in
6 a fiduciary position, other than as a lawyer. In *In re Lacey*, SB-06-0129-D, Mr. Lacey was
7 suspended for six months for violations of Rule 42, Ariz.R.Sup.Ct., ER 8.4(c) and (d). Mr.
8 Lacey was found to have misappropriated monies that were in his possession as treasurer for
9 the Inns of Court. In contrast to this matter, Mr. Lacey's mental state in misappropriating
10 the funds was "knowing." Mr. Lacey had the money for about a year and a half.

11 There are numerous cases, however, in which lawyers were sanctioned for
12 negligently mishandling client trust accounts. Those cases provide support for an imposition
13 of a censure. Lawyers who have negligently failed to preserve their clients' property by
14 failing to maintain their established trust account procedures have generally received a
15 censure.
16

17 In *In re Hall*, SB-02-0122-D, Hall received a censure for advancing funds from his
18 firm's operating account and placing those funds into the trust account to cover client costs.
19 The trust account records examined by the State Bar reflected negative balances for a total
20 of twelve clients. Hall had failed to monitor the clients' funds and as a result of this failure
21 overdrafts occurred on the account. Hall received a censure and was placed on probation for
22 one year for failing to establish sufficient internal controls in order to properly monitor his
23 clients' funds. No factors were found in aggravation and six factors were found in
24 mitigation: absence of a prior disciplinary record; absence of a dishonest or selfish motive;
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1 timely good effort to rectify consequences of misconduct; full and free disclosure to
2 disciplinary board or cooperative attitude towards proceedings; physical disability; and
3 remorse.

4 Similarly, in *In Re McKindles*, SB-05-0065-D, McKindles was censured and placed
5 on probation for a period of one year for failing to safeguard client funds by keeping
6 unearned fees in his firms' operating account and by commingling earned fees with client
7 funds in the trust account. McKindles also failed to maintain complete trust account records
8 and failed to exercise due professional care in dealing with client funds. There were no
9 aggravating factors found. As in the present case, McKindles had substantial experience in
10 the practice of law, which, when considered in conjunction with a clean disciplinary record,
11 was found not to constitute an aggravating factor. In mitigation, the Hearing Officer found
12 an absence of a dishonest or selfish motive; timely good faith effort to make restitution or to
13 rectify consequences of misconduct; full and free disclosure to disciplinary board or
14 cooperative attitude towards proceedings; and, character or reputation.

15
16 The court has also generally imposed censures in cases of violation of a court order.
17 See, e.g., *In re Bloom*, SB-09-0040-D and *In re Boegemann*, SB-09-00690.

18 As for the misdemeanor conviction, that violation may serve as an aggravating
19 factor. The parties were unable to locate any similar criminal conviction discipline cases in
20 Arizona. Although other misdemeanor convictions have resulted in censures in some
21 instances, *In re Alcorn* DC No. 86-1388 (1988). In *In re Levine*, SB-99-0049-D (1999), the
22 lawyer was censured for violation of ER 8.4(b) relating to his misdemeanor conviction for
23 willful failure to pay income tax.
24
25

1 Based on the *Standards* and case law, the Hearing Officer agrees with the parties that
2 in this matter, a censure and one year of probation are within the range of appropriate
3 sanctions and will serve the purposes of lawyer discipline. The sanction will serve to protect
4 the public, instill confidence in the public, deter other lawyers from similar misconduct, and
5 maintain the integrity of the bar.

6 RECOMMENDATION

7 The Hearing Officer recommends that Respondent received a censure and one year
8 of probation. The reasons stated by Bar Counsel for a censure and probation at the hearing
9 support this recommendation. First, Bar Counsel noted the significant fact that Respondent
10 reported himself to the Bar before he was under any threat that others might report him.
11 Respondent replaced the funds in the trust money market account before the attorneys for
12 the trust beneficiaries knew that any funds had been misappropriated. In most cases
13 attorneys who self-report to the Bar are doing so because they know that their misconduct is
14 about to be reported by another person or party. Respondent might well have escaped any
15 sanction if no one had noticed that funds had been replaced. (TR 66:11 through 67:9)
16 Second, the Bar was able to verify that Respondent did not know that he was using trust
17 funds for his own benefit. Third, by reviewing medical records the Bar verified that
18 Respondent had suffered a substantial depressive episode at the time when he was using the
19 trust funds. Fourth, Respondent's criminal conviction occurred during the time of his
20 depression. (TR 67:10 through 68:3).

22 The combination of the negligent misappropriation of funds, the failure to personally
23 attend the court hearing (Respondent appeared telephonically) and the guilty plea to
24 Disorderly Conduct with a Weapon (eventually designated a misdemeanor) could lead to a
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1 reasonable conclusion that a suspension should be the appropriate sanction. However the
2 mitigating factors in this case far outweigh the aggravating factors. Respondent's 28 year
3 record of no Bar complaints combined with the personal and emotional problems that he
4 was suffering at the time of these events leads this Hearing Officer to conclude that the
5 censure and one year of probation is appropriate. Respondent was one of the leading estate
6 lawyers in the Bar. (TR 68:8) His distinguished legal career should be considered in arriving
7 at the proper sanction. His reaction to his misconduct is also significant. In the criminal
8 matter the sentencing court must have concluded that there were extenuating circumstances
9 when deciding to place Respondent on only summary probation. Respondent successfully
10 completed the probation and the offense was designated a misdemeanor.

11 In the trust matter Respondent immediately replaced the funds that he had used and
12 reported himself to the Bar. When ordered by the court to pay more than \$100,000 in
13 attorney fees he complied fully. Respondent has addressed the issue of depression with his
14 biweekly MAP group sessions, medication and regular psychotherapy. Dr. Lett concluded
15 that Respondent is fit to practice law. The probation will include a MAP assessment and
16 terms and conditions developed by the director of MAP. For the foregoing reasons the
17 Hearing Officer finds that the agreement reached by the parties for a censure and one year of
18 probation is appropriate.
19
20

21 CONCLUSION

22 The objective of lawyer discipline is not to punish the lawyer, but to protect the public,
23 the profession, and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297
24 (1985). The Hearing Officer asserts that the objectives of discipline will be met by the
25

1 imposition of the proposed sanction of a censure, one year of probation and the payment of
2 costs and expenses of these proceedings.

3 **SANCTION**

4 The Hearing Officer recommends that Respondent be sanctioned as follows:

- 5 1. Respondent shall receive a censure;
- 6 2. Respondent shall be placed on probation for a period of one year, under the
7 following terms and conditions:
- 8 a. The probation period will begin to run at the time of the judgment and
9 order.
- 10 b. Respondent shall contact the director of the State Bar's Member
11 Assistance Program (MAP) within 30 days of the judgment and order.
12 Respondent shall submit to a MAP assessment. The director of MAP
13 shall develop "Terms and Conditions of Probation" based on the
14 assessment and the terms shall be incorporated herein by reference.
- 15 c. If Respondent fails to comply with any of the foregoing conditions and
16 the State Bar receives information about non-compliance, bar counsel
17 shall file with the Hearing Officer a Notice of Noncompliance. The
18 Hearing Officer shall conduct a hearing at the earliest applicable date, but
19 in no event later than 30 days after receipt of notice, to determine whether
20 a term of probation has been breached and, if so, to recommend an
21 appropriate sanction. If there is an allegation that Respondent failed to
22 comply with any of the foregoing conditions, the burden of proof shall be
23 on the State Bar to prove noncompliance by clear and convincing
24 evidence.
25

EXHIBIT A

1 **Statement of Costs and Expenses**

2 In the Matter of a Member of the State Bar of Arizona,
3 Arthur Paul Blunt, Bar No. 006304, Respondent

4 File No(s). 08- 0265 and 08-2194

5 **Administrative Expenses**

6
7 The Board of Governors of the State Bar of Arizona with the consent of the
8 Supreme Court of Arizona approved a schedule of general administrative
9 expenses to be assessed in disciplinary proceedings. The administrative
10 expenses were determined to be a reasonable amount for those expenses
11 incurred by the State Bar of Arizona in the processing of a disciplinary matter.

12 * An additional fee of 20% of the general administrative expenses will be
13 assessed for each separate file/complainant that exceeds five, where a violation
14 is admitted or proven.

15 General administrative expenses include, but are not limited to, the following
16 types of expenses incurred or payable by the State Bar of Arizona:
17 administrative time expended by staff bar counsel, paralegals, legal assistants,
18 secretaries, typists, file clerks and messengers; postage charges, telephone
19 costs, normal office supplies, and other expenses normally attributed to office
20 overhead. General administrative expenses do not include such things as travel
21 expenses of State Bar employees, investigator's time, deposition or hearing
22 transcripts, or supplies or items purchased specifically for a particular case.

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

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

26 **Staff Investigator/Miscellaneous Charges**

27	02/21/08	Review file; Consult with Bar Counsel; Request additional information	\$17.50
28	04/15/08	Review file; Computer investigation; Call to Attorney Stephen Thompson; Call to Respondent	\$70.00
29	04/16/08	Call to Attorney Robert Rosepink; Memo to Bar Counsel	\$70.00
30	04/18/08	Call from Attorney Robert Rosepink; Memo to Bar Counsel	\$17.50
31	05/05/08	Review documents from Attorney Robert Rosepink; Memo to Bar Counsel	\$26.25

1	06/03/08	Consult with Bar Counsel; Review file; Prepare investigative report	\$17.50
2	07/02/08	Call to Attorney Robert Rosepink; Review information from Rosepink; Attempt to contact Comm. Ellis; Call to Attorney Larry	
3		Schafer; Memo to Bar Counsel	\$70.00
4	08/14/08	Bank of America, Copies of bank records	\$18.79
	08/15/08	Reconstruct trust account	\$17.50
5	12/01/08	Computer investigation; Consult with Bar Counsel	\$175.00
	12/02/08	Draft and fax letter to CCSC; Call to Attorney Robert Rosepink; Call to MCSC electronic records; Review court file	\$96.25
6		Review CCSC file; Memo to Bar Counsel	\$26.25
7	12/03/08	Review CCSC file; Memo to Bar Counsel	\$26.25
	12/15/08	Travel and mileage to Maricopa Court Superior Court to pick up CD	\$7.02
8	04/22/09	Call to Attorney Robert Rosepink	\$8.75
	04/23/09	Call to court reporter Margie Riley	\$8.75
9	04/27/09	Call from court reporter Margie Riley	\$8.75
	05/20/09	Attempt to contact Margie Riley	\$8.75
10	05/27/09	Travel and mileage to Maricopa County Superior Court to pick up transcript	\$6.60
11	05/25/09	Transcript of PB2001-002075 Kenneth H and Sonia Graham hearing	\$325.00
12	06/15/09	Atwood Reporting Service, Deposition of Arthur Paul Blunt	\$806.65
13			
14		Total for staff investigator charges	\$1802.81
15		<u>TOTAL COSTS AND EXPENSES INCURRED</u>	<u>\$3,002.81</u>

16 
 17 Sandra E. Montoya
 18 Lawyer Regulation Records Manager

16 11-24-09
 17 Date