Nicole S. Kaseta, Bar No. 025244
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7250
Email: LRO@staff.azbar.org

Donald O. Loeb, Bar No. 001959
Donald O. Loeb PLC
322 North 54th Street, Unit 2
Mesa, Arizona 85205-8104
Telephone: (602) 708-0073
Email: donloeblaw@gmail.com
Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **Donald O. Loeb, Bar No. 001959,** Respondent.	**PDJ-2013-** 9090 **AGREEMENT FOR DISCIPLINE BY CONSENT** State Bar No. 13-1027

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Donald O Loeb, who has chosen not to seek the assistance of counsel, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. The parties reached an agreement for discipline by consent before the matter was submitted to the Attorney Discipline Probable Cause Committee; therefore, there is no order of probable cause. Additionally, this matter involves trust account violations and, therefore, there is no Complainant to notify regarding this Agreement for Discipline by Consent. Respondent voluntarily waives the right to an adjudicatory hearing on the

complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, Ariz. R. Sup. Ct., ER 1.15(a) and Rule 43(b)(1)(A), 43(b)(1)(B), 43(b)(1)(C), 43(b)(2)(A), 43(b)(2)(B), 43(b)(2)(C), 43(b)(2)(D), 43(b)(5), and 54(d)(2)(A). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand, followed by one year of probation and participation in Law Office Management Assistance Program (LOMAP) and Trust Account Ethics Enhancement Program (TAEEP). Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.[1] The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

GENERAL ALLEGATIONS

1. 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 6, 1966.

COUNT ONE (State Bar File No. 13-1027)

2. The State Bar received an insufficient funds notice on Respondent's client trust account. On May 1, 2013, check number 1061 in the amount of $110.00, a withdrawal in the amount of $32.00, and a withdrawal in the amount of $294.68 attempted to pay against the account when the balance was $2.37. The bank paid

[1] Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

the two withdrawals but returned check 1061 and did not charge an overdraft fee leaving the account with a negative balance of $324.31.

3. On May 9, 2013, the trust account examiner sent Respondent a copy of the overdraft notice and requested an explanation of the overdraft. The trust account examiner also requested copies of the related mandatory records, including copies of Respondent's trust account bank statements for April 2013 to May 2013; copies of cancelled checks and deposit slips corresponding to such bank statements; copies of individual client ledgers corresponding to such bank statements; copies of the administrative fund/bank charges ledger corresponding to such bank statements; copies of the general ledger/check register corresponding to such bank statements; and copies of the April 2013 and May 2013 monthly reconciliations.

4. After multiple phone calls and emails from Respondent and his staff, and two extensions of time, Respondent provided the requested information with exceptions on June 28, 2013. In one of the phone calls from Respondent, he explained that he believed the occurrence of the overdraft was the result of a client's returned deposit item. The trust account examiner, however, did not find any occurrence of a returned deposited item during the period of review.

5. In Respondent's June 28, 2013 response, Respondent failed to explain the cause of the overdraft. Instead, Respondent wrote that he believed the nonsufficient funds notice was erroneous because the subsequent deposits of $1,000.00 and $2,500.00 one day later remedied this isolated incident of an overdraft.

6. Respondent failed to produce with his June 28, 2013 response the

requested copies of individual client ledgers, administrative fund/bank charges ledger, the general ledger/check register, or the monthly reconciliations.

7. On July 3, 2013, the State Bar issued a subpoena duces tecum to obtain Respondent's IOLTA bank records from BMO Harris Bank due to Respondent's failure to provide complete records and a complete response. BMO Harris Bank produced the records pursuant to the subpoena on August 14, 2013.

8. On August 9, 2013, Respondent's assistant provided the trust account examiner with a letter from Respondent dated June 26, 2013. In this letter, Respondent advised the trust account examiner of the following:

A. "For the past five years[,] I have been operating what is effectively a Public Interest Law Firm assisting home mortgage loan borrowers who are underwater – i.e. the amount of their home mortgage loan far exceeds the present fair market value of their home and often non-judicial foreclosure is imminent or the property has already been foreclosed."

B. "The clients typically sign a Fee Agreement (now a new Advanced Fee Agreement) in which they post an advanced fee in a specified amount, usually $2,500 to $3,500, and agree to pay the undersigned attorney $225.00 for attorney time expended plus costs incurred. The clients also agree to promptly replenish the Advanced Fee when the remaining balance of Advanced Fee gets below $1,500 as a result of attorney billing time expended including costs."

C. "All too often, however, in the undersigned's experience],] defense clients are reluctant to stick to their agreement to continue paying attorney's fees and accruing costs at the agreed upon hourly billing agreement."

D. "Such borrowers threatened with foreclosure are often in dire financial straights, often with serious health problems, who are often either unemployed or facing the loss of a job."

E. "The undersigned typically collects an initial Advanced Fee from the client following the Initial Interview with the client, in the amount of $2,500 to $3,500, for attorney time to be devoted initially to the cases to be filed at the rate of $225/hr. which fee is placed in the client's Trust Account."

F. Regarding individual client ledgers, Respondent advised that his former law firm dissolved on October 1, 2011, the firm's previous bookkeeper no longer provided him bookkeeping services, and the bookkeeper he retained to replace her was "seriously substandard."

G. Respondent retained another bookkeeper who provided him with originals and copies of full and complete billing statements for all clients showing the time reflected in Respondent's time sheets for each client. This bookkeeper also provided Respondent with a copy of the QuickBooks information she developed and maintained.

H. Respondent has "retained a new accountant/bookkeeper . . ., Dawn Loomis, in an effort to develop the capacity to create client ledgers corresponding to Trust Account balances and to generate quarterly Profit and Loss Statements."

I. Respondent "instructed Ms. Loomis to set up an electronic bookkeeping system utilizing QuickBooks including a system for reconciling funds put into and removed from . . . [Respondent's] IOLTA. That effort is currently

in progress and the bookkeeper has been gathering pertinent records of monies going into and out of the IOLTA account."

J. "An Administrative Funds/Bank Charges Ledger that corresponds to trust account bank statements has not yet been prepared for the time period in question."

K. "[A] general ledger for the time period in question will be established."

L. "Monthly reconciliations are in the process of being provided by Ms. Loomis . . ." who has now completed the installment of QuickBooks and who has prepared up to date billing statements for his clients

9. On August 28, 2013, the trust account examiner reaffirmed her request for client ledgers, an administrative funds ledger, a general ledger, and monthly reconciliations. The trust account examiner enclosed a portion of her reconstruction of Respondent's IOLTA based on records received to date and asked Respondent to write in the names of the clients for each deposit to and disbursement from the IOLTA. The trust account examiner requested the aforementioned information and documentation within ten days.

10. On September 7, 2013, Respondent responded to the trust account examiner's August 28, 2013 request for information and documentation. Respondent again did not provide client ledgers, an administrative funds ledger, a general ledger, or monthly reconciliations. The only document Respondent provided was the reconstruction completed by the trust account examiner detailing those IOLTA transactions whose corresponding client names were unknown. However, six of the transactions remain unidentified to date.

11. Because Respondent failed to maintain the proper client ledgers and general ledger on a contemporaneous basis, the trust account examiner was unable to establish which clients held or should have held funds on deposit in the client trust account as of April 2, 2013 and June 3, 2013, to determine the root cause of the overdraft, and to identify whether any client funds were converted at the time of the overdraft.

12. During the period of review, Respondent routinely held a balance of earned fees in his client trust account and used his client trust account as an operating account by disbursing directly to third-parties for business and/or personal expenses, when his earned fees should have been removed promptly from the trust account into a business account for payment to third-parties.

13. During the period of review, Respondent disbursed from his client trust account by withdrawal, debit memo, telephone transfer, and debit card on multiple occasions and not by pre-numbered check or electronic transfer, and did not maintain corresponding records on a contemporaneous basis.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., ER 1.15(a) and Rule 43(b)(1)(A), 43(b)(1)(B), 43(b)(1)(C), 43(b)(2)(A), 43(b)(2)(B), 43(b)(2)(C), 43(b)(2)(D), 43(b)(5), and 54(d)(2)(A).

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Reprimand, followed by one year of probation and participation in the Law Office Management Assistance Program and Trust Account Ethics Enhancement Program.

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ER 1.15(a) and Rule 43(b). The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

TAEEP

Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). Respondent must contact the TAEEP Program Coordinator, State Bar of Arizona, at (602) 340-7278, within 20 days from the date of the final judgment and order. Respondent shall be responsible for the cost of attending the program.

NON-COMPLIANCE LANGUAGE

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 Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days 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.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley,* 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to 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. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The parties agree that *Standard* 4.13 applies in this matter, given the facts and circumstances involved. *Standard* 4.13 provides that reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. Respondent failed to safe keep client property, commingled earned funds in his client trust account, failed to properly supervise others assisting him in his trust account duties, failed to maintain adequate internal controls to safeguard funds held in trust, failed to maintain adequate trust accounting procedures, and failed to maintain complete trust account records.

The duty violated

As described above, Respondent's conduct violated his duty to his client.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent negligently failed to safe keep client property, negligently commingled earned funds in his client trust account, negligently failed to properly supervise others assisting him in his trust account duties, negligently failed to maintain adequate internal controls to safeguard funds held in trust, negligently failed to maintain adequate trust accounting procedures, and negligently failed to maintain complete trust account records and that his conduct was in violation of the Rules of Professional Conduct.

Respondent previously worked at the law firm of Campana, Vieh & Loeb and such firm had a bookkeeper to assist with his trust account obligations. This firm was allegedly dissolved on October 1, 2011 and then Respondent obtained a new bookkeeper to assist him but Respondent contends that this new bookkeeper "proved to be seriously substandard." Respondent has since retained two other

bookkeepers to assist him with his trust account obligations. Respondent contends that his current bookkeeper has assisted him with installation of QuickBooks and is assisting him with developing and maintaining his trust account documents, including client ledgers, a general ledger, and monthly reconciliations.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential harm to Respondent's clients as a result of the trust account errors discovered during the investigation of this matter.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is reprimand. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22(a): Prior disciplinary offenses. Respondent was admonished on March 19, 2013 in file no. 12-0803 for violating ERs 1.1, 1.3, 5.4, 8.1, and Rule 54(b), and placed on probation for two years to include MAP and LOMAP.[2]

Standard 9.22(i): Substantial experience in the practice of law. Respondent has been licensed to practice in Arizona since October 6, 1966.

In mitigation:

Standard 9.32(b): Absence of a dishonest or selfish motive.

Standard 9.32(d): Timely good faith effort to make restitution or to rectify consequences of misconduct. Respondent retained a new bookkeeper, Dawn Loomis, who has assisted him with installation of QuickBooks and is assisting him with developing and maintaining his trust account documents, including client ledgers, a general ledger, and monthly reconciliations.

---

[2] Respondent's LOMAP terms and conditions relating to file no. 12-0803 focus on calendaring and diligence issues. It is the parties' intent that Respondent's LOMAP terms and conditions relating to the present file, file no. 13-1027, will focus on trust account issues such as compliance with ER 1.15(a) and Rule 43(b).

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: Although Respondent failed to maintain adequate trust accounting procedures and complete trust account records, Respondent's trust account issues can be addressed through TAEEP and LOMAP. Moreover, Respondent retained a new bookkeeper to assist him with his trust account obligations.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand, followed by one year of probation and participation in the Law Office Management Assistance Program and Trust Account Ethics Enhancement Program, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

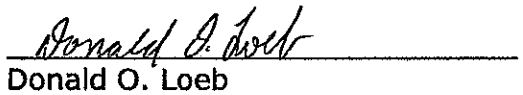
DATED this 4th day of October, 2013.

STATE BAR OF ARIZONA

Nicole S. Kaseta
Staff Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 1st day of October, 2013.



Donald O. Loeb
Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 7th day of October, 2013.

Copies of the foregoing mailed/emailed
this 7th day of October, 2013, to:

Donald O. Loeb
Donald O. Loeb PLC
322 North 54th Street,
Unit 2
Mesa, Arizona 85205-8104
Email: donloeblaw@gmail.com
Respondent

Copy of the foregoing emailed
this 7th day of October, 2013, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 7th day of October, 2013, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

By: Rodney T. Brew
NSK//rtb

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DONALD O. LOEB,** **Bar No. 001959** Respondent.	**PDJ-2013-9090** **AMENDED** **FINAL JUDGMENT AND ORDER** State Bar No. 13-1027 **FILED OCTOBER 16, 2013**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on October 7, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **DONALD O. LOEB**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents effective the date of this Order.

IT IS FURTHER ORDERED that Respondent shall be placed on probation for a period of one (1) year. The probation period will commence at the time of entry of this Judgment and Order and will conclude one year from that date.

IT IS FURTHER ORDERED that during the period of probation of one year, Respondent shall also complete the following:

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at (602) 340-7332, within 30 days of the date of the final Judgment and Order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ER 1.15(a) and Rule 43(b). The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

TAEEP

Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). Respondent must contact the TAEEP Program Coordinator, State Bar of Arizona, at (602) 340-7278, within 20 days from the date of the final Judgment and Order. Respondent shall be responsible for the cost of attending the program.

NON-COMPLIANCE LANGUAGE

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 Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days 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.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $1,221.33. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 16th day of October, 2013.

/s/ *William J. O'Neil*

The Honorable William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 16th day of October, 2013.

Copies of the foregoing mailed/emailed
this 11th day of October, 2013, to:

Donald O. Loeb
Donald O. Loeb PLC
322 North 54th Street, Unit 2
Mesa, Arizona 85205-8104
Email: donloeblaw@gmail.com
Respondent

Copy of the foregoing hand-delivered/emailed
this 16th day of October, 2013, to:

Nicole S Kaseta
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

Sandra Montoya
Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: MSmith