

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,

CLIFFORD I. LEVENSON,
Bar No. 014523

Respondent.

PDJ 2014-9070

FINAL JUDGMENT AND ORDER

State Bar No. 13-1299

FILED OCTOBER 2, 2014

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on September 22, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Clifford I. Levenson**, is hereby reprimanded and placed on probation for two (2) years effective the date of this Order for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that as a term of that probation, Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within thirty (30) days of the date of this Order. Respondent shall submit to a LOMAP examination of his office's trust account procedures. The director or designee of LOMAP shall develop "Terms of Probation",

and those terms shall be incorporated herein by reference. Respondent shall be responsible for any costs associated with LOMAP.

IT IS FURTHER ORDERED that, Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). Respondent must contact the TAEEP Coordinator, State Bar of Arizona, at (602) 340-7351, within twenty (20) days from the date of this 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 \$ 1,200.00, within thirty (30) days from the date of service of this Order. 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 2nd day of October, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 2nd day of October, 2014.

Nancy A. Greenlee
821 E. Fern Dr. North
Phoenix, AZ 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

Shauna R. Miller
Senior Bar Counsel
State Bar of Arizona
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Lawyer Regulation Records Manager
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: JAlbright

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,

CLIFFORD I. LEVENSON,
Bar No. 014523

Respondent.

No. PDJ-2014-9070

**REPORT ACCEPTING CONSENT
FOR DISCIPLINE**

[State Bar File No. 13-1299]

FILED OCTOBER 2, 2014

An Agreement for Discipline by Consent (Agreement) was filed on September 22, 2014, and submitted pursuant to Rule 57(a)(3), Ariz. R. Sup. Ct. A Probable Cause Order was filed on July 21, 2014, and the formal complaint was filed on August 18, 2014. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate". The State Bar is the complainant in this matter, therefore, pursuant to Rule 53(b)(3), no notice of this Agreement is required. Accordingly:

IT IS ORDERED incorporating by this reference the Agreement for Discipline by Consent and any supporting documents by this reference. The agreed upon sanctions are: Reprimand and two (2) years of probation (Trust Account Ethics Enhancement Program and Law Office Management Assistance Program). Respondent also agrees to pay costs associated with the disciplinary proceedings of \$1,200.00.

IT IS ORDERED the Agreement for Discipline by Consent discipline is accepted. A Final Judgment and Order was submitted simultaneously with the Agreement. Costs as submitted are approved in the amount of \$1,200.00. The proposed final judgment and order having been reviewed are approved as to form. Now therefore, the final judgment and order is signed this date.

DATED this 2nd day of October, 2014.

William J. O'Neil

**William J. O'Neil,
Presiding Disciplinary Judge**

Copies of the foregoing mailed/emailed
this 2nd day of October, 2014.

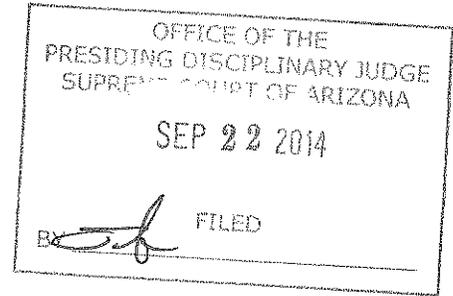
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Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,

**CLIFFORD I. LEVENSON,
Bar No. 014523,**

Respondent.

PDJ 2014-9070

State Bar No. 13-1299

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

The State Bar of Arizona, through undersigned bar counsel, and Respondent, Clifford I. Levenson, who is represented in this matter by Nancy A. Greenlee, hereby submit their agreement for discipline by consent, pursuant to Rule 57(a), Ariz.R.Sup.Ct. A probable cause order was entered on July 21, 2014, and a formal complaint was filed in this matter. 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.

The State Bar is the complainant in this matter, therefore no notice of this agreement is required pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER 1.15(a), Rule 43(a), 43(b)(1)(A) and (C), 43(b)(2)(B) and (C) Ariz.R.Sup.Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: reprimand and two years of probation. 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 December 01, 1992.

COUNT ONE (File no. 13-1299/State Bar of Arizona)

2. On June 3, 2013, the State Bar received an insufficient funds notice dated April 23, 2013, on Respondent's client trust account.

3. On April 19, 2013, check number 3185 for \$10,520.52 attempted to pay against the account when the balance was an uncollectible \$26,589.36.

4. The bank returned the check and did not charge an overdraft fee, leaving the account with an uncollectible balance of \$26,589.36.

5. If this matter were to proceed to hearing, Respondent would testify that he believes the overdraft was a result of a bank error. On April 19, 2013, Respondent made a limited-risk deposit, but was unaware that the bank put a hold

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.

on his deposit. Check number 3185 was a check to Respondent's operating account for earned fees. Because there was a hold on the deposit, check number 3185 was returned for insufficient funds. At the time that the check was returned, Respondent did have other funds on deposit in other accounts to cover the amount of the check in accordance with Rule 43(b)(4)(A), Ariz.R.Sup.Ct. For purposes of this agreement, the State Bar does not dispute the proffered testimony.

6. During the State Bar's investigation, the trust account examiner noted the following problems with Respondent's trust account:

- a. Respondent paid client P.T. \$3,000.00 twice, when client did not have an extra \$3,000.00 in the trust account. The client did not return the \$3,000.00 windfall to Respondent until August 2013.
- b. On April 1, 2013, Respondent disbursed \$102.00 more to J.N than she had in the trust account.
- c. Respondent mistakenly disbursed \$1,579.89 to a medical provider in a matter for client Q.T., when this amount was not in the trust account for client Q.T.
- d. On June 7, 2013, Respondent paid himself \$7,567.52, which consisted of earned fees from N.P. (\$1,433.33), T.D.N. (\$3,173.72), and Q.N.P. (\$2,833.33). However, the amounts listed on the client ledgers only totaled \$7,440.38, leaving a \$127.14 discrepancy.
- e. As of June 30, 2013, Respondent's trust account was short \$1,575.73 in client funds. Respondent was unable to accurately explain how the misappropriation occurred. Respondent deposited funds to cover the \$1,575.73 short-fall on January 15, 2014.

7. Respondent failed to record the name of the payor of funds received on the individual client ledgers.

8. Respondent's trust account was not appropriately labeled as such.

9. Initially, the trust account examiner only sought to review trust account records for the month of April 2013. Due to the numerous errors in Respondent's trust account records, the State Bar determined a review of the last five years of Respondent's trust account records was necessary.

10. The trust examiner noted in his supplemental report:

I have completed my analysis for Respondent's trust account for the periods of January 2009 through February 2014. After reconstructing the accounts, I have determined that, due to how Respondent maintained his client ledgers and the practices he had in place, I am unable to properly reconcile the trust account. In addition, Respondent made various errors in what he recorded on his client ledgers and what actually was transacted on the trust account. Also, there are many instances that I have flagged on Respondent's client ledgers where he recorded transactions listed either as Trans/Dep or Adjust. Since these appear to be bookkeeping adjustments rather than actual transactions that cleared the bank accounts, I am unable to determine the source of the transactions.

11. The trust account examiner was unable to determine why Respondent's account was missing \$1,575.73 in client funds.

12. As of June 20, 2013, Respondent's trust account was missing \$1,575.73 in client funds, in violation of Rule 42, ER 1.15(a), Ariz.R.Sup.Ct.(failing to safeguard client property); Rule 43(b)(1)(A), Ariz.R.Sup.Ct., (failing to exercise due professional care in the performance of the lawyer's duties); and Rule 43(b)(1)(C), Ariz.R.Sup.Ct., (failing to maintain adequate internal controls under the circumstances to safeguard funds or other property held in trust).

13. Respondent violated of Rule 42, ER 1.15(a), Ariz.R.Sup.Ct. (failing to safeguard client property); Rule 43(b)(1)(A), Ariz.R.Sup.Ct., (failing to exercise due

professional care in the performance of the lawyer's duties); and Rule 43(b)(1)(C), Ariz.R.Sup.Ct., (failing to maintain adequate internal controls under the circumstances to safeguard funds or other property held in trust). Respondent disbursed \$3,000.00 twice to client P.T., \$3,000.00 more than what the client had in the trust account. On April 1, 2013, Respondent disbursed \$102.00 more to J.N than she had in the trust account. Respondent disbursed \$1,579.89 to a medical provider in a matter for client Q.T., which was more than the client had in the trust account.

14. Respondent violated Rule 43(b)(2)(C), Ariz.R.Sup.Ct., by failing to make or cause to be made monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement. Respondent disbursed \$3,000.00 twice to client P.T., \$3,000.00 more than what the client had in the trust account. On April 1, 2013, Respondent disbursed \$102.00 more to J.N than she had in the trust account. Respondent disbursed \$1,579.89 to a medical provider in a matter for client Q.T., which was more than the client had in the trust account.

As of June 20, 2013, Respondent's trust account was still short by \$1,575.73. If Respondent had been performing proper monthly 3-way reconciliations, Respondent would have known he was mishandling client funds.

15. Respondent violated Rule 43(a), Ariz.R.Sup.Ct., by failing to keep funds in one or more trust accounts that are labeled as such. Respondent's trust account is not labeled properly.

16. Respondent violated Rule 43(b)(2)(B), Ariz.R.Sup.Ct., by failing to maintain an account ledger for each client, person, or entity for which funds have

been received in trust, showing the date, amount, and payor of each receipt of funds. Respondent failed to record the name of the payor on the individual client ledgers.

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, ER 1.15(a), Rule 43(a), 43(b)(1)(A) and (C), 43(b)(2)(B) and (C) Ariz.R.Sup.Ct.

CONDITIONAL DISMISSALS

None.

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 and two years of probation.

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* is the appropriate *Standard* given the facts and circumstances of this matter.

Standard 4.13

Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

The duty violated

As described above, Respondent's conduct violated his duty to his clients by failing to properly protect client funds.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent negligently failed to properly maintain his client trust account and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential harm to his clients.

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.

Aggravating factors:

Standard 9.22(a) prior disciplinary offenses. File Nos: 00-1622, 00-1624, 01-0034 and 01-0722. By Supreme Court Judgment and Order dated December 4, 2002, Respondent was suspended for one year, retroactive to October 16, 2000, by consent, for violation of his duties and obligations as a lawyer. Respondent received retainers from clients and then failed to adequately communicate with his clients; failed to act with reasonable diligence on their matters; failed to refund unearned fees to his clients; engaged in conduct that was prejudicial to the administration of justice and failed to promptly respond to the inquiries and requests for information received from the State Bar regarding the matters. Respondent voluntarily ceased practice and entered treatment in October 2000. There were three aggravating factors. Standard 9.22: (d) multiple offenses, (h) vulnerability of victims and (i) substantial experience in the practice of law. There were four mitigating factors. Standard 9.32: (a) absence of prior disciplinary record, (b) absence of dishonest or selfish motive, (i) mental disability or impairment and (l) remorse. Respondent's conduct violated Rule 42, Ariz.R.Sup.Ct., particularly, ERs 1.2, 1.3, 1.4, 1.5, 1.16(d), 3.4, 8.1(b), and 8.4(d) and Rule 51(h) and (i), Ariz.R.Sup.Ct. Respondent was reinstated on September 22, 2004.

Mitigating factors :

Standard 9.32(d)(good faith effort to rectify consequences of misconduct)

Respondent has taken remedial steps to correct his misconduct by depositing sufficient funds to cover the shortfall identified (\$1,575.73). He has also made other changes to his trust accounting practices, including retaining the services of a CPA employed with Duskin Duskin Ltd.

Standard 9.32(m) remoteness of prior offenses. Even though Respondent was suspended for a year, it was for conduct that occurred in 2000 – 2001, and was directly related to an addiction. He was reinstated in 2004. There are no indications that Respondent's negligent mismanagement of his trust account was related to a relapse. Because Respondent has taken steps to correct his misconduct, the parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter.

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 and two-year probation, TAEEP and LOMAP, and the

imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 22nd day of September 2014

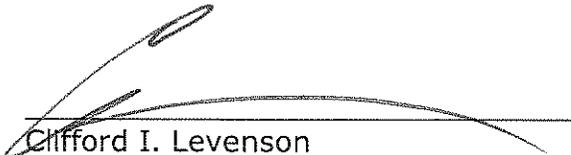
State Bar of Arizona



Shauna R. Miller
Senior Bar Counsel

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

DATED this 19th day of September, 2014.



Clifford I. Levenson
Respondent

DATED this 19th day of September, 2014.



Nancy A. Greenlee
Counsel for 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
of the Supreme Court of Arizona
this 22nd day of September 2014.

Copies of the foregoing mailed/emailed
this 22nd day of September 2014 to:

Nancy A. Greenlee
821 E. Fern Dr. North
Phoenix, AZ 85014-3248
nancy@nancygreenlee.com
Respondent's Counsel

Copy of the foregoing emailed
this 22nd day of September, 2014, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov

Copy of the foregoing hand-delivered
this 22nd day of September, 2014, to:

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

by: 
SRM-jao

EXHIBIT "A"

Statement of Costs and Expenses

In the Matter of a Current Member of the State Bar of Arizona,
Clifford I. Levenson, Bar No. 014523, Respondent

File No. 13-1299

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

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

General Administrative Expenses for above-numbered proceedings

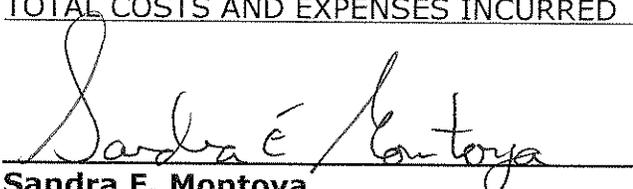
\$1,200.00

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

Staff Investigator/Miscellaneous Charges

Total for staff investigator charges \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED \$ 1,200.00


Sandra E. Montoya
Lawyer Regulation Records Manager

9-9-14
Date

EXHIBIT "B"

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,

CLIFFORD I. LEVENSON,
Bar No. 014523,

Respondent.

PDJ 2014-9070

State Bar No. 13-1299

FINAL JUDGMENT AND ORDER

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on September ____, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Clifford I. Levenson**, is hereby reprimanded and placed on probation for two years for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents

IT IS FURTHER ORDERED that, as a term of that probation, Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within thirty (30) days of the date of the reinstatement. Respondent shall submit to a LOMAP examination of his office's trust account procedures. The director of LOMAP shall develop "Terms of Probation", and those terms shall be incorporated herein by reference. Respondent shall be responsible for any costs associated with LOMAP.

IT IS FURTHER ORDERED that, Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEED). Respondent must contact the TAEED Coordinator, State Bar of Arizona, at (602) 340-7351, within twenty (20) days from the date of service of this Order. Respondent shall be responsible for the cost of attending the program.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ _____, within thirty (30) days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within thirty (30) days from the date of service of this Order.

DATED this _____ day of September, 2014.

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 _____ day of September, 2014.

Copies of the foregoing mailed/mailed
this _____ day of September, 2014.

Nancy A. Greenlee
821 E. Fern Dr. North
Phoenix, AZ 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

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this ____ day of September, 2014, to:

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by: _____