

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 DISABLED
MEMBER OF THE STATE BAR OF
ARIZONA,**

**DANIEL J. RADACOSKY,
Bar No. 011673**

Respondent.

PDJ 2014-9045

**AMENDED FINAL JUDGMENT AND
ORDER**

[State Bar No. 13-0428]

FILED OCTOBER 8, 2014

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on September 29, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Daniel J. Radacosky**, is hereby suspended for six (6) months and one (1) day 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 pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay Bank of America, N.A. restitution in the amount of Three Thousand Six Hundred Thirty Dollars (\$3,630.00).

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,216.95. 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 8TH day of October, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 8TH day of October, 2014, to:

Daniel J. Radacosky
875 West Spur Avenue
Gilbert, Arizona 85233-6235
Email: danradacosky@gmail.com
Respondent

Craig D. Henley
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 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,

DANIEL J. RADACOSKY,
Bar No. 011673

Respondent.

No. PDJ-2014-9045

**REPORT ACCEPTING CONSENT
FOR DISCIPLINE**

[State Bar File No. 13-0428]

FILED OCTOBER 1, 2014

An Agreement for Discipline by Consent was filed on September 29, 2014, and submitted pursuant to Rule 57(a)(3), of the Rules of the Arizona Supreme Court. A Probable Cause Order was filed on May 14, 2014 and the formal complaint was filed on May 28, 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 no notice of the proposed agreement is required pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct.

Mr. Radacosky's misconduct arose when he negligently transferred his client's settlement funds from the restricted bank account to his personal bank account. Mr. Radacosky admits that his conduct was prejudicial to the administration of justice and violated ER 8.4(d).

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: six months and one day suspension and restitution in the amount of \$3,630.00. Respondent also agrees to pay costs associated with the disciplinary proceedings of \$1,216.95.

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 \$1,216.95. 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 1st day of October, 2014.

William J. O'Neil

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

Copies of the foregoing mailed/emailed
this 1st day of October, 2014.

Craig D. Henley
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
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Daniel A. Radacosky
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Respondent

Sandra Montoya
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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
SEP 29 2014
BY: *ML* FILED

Daniel J. Radacosky, Bar No. 011673
875 W Spur Ave
Gilbert, AZ 85233-6235
Telephone 602-206-5334
Email: danradacosky@gmail.com
Respondent

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

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

**DANIEL J. RADACOSKY,
Bar No. 011673,**

Respondent.

PDJ 2014-9045

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar No. 13-0428

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Daniel J. Radacosky, 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. A Probable Cause Order was entered on May 14, 2014 and a formal complaint was filed on May 28, 2014.

Respondent voluntarily waives the right to an adjudicatory hearing on the allegations contained in the complaint 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.

Even though the State Bar is the complainant in this matter, and therefore no notice of this agreement is required pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., the judge originally referring the case was informed of the agreement and provided no opposition.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER 8.4(d) ~ Misconduct Which was Prejudicial to the Administration of Justice.

Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **Long-Term Suspension of Six Months and One Day with Restitution Order for Three Thousand Six Hundred Thirty Dollars (\$3,630.00).**

Respondent understands that a period of suspension of more than six months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona.

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 but at times on disability status in the state of Arizona having been first admitted to practice in Arizona on October 24, 1987.

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.

COUNT ONE (File no. 13-0428/SB-Judicial Referral)

2. On July 30, 1996, Respondent filed a *Petition for Appointment of Conservator and for Approval of Settlement of Personal Injury Claim of Minor (In the Matter of the Estate of Doran A. Chelsey, II, Maricopa County Superior Court File No. PB96-003229)* on behalf of the parents of a six-year-old client, Doran A. Chelsey, II (Doran), in an effort to obtain court approval of a settlement with some of the defendants regarding injuries Doran suffered when he fell from playground equipment.

3. The petition requested that Doran's parents be named conservators and stated that a portion of the settlement funds would be placed into a restricted account.

4. On September 10, 1996, Maricopa County Superior Court Commissioner/Judge Pro Tem Gary Donahoe issued an order appointing Doran's parents as conservators, approving the settlement, and scheduling an administrative review for proof of the establishment of a restricted account.

5. The order also stated that no funds could be withdrawn from the bank without a certified copy of an order authorizing the withdrawal and that "Counsel is responsible for establishing the restricted account and filing the proof required by this order with the Court within thirty days."

6. On August 21, 1997, Commissioner Donahoe ordered Respondent to open a restricted account for the estate of Doran A. Chelsey, II, because Respondent's efforts to contact Doran's parents had been unsuccessful, and the Court file reflected that mail to the parents was being returned as "undeliverable".

7. On September 23, 1997, Respondent filed a notice with the Court which stated that \$3,473.58 had been deposited with the Bank of America into the restricted savings account of "The Estate of Doran A. Chesley, II, a protected person by Daniel J. Radacosky, as Counsel for Doran A. Chesley and Tresia Chesley, Co-Conservators".

8. On December 17, 1999, the Chesley account had a balance of \$3,594.77 due to accruing interest earned.

9. For reasons that remain unclear, despite acknowledging the Order to establish a restricted account, Bank of America did not actually restrict the Chesley account.

10. At some time on or before June 14, 2004, Bank of America mistakenly electronically linked the Chesley account with a personal checking account of Respondent's, such that electronic transfers could be made from the account without a court order.

11. Believing the account was one of his own personal accounts, Respondent mistakenly made a series of electronic transfers from the Chesley account into his checking account, as follows:

- a. \$1,000.00 on June 14, 2004;
- b. \$1,000.00 on June 23, 2004;
- c. \$1,000.00 on July 7, 2004;
- d. \$500.00 on October 6, 2004;
- e. \$130.00 on July 11, 2006.

12. On February 20, 2007, the balance of the restricted account was reduced to \$0.00 due to monthly maintenance fees and the cost incurred when the account was "force closed."

13. On August 14, 2012, Maricopa County Superior Court Commissioner Richard Nothwehr issued a minute entry stating that Doran had reached the age of majority and ordered that the conservator file a petition to release the restricted funds and discharge the conservator within 60 days.

14. On October 25, 2012, Doran's father filed a *pro se* a Petition for Termination of Conservatorship of a Minor and Release of Restricted Funds.

15. The petition stated, among other things, that Doran's parents had not withdrawn any funds from the restricted account and moved the court to release the restricted funds to Doran.

16. A hearing regarding the Petition for Termination of Conservatorship was set for December 20, 2012, and Bank of America was ordered to appear regarding the status of the restricted account.

17. On December 19, 2012, James T. Rayburn (Rayburn), Bank of America's outside counsel, sent an email to Respondent informing Respondent of the December 20th hearing.

18. Rayburn also provided Respondent with copies of bank statements reflecting transfers from the restricted account to Respondent's personal account.

19. On December 20, 2012, Rayburn informed the court that the funds in the restricted account had been withdrawn and transferred to Respondent's personal account.

20. The court scheduled an order to show cause hearing for January 24, 2013 and ordered Respondent to appear to show cause why he should not be held in contempt of court or have other sanctions imposed.

21. The Clerk of Court mailed a copy of the court's minute entry to Respondent but it was returned as undeliverable.

22. The hearing was therefore rescheduled to February 21, 2013 and Respondent was ordered to appear at the continued hearing.

23. On February 6, 2013, Respondent sent an email message to Rayburn regarding Respondent's belief that Bank of America "linked" the restricted account to his personal account.

24. At the order to show cause hearing, Respondent did not contest the transfer of funds from the restricted account to his personal account but reiterated his belief that the transfers could only be caused by Bank of America wrongfully "linking" the restricted account to Respondent's personal account.

25. Following the hearing, Commissioner Nothwehr ordered Bank of America to distribute the principal and accruing interest to Doran by April 15, 2013, and to include information regarding the manner in which interest was calculated.

26. On April 12, 2013, Bank of America filed a *Notice of Payment to Former Minor by Bank of America* which included a letter and copy of a certified check in the amount of Three Thousand Seven Hundred Fifteen Dollars and 52/100 (\$3715.52) which represented the principal and interest paid to Doran by Bank of America, thereby making the client financially whole.

27. To date, Respondent has not paid to Bank of America any of the funds transferred from the Chesley account to Respondent's personal account.

28. If the matter were to proceed to trial, Respondent would argue (1) that the transfers from the Chesley account were based on the mistaken belief that Respondent was merely dealing with his own personal accounts; (2) that the transfers could never have occurred if Bank of America had properly restricted the Chesley account and otherwise complied with the court order; (3) that the wrongful "linking" of the Chesley account to Respondent's personal account was done unilaterally by Bank of America through no request or actions by Respondent; and (4) that once Respondent learned of the inadvertent transfers, he contacted Bank of America and appeared at a hearing in order to ensure that Doran Chesley would be made whole by Bank of America pursuant to its statutory liability for failing to properly restrict the Chesley account.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is 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 8.4(d) Misconduct Prejudice to the Administration of Justice.

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss alleged violations of Rule 42, Ariz. R. Sup. Ct., ERs 1.3 and 1.4 as Respondent did undertake take efforts to eliminate the financial harm of his client once he became aware of the harm and Respondent apparently failed to communicate with the clients as a result of their relocation.

RESTITUTION

Restitution is due and owing to Bank of America, N.A. in the amount of Three Thousand Six Hundred Thirty Dollars (\$3,630.00).

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:

Long Term Suspension of Six Months and One Day with an Order of Restitution for Three Thousand Six Hundred Thirty Dollars (\$3,630.00)

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 the following *Standard* is applicable to Respondent's misconduct:

Standard 7.2

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

The duty violated

As described above, Respondent's conduct violated his duty to the profession, the legal system and the public (Bank of America).

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent negligently transferred the client's settlement funds from the restricted bank account to his personal bank account, but then Respondent has not repaid the funds due to financial inability. The parties further agree that Respondent's 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 actual harm to the legal system and public.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(g) refusal to acknowledge wrongful nature of conduct;

Standard 9.22(j) indifference to making restitution.

In mitigation:

Standard 9.32:

- (c) personal or emotional problems;
- (d) timely good faith initial effort to ... rectify consequences of misconduct;
- (j) delay in disciplinary proceedings;
- (l) remorse.

During the time period involved, Respondent was suffering from significant health problems, in significant pain, and suffering from clinical depression as a result of his health problems. These disabilities substantially affected his ability to function and to practice law, leading to his application and ultimate transfer to disability inactive status as of November 29, 2005. He has remained on disability status and has not practiced law since that time.

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: While Respondent's original transfer of funds from the restricted account to his personal account was the result of inadvertent negligence, Respondent's ongoing retention of the funds warrants the agreed upon sanction of a Long Term Suspension of Six Months and One Day with an Order of Restitution for Three Thousand Six Hundred Thirty Dollars (\$3,630.00).

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

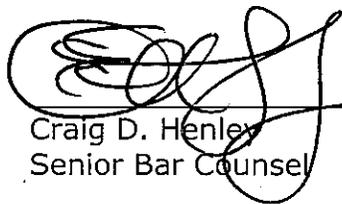
The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778.

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 **Long Term Suspension of Six Months and One Day with an Order of Restitution for Three Thousand Six Hundred Thirty Dollars (\$3,630.00)** and the imposition of costs and expenses.

A proposed form order is attached hereto as Exhibit "B."

DATED this 26TH day of September 2014

State Bar of Arizona


Craig D. Henley
Senior Bar Counsel

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

DATED this 26 day of September, 2014.


Daniel J. Radacosky
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 29th day of September 2014.

Copies of the foregoing mailed/emailed
this 29th day of September 2014 to:

Daniel J. Radacosky
875 W Spur Ave
Gilbert, AZ 85233-6235
danradacosky@gmail.com
Respondent

Copy of the foregoing emailed
this 29th 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 29th day of September, 2014, to:

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

by: 
CDH:dds

EXHIBIT "A"

Statement of Costs and Expenses

In the Matter of a Disability Member of the State Bar of Arizona,
Daniel J. Radacosky, Bar No. 011673, Respondent

File No. 13-0428

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.

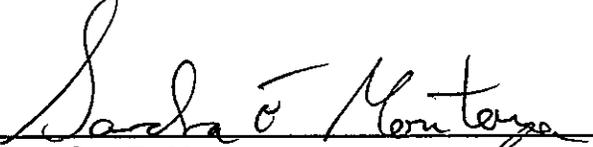
Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative 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

04/24/13	Computer investigation reports, Accurint	\$ 16.95
	Total for staff investigator charges	\$ 16.95
TOTAL COSTS AND EXPENSES INCURRED		\$1,216.95


Sandra E. Montoya
Lawyer Regulation Records Manager

9-29-14
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
DISABILITY MEMBER OF
THE STATE BAR OF ARIZONA,**

**Daniel J. Radacosky,
Bar No. 011673,**

Respondent.

PDJ 2014-9045

FINAL JUDGMENT AND ORDER

[State Bar No. 13-0428]

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

IT IS HEREBY ORDERED that Respondent, **Mr Daniel J Radacosky**, is hereby suspended for a period of Six Months and One Day. A period of suspension of more than six months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this order or _____.

IT IS FURTHER ORDERED that, if reinstated to the practice of law, Respondent shall be placed on probation for a period of one year and shall be

subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay Bank of America, N.A. restitution in the amount of Three Thousand Six Hundred Thirty Dollars (\$3,630.00).

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 _____, 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 _____, 2014.

Copies of the foregoing mailed/mailed
this ____ day of _____, 2014, to:

Daniel J. Radacosky
875 W Spur Ave
Gilbert, AZ 85233-6235
Email: danradacosky@gmail.com
Respondent

Copy of the foregoing emailed/hand-delivered
this ____ day of _____, 2014, to:

Craig D. Henley
Senior Bar Counsel - Litigation
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

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

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

by: _____