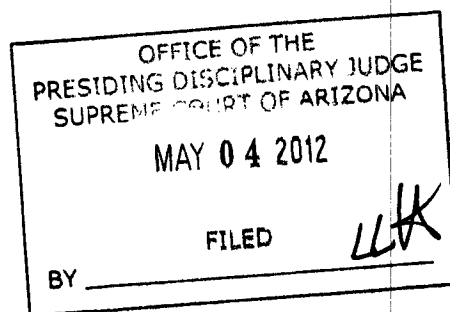


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Respondent

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

In the Matter of a Member of
the State Bar of Arizona,

FRED L. HOWE
Bar No. 013270

Respondent.

PDJ-2012-9010

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

[State Bar File Nos. 11-1562, 11-1592,
11-1984, 11-2329]

The State Bar of Arizona, through undersigned bar counsel, and Respondent Fred L. Howe, who is not represented by counsel in this matter, hereby submit this Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. 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, specifically ER 1.1, ER 1.3, ER 1.4(b), ER 1.5(b), ER 1.7(a), ER 1.8(a), ER 1.15(a), ER 3.4(c), ER 3.7 and ER 8.4(a) & (d), and Rules 43(b)(1)(A) & (C),

43(b)(2)(B) & (C), and 54(d)(2), Ariz. R. Sup. Ct. Upon acceptance of this agreement by the Presiding Disciplinary Judge, Respondent agrees to accept imposition of the following discipline: 60-day suspension (to take effect no sooner than July 1, 2012¹), two years of probation (Law Office Management Assistance Program (LOMAP), including a Practice Monitor if deemed appropriate by LOMAP; an assessment by the State Bar's Member Assistance Program and compliance with all recommendations made as a result of the assessment; attendance at the State Bar's Trust Account Ethics Enhancement Program; and completion of the State Bar's Continuing Legal Education course titled "Ten Deadly Sins of Conflicts of Interest" or other conflict of interest course approved by bar counsel), and restitution. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.² 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 27, 1990.

COUNT ONE (File No. 11-1562/Babbitt)

2. On July 28, 2010, Angelica Babbitt (Babbit) retained Respondent to

¹ A July 1, 2012, effective date for the period of suspension will allow Respondent time to complete some pending matters prior to his suspension, which will reduce the number of cases for which he will have to associate counsel pursuant to Rule 72(b), Ariz. R. Sup. Ct. (Respondent may associate with another lawyer with the written consent of his clients).

² 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 Attorney Discipline Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

represent her in a post-decree family law matter regarding a change in parenting time and the school that a child would attend (Maricopa County Superior Court File No. FC2005-000683).

3. Respondent's fee agreement with Babbitt states, "If at any time the contractual obligations of this retainer agreement are not met, the Law Offices of Fred L. Howe has your consent to withdrawal [sic] from your case regardless of case status." At the end of the agreement there is a "consent to withdraw" form that Ms. Babbitt signed, but not dated, giving consent to Respondent to withdraw. The agreement does not, however, explain that if litigation is commenced, it would be up to the court to allow Respondent's withdrawal.

4. On February 16, 2011, the court held a trial in the Babbitt matter. The court took the matter under advisement at the conclusion of the trial, and ordered counsel for the parties to submit proposed findings of fact and conclusions of law by no later than February 24, 2011.

5. Respondent did not submit findings of fact and conclusions of law in the Babbitt matter as ordered by the court. However, opposing counsel filed proposed findings of fact and conclusions of law that Respondent found appropriate.

COUNT TWO (File No. 11-1592/Judicial Referral)

6. Paloma Rodriguez (Rodriguez) was married to Paul Holmes (Holmes). They separated in or about 2004.

7. In 2005, the Arizona Attorney General's Office filed an action in Maricopa County Superior Court to obtain an order directing Holmes to pay child support for a child that he and Rodriguez conceived (Maricopa County Superior Court File No. FC2005-006684).

8. Sometime thereafter, the Maricopa County Superior Court ordered Holmes to pay child support.

9. In late March or early April 2010, Respondent met Rodriguez. Thereafter, Respondent began dating Rodriguez. In or about late April 2010, the relationship turned sexual.

10. In early June 2010, Rodriguez hired Respondent to represent her regarding the dissolution of marriage matter that she had previously filed against Holmes. Respondent did not give Rodriguez a written explanation of the scope of his representation or the basis or rate of his fee.

11. On July 30, 2010, Respondent filed a *Notice of Appearance* and a *Petition for Dissolution of a Non-Covenant Marriage With Minor Children*, as well as other documents, on Rodriguez's behalf in Maricopa County Superior Court File No. FC2005-00684. The petition requested the court to award sole custody of the child to Rodriguez. During the pendency of the matter, Holmes resided in Missouri.

12. During Respondent's representation of Rodriguez, Rodriguez sold her automobile to Respondent. Rodriguez used some of the funds to pay Respondent's outstanding legal fees. Respondent did not provide a writing to Rodriguez that outlined the terms of the transaction nor did he provide a writing to Rodriguez that advised her of the desirability of seeking the advice of independent legal counsel. Additionally, Respondent failed to obtain from Rodriguez a writing signed by her that reflected she was giving her informed consent to the essential terms of the transaction and Respondent's role in the transaction. If this matter were to proceed to hearing, Respondent would testify that Rodriguez was **aware of the** value of the car and that he paid her more than the Kelly Blue Book value.

13. In or around October 2010, Respondent and Rodriguez began cohabitating at Rodriguez's home.

14. During the evening of October 22, 2010, Respondent and Rodriguez were together at Rodriguez's home when Rodriguez stopped breathing. Respondent performed CPR on her. The police were dispatched to the home. Rodriguez, however, refused medical treatment and informed the reporting officer she drank "a lot" that night.

15. On December 3, 2010, Holmes filed *pro per* a response to the petition for dissolution of marriage filed by Respondent on Rodriguez's behalf.

16. On January 20, 2011, the court issued an order allowing Holmes to have contact with the minor child via telephone on Sundays, Tuesdays, and Fridays during a specified hour.

17. On January 23, 2011, Holmes contacted the Avondale Police Department to request a welfare check because he had been unable to speak with his minor child, who was in Rodriguez's physical custody.

18. Later that night or the early morning of January 24, 2011, Avondale Police Officer Larson called Rodriguez's home. Respondent answered the telephone and asked Officer Larson not come to the home. If this matter were to proceed to hearing, Respondent would testify that he asked Officer Larson not to come to Rodriguez's home because the child had been asleep for three hours and had school the next morning.

19. Shortly after the telephone call between Respondent and Officer Larson, Respondent called Holmes and asked Holmes to withdraw the welfare check.

24. On April 4, 2008, Respondent mailed a letter to Travelbee in which he set forth his efforts to settle the matter. That letter also informed Travelbee that Respondent believed that his settlement demand was unreasonable. Respondent informed Travelbee in that letter that the statute of limitations was six weeks away and explained what litigation would entail.

25. On November 26, 2008, Respondent filed a complaint on Travelbee's behalf. Respondent alleged negligence *per se* and strictly liability causes of action pursuant to A.R.S. §11-1020 (hereinafter "statutory claim") and a negligence cause of action pursuant to the common law (hereinafter "common law claim").

26. On June 11, 2009, the defendants, through counsel, filed a motion for summary judgment regarding all claims. The motion alleged that the complaint was filed after the statute of limitations had expired on the statutory claim and that there was no evidence of prior dangerous propensities to support the common law claim. Thereafter, Respondent filed a response to the defendants' motion for summary judgment.

27. On October 5, 2009, the court heard oral argument regarding the motion for summary judgment. The court took the matter under advisement. Thereafter, the court granted the defendants' motion for summary judgment. The court found the statutory claim was barred by the statute of limitations and the common law claim could not proceed because there was no evidence to establish the defendants knew, or should have known, the dog had any dangerous tendencies.

28. On December 2, 2009, the court entered a final judgment. The court granted summary judgment on all issues asserted in the complaint in favor of the

defendants and against Travelbee and his wife. The court ordered Travelbee and his wife to pay the defendants' taxable costs, pursuant to A.R.S. §12-341, in the amount of \$223.00.

29. On June 17, 2011, Travelbee sent a letter to Respondent in which he requested Respondent to provide him with the file he maintained on his behalf. As of August 30, 2011, Respondent had not respond to Travelbee's request. Respondent has since provided his file to Travelbee.

30. Also on June 17, 2011, Travelbee submitted a bar charge to the State Bar regarding Respondent's conduct.

31. On June 30, 2011, bar counsel sent a letter to Respondent at his address of record with the State Bar. That letter informed Respondent of Travelbee's bar charge and directed him to provide a written response within 20 days. A copy of Travelbee's charge was enclosed with that letter.

32. Respondent failed to submit to the State Bar a written response to Travelbee's charge within 20 days, as directed by bar counsel in his letter dated June 30, 2011.

33. On July 28, 2011, bar counsel sent another letter to Respondent at his address of record with the State Bar. That letter informed Respondent that the State Bar had not received a written response from him regarding Travelbee's charge, reminded Respondent that failing to cooperate is an ethical violation, and directed him to submit a written response within ten days.

34. Respondent failed to submit to the State Bar a written response to Travelbee's charge within ten days, as directed by bar counsel in his letter dated July 28, 2011.

35. On September 19, 2011, Respondent submitted a written response to Travelbee's charge.

COUNT FOUR (File No. 11-2359/Trust Account)

36. On July 27, 2011, the State Bar of Arizona received an insufficient funds notice on Respondent's Wells Fargo Bank trust account. The notice indicated that on July 21, 2011, check number 2694 in the amount of \$15,772.10, check number 2697 in the amount of \$3,253.61, and check number 2693 in the amount of \$178.98 attempted to pay against the account when there were insufficient funds to pay all of the checks. All of those checks were made payable to Respondent or his law firm. The bank returned check numbers 2694 and 2697, but paid check number 2693. The bank charged a \$35.00 overdraft fee for each check.

37. On July 28, 2011, a State Bar records examiner notified Respondent that an investigation was underway regarding the overdraft. Respondent was directed to provide an explanation regarding the overdraft and to provide copies of his July 2011 trust account bank statements with corresponding cancelled checks, duplicate deposit slips, individual client ledgers, general ledger, and monthly reconciliation. Respondent was directed to provide the requested information and documents within 20 days of the date of that letter.

38. Respondent failed to provide the requested information or documents, or otherwise seek an extension, within 20 days, as directed by the records examiner in his letter dated July 28, 2011.

39. On August 25, 2011, Respondent requested, and was granted, an extension to August 29, 2011, to provide the requested information and documents.

40. Respondent failed to provide the requested information by August 29, 2011.

41. On September 6, 2011, a State Bar records examiner sent a letter to Respondent in which he stated he had not received a written response from him, warned him that failure to cooperate is an ethical violation, and requested Respondent provide the requested information within ten days.

42. On September 12, 2011, the State Bar received Respondent's response dated September 2, 2011. Respondent provided some, but not all, of requested documents. Specifically, Respondent failed to provide a copy of a cancelled check and copies of deposited instruments. Additionally, Respondent failed to provide an explanation for the overdraft in his response.

43. On September 13, 2011, a State Bar records examiner sent a letter to Respondent at his address of record with the State Bar in which he directed Respondent to provide an explanation regarding the overdraft and copies of the requested documents that he had not yet provided. Respondent was directed to provide the requested information and documents within ten days of the date of that letter.

44. Respondent failed to provide the requested information and documents within ten days, as directed by the records examiner in his letter dated September 13, 2011.

45. On September 28, 2011, State Bar Records Examiner Robert Root spoke with Respondent. Respondent claimed he did not receive the September 13, 2011, request and asked it be faxed to him. The same day, Robert Root faxed and

emailed the request to Respondent and asked for a response on or before October 3, 2011.

46. On October 4, 2011, the State Bar received Respondent's faxed letter dated September 29, 2011. Respondent provided the requested information and documents. However, the records examiner determined that additional information was required, so he sent an email message to Respondent directing him to provide additional information by October 7, 2011.

47. Respondent failed to provide the requested information by October 7, 2011, as directed by the records examiner in his email message.

48. On October 13, 2011, Respondent faxed the requested information to the records examiner.

49. An examination of the information and records provided by Respondent revealed the following.

a. On July 19, 2011, Respondent's assistant deposited a total of \$50,607.92 (\$7,636.42 for Client O and \$42,971.50 for Client B) into the family law client trust account when it should have been deposited into the personal injury client trust account. That error was not immediately identified, so another assistant disbursed checks on July 21, 2011, from the personal injury client trust account, which resulted in an overdraft in Respondent's family law client trust account. The shortage was remedied on July 22, 2011.

b. Respondent failed to maintain an administrative funds ledger.

c. Respondent utilized billing statements and settlement statements, two separate documents, for individual client ledgers. The statements do not

contain all of the information required for individual client ledgers (e.g., they did not have the date and amount of each deposit, the name of the payor of the funds, and the unexpended balance after each transaction). The billing statements, however, listed the date of each transaction and a running balance, but did not identify the name of the payor of deposited funds.

d. Respondent was unable to perform monthly three-way reconciliations since he did not maintain the requisite documents.

e. On July 5, 2011, Respondent recorded a deposit for Client S of \$18,861.00 on his billing statement. In actuality, Respondent deposited two checks for Client S in the amounts of \$7,200.00 and \$10,660.81 (for a total of \$17,860.81) on June 28, 2011, and another \$1,000.00 deposit for Client S on July 5, 2011. There was a \$0.19 discrepancy between the amount actually deposited and the amount Respondent recorded on his billing statement.

f. On July 6, 2011, Respondent recorded disbursements on his billing statement for Client S to Southwest Ambulance in the amounts of \$757.51 and \$878.64 (for a total of \$1,636.15) when the sole check to Southwest (#2681) was paid in the amount of \$1,635.96, a difference of \$0.19.

g. Also on July 6, 2011, Respondent recorded two disbursements for Client S to Dell Webb Hospital in the amounts of \$2,000.00 and \$475.00 on the billing statement (for a total of \$2,475.00) when the sole check to Banner Hospital (#2683) was paid in the amount of \$2,475.10, a difference of \$0.10.

h. Respondent maintained separate trust accounts for personal injury and family law matters. Both accounts have been labeled as trust accounts, but there are no distinguishing features to indicate which one is which, other than the account number.

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., specifically ER 1.1, ER 1.3, ER 1.4(b), ER 1.5(b), ER 1.7(a), ER 1.8(a), ER 1.15(a), ER 3.4(c), ER 3.7, ER 8.4(a) & (d), and Rules 43(b)(1)(A) & (C), 43(b)(2)(B) & (C), and 54(d)(2), Ariz. R. Sup. Ct., as follows.

COUNT ONE (File No. 11-1562/Babbitt)

Respondent violated one or more Rules of Professional Conduct as follows:

a. Respondent violated ER 1.3 by failing to act with reasonable diligence and promptness in representing Babbitt (e.g., Respondent failed to file proposed findings of fact and conclusions of law as ordered by the court);

b. Respondent violated ER 1.4(b) by failing to explain a matter to the extent reasonably necessary to permit Babbitt to make informed decisions regarding the representation (e.g., Respondent failed to clarify his fee agreement by failing to inform Babbitt that the court has the ultimate authority to allow an attorney to withdraw once litigation has commenced);
and

c. Respondent violated ER 3.4(c) by knowingly disobeying an obligation under the rules of a tribunal (Respondent failed to submit proposed findings of fact and conclusions as ordered by the court).

COUNT TWO (File No. 11-1592/Judicial Referral)

Respondent violated one or more Rules of Professional Conduct as follows:

a. Respondent violated ER 1.5(b) by failing to provide Rodriguez with a writing in which he explained the scope of his representation, the basis or rate of his fee, and the expenses for which Rodriguez would be responsible;

b. Respondent violated ER 1.7(a) by representing Rodriguez while there was a significant risk that his representation of her would be materially limited by his personal interests (Respondent represented Rodriguez in a divorce proceeding while he was engaged in a romantic relationship with her);

c. Respondent violated ER 1.8(a) by entering into a business transaction with Rodriguez (Rodriguez's sale of a car to Respondent) without providing Rodriguez with a writing that explained the terms of the transaction and advised the client about the desirability of seeking the advice of independent legal counsel, and failed to obtain from Rodriguez informed consent in a writing signed by Rodriguez that included the essential terms of the transaction and Respondent's role in the transaction;

d. Respondent violated ER 3.7 and ER 8.4(a) by continuing to represent Rodriguez when he became a likely witness in Rodriguez's divorce proceeding (based upon his personal relationship and cohabitation with Rodriguez);

e. Respondent violated ER 8.4(d) by engaging in conduct that was prejudicial to the administration of justice (e.g., Respondent caused the court to expend its limited resources by holding a hearing and issuing rulings regarding Respondent's romantic relationship with Rodriguez).

COUNT THREE (File No. 11-1984/Robert Travelbee)

Respondent violated one or more Rules of Professional Conduct as follows:

a. Respondent violated ER 1.1 by failing to competently represent Travelbee (e.g., Respondent failed to file a complaint on Travelbee's behalf prior to expiration of the statute of limitations);

b. Respondent violated ER 1.3 by failing to act with reasonable diligence and promptness in representing Travelbee (e.g., Respondent failed to diligently pursue Travelbee's case by failing to file a complaint on Travelbee's behalf prior to expiration of the statute of limitations);

c. Respondent violated ER 1.16(d) by failing to promptly comply with Travelbee's request for the file Respondent maintained on his behalf;

d. Respondent violated ER 8.4(d) by engaging in conduct prejudicial to the administration of justice by failing to timely file a complaint on Travelbee's behalf; and

e. Respondent violated Rule 54(d)(2), Ariz. R. Sup. Ct., by failing to furnish information or respond promptly to bar counsel's inquiry or request.

COUNT FOUR (File No. 11-2359/Trust Account)

Respondent violated one or more Rules of Professional Conduct as follows:

a. Respondent violated ER 1.15(a) by failing to safeguard property and maintain complete records of funds he held client's behalf (e.g.,

Respondent failed to maintain all of the required trust account records and the records that Respondent did maintain did not accurately reflect the activity in his trust accounts;

b. Respondent violated Rule 43(b)(1)(A), Ariz. R. Sup. Ct., by failing to exercise due professional care in the performance of his trust accounting duties (e.g., Respondent failed to ensure that funds were deposited into the correct trust account before disbursing checks against those fund, failed to maintain the required trust account ledgers, failed to accurately record the amounts deposited into and disbursed from his trust accounts, and failed to properly conduct monthly three-way reconciliations using bank statements, his general ledger, and his individual client ledgers;

c. Respondent violated Rule 43(b)(1)(C), Ariz. R. Sup. Ct., by failing to have adequate internal controls within his office to safeguard funds or other property held in trust (e.g., Respondent had similar looking checks and deposit slips for his two trust accounts, failed to maintain a ledger for administrative funds, failed to maintain adequate individual client ledgers, and failed to conduct proper monthly three-way reconciliations);

d. Respondent violated Rule 43(b)(2)(B), Ariz. R. Sup. Ct., by failing to maintain an account ledger for administrative funds held in his trust accounts;

e. Respondent violated Rule 43(b)(2)(C), Ariz. R. Sup. Ct., by failing to make or cause to be made a proper monthly three-reconciliation using his trust account general ledger, his individual client ledges, and the bank statements;

f. Respondent violated Rule 54(d)(2), Ariz. R. Sup. Ct., by failing to respond promptly to inquiries and requests made of him by the State Bar's records examiner.

CONDITIONAL DISMISSALS

No allegations or counts are being conditionally dismissed.

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: 60-day suspension (to take effect no sooner than July 1, 2012), two years of probation, as set forth below, upon reinstatement to the practice of law in Arizona, restitution as set forth below, and payment of the costs and expenses of the disciplinary proceeding.

Law Office Management Assistance Program

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at (602) 340-7332, within ten (10) days of his reinstatement to the practice of law in Arizona. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ER 1.1, ER 1.3, ER 1.4(b), ER 1.5(b), ER 1.7(a), ER 1.8(a), ER 1.15(a), ER 3.4(c), ER 3.7, ER 8.4(a) & (d), and Rules 43(b)(1)(A) & (C), 43(b)(2)(B) & (C), and 54(d)(2), Ariz. R. Sup. Ct. The director of LOMAP, or her designee, shall develop "Terms and Conditions of Probation," which shall be incorporated herein by reference. LOMAP may require Respondent to utilize a Practice Monitor approved by LOMAP if it determines such is appropriate. The probation period will commence on the date Respondent is reinstated to practice

law in Arizona and will conclude two years from that date unless the term of probation is extended pursuant to Rule 60(a)(5)A), Ariz. R. Sup. Ct. Respondent shall be responsible for any costs associated with LOMAP.

Member Assistance Program

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at (602) 340-7332, within ten (10) days of his reinstatement to the practice of law in Arizona. Respondent shall submit to a MAP assessment. The director of MAP, or her designee, shall develop "Terms and Conditions of Probation" if it is determined that the results of the assessment indicate the need for further services. The MAP Terms and Conditions of Probation shall be incorporated herein by reference. The probation period will commence on the date Respondent is reinstated to practice law in Arizona and will conclude two years from that date unless the term of probation is extended pursuant to Rule 60(a)(5)A), Ariz. R. Sup. Ct. Respondent shall be responsible for any costs associated with MAP.

Trust Account Ethics Enhancement Program

Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEHP). Respondent shall contact the State Bar's TAEHP Program Coordinator at (602) 340-7278, within 20 days of his reinstatement to the practice of law in Arizona. Respondent shall be responsible for the cost of attending the program.

Continuing Legal Education: "Ten Deadly Sins of Conflicts"

Respondent shall contact the publications unit of the State Bar of Arizona at (602) 340-7318, within ninety (90) days of his reinstatement to the practice of law in Arizona, to either obtain and listen to the CD or obtain and view the DVD titled

"The Ten Deadly Sins of Conflicts." Respondent may alternatively go to the State Bar website (www.myazbar.org) and complete the self-study online version of that continuing legal education program. Respondent shall provide Bar Counsel with evidence of completion by providing copies of handwritten notes. Respondent shall be responsible for the cost of the CD, DVD or online self-study.

Non-Compliance with Terms of Probation

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)(C), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether the terms of probation have been violated and, if so, to determine whether an additional sanction should be imposed. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of persuasion shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

Restitution

Respondent shall pay \$223.00 in restitution to Robert Travelbee within 30 days of the entry of a final judgment and order (the restitution amount is based upon the court's order that Travelbee and his wife pay \$223.00 to the defendants for taxable costs pursuant to A.R.S. §12-341). Respondent shall also participate in fee arbitration with Robert Travelbee if he files a petition for fee arbitration with the State Bar of Arizona.

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), Ariz. R. Sup. Ct. 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 *Standards* should be considered in determining an appropriate disciplinary sanction in this matter:

Standard 4.42 – Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury to potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Standard 4.33 – Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

Standard 4.12 – Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

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.

Standard 6.23 - Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

The duty violated

As described above, Respondent's conduct violated his duty to his clients, the profession, and the legal system.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent knowingly failed to respond timely to requests for information and documents that he received from the State Bar, negligently failed to diligently represent his clients, negligently failed to adequately communicate with his clients, negligently failed to determine the existence of a conflict of interest or a potential conflict of interest between himself and a client, and negligently failed to properly maintain his trust accounts and ensure compliance with the trust account rules. The parties also agree that Respondent's conduct violated the Rules of Professional Conduct and Supreme Court rules.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree there was potential harm to his clients, the profession, and the legal system, and that it is possible there was actual injury to one client (Travelbee).

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(a) prior disciplinary offenses (Respondent received an admonition and probation (CLE and LOMAP) on or about May 18, 2011, for violation of ER 1.2(a), ER 1.3, and ER 3.2 (by not timely and expeditiously filing a motion to set and certificate of readiness, Respondent caused the litigation to be dismissed for lack of prosecution), and ER 8.1(b) and Rules 53(d) and (f), Ariz. R. Sup. Ct. (2010)).

Standard 9.22(c) – a pattern of misconduct (the misconduct occurred during Respondent’s representation of several clients).

Standard 9.22(d) – multiple offenses (Respondent’s misconduct violated several unrelated ethical rules).

Standard 9.22(e) – bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (Respondent failed to timely respond to several requests made by the State Bar).

Standard 9.22(i) – substantial experience in the practice of law (Respondent was licensed to practice law in the state of Arizona on October 27, 1990).

In mitigation:

Standard 9.32(b) – absence of a dishonest or selfish motive.

Proportionality

In re Diodati, SB-07-0197-D (2008)³ (consent agreement for a 60-day suspension and one year of probation (LOMAP/MAP/TAP) for violating ER 1.3, ER 1.15, ER 3.4, ER 8.1(b), ER 8.4(d), and Rules 43, 44 and 53, Ariz. R. Sup. Ct., by failing to diligently represent clients, failing to exercise due professional care in the maintenance of his trust account (by comingling funds), failing to conduct monthly

³ Copies of the Tender of Admissions and Agreement for Discipline by Consent and the Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent, without exhibits, are attached hereto as Exhibit "B" (the hearing officer’s report in the Disciplinary Case Matrix on the Arizona Supreme Court’s website provides very few facts).

three-way reconciliations, failing to safeguard client funds, failing to comply with a court order regarding discovery, and failing to respond and/or cooperate with the State Bar's investigation; in aggravation, prior disciplinary offense (informal reprimand for violation of ER 3.4(c), ER 8.4(d) and Rule 53(c), Ariz. R. Sup. Ct.), a pattern of misconduct, multiple offenses, and substantial experience in the practice of law; in mitigation, absence of a dishonest or selfish motive, personal or emotional problems, timely good faith effort to make restitution or to rectify the consequences of his misconduct, full and free disclosure to bar counsel or cooperative attitude toward the disciplinary proceedings, character or reputation, physical disability, mental disability, and remorse; knowing mental state; potential injury).

In re Brown, SB-07-0011-D (2007) (five-month suspension, two years of probation (LOMAP/Practice Monitor) and restitution for violating ER 1.8(a), ER 1.15(a) & (e), and Rules 43(a) & (d), Ariz. R. Sup. Ct., by entering into a business transaction with his client (trading furniture for legal services), failing to memorialize in writing the terms of the transaction with his client, failing to advise his client to obtain independent legal advice, failing to obtain his client's consent to the transaction, removing funds held in trust over the objection of his client's directives and prior authorization, and failing to maintain adequate trust account records; in aggravation, dishonest or selfish motive (Brown removed funds from his trust account to pay himself despite the lack of authority to do so from his client), refusal to acknowledge the wrongful nature of his conduct, and substantial experience in the practice of law; in mitigation, absence of a prior disciplinary

record; knowing mental state; actual injury). The hearing officer found that the aggravating factors far outweighed the sole mitigating factor, and that Brown's selfish motive and refusal to acknowledge his misdeeds were especially troubling. While Brown had a dishonest or selfish motive, that aggravating factor is not present in the instant case.

In re Morgan, SB-04-0140-D (2005) (consent agreement for a six-month suspension (retroactive) and two years of probation (MAP) for violating ER 1.2, ER 1.3, ER 1.4, ER 1.7, ER 1.9(a), ER 1.15, ER 8.1, ER 8.4(b), and Rules 43 and 44, Ariz. R. Sup. Ct., by engaging in a conflict of interest by representing clients with whom she had personal relationships, failing to discuss the conflict of interest with her clients, failing to advise her clients to seek independent counsel, failing to obtain written consent from her clients regarding the conflict of interest, making a false statement to the State Bar during its investigation, mishandling her trust account by failing to segregate and protect third-party funds, and pleading "no contest" to shoplifting, a class 1 misdemeanor; in aggravation, prior disciplinary offenses (informal reprimand and probation for violations of ERs 1.2, 1.3, 1.4 and 8.4(d)), a pattern of misconduct, and substantial experience in the practice of law; in mitigation, personal or emotional problems, timely good faith effort to make restitution or to rectify the consequences of her misconduct, full and free disclosure to bar counsel or cooperative attitude toward the disciplinary proceedings, character or reputation, remorse and prior disability inactive status; knowing mental state; potential injury to clients). The Morgan case involved a lie to the State Bar regarding her personal relationship with a client, a misdemeanor

conviction, and a failure to segregate and protect third-party funds, none of which are present in the instant case.

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: the nature of the misconduct; the potential harm to his clients, the profession and the legal system; the similarity of the nature of the misconduct in this case and the case that led to Respondent's prior admonition and probation; the multiple offenses committed; the pattern of misconduct; and a determination that the aggravating factors outweigh the mitigating factors.

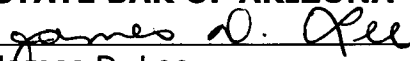
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanctions set forth above are within the range of appropriate sanctions and will serve the purposes of lawyer discipline.

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 sanctions set forth above. A proposed form order is attached hereto as Exhibit "C."

DATED this 7th day of May, 2012.

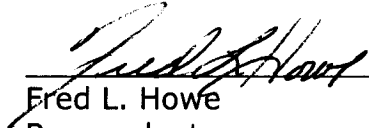
STATE BAR OF ARIZONA




James D. Lee
Senior Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.

DATED this 4th day of ~~April~~^{May}, 2012.


Fred L. Howe
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 4th day of ~~April~~^{May}, 2012.

Copies of the foregoing mailed/mailed
this 4th day of April, ~~2012~~^{May}, to:

Fred L. Howe
Law Office of Fred L. Howe
14239 West Bell Road, Suite 205
Surprise, Arizona 85374-2471
Email: fredhowe@cox.net
Respondent

Copy of the foregoing emailed
this 4th day of ~~April~~^{May}, 2012, to:

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

Copy of the foregoing hand-delivered
this 4th day of May, 2012, to:

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

by: 
JDL:lmc

EXHIBIT "A"

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Fred L. Howe, Bar No. 013270, Respondent

File Nos. 11-1562, 11-1592, 11-1984, 11-2359

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

06/28/11	Travel and mileage for CD copy	\$	3.39
06/30/11	Travel and mileage for CD copy	\$	20.30
09/16/11	Travel and mileage for vehicle record	\$	9.27
09/30/11	Travel and mileage/parking for CD copy	\$	9.55
Total for staff investigator charges			\$ 40.51

TOTAL COSTS AND EXPENSES INCURRED

\$1,240.51



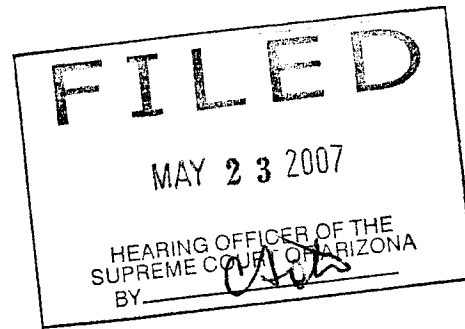
Sandra E. Montoya
Lawyer Regulation Records Manager

5-4-12

Date

EXHIBIT "B"

1 Roberta L Tepper, Bar No. 011332
2 Staff Bar Counsel
3 State Bar of Arizona
4 4201 N. 24th Street, Suite 200
5 Phoenix, Arizona 85016-6288
6 Telephone 602-340-7247



7 Joseph P. St. Louis, Bar No. 011728
8 Nesci, St. Louis & West, PLLC
9 216 North Main Avenue
10 Tucson, Arizona 85701
11 Telephone 520-622-1222
12 Attorney for Respondent

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

15 **IN THE MATTER OF A MEMBER
16 OF THE STATE BAR OF ARIZONA,**

17 **Andrew D. Diodati,
18 Bar No. 014394**

19 Respondent.

No. 04-1903, 05-0196, 06-2044¹

**TENDER OF ADMISSIONS AND
20 AGREEMENT FOR DISCIPLINE
21 BY CONSENT**

(Assigned to Hearing Officer 7J,
22 Douglas Clark)

23 The State Bar of Arizona, represented by undersigned Bar counsel, and
24 Respondent, Andrew D. Diodati, who is represented by attorney Joseph P. St.
25 Louis in this matter, hereby submit this Tender of Admissions and Agreement for
Discipline by Consent pursuant to Rule 56(a), Ariz.R.Sup.Ct., and the guidelines

¹ File No. 06-2044 is a State Bar investigative file. Pursuant to the terms of this agreement, and the conditional admissions by Respondent relating to that file, it is being resolved herein, with terms of probation added to specifically address the concerns raised in that matter. A summary appears below.

1 for discipline by consent issued by the Arizona Supreme Court's Disciplinary
2 Commission.

3 The formal complaint in this matter was filed on December 28, 2006.
4 Respondent filed an answer on March 5, 2007. No hearing has been held. The
5 Respondent conditionally admits violating the duties owed to his clients, the
6 profession and the legal system, described in detail below. Respondent agrees to
7 accept a suspension for sixty days, the period of suspension to begin as provided
8 in the Supreme Court's Judgment and Order, and payment of the costs and
9 expenses of the disciplinary proceedings. *See*, Exhibit "A" attached.
10

11 Upon Respondent's reinstatement, he shall be placed on probation for one
12 year. During the period of probation, Respondent shall participate in the State
13 Bar's Members Assistance Program ("MAP") and the State Bar's Trust Account
14 Program ("TAP"). Respondent shall submit to an audit by the State Bar's Law
15 Office Management Assistance Program ("LOMAP"), and comply with any
16 recommended changes.
17

18 The parties understand that this agreement is subject to review and
19 acceptance by the Hearing Officer, the Disciplinary Commission and the Supreme
20 Court.
21

22
23
24 ...

25 ...

1 bank statements, canceled checks, deposit receipts, trust account registers, client
2 ledgers or bank letters.

3
4 7. Respondent provided a response in which he explained that the
5 overdraft was due to the payment of client-related expenses and that he had
6 "declared funds that (he) maintained in trust and earmarked for this purpose prior
7 to writing the check."

8
9 8. Respondent had not deposited into his client trust account funds held
10 for the benefit of the client, when he disbursed funds via check number 259.

11 9. Respondent failed to provide any documentation to support his
12 response, despite the instructions in the Staff Examiner's letter dated November
13 16, 2004.

14
15 10. By letter dated December 15, 2004, the Staff Examiner again
16 requested that Respondent provide documentation to support his explanation of
17 the overdraft of this trust account.

18
19 11. A list of the requested documentation was included in the Staff
20 Examiner's letter of December 15, 2004.

21 12. Respondent was requested to provide the pertinent documentation no
22 later than 20 days from the December 15, 2004, date of the Staff Examiner's letter.
23
24
25

1 13. On or about January 3, 2005, Respondent requested a 30-day
2 extension, until February 1, 2005, to provide the requested documentation and
3 records.
4

5 14. Respondent was granted an extension until February 1, 2005, to
6 provide the requested records necessary for the Staff Examiner's review of his
7 trust account relating to the overdraft.
8

9 15. Respondent failed to provide the requested documentation.

10 16. By letter dated February 2, 2005, from the Staff Examiner,
11 Respondent was reminded of his obligation to respond to the inquiry of the State
12 Bar and was advised that failure to cooperate with a disciplinary investigation was
13 grounds, in itself, for discipline.
14

15 17. On or about February 7, 2005, Respondent requested an extension for
16 a few days to provide his response.

17 18. The Staff Examiner placed at least two telephone calls to Respondent
18 on or about February 7, 2005, and left messages for him, but Respondent failed to
19 return her calls.
20

21 19. Respondent failed to provide the requested documentation.

22 20. On or about April 22, 2005, a subpoena was issued to Wells Fargo for
23 documents from Respondent's trust account.
24
25

1 21. A Subpoena Duces Tecum was issued by the Probable Cause Panelist
2 of the State Bar of Arizona on April 23, 2005, and filed on April 26, 2005,
3 directing Respondent to appear at a deposition in this matter, and to provide
4 records of his client trust account.
5

6 22. The records Respondent was directed to produce were the same
7 records Respondent had previously failed to produce at the request of the Staff
8 Examiner.
9

10 23. On or about May 26, 2005, the State Bar received documents relating
11 to Respondent's trust account from Wells Fargo.
12

13 24. Respondent's deposition was originally scheduled to be held on May
14 27, 2005.
15

16 25. On or about May 25, 2005, Respondent orally promised to produce
17 the previously requested records.
18

19 26. On or about May 25, 2005, Respondent was informed that his May
20 27, 2005, deposition would be rescheduled.
21

22 27. On or about June 22, 2005, Respondent was notified of a new
23 deposition date, July 12, 2005.
24

25 28. Respondent was served, by certified mail, return receipt requested,
with a new Subpoena Duces Tecum issued by the State Bar's Probable Cause

1 Panelist, listing the documents Respondent was directed to produce on July 12,
2 2005.

3 29. Due to scheduling conflicts, Respondent's deposition was
4 rescheduled until July 20, 2005.

5 30. Respondent appeared at the July 20, 2005, deposition with counsel,
6 but failed to provide all of the requested documents, including but not limited to
7 his March 2005 trust account bank statement.
8

9 31. Respondent admitted to failing to keep complete trust account
10 records, as required by Rules 43 and 44, Ariz.R.Sup.Ct.
11

12 32. At the conclusion of the deposition, Respondent promised to produce
13 the missing documentation, including trust account documents, medical records
14 and a completed trust account reconstruction spreadsheet, no later than August 26,
15 2005. Respondent affirmatively asserts, and for purposes of this agreement the
16 State Bar conditionally does not contest, that he did provide some additional
17 information to the State Bar's Trust Account Examiner after the formal deposition
18 concluded.
19

20 33. Respondent later requested an extension until August 29, 2005, to
21 provide the promised materials.
22

23 34. On or about August 29, 2005, Respondent provided some, but not all,
24 of the information requested.
25

1 35. Among the items Respondent failed to produce were individual client
2 ledgers, cancelled checks, and the March 2005 bank statement, as well as medical
3 records that Respondent had promised to provide.
4

5 36. The records provided by Respondent, the records obtained by
6 subpoena and Respondent's testimony at the deposition held on July 20, 2005,
7 were reviewed and revealed that Respondent:
8

9 a. Commingled personal funds; Respondent affirmatively asserts that at
10 the time of the insufficient funds, only administrative funds were held in the
11 account. For purposes of this agreement, the State Bar does not contest this
12 assertion.
13

14 b. Failed to appropriately and/or timely deposit all unearned funds into
15 his client trust account;

16 c. Failed to verify the collection of funds prior to drawing
17 disbursements, resulting in overdrafts;
18

19 d. Established a monthly automatic debit for payment of a business
20 expense from his client trust account;

21 e. Failed to maintain and safeguard required trust account records,
22 including, but not limited to failing to maintain individual client ledgers;
23
24
25

1 f. Failed to conduct monthly three-way reconciliations of his client trust
2 account bank statements, trust account general ledger and individual client
3 ledgers;
4

5 39. Respondent failed to furnish information or promptly respond to
6 inquiry or request from Bar counsel or staff of the State Bar made pursuant to the
7 Rules of the Supreme Court, acting within the scope of their duties, relating to a
8 disciplinary investigation.
9

10 **COUNT TWO**
11 **(05-0196/State Bar of Arizona Trust Account)**

12 40. On or about February 2, 2005, the State Bar received an insufficient
13 funds notice on Respondent's Wells Fargo Arizona Bar Foundation client trust
14 account.
15

16 41. The notice indicated that on January 31, 2005, an item in the
17 amount of \$28.90 attempted to pay against the account when the balance at the
18 time was \$4.45.

19 42. It appears that the bank returned the item and charged a \$30.00 non-
20 sufficient funds fee, thereby overdrawing Respondent's trust account a total of
21 negative \$54.45.
22

23 43. By letter dated February 7, 2005, the State Bar's Staff Examiner sent
24 Respondent a copy of the overdraft notice and requested an explanation of the
25 apparent overdraft of Respondent's trust account.

1 44. Respondent failed to respond.

2 45. On or about April 23, 2005, the Probable Cause Panelist of the State
3 Bar issued a subpoena, filed April 26, 2005, to Wells Fargo Bank requesting
4 copies of records relating to Respondent's trust account.
5

6 46. A Subpoena Duces Tecum was issued by the Probable Cause
7 Panelist of the State Bar of Arizona on April 23, 2005, and filed on April 26,
8 2005, directing Respondent to appear at a deposition in this matter, and to provide
9 records of his client trust account.
10

11 47. The records Respondent was directed to produce were the same
12 records Respondent had previously failed to produce at the request of the Staff
13 Examiner.
14

15 48. On or about May 26, 2005, the State Bar received documents relating
16 to Respondent's trust account from Wells Fargo.

17 49. Respondent's deposition was originally scheduled to be held on May
18 27, 2005.
19

20 50. On or about May 25, 2005, Respondent orally promised to produce
21 the previously requested records.

22 51. On or about May 25, 2005, Respondent was informed that his May
23 27, 2005, deposition would be rescheduled.
24
25

1 52. On or about June 22, 2005, Respondent was notified of a new
2 deposition date, July 12, 2005.

3 53. Respondent was served, by certified mail, return receipt requested,
4 with a new Subpoena Duces Tecum issued by the State Bar's Probable Cause
5 Panelist, listing the documents Respondent was directed to produce on July 12,
6 2005.
7

8 54. Due to scheduling conflicts, Respondent's deposition was
9 rescheduled until July 20, 2005.
10

11 55. Respondent appeared at the July 20, 2005, deposition with counsel,
12 but failed to provide all of the requested documents, including but not limited to
13 his March 2005 trust account bank statement.
14

15 56. Respondent admitted to failing to keep complete trust account
16 records, as required by Rules 43 and 44, Ariz.R.Sup.Ct.
17

18 57. At the conclusion of the deposition, Respondent promised to produce
19 the missing documentation, including trust account documents, medical records
20 and a completed trust account reconstruction spreadsheet, no later than August 26,
21 2005. Respondent affirmatively asserts, and for purposes of this agreement the
22 State Bar conditionally does not contest, that he did provide some additional
23 information to the State Bar's Trust Account Examiner after the formal deposition
24 concluded.
25

1 58. Respondent later requested an extension until August 29, 2005, to
2 provide the promised materials.

3 59. On or about August 29, 2005, Respondent provided some, but not all,
4 of the information requested.

5 60. Among the items Respondent failed to produce were individual client
6 ledgers, cancelled checks, the March 2005 bank statement and medical records.

7 63. The records provided by Respondent, the records obtained by
8 subpoena and Respondent's testimony at the deposition held on July 20, 2005,
9 were reviewed and revealed that Respondent:
10

11 a. Failed to safeguard the property of clients or third persons that
12 were in his possession in connection with a representation by holding them
13 separate from Respondent's own property and thereby commingled personal
14 funds;
15
16

17 b. Failed to appropriately and/or timely deposit all unearned
18 funds into his client trust account;

19 c. Failed to verify the collection of funds prior to drawing
20 disbursements, resulting in overdrafts;
21

22 d. Established a monthly automatic debit for payment of a
23 business expense from his client trust account;

24 e. Converted client funds by remedying one or more overdrafts of
25 his client trust account with funds held in trust for another client;

1 f. Failed to maintain and safeguard required trust account
2 records, including, but not limited to failing to maintain individual client ledgers;

3 g. Failed to conduct monthly three-way reconciliations of his
4 client trust account bank statements, trust account general ledger and individual
5 client ledgers;
6

7 64. Respondent failed to furnish information or promptly respond to
8 inquiry or request from Bar counsel or staff of the State Bar made pursuant to the
9 Rules of the Supreme Court, acting within the scope of their duties, relating to a
10 disciplinary investigation.
11

12 **INVESTIGATIVE FILE No. 06-2044 (Evans)**
13

14 The allegations in this matter center upon Respondent's failure to timely
15 provide disclosure to opposing counsel, in compliance with court orders, in a
16 criminal matter in Pima County Superior Court. The Court, in a minute entry
17 dated January 6, 2006, found that Respondent had failed in his professional
18 obligations to the State with regard to discovery. Although the Court stated that it
19 did not believe that Respondent's motives for his failure to do so were deliberate
20 or "impure" but it did impede the State's access to information. The Court,
21 convinced that Respondent was "disorganized, overworked and/or understaffed,"
22 sanctioned Respondent and ordered him to either make a sizeable charitable
23
24
25

1 donation or to participate in an audit by LOMAP and enter into a contract with
2 LOMAP. Respondent has since entered into a contract with LOMAP.

3
4 With regard to the specific allegations in this investigative matter,
5 Respondent failed in his duty of diligence and failed to comply with court-ordered
6 discovery deadlines, thereby engaging in conduct prejudicial to the administration
7 of justice. As reflected below, Respondent conditionally admits that he violated
8 Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 3.4 and 8.4(d).
9

10 **CONDITIONAL ADMISSIONS**

11 Respondent conditionally admits that his conduct, as set forth above
12 violated the following Rules of Professional Conduct, Rule 42, Ariz.R.Sup.Ct.,
13 specifically ERs 1.3, 1.15, 3.4, 8.1(b) and 8.4(d), Rules 43, 44 and 53,
14 Ariz.R.Sup.Ct.
15

16 **RESTITUTION**

17 There are no issues of restitution in this matter.
18

19 **SANCTIONS**

20 Respondent and the State Bar agree that based on the conditional
21 admissions, the following disciplinary sanctions shall be imposed:

- 22 1. Respondent will be suspended for 60 days for violating Rule 42,
23 Ariz.R.Sup.Ct., specifically ERs 1.3, 1.15, 3.4, 8.1(b) and 8.4(d), and Rules 43, 44
24 and 53, Ariz.R.Sup.Ct.
25

1 2. Upon reinstatement, Respondent shall be placed on probation for one
2 year under the following terms and conditions:

3 a. The period of probation shall commence upon the issuance of
4 the Supreme Court's order granting Respondent's reinstatement, and will continue
5 for one year from the date Respondent signs the Probation Contract for the State
6 Bar's Member Assistance Program and the State Bar's Trust Account Program,
7 whichever date is later.
8

9 b. Respondent shall, within 30 days of the Supreme Court's order
10 granting reinstatement, contact the director of the State Bar's Member Assistance
11 Program ("MAP"). A Probation Contract shall be drafted by the Director of MAP,
12 in consultation with the Medical Director of MAP that will include all applicable
13 terms and reporting requirements. The terms of the probation contract shall
14 constitute the terms of probation. Respondent will participate in the MAP
15 program for the entire period of probation. Respondent shall sign the Probation
16 Contract and return it to MAP within 10 days of the date on which it is mailed to
17 Respondent.
18

19 c. Respondent shall, within 30 days of the Supreme Court's order
20 granting reinstatement, contact the State Bar's Staff Examiner to begin
21 participation in the State Bar's Trust Account Program ("TAP"). Respondent
22 shall sign a Probation Contract that shall include all applicable terms of
23
24
25

1 participation including reporting requirements, and shall constitute the terms of
2 probation. The probation contract shall be signed by Respondent and returned to
3 the Staff Examiner within 10 days of the date it is mailed to Respondent by the
4 State Bar. Respondent shall participate in TAP for the entire period of probation.
5

6 d. Respondent shall, within 30 days of the Supreme Court order
7 granting reinstatement, contact the Director of Lawyer Assistance Programs
8 (“LAP”) to schedule an audit by LOMAP, particularly focusing on, but not limited
9 to, workload, calendaring and workflow. This audit is primarily intended to assure
10 that there are no additional improvements needed in Respondent’s office
11 management still required after the completion of his current LOMAP contract. If
12 LOMAP recommends changes, Respondent shall implement those changes and
13 provide evidence of the implementation of those to LOMAP.²
14
15

16 d. Pursuant to the provisions of Rule 60(a)(5), Ariz.R.Sup.Ct., the
17 term of probation may be renewed for an additional two (2) year period.
18

19 3. Respondent will follow all the Rules of Professional Conduct and all
20 Trust Account Guidelines.

21 4. Respondent shall pay all costs incurred by the State Bar in connection
22 with these proceedings, including the costs of participation in MAP and TAP. A
23
24

25 ² LOMAP may also verify the implementation of the recommended changes by conducting a site visit for that purpose.

1 statement of costs and expenses incurred by the State Bar to date in this
2 disciplinary proceeding is attached hereto as Exhibit "A".

3
4 5. In the event Respondent fails to comply with any of the foregoing
5 terms, and the State Bar receives information about her failure, bar counsel will
6 file a Notice of Non-Compliance with the Disciplinary Clerk. A Hearing Officer
7 will conduct a hearing at the earliest practical date, but in no event later than 30
8 days following receipt of the notice, and will determine whether the terms have
9 been breached and, if so, will recommend appropriate action in response to the
10 breach. The State Bar shall have the burden of proving non-compliance by clear
11 and convincing evidence.
12

13 CONCLUSION

14
15 Respondent conditionally admits that he engaged in the conduct set forth
16 above, and the rule violations indicated, in exchange for the form of discipline set
17 forth above.
18


19 By entering into this agreement, Respondent waives his right to a formal
20 disciplinary hearing to which he would otherwise be entitled pursuant to Rule
21 57(i), Ariz.R.Sup.Ct., as well as his right to testify and present witnesses on his
22 behalf at a hearing. Respondent further waives all motions, defenses, objections or
23 requests that he has made or raised, or could assert hereafter, if the conditional
24 admissions and stated forms of discipline are approved.
25

1 Respondent submits this agreement with conditional admissions, freely and
2 voluntarily, and without coercion or intimidation, and is aware of the Rules 64, 65,
3 and 72, Ariz.R.Sup.Ct., regarding suspension and reinstatement and agrees to
4 comply with such where applicable.
5

6 This Tender of Admissions and Agreement for Discipline by Consent will
7 be submitted to a hearing officer. Respondent understands that the Hearing Officer
8 may request an evidentiary hearing. The Hearing Officer shall prepare a report
9 with the Disciplinary Commission recommending acceptance, rejection or
10 modification of the agreement. Respondent further understands that the
11 Disciplinary Commission must approve this agreement and that this matter will
12 become final only upon judgment and order of the Supreme Court of Arizona. If
13 the agreement is rejected, the parties' conditional admissions are withdrawn.
14
15

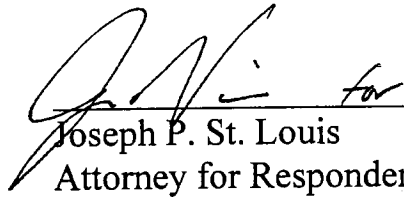
16 **This agreement, with conditional admissions, is submitted freely and**
17 **voluntarily and not under coercion or intimidation. I am aware of the Rules**
18 **of the Supreme Court with respect to discipline and reinstatement.**
19

20 DATED this 22nd day of May, 2007

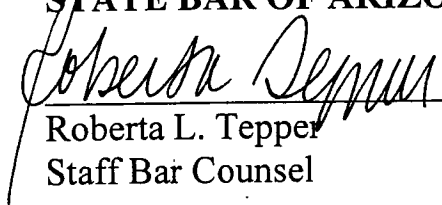
21 
22 _____
23 Andrew D. Diodati,
24 Respondent
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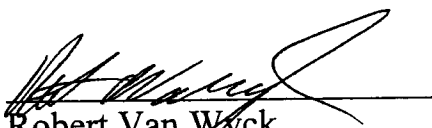
DATED this 22nd day of May, 2007


Joseph P. St. Louis
Attorney for Respondent

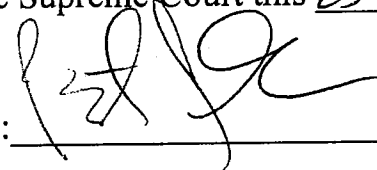
DATED this 23rd day of May, 2007

STATE BAR OF ARIZONA

Roberta L. Tepper
Staff Bar Counsel

Approved as to form and content:


Robert Van Wyck
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Supreme Court this 23rd day of May, 2007.

by: 

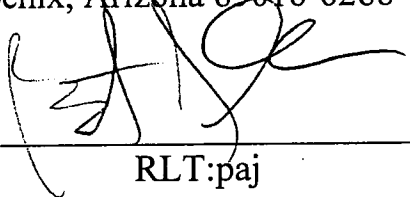
Copy of the foregoing mailed
this 23rd day of May, 2007, to:

Joseph P. St. Louis
Nesci, St. Louis & West, PLLC
216 N. Main Avenue
Tucson, Arizona 85701-7202
Respondent's Counsel

1 Douglas H. Clark, Jr.
2 Hearing Officer 7J
3 Mesch, Clark & Rothschild, P.C.
4 259 North Meyer
5 Tucson, Arizona 85701-1090

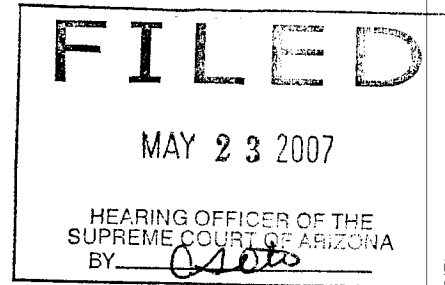
6 Copy of the foregoing hand-delivered this
7 23rd day of May, 2007, to:

8 Lawyer Regulation Records Manager
9 State Bar of Arizona
10 4201 N. 24th St., Suite 200
11 Phoenix, Arizona 85016-6288

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25
by: 
RLT:paj

1 Roberta L. Tepper, Bar No. 011332
2 Staff Bar Counsel
3 State Bar of Arizona
4 4201 N. 24th Street, Suite 200
5 Phoenix, Arizona 85016-6288
6 Telephone 602-340-7247

7 Joseph P. St. Louis, Bar No. 011728
8 Nesci, St. Louis & West, PLLC
9 216 North Main Avenue
10 Tucson, Arizona 85701
11 Telephone 520-622-1222
12 Attorney for Respondent



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

12 **IN THE MATTER OF A MEMBER**
13 **OF THE STATE BAR OF ARIZONA,**

14 **Andrew D. Diodati,**
15 **Bar No. 014394**

16 Respondent.

No. 04-1903, 05-0196, 06-2044¹

JOINT MEMORANDUM IN
SUPPORT OF TENDER OF
ADMISSIONS AND
AGREEMENT FOR DISCIPLINE
BY CONSENT

(Assigned to Hearing Officer 7J,
Douglas H. Clark, Jr.)

17
18
19
20 The State Bar of Arizona, through undersigned Bar Counsel, and
21 Respondent, Andrew D. Diodati, who is represented by attorney Joseph P. St.
22 Louis in this matter, hereby submit this Joint Memorandum in Support of the
23

24 ¹ File No. 06-2044 is a State Bar investigative file. Pursuant to the terms of this agreement,
25 and the conditional admissions by Respondent relating to that file, it is being resolved
herein, with terms of probation added to specifically address the concerns raised in that
matter. A summary appears below.

1 Tender of Admissions and Agreement for Discipline by Consent. The conduct
2 that Respondent has conditionally admitted is set forth in the accompanying
3 Tender of Admissions and Agreement for Discipline by Consent.
4

5 **CONDUCT**

6 As reflected in the Tender of Admissions and Agreement for Discipline by
7 Consent, Respondent engaged in professional misconduct that violated duties
8 owed to his clients and the profession by: failing to act diligently in the
9 representation of his client, failing to maintain his client trust account in
10 accordance with the Rules of the Supreme Court, including but not limited to
11 failing to adequately safeguard client funds, commingling funds, failing to
12 maintain required records and failing to conduct monthly three-way
13 reconciliations and failing to exercise due professional care in the maintenance of
14 his client trust account; failing to timely comply with court orders relating to
15 discovery; engaging in conduct prejudicial to the administration of justice; failing
16 to respond to a lawful demand for information from a disciplinary authority;
17 failing to furnish information or promptly respond to requests for information
18 relating to a disciplinary investigation made by Bar counsel and staff of the State
19 Bar, pursuant to the Rules of the Supreme Court.
20
21
22
23

24 ...
25 ...

1 . . .

2 **CONDITIONAL ADMISSIONS**

3
4 Respondent conditionally admits the facts as set forth in the Tender and
5 conditionally admits that his conduct violated Rule 42, Ariz.R.Sup.Ct., ERs 1.3,
6 1.15, 3.4, 8.1(b) and 8.4(d), Rules 43, 44 and 53, Ariz.R.Sup.Ct.

7 **SANCTION**

8
9 In determining the appropriate sanction, the parties considered both the
10 American Bar Associations' *Standards for Imposing Lawyer Sanctions*
11 (*"Standards"*) and Arizona case law.

12
13 The State Bar of Arizona and Respondent agree that Respondent shall
14 receive a suspension for 60 days, followed by one year of probation upon
15 reinstatement, upon the following terms and conditions: Respondent shall pay the
16 costs and expenses of this proceeding as set forth in Exhibit "A" attached to the
17 Tender of Admissions. Respondent, during the participate in the Members
18 Assistance Program ("MAP"), the State Bar's Law Office Management Assistance
19 Program ("LOMAP") and the State Bar's Trust Account Program ("TAP"), and
20 other terms as set forth in the Tender of Admissions and Agreement for Discipline
21 by Consent incorporated herein by reference.
22
23
24
25

1 **I. ABA STANDARDS**

2 The *Standards* provide guidance with respect to an appropriate sanction in
3 this matter. The Supreme Court and Disciplinary Commission consider the
4 *Standards* a suitable guideline. *See In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.2d
5 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P. 2d 1037, 1040
6 (1990).
7

8 In determining an appropriate sanction, the Supreme Court and the
9 Disciplinary Commission consider the duty violated, the lawyer's mental state, the
10 actual or potential injury caused by the misconduct and the existence of
11 aggravating and mitigating factors. *See, Peasley*, 208 Ariz. at 35, 90P.3d at 772;
12 *Standard 3.0*.
13

14 Respondent's knowing² misconduct implicates two *Standards*, *Standard*
15 4.12 and *Standard 7.2*. *Standard 4.12* provides that suspension is generally
16 appropriate when a lawyer knows or should know that he is dealing improperly
17 with client property and causes injury or potential injury to a client. *Standard 7.2*
18 provides that suspension is generally appropriate when a lawyer knowingly
19
20
21

22 ² The "knowing" mental state is further supported by the following: during the time period
23 in which the first overdraft occurred, Respondent was involved in a disciplinary
24 investigation that resulted in his being ordered to complete the Trust Account Ethics
25 Enhancement Program ("TAEPP") and was on notice about the requirements for
maintaining and using his client trust account. Moreover, at the time of the second overdraft
(as alleged in Count Two of the State Bar's complaint), Respondent had already completed
TAEPP, during which he was instructed in the proper maintenance and use of his trust
account and guided through a number of practical exercises.

1 engages in conduct that is a violation of a duty owed as a professional, and causes
2 injury or potential injury to a client, the public or the legal system.

3
4 The presumptive sanction in this matter, therefore, appears to be suspension.
5 Application of the aggravating and mitigating factors assists in determining the
6 appropriate sanction as well as the length of the suspension.

7
8 The parties agree that the following factors should be considered in
9 aggravation:

10 *Standard 9.22(a)* Prior disciplinary offenses. Respondent was informally
11 reprimanded in State Bar File No. 04-1676 for violations of Rule 42,
12 Ariz.R.Sup.Ct., specifically ERs 3.4(c) and 8.4(d), and Rule 53(c), Ariz.R.Sup.Ct.

13
14 *Standard 9.22(c)* Pattern of misconduct. Respondent was ordered into the
15 State Bar's diversion program in File No. 03-1765, for trust account violations.
16 As a condition of diversion, Respondent was required to, and did, complete the
17 State Bar's Trust Account Ethics Enhancement Program ("TAEEP"). Respondent
18 completed TAEEP on December 14, 2004. Respondent was previously informally
19 reprimanded for violations of ERs 3.4 and 8.4(d) for failure to timely comply with
20 court orders in State Bar File No. 04-1676.

21
22
23 *Standard 9.22(e)* Bad faith obstruction of the disciplinary process. During
24 the course of the State Bar's investigation, Respondent repeatedly failed to provide
25

1 requested trust account records. Due to Respondent's failure to do so, records had
2 to be subpoenaed from his bank and a deposition had to be conducted.

3
4 *Standard 9.22(j)* Substantial experience in the practice of law. Respondent
5 was admitted to the practice of law in Arizona in 1992.

6 The parties agree that the following factors should be considered in
7 mitigation:

8
9 *Standard 9.32(b)* Absence of selfish or dishonest motive. The parties
10 conditionally agree that there is no indication that Respondent's misconduct
11 resulted from any ill motives.

12
13 *Standard 9.32(c)* Personal or emotional problems. The parties conditionally
14 agree that Respondent, during this period of time, was affected by a number of
15 personal or emotional problems. These problems are detailed in the documents
16 attached hereto as Exhibit "B."

17
18 *Standard 9.32(g)* Character or reputation. Respondent has a good
19 reputation in the legal community. Letters supporting this factor are attached
20 hereto as Exhibit "C."

21 Having reviewed the aggravating and mitigating factors, the parties agree
22 that a suspension for 60 days is appropriate in this matter and turn to the
23 proportional case law.
24

1 **II. PROPORTIONALITY REVIEW**

2 In the past, the Supreme Court has consulted similar cases in an attempt to
3 assess the proportionality of the sanction recommended. *See In re Struthers*, 179
4 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that
5 the concept or proportionality review is “an imperfect process.” *In re Owens*, 182
6 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases “are
7 ever alike.” *Id.*
8

9
10 To have an effective system of professional sanctions, there must be internal
11 consistency, and it is appropriate to examine sanctions imposed in cases that are
12 factually similar. *Peasley, supra*, 208 Ariz. at ¶ 33, 90 P.3d at 772. However, the
13 discipline in each case must be tailored to the individual case, as neither perfection
14 nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778
15 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135
16 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).
17

18
19 The cases set forth below demonstrate that a suspension is an appropriate
20 sanction in this matter.³

21 In *In re Gabroy*, SB-06-0124-D (2006), the lawyer’s conduct with regard to
22 her client trust account was found to have violated ER 1.15, as well as Rules 43
23

24 ³ Respondent’s conditional admissions of violations of ERs 1.3, 3.4 and 8.4(d), in State Bar
25 File No. 06-2044, were also considered in determining the appropriate sanction and the
parties conditionally agree that those violations do not increase the presumptive or agreed-
upon sanction.

1 and 44. A two-year suspension was imposed. The lawyer's misconduct included
2 her failure to provide requested trust account records, which caused the State Bar
3 to have to obtain them by subpoena. The lawyer was found to have violated Rule
4 53(d) and (f). The lawyer had no prior discipline, six aggravating factors were
5 found and there was a finding of a knowing mental state. Gabroy's conduct was
6 more egregious, however, than Respondent's and she never acknowledged the
7 wrongful nature of her conduct. In addition, Gabroy had misused her client trust
8 account to serve a selfish/dishonest purpose of attempting to avoid a tax lien.
9 Such a selfish or dishonest motive is absent in the instant matter.
10
11

12 In *In re Johnson*, SB-05-0165-D (2005), the lawyer was suspended for six
13 months and one day for misconduct including failure to properly maintain his
14 client trust account or internal controls, resulting in overdrafts of the account. In
15 addition, the lawyer also demonstrated a pattern of neglect with client matters and
16 the improper use of an expired notary stamp. The lawyer then failed to cooperate
17 with the State Bar during the investigation. This lawyer's misconduct was more
18 pervasive than the misconduct in the instant matter, and a greater number of
19 matters were involved.
20
21

22 Finally, in *In re Ryan*, SB-06-0004-D (2006) the lawyer was suspended for
23 60 days, by consent, for failing to exercise due professional care in the
24 maintenance of his client trust account, including dealing improperly with client
25

1 funds, commingling personal funds, and disbursing funds from the trust account
2 without verifying that sufficient funds were available. The lawyer was found to
3 have violated ER 1.15 and Rules 43 and 44⁴. The lawyer, however, did participate
4 in the investigation and there was no allegation of a violation of Rule 53, present
5 in the instant matter.⁵
6

7 Based on the above cases, and on the specific facts of Respondent's matter
8 including his mitigation, the parties conditionally agree that a suspension for 60
9 days, with one year probation upon reinstatement, with the terms and conditions as
10 set forth above and in the Tender of Admissions, is an appropriate sanction in this
11 matter.
12

13
14 In sum, the parties believe that this agreement provides for a sanction that
15 meets the goals of the disciplinary system. The terms of the agreement serve to
16 protect the public, instill confidence in the public, deter other lawyers from similar
17 conduct and maintain the integrity of the bar.
18

19 III. CONCLUSION

20 Recognizing that it is the prerogative of the Hearing Officer, the
21 Disciplinary Commission and the Supreme Court to determine the appropriateness
22

23 ⁴ The lawyer also violated ER 1.2 by misapplying funds provided by the client to payment
24 of an outstanding balance without the client's permission, misconduct that is not present in
the instant matter.

25 ⁵ The parties also considered *In re Shaw*, SB-05-0152-D (2006) and *In re Odneal*, SB-06-
0146-D (2006), in which the lawyers received suspensions for violations of the ethical rules,
including ER 3.4 and Rule 53.

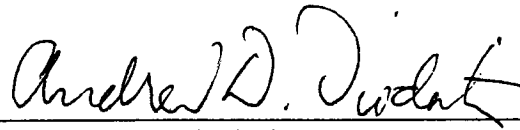
1 of sanctions, the State Bar and Respondent conditionally agree that, based on the
2 *Standards* and relevant case law, a suspension for 60 days, with probation under
3 the terms and conditions enumerated in the Tender of Admissions and Agreement
4 for Discipline by Consent to begin upon reinstatement, is an appropriate sanction
5 in this matter. In addition, Respondent shall pay the costs and expenses incurred
6 in this disciplinary proceeding, as set forth in Exhibit "A" attached to the Tender
7 of Admissions and Agreement for Discipline by Consent. The State Bar and
8 Respondent feel that this constitutes an appropriate sanction under these
9 circumstances.
10
11

12 The Court and the Commission have repeatedly stated that the purpose of
13 lawyer discipline is not to punish the offender but to protect the public, the
14 profession and the administration of justice. *See Peasley*, 208 Ariz. at 41, 90 P.3d
15 at 778; *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1988). The proposed sanction
16 will accomplish those goals.
17
18

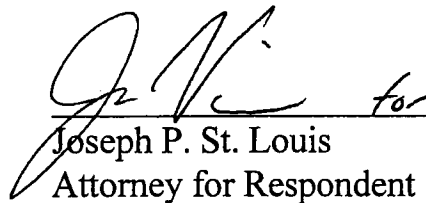
19 The State Bar and Respondent respectfully request that the Hearing Officer
20 recommend acceptance of the proposed discipline, of suspension for 60 days, with
21 one year of probation upon reinstatements, with participation in MAP, TAP, and
22
23
24
25

1 LOMAP and other terms and conditions as determined appropriate at the time of
2 reinstatement.

3
4 DATED this 22 day of May, 2007.

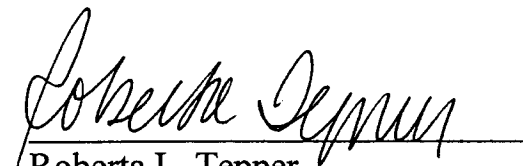
5 
6 Andrew D. Diodati
7 Respondent

8 DATED this 22 day of May, 2007.

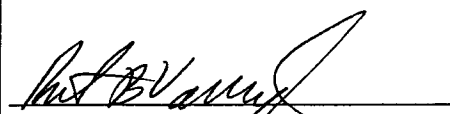
9
10 
11 Joseph P. St. Louis
12 Attorney for Respondent

13 ...
14 DATED this 23 day of May, 2007.

15 STATE BAR OF ARIZONA

16 
17 Roberta L. Tepper
18 Staff Bar Counsel

19
20
21 Approved as to form and
22 content.

23 
24 Robert B. VanWyck
25 Chief Bar Counsel

1 Original filed this 23rd day
2 of May, 2007, with:

3 Disciplinary Clerk of the Supreme Court of Arizona
4 1501 W. Washington Street
5 Phoenix, Arizona 85007

6 Copies of the foregoing mailed this 23rd day
7 of May, 2007, to:

8 Joseph P. St Louis
9 Nesci, St. Louis & West, PLLC
10 216 N. Main Avenue
11 Tucson, Arizona 85701-7202
12 Attorney for Respondent

13 Douglas H. Clark, Jr.
14 Hearing Officer 7J
15 Mesch, Clark & Rothschild, PC
16 259 N. Meyer
17 Tucson, Arizona 85701-1090

18 Copy of the foregoing hand-delivered this
19 23rd day of May, 2007, to:

20 Lawyer Regulation Records Manager
21 State Bar of Arizona
22 4201 N. 24th St., Suite 200
23 Phoenix, Arizona 85016-6288

24 by: 
25 _____

RLT:paj

Exhibit "C"

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

In the Matter of a Member of
the State Bar of Arizona,

FRED L. HOWE
Bar No. 013270

Respondent.

PDJ-2012-9010

FINAL JUDGMENT AND ORDER

[State Bar File Nos. 11-1562, 11-1592, 11-1984, 11-2359]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on 5/4, 2012, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Fred L. Howe**, is hereby suspended for 60 days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective July 1, 2012.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation for a period of two years.

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at (602) 340-7332, within ten (10) days of his reinstatement to the practice of law in Arizona. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ER 1.1, ER 1.3, ER 1.4(b), ER 1.5(b), ER 1.7(a), ER 1.8(a), ER 1.15(a), ER 3.4(c), ER 3.7, ER 8.4(a) & (d), and Rules 43(b)(1)(A) & (C), 43(b)(2)(B) & (C), and 54(d)(2), Ariz. R. Sup. Ct. The director of LOMAP, or her

designee, shall develop "Terms and Conditions of Probation," which shall be incorporated herein by reference. LOMAP may require Respondent to utilize a Practice Monitor approved by LOMAP if it determines such is appropriate. The probation period will commence on the date Respondent is reinstated to practice law in Arizona and will conclude two years from that date unless the term of probation is extended pursuant to Rule 60(a)(5)A, Ariz. R. Sup. Ct. Respondent shall be responsible for any costs associated with LOMAP.

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at (602) 340-7332, within ten (10) days of his reinstatement to the practice of law in Arizona. Respondent shall submit to a MAP assessment. The director of MAP, or her designee, shall develop "Terms and Conditions of Probation" if it is determined that the results of the assessment indicate the need for further services. The MAP Terms and Conditions of Probation shall be incorporated herein by reference. The probation period will commence on the date Respondent is reinstated to practice law in Arizona and will conclude two years from that date unless the term of probation is extended pursuant to Rule 60(a)(5)A, Ariz. R. Sup. Ct. Respondent shall be responsible for any costs associated with MAP.

Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEHP). Respondent shall contact the State Bar's TAEHP Program Coordinator at (602) 340-7278, within 20 days of his reinstatement to the practice of law in Arizona. Respondent shall be responsible for the cost of attending the program.

Respondent shall contact the publications unit of the State Bar of Arizona at (602) 340-7318, within ninety (90) days of his reinstatement to the practice of law in Arizona, to either obtain and listen to the CD or obtain and view the DVD titled "The Ten Deadly Sins of Conflicts." Respondent may alternatively go to the State Bar website (www.myazbar.org) and complete the self-study online version of that continuing legal education program. Respondent shall provide Bar Counsel with evidence of completion by providing copies of handwritten notes. Respondent shall be responsible for the cost of the CD, DVD or online self-study.

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)(C), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether the terms of probation have been violated and, if so, to determine whether an additional sanction should be imposed. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of persuasion shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent shall pay \$223.00 in restitution to Robert Travelbee within 30 days of the entry of this final judgment and order. Respondent shall also participate in fee arbitration with Robert Travelbee if he files a petition for fee arbitration with the State Bar of Arizona.

IT IS FURTHER ORDERED that Respondent 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 the costs and expenses of the State Bar of Arizona in the amount of \$ _____.

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 _____.

DATED this _____ day of _____, 2012.

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 _____ day of _____, 2012.

Copies of the foregoing mailed/mailed
this _____ day of _____, 2012, to:

Fred L. Howe
Law Office of Fred L. Howe
14239 West Bell Road, Suite 205
Surprise, Arizona 85374-2471
Email: fredhowe@cox.net
Respondent

Copy of the foregoing hand-delivered/mailed
this _____ day of _____, 2012, to:

James D. Lee
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: _____