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State Bar Court of California Hearing Department		
Counsel For The State Bar Eli D. Morgenstern Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015-2299 Bar # 190560 Tel. (213)	Case Number (s) 08-J-14351	(for Court's use) <div style="text-align: center;"> FILED APR 23 2010 <i>Y/c</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> <div style="text-align: center; font-size: 1.5em; font-weight: bold; margin-top: 10px;"> PUBLIC MATTER </div>
Robert M. Gregory Law Offices of Robert M. Gregory, PC 1930 S. Alma School Road, Suite A115 Mesa, Arizona 85210 Bar # 181193 Tel. (480) 839-4711	Submitted to: Assigned Judge	
In the Matter Of: ROBERT MILES GREGORY Bar # 181193 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 13, 1995.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (11) pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.



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- (8) **Payment of Disciplinary Costs**—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- costs to be paid in equal amounts prior to February 1 for the following membership years: (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
- (b) Date prior discipline effective
- (c) Rules of Professional Conduct/ State Bar Act violations:
- (d) Degree of prior discipline
- (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances are involved.**

Additional mitigating circumstances

D. Discipline:

- (1) **Stayed Suspension:**

(Do not write above this line.)

- (a) Respondent must be suspended from the practice of law for a period of one (1) year.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
 - ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
 - iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) Probation:

Respondent must be placed on probation for a period of one (1) year, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) Actual Suspension:

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of thirty (30) days.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
 - ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
 - iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state

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whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: See Attachment Page 4 re EXCLUSION OF STATE BAR ETHICS AND TRUST ACCOUNT SCHOOLS.
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|-----------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension

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- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:	ROBERT MILES GREGORY
CASE NUMBER(s):	08-J-14351

AGREEMENTS AND WAIVERS PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6049.1.

1. Respondent's culpability determined in the disciplinary proceeding in the State of Arizona would warrant the imposition of discipline in the State of California under the laws or rules in effect in this State at the time the misconduct was committed.

2. The proceeding in the State of Arizona provided Respondent with fundamental constitutional protection.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified Rule of Professional Conduct.

Facts

1. Respondent has been a member of the State Bar of California since December 13, 1995. Respondent has been a member of the State Bar of Arizona since April 22, 2003.

2. On October 12, 2003, Suzette Llantana ("Llanatan") employed Respondent to represent her on a contingency fee basis in an employment discrimination claim against the City of Scottsdale, her former employer.

3. On March 12, 2004, Respondent filed a complaint in federal court on behalf of Llanatan against the City of Scottsdale (the "discrimination case").

4. On October 18, 2005, Llantana wrote a check made payable to Respondent in the sum of \$7,000. In the memo portion of the check, the words "2 expert witness" were written.

5. The purpose of the \$7,000 check was to pay the fees of an expert witness hired by Respondent in connection with the discrimination case. Respondent did not deposit the check into his client trust account. Instead, Respondent deposited the \$7,000 check into his general account.

6. On November 23, 2005, Llantana wrote a check made payable to Respondent in the sum of \$3,000. In the memo portion of the check, the words "per verbal agrees Drs Kleiner Hochman paid in full \$10,000 balance 0/no further payments owed" were written.

7. The purpose of the \$3,000 check was to pay the fees of two expert witnesses hired by Respondent in connection with the discrimination case. Respondent did not deposit the check into his client trust account. Instead, Respondent deposited the \$3,000 check into his general account.

8. On February 9, 2006, Respondent filed a motion to withdraw as Llantana's counsel in the discrimination case; on February 15, 2006, the motion was granted.

9. On October 28, 2008, the Supreme Court of Arizona filed an Order (No. SB-08-0128-D) with respect to two disciplinary matters involving Respondent, case no. 06-1832 and case no. 07-0265. With respect to case no. 07-0265, the Arizona Supreme Court found that Respondent violated rule 1.15 of the Arizona Rules of Professional Conduct, as well as rules 43(d)(2)(b) and 44(a) of the Rules of the Arizona Supreme Court, the equivalent of rule 4-100(A) of the Rules of Professional Conduct. The Supreme Court ordered that Respondent be actually suspended for thirty (30) days. The Arizona Supreme Court also placed Respondent on probation for one year with conditions including that Respondent:

- undergo and cooperate with a full assessment by the State Bar of Arizona's Law Office Management Assistance Program ("LOMAP"); and
- attend and successfully complete the State Bar's Trust Account Ethics Enhancement Program ("TAEEP")

10. A certified copy of the following documents are cumulatively attached hereto as **Exhibit 1**:

- The Supreme Court of Arizona's Judgment and Order in *In the Matter of the State Bar of Arizona, Robert M. Gregory*, Arizona Supreme Court No. SB-08-0128-D (Disciplinary Commission Nos. 06-1832, 07-0265); and
- The Disciplinary Commission Report in *In the Matter of the State Bar of Arizona, Robert M. Gregory*, Nos. 06-1832, 07-0265.
- The Supreme Court of Arizona's Order dated March 10, 2009 in *In the Matter of the State Bar of Arizona, Robert M. Gregory*, Nos. 06-1832, 07-0265.

11. To date, Respondent has successfully completed all of the terms of probation as ordered by the Arizona Supreme Court in Order No. SB-08-0128-D. Respondent has one further probationary term to complete, namely, the submission of his final report to LOMAP. Respondent's one-year probation ends on April 7, 2010.

Conclusions of Law

By failing to deposit checks received for the benefit of a client in his client trust account, Respondent wilfully violated rule 4-100(A) of the Rules of Professional Conduct.

Respondent's culpability in Case No. 06-1832 would not warrant the imposition of discipline in the State of California under the laws or rules in effect in this State at the time the conduct was committed.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was March 24, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of March 24, 2010, the prosecution costs in this matter are \$1,649. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

MITIGATING CIRCUMSTANCES.

Respondent is entitled to mitigation for his cooperation in entering into this stipulation. (See, In the Matter of Silver (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906.)

Respondent committed the misconduct described herein almost five years ago. Respondent has demonstrated his rehabilitation by successfully completing the terms of his probation as imposed by the Arizona Supreme Court in the underlying disciplinary matter. The passage of almost five years since the misconduct stipulated herein occurred followed by proof of subsequent rehabilitation is a mitigating factor. (See, In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113 (where the attorney's misconduct occurred four years prior to the disciplinary hearing, and five years prior to the proceedings on review, and the attorney had not committed misconduct since then, this constituted a mitigating circumstance).)

AUTHORITIES SUPPORTING DISCIPLINE.

1. Standards

The purpose of a State Bar disciplinary proceeding is not to punish the attorney, but to protect the public, to preserve confidence in the profession, and to maintain the highest possible standards for attorneys. (Std. 1.3.)

Standard 2.2 (b) of the Standards for Attorney Sanctions for Professional Misconduct (“Standards”) is most relevant to the instant case since it addresses a violation of rule 4-100 that does not result in willful misappropriation of entrusted funds. Such a violation “shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.” (Std. 2.2(b).)

However, a departure from the 90-day suspension prescribed by Standard 2.2(b) is justified here, because Respondent’s misconduct appears to have been aberrational.

Respondent has taken responsibility for his actions as demonstrated by this stipulation. Respondent also stipulated to culpability and the level of discipline in the Arizona disciplinary proceeding. In his recommendation to the Arizona Supreme Court, the Hearing Officer in the Arizona disciplinary proceeding found that Respondent had “learned his lesson, has apologized for his mistakes, and has taken steps to change his procedures so that similar mistakes will not occur in the future.”

To date, Respondent has demonstrated that the Arizona Hearing Officer’s assessment of him was accurate. Respondent’s misconduct occurred almost five years ago. Respondent has successfully completed the terms of probation imposed by the Arizona Supreme Court, and has not received any further discipline since the discipline described herein.

The State Bar respectfully submits that a 30 day actual suspension is warranted given the record in this case.

2. Case Law

In *Sternleib v. State Bar* (1990) 52 Cal.3d 317, the California Supreme Court ordered the attorney suspended for 30 days for making numerous withdrawals from the trust account for attorney fees during a six-and-one-half-month period without client authorization and for failing to render an account.

EXCLUSION OF STATE BAR ETHICS AND TRUST ACCOUNT SCHOOLS.

In 2009, Respondent cooperated with a full assessment by the State Bar of Arizona’s Law Office Management Assistance Program (“LOMAP”), and successfully completed the Arizona State Bar’s Trust Account Ethics Enhancement Program (“TAEEP”)

Consequently, it is not recommended that Respondent be ordered to take the State Bar Ethics and Trust Account Schools.

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In the Matter of ROBERT MILES GREGORY Member #181193	Case number(s): 08-J-14351
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SIGNATURE OF THE PARTIES

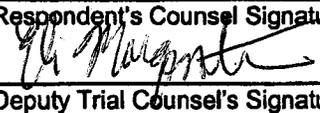
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

4/1/10
Date


Respondent's Signature

ROBERT M. GREGORY
Print Name

4/6/10
Date


Deputy Trial Counsel's Signature

ELI D. MORGENSTERN
Print Name

(Do not write above this line.)

In the Matter Of ROBERT MILES GREGORY MEMBER# 181193	Case Number(s): 08-J-14351
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The first box of Paragraph A(8) [page 2], is deemed checked. This language provides, "Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure."

The Condition of Probation checked for Paragraph E(6) [page 5] is removed. The court does not recommend that a probation monitor be assigned.

The first box for Paragraph E(8) [page 5] is deemed checked, to require Respondent to take the California State Bar's Ethics School. This language provides, "Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session." The parties' agreement that no Ethics School is recommended is rejected by the court.

The second paragraph under the heading "Conclusions of Law" is deemed deleted. This language reads, "Respondent's culpability in Case No. 06-1832 would not warrant the imposition of discipline in the State of California under the laws or rules in effect in this State at the time the conduct was committed." The court rejects any such conclusion. (Compare Count Two (06-1832) of Hearing Officer's Report [paragraphs 74-102] with pages 7-9 of this Stipulation, concluding that such conduct constituted a violation of rule -100(A).)

(Do not write above this line.)

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

4/22/10

Date



Judge of the State Bar Court
DONALD F. MILES

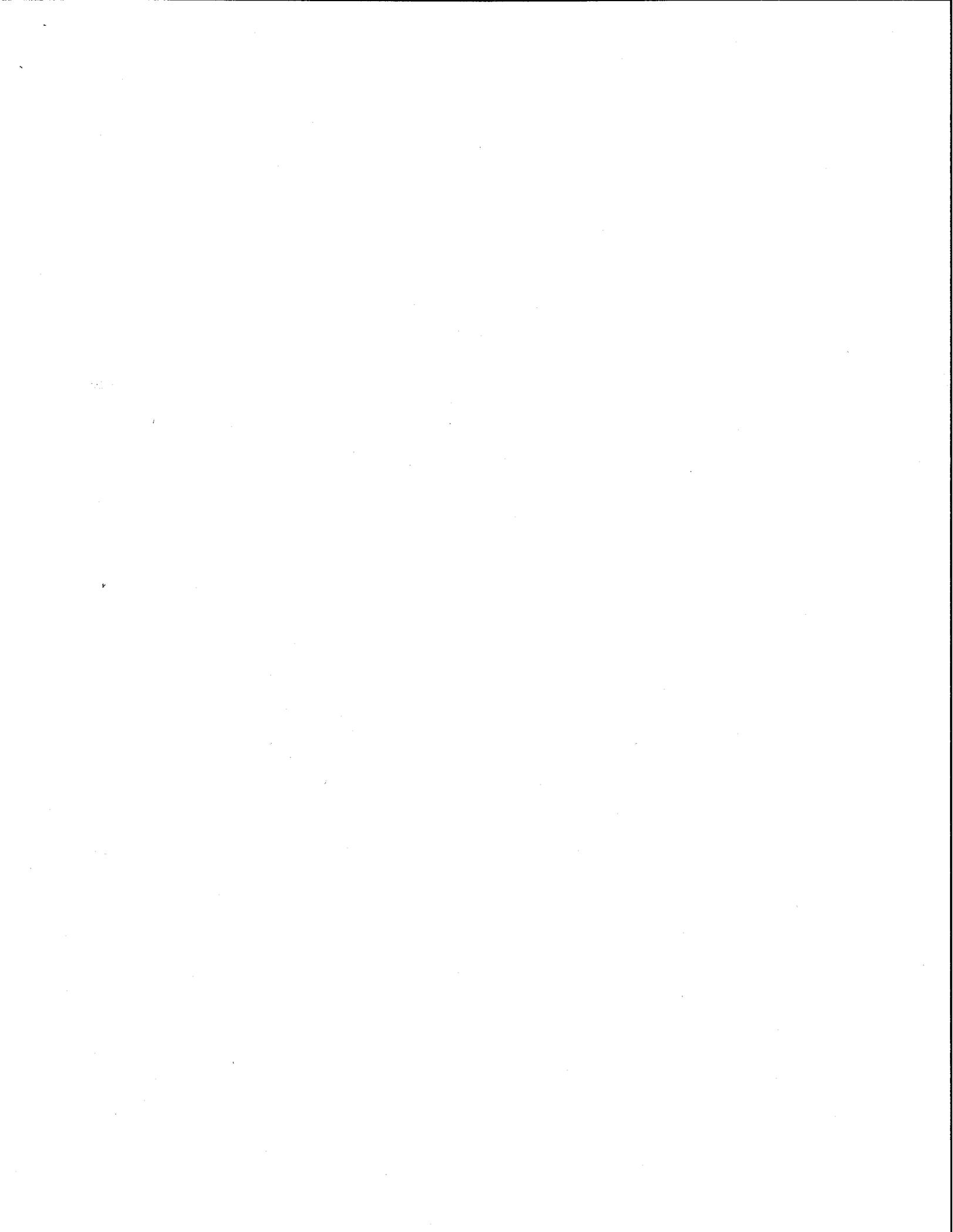


Exhibit 1 - Part 1

TO
STIPULATION [AND ATTACHMENT] RE FACTS, CONCLUSIONS
OF LAW AND DISPOSITION AND ORDER APPROVING

SUPREME COURT OF ARIZONA

FILED
OCT 28 2008
RACHELLE M. RESNICK
CLERK SUPREME COURT
BY

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
)
ROBERT M. GREGORY,)
Bar No. 021805)
)
)
RESPONDENT.)

Supreme Court
No. SB-08-0128-D

Disciplinary Commission
Nos. 06-1832, 07-0265

JUDGMENT AND ORDER

This matter having come before the Disciplinary Commission of the Supreme Court of Arizona, it having duly rendered its decision, and no discretionary or *sua sponte* review occurring,

IT IS ORDERED, ADJUDGED AND DECREED that **ROBERT M. GREGORY** a member of the State Bar of Arizona, is hereby suspended from the practice of law for a period of thirty days for conduct in violation of his duties and obligations as a lawyer, as disclosed in the Disciplinary Commission Report.

IT IS FURTHER ORDERED granting respondent's request to extend the commencement date of the suspension. The effective date of the suspension will be December 20, 2008.

IT IS FURTHER ORDERED that **ROBERT M. GREGORY** shall be placed on probation for a period of one year upon reinstatement. Bar Counsel shall notify the Disciplinary Clerk of the date on which the probation begins. The terms of probation are as follows:

1. Respondent shall undergo and cooperate with a full assessment by LOMAP.
2. Respondent shall attend and successfully complete TAEPP.
3. Respondent shall review the "Ten Deadly Sins of Conflict" MCLE video-tape and provide his hand-written notes to bar counsel.
4. Respondent shall provide the State Bar with copies of all letters required to be sent to his clients and other interested parties providing notice to said clients and parties of Respondent's suspension.
5. Respondent shall provide the State Bar with copies of all certified certificates required to be attached to the mailings referenced in paragraph 4.
6. Respondent shall provide the State Bar with copies of all return receipts returned to him as a result of the mailings referenced in paragraph 4.
7. In the event that Respondent fails to comply with any of the foregoing conditions, and the State Bar receives information, bar counsel shall file with the

imposing entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The Hearing Officer shall conduct a hearing within thirty days after receipt of said notice, to determine whether the terms of probation have been violated and if an additional sanction should be imposed. In the event there is an allegation that any of these terms have been violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence.

IT IS FURTHER ORDERED that pursuant to Rule 60(b), the State Bar of Arizona is granted judgment against **ROBERT M. GREGORY** for costs and expenses of these proceedings in the amount of \$1,150.05, together with interest at the legal rate from the date of this judgment and order. The costs and expenses shall be paid within thirty days of the date of this judgment and order.

DATED this 28th day of October, 2008.

Rachelle M. Resnick
Rachelle M. Resnick
Clerk of the Court

TO:

Robert M. Gregory, Respondent (Certified Mail, Return Receipt and Regular Mail)
Nancy A. Greenlee, Respondent's Counsel
Russell J. Anderson, Bar Counsel
Daniel P. Beeks, Hearing Officer 7M
Leticia V. D'Amore, Disciplinary Clerk (Cert. Copy)
Sandra Montoya, Lawyer Regulation Records Manager, State Bar of Arizona (Cert. Copy)
Molly Dwyer, Clerk, United States Court of Appeals for the Ninth Circuit (Cert. Copy)
Richard Weare, Clerk, United States District Court, District of Arizona (Cert. Copy)
West Publishing Company (Jode Ottman)
Lexis/Nexis

The foregoing instrument is a full, true and correct copy of the original on file in this office.

ATTEST

Rachelle M. Resnick, Clerk of the Supreme Court
State of Arizona

Carmen J. Gule Deputy

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Certified this 15th day of Dec., 2008

By L. D'Amore

Disciplinary Clerk
Supreme Court of Arizona

Exhibit 1 - Part 2

TO
STIPULATION [AND ATTACHMENT] RE FACTS, CONCLUSIONS
OF LAW AND DISPOSITION AND ORDER APPROVING

FILED

AUG - 7 2008

**BEFORE THE DISCIPLINARY COMMISSION OF THE
OF THE SUPREME COURT OF ARIZONA**

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

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IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
ROBERT M. GREGORY,)
Bar No. 021805)
)
RESPONDENT.)
_____)

Nos. 06-1832, 07-0265

**DISCIPLINARY COMMISSION
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on July 12, 2008, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed May 30, 2008, recommending acceptance of the Tender of Admissions and the Agreement for Discipline by Consent ("Tender") and the Joint Memorandum ("Joint Memorandum") in Support of Agreement for Discipline by Consent providing for a 30-day suspension, one year of probation with the State Bar Law Office Management Assistance Program ("LOMAP"), Trust Account Ethics Enhancement Program (TAEHP), completion of the continuing legal education ("CLE") seminar entitled *Ten Deadly Sins of Conflict*, and costs within 30-days of the Supreme Court's final Judgment and Order.

Decision

Having found no facts clearly erroneous, the seven members¹ of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for 30-day suspension, one year

¹ One lawyer member seat remains vacant. Commissioner Horsley did not participate in these proceedings.

of probation (LOMAP, TAEPP and view CLE seminar entitled *Ten Deadly Sins of Conflict*), and costs of these disciplinary proceedings within 30-days from the date of the final Judgment and Order including any costs incurred by the Disciplinary Clerk's office.²

The terms of probation are as follows:

Terms of Probation

1. Respondent shall³ undergo and cooperate with a full assessment by LOMAP.
2. Respondent shall attend and successfully complete TAEPP.
3. Respondent shall review the "Ten Deadly Sins of Conflict" MCLE video-tape and provide his hand-written notes to bar counsel.
4. Respondent shall provide the State Bar with copies of all letters required to be sent to his clients and other interested parties providing notice to said clients and parties of Respondent's suspension.
5. Respondent shall provide the State Bar with copies of all certified certificates required to be attached to the mailings referenced in paragraph 4.
6. Respondent shall provide the State Bar with copies of all return receipts returned to him as a result of the mailings referenced in paragraph 4.
7. In the event that Respondent fails to comply with any of the foregoing conditions, and the State Bar receives information, bar counsel shall file with the imposing entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The Hearing Officer shall conduct a hearing within 30-days after receipt of said notice, to

² A copy of the Hearing Officer's Report is attached as Exhibit A. The State Bar's costs total \$1,150.05.

1 determine whether the terms of probation have been violated and if an additional sanction
2 should be imposed. In the event there is an allegation that any of these terms have been
3 violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by
4 clear and convincing evidence.⁴

5 RESPECTFULLY SUBMITTED this 7th day of August, 2008.

6
7 *Daisy Flores*

8 Daisy Flores, Chair
9 Disciplinary Commission

10 Original filed with the Disciplinary Clerk
11 this 7th day of August, 2008.

12 Copy of the foregoing mailed
13 this 7th day of August, 2008, to:

14 Daniel P. Beeks
15 Hearing Officer 7M
16 *Mohr, Hackett, Pederson, Blakley & Randolph, P.C.*
17 2800 North Central, Suite 1100
18 Phoenix, AZ 85004-1043

19 Nancy A. Greenlee
20 Respondent's Counsel
21 821 East Fern Drive North
22 Phoenix, AZ 85014-3248

23
24 The foregoing instrument is a full, true, and
25 correct copy of the original on file in this office.

26 Certified this 15th day of Dec., 2008

By L. D. Amore

Disciplinary Clerk
Supreme Court of Arizona

24 ³ The Hearing Officer stated that "Gregory *should be required*," however, the Terms of Probation
25 as set forth in the Tender provide that "Respondent *shall*." See Report, pp. 12-13 and Tender, pp.
26 19-20.

⁴ The Hearing Officer's Report and Tender documents does not contain the standard probation
compliance language.

Russell J. Anderson
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

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by *R. Anderson*
/mps

EXHIBIT

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DANIEL P. BEEKS (AZ BAR NO. 012628)
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Hearing Officer 7M

FILED
MAY 30 2008
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY DM

BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

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

No. 07-0265, 06-1832

ROBERT M. GREGORY,
Bar No. 021805

HEARING OFFICER'S REPORT

(Assigned to Hearing Officer 7M, Daniel P. Beeks)

The parties have filed a Tender of Admissions and Agreement for Discipline by Consent ("Tender"), and a Joint Memorandum in Support of Agreement for Discipline by Consent ("Joint Memorandum") agreeing that Gregory Robert M. Gregory ("Gregory" OR "Gregory") should receive a 30 day suspension, with one year of probation upon terms described in more detail below.

The State Bar was represented by Russel J. Anderson in negotiating the Tender, and Gregory was represented by Nancy A. Greenlee. The Hearing Officer has determined that no hearing is necessary in order to rule on the Tender.

For reasons discussed in more detail below, the Hearing Officer recommends that the Tender be approved and accepted. The parties understand, however, that this agreement is subject to review by the Disciplinary Commission, and by the Arizona Supreme Court.

STIPULATED FACTS

1. At all times relevant, Gregory was a lawyer licensed to practice law in the State of Arizona, having been first admitted to practice in Arizona on April 22, 2003.
2. At all times relevant, Gregory was a lawyer licensed to practice law in the

1 State of California, having been first admitted to practice in California in December
2 1995.

3 3. A formal complaint was filed against Gregory in this matter on November
4 9, 2007.

5 4. On or about November 1, 2004, Nicole Jordan was a passenger injured in
6 a motor vehicle accident. Her boyfriend, Michael Adamczyk, was driving. Ms. Jordan's
7 children, Destin and Nico, were also in the car at the time.

8 5. On or about November 3, 2004, Ms. Jordan retained Stephen Gorey
9 ("Gorey") to represent her personal injury claim, as well as the claims of her children.

10 6. Mr. Adamczyk also retained Gorey to represent his personal injury claim
11 on or about November 3, 2004.

12 7. Ms. Jordan was treated for her injuries by Dr. Ty Endean and Dr. Robert
13 Berens.

14 8. Sometime between late November and early December 2004, Gorey
15 contacted and associated with Gregory to help Gorey represent Ms. Jordan, Mr.
16 Adamczyk, Destin, and Nico.

17 9. If this matter were to proceed to a hearing, both Dr. Endean and Dr.
18 Berens would testify that they opined, within a reasonable degree of medical
19 probability, that Ms. Jordan's injuries were related to the motor vehicle accident. If this
20 matter were to proceed to a hearing, Gregory would dispute this claim. Gregory would
21 further testify that at no time during his handling of the matter did Dr. Endean or Dr.
22 Berens indicate in any way that they were willing to relate Ms. Jordan's injuries to the
23 motor vehicle accident.

24 10. If this matter were to proceed to a hearing, Gregory would testify that he
25 and his legal assistant placed numerous telephone calls to both doctors' offices and that
26 they never received a return call from either doctor. Gregory would further testify that
27 he spoke with one of Ms. Jordan's treating doctors on one occasion and this doctor was
28

1 not willing to serve as Ms. Jordan's expert for purposes of testifying that her injuries
2 were related to the motor vehicle accident. Gregory does admit for purposes of this
3 agreement that under those circumstances, he should have sought to schedule an in-
4 person meeting with Ms. Jordan's doctors in order to verify that they would not serve as
5 experts.

6 11. If this matter were to proceed to a hearing, Betty Ann St. George ("Ms. St.
7 George") would testify that, during the course of Ms. Jordan's case, she was Gregory's
8 legal assistant.

9 12. If this matter were to proceed to a hearing, Ms. St. George would testify
10 that she attempted numerous times to contact Dr. Endean and Dr. Berens via telephone.

11 13. If this matter were to proceed to a hearing, Ms. St. George would testify
12 that neither Dr. Endean nor Dr. Berens returned her calls.

13 14. If this matter were to proceed to a hearing, Gorey would testify that Ms.
14 Jordan asked Gorey to rent a car for him while Mr. Adamczyk's car was being repaired.

15 15. Gorey failed to inform Ms. Jordan that renting a car for her would create a
16 conflict of interest pursuant to ER 1.8(e), Arizona Rules of Professional Conduct.

17 16. On or about November 22, 2004, Gorey rented a car through Enterprise
18 Rent-A-Car Company ("Enterprise") using his personal credit card.

19 17. If this matter were to proceed to a hearing, Gorey would testify that
20 renting a car for a client in California does not constitute an ethical violation, and would
21 further testify that he was unaware of the difference in the rules because he practiced in
22 California for approximately 20 years.¹

23 18. If this matter were to proceed to a hearing, Gregory would testify that
24 renting a car for a client in California does not constitute and ethical violation, and
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26 ¹ California's ethical rules regarding providing financial assistance to clients are
27 somewhat different than Arizona's rules. Compare ER 1.8(e) and Rule 4-210 of the California
28 Rules of Professional Conduct. Rule 4-210(A)(2) appears to allow attorneys to make loans to
clients. The State Bar does not dispute that in California, it is permissible for attorneys to rent
cars for clients in personal injury cases.

1 would further testify that he was unaware of the difference in the rules. Gregory would
2 further testify that he was unaware that Gorey had rented the car for the clients until
3 later in the representation, after Mr. Adamczyk agreed to reimburse Gorey.

4 19. On or about May 11, 2005, Gregory filed a personal injury lawsuit on
5 behalf of Ms. Jordan, Mr. Adamczyk, Destin, and Nico in Pima County Superior Court,
6 cause number C2005-2630.

7 20. Gregory and Gorey acted as co-counsel for their clients in C2005-2630.

8 21. Gregory and Gorey were jointly responsible for the representation of Ms.
9 Jordan, Mr. Adamczyk, Destin, and Nico in C2005-2630.

10 22. There were two central defendants named in C2005-2630: Jennifer
11 Witten, and Complete Landscaping, Inc., that owned a vehicle driven by an employee.

12 23. On or about February 14, 2006, the Court scheduled a jury trial for July
13 25, 2006. The Court also set a Status Conference for September 11, 2006 (the "Status
14 Conference").

15 24. Gregory did not appear at the Status Conference.

16 25. If this matter were to proceed to a hearing, both Gregory and Gorey would
17 testify that they did not receive notice of the Status Conference. Gregory would further
18 testify that the Court re-set the Status Conference and there was no prejudice to either
19 party.

20 26. On or about April 18, 2006, the Court continued the jury trial to October
21 11, 2006.

22 27. Based on the October trial date, the deadline for Gregory to disclose all of
23 his expert witnesses was July 13, 2006.

24 28. On or before June 17, 2006, Ms. Jordan received notice that she must
25 undergo an Independent Medical Examination ("IME").

26 29. The original IME was scheduled for June 19, 2006.

27 30. On or about June 19, 2006, Ms. Jordan failed to appear for her IME,
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1 stating that she needed to take her son to a previously scheduled dental appointment.

2 31. If this matter were to proceed to a hearing, Gregory would testify that he
3 called Ms. Jordan to see how the IME went, and this was the first time that Gregory was
4 told that Ms. Jordan had not appeared and that she had had to attend her son's dental
5 appointment.

6 32. If this matter were to proceed to a hearing, Gregory would testify that he
7 contacted Gorey upon Ms. Jordan informing him she had not attended the IME.

8 33. If this matter were to proceed to a hearing, Gorey would testify that
9 shortly after Ms. Jordan missed the IME, he spoke with defense counsel for Complete
10 Landscaping to address the missed appointment.

11 34. If this matter were to proceed to a hearing, Gregory would testify that he
12 also attempted to negotiate a resolution with defense counsel for Complete Landscaping
13 to pay for the costs of the missed IME at the end of the case.

14 35. On or about July 26, 2006, defense counsel for Complete Landscaping
15 filed a motion seeking compensation (the "Motion for Sanctions") for the missed IME.

16 36. The Motion for Sanctions requested a cancellation fee of \$1,000.00 and an
17 award of attorneys fees totaling \$500.00.

18 37. A response to the Motion for Sanctions was not filed.

19 38. If this matter were to proceed to hearing, Gregory would testify that he did
20 not believe that he had a good faith basis to file a response to the motion for sanctions,
21 because during his initial conversation with Ms. Jordan, she did not indicate that her
22 son's appointment was an emergency in that the appointment had been previously
23 scheduled.

24 39. Defense counsel for Complete Landscaping filed a request that the Motion
25 for Sanctions be granted.

26 40. The Court partially granted the Motion for Sanctions.

27 41. The Court awarded Complete Landscaping's request for the \$1,000.00
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1 cancellation fee, but did not order the \$500.00 sanction requested for attorneys' fees.

2 42. If this matter were to proceed to a hearing, Gregory would testify that he
3 spoke to Ms. Jordan further, and to Gorey following the granting of the motion for
4 sanctions. Gregory would further testify that, at that time, Ms. Jordan claimed that
5 although she knew about her son's dental appointment, she did not know that her
6 presence would be required until the day of the appointment. On the basis of that
7 information, and based upon his conversation with Gorey (see paragraph 43 below),
8 Gregory then filed a motion for reconsideration of the court's ruling, attaching Ms.
9 Jordan's affidavit.

10 43. If this matter were to proceed to a hearing, Gorey would testify that he
11 advised Gregory specifically what the Motion for Reconsideration should address as to
12 the issue of the unreasonableness of the amount of the cancellation fee.

13 44. On or about July 13, 2006, the deadline for Gregory to disclose the
14 experts to testify on his clients' behalf expired.

15 45. If this matter were to proceed to a hearing, Gregory would testify it was
16 his responsibility to conduct discovery and disclose witnesses in accordance with
17 deadlines.

18 46. If this matter were to proceed to a hearing, Gregory would testify that
19 Gorey advised him about the manner and level of detail that was required in connection
20 with expert witness disclosures.

21 47. If this matter were to proceed to a hearing, Gregory would testify that,
22 because a new judge had been assigned to the case, it was difficult for him to determine
23 the proper amount of detail to include in the disclosure of his expert witnesses. Gregory
24 would further testify that he did not believe that any of Ms. Jordan's doctors were
25 willing to serve as an expert witness, and therefore, he could not list the doctors as
26 experts particularly when they had not provided the necessary information required by
27 the disclosure rules.

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1 48. On or about August 31, 2006, defense counsel for Complete Landscaping
2 filed a Motion to Preclude Expert Testimony (the "Motion to Preclude").

3 49. On or about September 25, 2006, the Court granted the Motion to
4 Preclude.

5 50. The Court's ruling referenced in paragraph 49, above, based its decision
6 on the missing expert witness reports and summaries for Ms. Jordan.

7 51. The Court's ruling referenced in paragraph 49, above, excluded the
8 opinion testimony of certain medical experts, but not all witnesses.

9 52. If this matter were to proceed to a hearing, Gregory would testify that he
10 made numerous attempts to secure the expert witness reports and summaries for Ms.
11 Jordan.

12 53. If this matter were to proceed to a hearing, Ms. St. George would testify
13 that she made attempts, under the direction and instruction of Gregory, to secure the
14 expert witness reports and summaries for Ms. Jordan.

15 54. If this matter were to proceed to a hearing, Gregory would testify that the
16 expert witnesses were uncooperative in providing their reports and summaries.

17 55. On or about September 27, 2006, defense counsel for Complete
18 Landscaping offered to settle Jordan's claims against the company for \$25,000.00.

19 56. If this matter were to proceed to a hearing, Gregory would testify that he
20 called Gorey and informed him that despite the ruling precluding the use of certain
21 witnesses, \$25,000 was still being offered to Ms. Jordan. Gorey would testify that he
22 informed Gregory that if Ms. Jordan wanted the settlement that Gorey would waive his
23 portion of the attorneys' fees, and suggested to Gregory that he should consider doing
24 the same, but that if Ms. Jordan wanted to accept the \$25,000.00 that Ms. Jordan give
25 them a malpractice waiver.

26 57. Gregory discussed the settlement offer with Ms. Jordan.

27 58. On or about September 27, 2006, Gregory accepted the settlement offer on
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1 behalf of Ms. Jordan.

2 59. Were this matter to proceed to a hearing, Gregory would testify that after
3 accepting the settlement, he and Ms. Jordan had a conversation about the medical liens
4 that would need to be paid. Gregory would further testify that, during this conversation,
5 Ms. Jordan told Gregory that her injuries and medical treatment had not been related to
6 her motor vehicle accident.

7 60. Gregory would further testify that he then contacted ethics counsel at the
8 State Bar of Arizona and followed her advice which was to inform defense counsel that
9 he would not accept the settlement on behalf of Ms. Jordan and that the settlement
10 should be consummated with her; Gregory also moved to withdraw from the case; and
11 Gregory took no fee from the settlement.

12 61. On or about September 27, 2006, Gregory faxed a General Release waiver
13 to Ms. Jordan (the "Malpractice Waiver").

14 62. The Malpractice Waiver contained language whereby Ms. Jordan would
15 agree not to bring a malpractice lawsuit against either Gregory or Gorey in exchange for
16 their waiver of attorneys' fees.

17 63. The Malpractice Waiver did not include language instructing Ms: Jordan
18 to seek the advice of independent legal counsel before signing the Malpractice Waiver.

19 64. On or about September 27, 2006, Ms. Jordan signed the Malpractice
20 Waiver.

21 65. On or about September 27, 2006, Ms. Jordan faxed back to Gregory the
22 Malpractice Waiver.

23 66. The Malpractice Waiver had all references to Mr. Adamczyk crossed out.

24 67. If this matter were to proceed to a hearing, Gregory would testify that
25 after Gorey reviewed the Malpractice Waiver, he advised Gregory to include language
26 instructing Ms. Jordan and Mr. Adamczyk to consult an independent attorney before
27 signing it.

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1 68. If this matter were to proceed to a hearing, Gregory would testify that he
2 then added such language to the Malpractice Waiver (the "Second Malpractice
3 Waiver").

4 69. On or about September 27, 2006, Gregory then faxed the Second
5 Malpractice Waiver to Ms. Jordan.

6 70. On or about September 28, 2006, Ms. Jordan and Mr. Adameczyk signed
7 the Second Malpractice Waiver.

8 71. On or about September 29, 2006, Ms. Jordan faxed back the Second
9 Malpractice Waiver.

10 72. If this matter were to proceed to a hearing, Gregory would testify that Ms.
11 Jordan told him she had spoken with an attorney prior to signing the Second
12 Malpractice Waiver and that her attorney had advised her that she could sign the
13 Waiver, however, Ms. Jordan refused to tell Gregory the name of the attorney she had
14 consulted.

15 73. On or about October 20, 2006, Mr. Gregory filed a Motion to Withdraw as
16 Counsel of Record in Ms. Jordan's case, on his and Gorey's behalf, citing a conflict of
17 interest.

18 **COUNT TWO (06-1832)**

19 74. On or about October 12, 2003, Gregory was retained by Suzette Llantana
20 ("Ms. Llantana") to represent her in an employment discrimination claim against her
21 former employer, the City of Scottsdale.

22 75. The fee agreement provided for Gregory's attorneys fees to be contingent
23 upon any award received on Ms. Llantana's behalf.

24 76. The fee agreement provided that Ms. Llantana must pay her costs upon
25 demand.

26 77. On or about March 12, 2004, Gregory filed a five-count complaint on Ms.
27 Llantana's behalf in the United States District Court, as cause number CV-04- 496 PHX
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78. By invoice dated December 23, 2004, Gregory mailed a statement of costs to Ms. Llantana totaling \$1,502.72.

79. Gregory did not send Ms. Llantana monthly invoices; at the time of the representation, Gregory sent a summary of costs statement on a yearly basis.

80. On or about October 18, 2005, Ms. Llantana wrote Bank of America check # 1184 in the amount of \$7,000.00 payable to Gregory ("Check #1184").

81. Check #1184 was provided to Gregory with the notation "2 expert witness" written on it.

82. If this matter were to proceed to a hearing, Ms. St. George would testify that on the day Ms. Llantana brought Gregory Check #1184, Gregory discussed with Ms. Llantana using a portion of the money to apply toward his outstanding costs.

83. If the matter were to proceed to a hearing, Gregory would testify that later that day or shortly thereafter, Ms. Llantana gave him verbal authorization to use a portion of the \$7,000.00 check to pay his outstanding costs. Therefore, Gregory deposited Check # 1184 into his general operating account on or about October 28, 2005.

84. Gregory did not memorialize the agreement referred to in paragraph 83, above.

85. Gregory failed to deposit Check #1184 into his client trust account.

86. On or about October 31, 2005, Gregory sent Dr. John Hochman ("Dr. Hochman") First Bank of Arizona check #327 in the amount of \$6,290.00.

87. Dr. Hochman was to be used as an expert witness in Ms. Llantana's case.

88. Gregory placed a "stop payment" order on check #327 that became effective on November 3, 2005.

89. On or about November 3, 2005, Gregory wrote First Bank of Arizona check #329 in the amount of \$1,500.00 payable to Dr. Brian Kleiner ("Dr. Kleiner").

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90. Dr. Kleiner was to be used as an expert in Ms. Llantana's case.

91. On or about November 23, 2005, Ms. Llantana wrote Bank of America check # 1192 in the amount of \$3,000.00 payable to Gregory ("Check #1192").

92. Check #1192 was provided to Gregory with the notation "per verbal agreement Drs Kleiner Hochman paid in full \$10,000 balance 0/no further payments owed."

93. Gregory deposited Check #1192 into his general operating account.

94. Check # 1192 posted on November 28, 2005.

95. Gregory failed to deposit Check # 1192 into his trust account.

96. By invoice dated December 22, 2005, Gregory mailed Ms. Llantana a statement of costs totaling \$7,317.76.

97. Check # 1184 was not reflected on the December 22, 2005, invoice.

98. Check # 1192 was not reflected on the December 22, 2005, invoice.

99. On or about February 9, 2006, Gregory filed a Motion to Withdraw as Counsel of Record (the "Motion to Withdraw") in Ms. Llantana's case.

100. On or about February 15, 2006, Gregory's Motion to Withdraw was granted.

101. Gregory did not make any additional payments to expert witnesses for Ms. Llantana until on or about May 17, 2006. On or after that time, Gregory made payments to experts that totaled approximately \$10,400.00.

102. Ms. Llantana requested fee arbitration through the State Bar, to which Gregory agreed. At the conclusion of the fee arbitration, Gregory was ordered to refund to Ms. Llantana \$4,918.48, which Gregory did. Gregory asserts, and for purposes of this agreement only the State Bar does not dispute, that the end result was that he ended up paying to Ms. Llantana, or on her behalf, \$5,319.48 more than he received from her.

PRIOR DISCIPLINE

103. Gregory does not have any prior formal discipline in the State of Arizona.

1 104. Gregory does not have any prior formal discipline in the State of
2 California.

3 **CONDITIONAL ADMISSIONS**

4 105. Gregory has conditionally admitted that his conduct violated, with regard
5 to Count One: Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1.3, 1.8(h)(1), and with regard
6 to Count Two: Rule 42, Ariz.R.Sup.Ct., specifically, ER 1.15, Rule 43(d)(2)(b)
7 Ariz.R.Sup.Ct., and Rule 44(a), Ariz.R.Sup.Ct. Gregory's admissions were tendered in
8 exchange for the form of discipline contained in the Tender.

9 **CONDITIONAL DISMISSALS**

10 106. The State Bar has conditionally agreed, for purposes of the Tender only,
11 with regard to Count One: to dismiss the alleged violations of Rule 42, Ariz.R.Sup.Ct.,
12 specifically ERs 1.1, 1.2, 1.4, 1.7, 3.2, 8.3(a), and 8.4(d); and with regard to Count Two:
13 Rule 42, Ariz.R.Sup.Ct., specifically, ERs 1.2 and 1.5 based on evidentiary concerns
14 and in exchange for the terms of the Tender. The State Bar's reasons for these
15 dismissals were discussed in the facts section, above, and were based on Gregory's
16 explanations provided in his Answer, his deposition, his subsequent interviews, and
17 evidence provided from Gregory, Complainant, and other sources.

18 **SANCTION**

19 107. Gregory and the State Bar of Arizona have agreed that on the basis of the
20 conditional admissions contained in the Tender, the appropriate disciplinary sanctions
21 are as follows:

- 22 A. Gregory should be **suspended** from the practice of law for
23 **30 days**.
24 B. Upon completion of Gregory's suspension, Gregory should
25 be placed on one year of probation.
26 C. Gregory's probation terms should include requirements that:
27 i. Gregory undergo and cooperate with a full assessment
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by the State Bar's Law Office Management Assistance Program ("LOMAP");

- ii. Gregory should be required to attend and successfully complete the State Bar's Trust Account Ethics Enhancement Program ("TAEEP");
- iii. Gregory should be required to review the "Ten Deadly Sins of Conflict" MCLE video-tape and provide his hand-written notes to bar counsel.
- iv. Gregory should be required to provide the State Bar with copies of all letters required to be sent to his clients and other interested parties providing notice to said clients and parties of Gregory's suspension.
- v. Gregory should be required to provide the State Bar with copies of all certified certificates required to be attached to the mailings referenced in subpart (iv), above.
- vi. Gregory should be required to provide the State Bar with copies of all return receipts returned to him as a result of the mailings referenced in subpart (iv), above.

D. Gregory should be required to pay \$1,150.05 as costs and expenses incurred by the State Bar in these proceedings within 30 days of the Supreme Court's Final Judgment and Order, as detailed in Exhibit "A" attached to the Tender.

108. Gregory has conditionally admitted that, in exchange for the form of discipline set forth above, he has engaged in the conduct described above and the Rule violations indicated above.

109. By entering into the Tender, Gregory has waived his right to a formal disciplinary hearing that he would otherwise be entitled to pursuant to Rule 57(i),

1 Ariz.R.Sup.Ct., and the right to testify or present witnesses on his behalf at a hearing.

2 110. Counsel represented Gregory in this matter, and in entering into the
3 Tender. Gregory and his counsel have knowingly waived all motions, defenses,
4 objections, or requests that were made or raised or could have been asserted, if the
5 conditional admissions and stated form of discipline are approved. Gregory has read the
6 Tender and has received a copy of the Tender.

7 111. Gregory submitted the Tender with conditional admissions, freely and
8 voluntarily, and without coercion or intimidation, and he was aware of the Rules 64, 65,
9 and 72, Ariz.R.Sup.Ct., regarding suspension and reinstatement and has agreed to
10 comply with such where applicable.

11 112. Gregory submitted the Tender with the understanding that even if the
12 Hearing Officer recommended acceptance of the Tender, the Disciplinary Commission
13 and the Arizona Supreme Court also have the power to accept, reject or modify the
14 Tender. Gregory further understood that the discipline recommended in this Report will
15 not become final until a judgment and order are entered by the Arizona Supreme Court.

16 113. The State Bar and Gregory have agreed that if the Tender is rejected by
17 the Disciplinary Commission or by the Arizona Supreme Court, the parties' conditional
18 admissions shall be deemed withdrawn.

19 **APPROPRIATENESS OF AGREED UPON SANCTIONS**

20 114. In determining the appropriate sanction, Arizona generally looks to the
21 American Bar Association Standards for Imposing Lawyer Discipline (1992) ("ABA
22 Standards"). *In re Van Dox*, 214 Ariz. 300, 303, ¶ 11, 152 P.3d 1183, 1186 (2007).

23 86. The ABA Standards list the following factors to be considered in
24 imposing the appropriate sanction:

- 25 a. the duty violated;
- 26 b. the lawyer's mental state;
- 27 c. the actual or potential injury caused by the lawyer's misconduct; and
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d. the existence of aggravating or mitigating circumstances.

ABA Standard 3.0. Van Dox at ¶ 11. The Hearing Officer has considered all of the required factors.

Duties Violated

115. Gregory has conditionally admitted that he violated:

- a. ER 1.3, by failing to act diligently in connection with cause number C2005-2630,
- b. ER 1.8(h)(1) in attempting to obtain the Malpractice Waiver ,
- c. ER 1.15 and Rules 43(d)(2)(b) and 44(a) of the Arizona Rules of the Supreme Court in dealing with funds provided to him to retain expert witnesses.

Gregory's Mental State

116. In the joint Memorandum, the parties agreed that Gregory's violations in connection with count one were committed **negligently**. *Joint Memorandum* at pg. 4.

117. In the joint Memorandum, the parties agreed that Gregory's violations in connection with count two were committed **knowingly**. *Joint Memorandum* at pg. 5.

Actual or Potential Injury to Gregory's Clients

118. In the Joint Memorandum, Gregory and the State Bar disagree regarding whether Gregory's failure to advise his clients to seek independent counsel when he provided them with the first Malpractice Waiver caused actual injury or only potential injury. *Joint Memorandum* at pg. 4. The Hearing Officer finds that resolving this issue is not necessary, as the same presumptive sanction would apply regardless.

119. In the Joint Memorandum, Gregory and the State Bar have agreed that Gregory's trust account violations in connection with count two caused actual injury to Ms. Llantana because the balance of her payments for expert witnesses were integrated into Gregory's general operating funds, causing her to lose control of her property. *Joint Memorandum* at pg. 6.

1 125. The parties have agreed that Standard 4.12 applies. Standard 4.12
2 provides that "Suspension is generally appropriate when a lawyer knows or should
3 know that he is dealing improperly with client property and causes injury or potential
4 injury to a client."

5 126. The Hearing Officer finds that the balance of the aggravating and
6 mitigating factors does not justify a departure from the presumptive sanction of a
7 suspension.

8 Application of Standards

9 127. The commentary to Standard 2.3 indicates that when a suspension is
10 warranted, a minimum 6-month suspension is generally necessary to protect the public.
11 The commentary also indicates that it is preferable to suspend an attorney for a period
12 of greater than six months to protect the public and ensure that the attorney is required
13 to establish that he or she has been rehabilitated before being readmitted to the practice
14 of law. *See also In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994) (purpose of
15 the presumption that a suspension should be for at least six months is to protect the
16 public and to ensure effective demonstration of rehabilitation).

17 128. The Arizona Supreme Court, however, has recognized that shorter
18 suspensions can be appropriate if the attorney has learned his or her lesson, and can
19 establish interim rehabilitation, and if there are less concerns with rehabilitation in the
20 particular case, and more concerns with deterring others and maintaining the integrity of
21 the profession. *See In re Alcorn*, 202 Ariz. 62, 75, 41 P.3d 600, 613 n.11 (2002).

22 129. It appears in the present case that Gregory has learned his lesson, has
23 apologized for his mistakes, and has taken steps to change his procedures so that similar
24 mistakes will not occur in the future. *See Joint Memorandum at pg. 8.*

25 130. The Hearing Officer believes that the public will be adequately protected
26 after Gregory's suspension by the terms of the probation agreed upon in the Tender.
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1 brief suspension is appropriate for the conditionally admitted misconduct.

2 **CONCLUSION**

3 136. For the reasons discussed above, the Hearing Officer recommends that the
4 following punishment be imposed upon respondent Robert M. Gregory:

- 5 A. Gregory should be **suspended** from the practice of law for **30 days**.
6 B. Upon completion of Gregory's suspension, Gregory should be
7 placed on **one year of probation**.
8 C. Gregory's probation terms should include requirements that:

- 9 i. Gregory undergo and cooperate with a full assessment
10 by the State Bar's Law Office Management Assistance
11 Program ("**LOMAP**");
12 ii. Gregory should be required to attend and successfully
13 complete the State Bar's Trust Account Ethics
14 Enhancement Program ("**TAEEP**");
15 iii. Gregory should be required to review the "**Ten Deadly**
16 **Sins of Conflict**" MCLE video-tape and provide his
17 hand-written notes to bar counsel.
18 iv. Gregory should be required to provide the State Bar with
19 copies of all letters required to be sent to his clients and
20 other interested parties providing notice to said clients
21 and parties of Gregory's suspension.
22 v. Gregory should be required to provide the State Bar with
23 copies of all certified certificates required to be attached
24 to the mailings referenced in subpart (iv), above.
25 vi. Gregory should be required to provide the State Bar with
26 copies of all return receipts returned to him as a result of
27 the mailings referenced in subpart (iv), above.
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D. Gregory should be required to pay \$1,150.05 as costs and expenses incurred by the State Bar in these proceedings within 30 days of the Supreme Court's Final Judgment and Order, as detailed in Exhibit "A" attached to the Tender.

DATED: May 30, 2008.

Hearing Officer 7M



Daniel P. Beeks
2800 North Central Avenue
Suite 1100
Phoenix, Arizona 85004-1043

ORIGINAL of the foregoing mailed for filing on May 30, 2008, to:

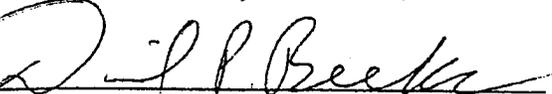
Disciplinary Clerk
Supreme Court of Arizona
1501 West Washington, Suite 104
Phoenix, Arizona 85007-3231

COPIES of the foregoing mailed May 30, 2008, to:

Russell J. Anderson
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288
Bar Counsel

Nancy A. Greenlee
821 E. Fern Drive North
Phoenix, Arizona 85014
Attorney for Gregory

Mark Rubin
Law Office of Mark Rubin, P.L.C.
4574 N. First Avenue, Suite 150
Tucson, Arizona 85718
Attorney for Gorey



The foregoing instrument is a full, true, and correct copy of the original on file in this office.
Certified this 15th day of Dec., 2008
By R. D'Amore
Disciplinary Clerk
Supreme Court of Arizona

Exhibit 1 - Part 3

TO
STIPULATION [AND ATTACHMENT] RE FACTS, CONCLUSIONS
OF LAW AND DISPOSITION AND ORDER APPROVING

SUPREME COURT OF ARIZONA

FILED
MAR 10 2009
RACHELLE M. RESNICK
CLERK SUPREME COURT

In the Matter of a Member of the) Arizona Supreme Court
State Bar of Arizona,) No. SB-08-0128-D/R
)
ROBERT M. GREGORY,)
Attorney No. 21805)
) Disciplinary Commission
) No. 06-1832; 07-0265
Respondent.)

O R D E R

Respondent Gregory, having filed a "Rule 64(e) Affidavit" pursuant to Rule 64(e) (2) (A) and no objection having been filed by the State Bar of Arizona,

IT IS ORDERED that Respondent Gregory be and hereby is reinstated as a member of the State Bar of Arizona, effective the 10th day of March, 2009.

DATED this 10th day of March, 2009.

The foregoing instrument is a full, true and correct copy of the original on file in this office.

ATTEST
Rachelle M. Resnick, Clerk of the Supreme Court
State of Arizona

Rachelle M Resnick
Rachelle M. Resnick
Clerk of the Court

By *Armen Tulce* Deputy

TO:

- Robert M Gregory
- Nancy A Greenlee, Respondent's Counsel
- Russell Anderson, State Bar of Arizona
- Molly Dwyer, Clerk, United States Court of Appeals for Ninth Circuit, (Cert. Copy)
- Mr. Richard H Weare, Clerk, United States District Court for the District of Arizona, (Cert. Copy)
- Sandra Montoya, Records Manager, State Bar of Arizona (Cert. Copy)
- Leticia V D'Amore, Disciplinary Clerk (Cert. Copy)
- Jode Ottman
- Lexis Nexis
- cf

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 23, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION

in a sealed envelope for collection and mailing on that date as follows:

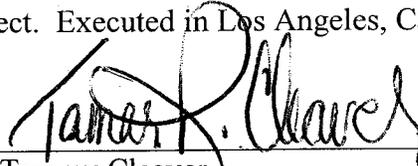
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ROBERT M. GREGORY
LAW OFFICES OF ROBERT M.
GREGORY, P.C.
1930 S ALMA SCHOOL RD STE A115
MESA, AZ 85210**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ELI MORGENSTERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 23, 2010.



Tammy Cleaver
Case Administrator
State Bar Court