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HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY R. DiAmore

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

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

**Hector A. Montoya,
Bar No. 015499**

Respondent.

Nos. 08-0193 and 08-1253

**PROPOSED HEARING OFFICER'S
REPORT, RECOMMENDED
MODIFICATION, FINDINGS OF
FACT, CONCLUSIONS OF LAW
AND RECOMMENDED
SANCTIONS**

(Assigned to Hearing Officer 8J, David
M. Waterman)

PROCEDURAL HISTORY

The State Bar filed a Complaint on December 23, 2008. Respondent filed his Answer on January 26, 2009. On June 30, 2009, a hearing was held on the Tender of Admissions and Agreement for Discipline by Consent in which Respondent gave his testimony before this Hearing Officer. The parties filed their Tender of Admissions and Agreement for Discipline by Consent and Joint Memorandum in Support of Agreement for Discipline by Consent on July 6, 2009.

In addition to the foregoing, I have carefully considered Respondent's Plea Agreement and the attached factual basis, Respondent's testimony at the hearing, the letters of support submitted on Respondent's behalf. Based upon all of the above I have concluded that the proposed Discipline by Consent of six months and one day is too severe. Accordingly I hereby submit this Report offering a modification of the parties' agreement in accordance with Rule 56, Rules of the Arizona Supreme Court.

FINDINGS OF FACT

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 May 21, 1994.

COUNT ONE (File no. 08-0193)

1. On January 31, 2008, Respondent self-reported an insufficient funds event on his client trust account with JPMorgan Chase Bank ("Chase").

2. A bank error, in which the bank sent a \$135,000 wire transfer twice, caused the event.
3. On February 7, 2008, Respondent, through counsel, advised the State Bar that Chase had taken funds from the trust account after Respondent became the victim of a fraudulent wire transfer.
4. On February 8, 2008, Respondent, through counsel, advised the State Bar that Chase had frozen Respondent's trust account because of fraudulent activity on the account.
5. The State Bar's subsequent investigation of Respondent's client trust account records uncovered the following:
 - a. Client Malagon's flat, earned upon receipt fee, was deposited into the trust account;
 - b. There was no client ledger for Client Malagon;
 - c. Client Fimbres's retainer check had been returned for insufficient funds, yet trust fund monies were withdrawn to pay for fees on Client Fimbres's case;
 - d. Client Garcia's account had a negative balance;
 - e. Client Obmer's account had a negative balance;
 - f. Client Perez's account had a negative balance;
 - g. Client Potts's account had a negative balance;
 - h. Respondent did not maintain funds in the trust account to pay for bank charges.
6. Respondent's accounting issues were identified because of a check cashing scheme to which he and other attorneys around the country, including Arizona, have fallen victim. He was contacted by a putative client, a Japanese-based corporation, regarding collection work in the United States. Respondent performed his due diligence by researching the client, the company from which he was tasked to collect, and verified the parties involved. He only learned of the scheme when the check he received from the "client" was uncollectible.

7. After the foregoing matters described in Paragraph 5 were brought to Respondent's attention, he took prompt steps to correct these issues which included hiring an outside bookkeeper to reconcile his trust account.
8. Furthermore, Respondent took all necessary steps to ensure that no client lost any money whatsoever as the result of this situation.
9. Respondent also immediately self-reported the trust account issue to the State Bar.
10. Respondent's conduct with respect to Count One was negligent, causing no actual injury to his clients.

COUNT TWO (File no. 08-1253)

11. On August 13, 2004, Respondent was arrested in a marijuana trafficking sting operation.
12. Respondent was indicted for Money Laundering.
13. On April 21, 2008, Respondent pled guilty to Facilitation of Money Laundering in the Second Degree, a class 6 undesignated felony, and was sentenced to 18 months unsupervised probation.
14. Respondent's probation reportedly terminated in October 2009 and his class 6 undesignated felony was designated a misdemeanor.
15. Pursuant to Respondent's factual basis for his plea and other evidence in this case:
 - a. On August 2, 2008, while on vacation with his family, Respondent was speaking on the phone to Casin Mclean who was referred to him by his client, Isabel Dominguez, for the purpose of representing Marcus Maragh following his arrest on drug charges.
 - b. Respondent knew or should have known that Mr. Maragh was in the drug business because of his relationship with Ms. Dominguez.
 - c. Respondent told Ms. Mclean his fee was \$20,000 and repeatedly told her and Ms. Dominguez that he could only accept the retainer if a proper identification was submitted to him and that Ms. Mclean would need to sign a Federal Tax Form 8300 to report the transaction.
 - d. When Ms. Mclean balked, Respondent said he would not accept the fee or the representation without the form being signed.

- e. Ms. Dominguez then took the phone from Ms. Mclean and assured Respondent she would “get somebody’s ID” to complete the form.
- f. Respondent agreed to this even though he knew or should have known that this agreement would facilitate Ms. Dominguez in committing money laundering by her causing his law firm to file the Form 8300 with a material omission, i.e. that Ms. Mclean was the person involved in the transaction.
- g. The person that Ms. Dominguez ultimately found to sign the form, her son, had no interest in the money or the transactions. Respondent, by these actions, facilitated the act of money laundering by Ms. Dominguez.
- h. Respondent was aware that Ms. Dominguez was involved in drug-related activities.
- i. Ms. Dominguez referred four clients in drug-related matters to Respondent for representation, although he only undertook the representation of two, one of which was Mr. Maragh. Respondent was introduced to Mr. Maragh by Ms. Dominguez and Ms. Dominguez provided contact information to Respondent for the other individual Respondent represented.
- j. He further became aware that Ms. Dominguez was the target of a drug-related law enforcement investigation and advised her to be careful and cautious, which he knew or should have known she could interpret as advice relating to the manner in which she committed her drug related crimes to avoid detection and arrest.
- k. He further became aware that a pole camera was operating at a residence controlled by Ms. Dominguez and jokingly told her to have individuals pose for the camera engaging in legitimate activity although he knew or should have known this could mislead investigators about the criminal activity that may have been occurring at the location.

- l. Respondent agrees that Ms. Dominguez and/or Titi Hernandez may have used said information to mislead investigators about the criminal activity occurring at the location.
 - m. Respondent also knowingly made false statements to another individual, at the request of Ms. Dominguez, which represented that the police seized the vehicle used by that person during a drug investigation in order to dissuade the person from seeking the return of the vehicle.
 - n. In the factual basis attached to his plea agreement, Respondent accepted responsibility for his statements and his conduct and acknowledged that the things he said and did facilitated Ms. Dominguez in her criminal activity and should not have been said and done.
16. This factual basis was the result of hard-fought negotiations with the Pima County prosecutors. Respondent was originally offered a diversion plea agreement, but rejected it based upon the advice of his attorneys. Later in the litigation, negotiated the plea agreement and factual basis which is the subject of this proceeding.
17. Respondent stopped representing criminal drug defendants in 2006. He has only one remaining misdemeanor case in city court involving leaving the scene of an accident. Respondent does not intend to represent practice in criminal law in the future as evidenced by his website that advertises only that his practice areas are family law and business.
18. Due to the publicity surrounding the arrest and conviction Respondent has suffered significant financial, professional, and personal hardship. Respondent has incurred at least \$250,000 in legal fees during his criminal case that resulted in his having to sell his share of his office building. Respondent also suffered a great loss of business as an immediate reaction to his arrest.
19. I find that the conduct at issue here was an isolated incident and that while Respondent's conduct may have been misguided, Respondent is in no danger of repeating that conduct.

20. Respondent does not pose a threat to the public and his conduct was sufficiently addressed and punished by the criminal justice system.

ABA STANDARDS

The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying these 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. The court and commission consider the *Standards* a suitable guideline. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990). *In re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274, 276 (1994). In determining an appropriate sanction, both the court and the commission consider 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. *In re Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); *Standard* 3.0.

Given the conduct in this matter, the most applicable *Standards* are *Standard* 4.0, regarding the Duties Owed to the Client, and specifically *Standard* 4.1 for failure to preserve client property (ER 1.15(a) and (b)); *Standard* 5.1 regarding Failure to Maintain Personal Integrity; and *Standard* 6.1 for False Statements, Fraud and Misrepresentation.

With respect to Count One, *Standard* 4.1 provides the starting point in the analysis of what sanction is appropriate. Censure "is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client." *Standard* 4.13. Informal reprimand "is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual injury or potential injury to a client." *Standard* 4.14. Here, I found that Respondent's conduct was merely negligent and not intentional or knowing.

With respect to Count Two, the applicable *Standards* are 5.1 and 6.0. *Standard* 5.13 states that censure "is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law." Informal reprimand "is generally appropriate when a lawyer engages in any other conduct that reflects adversely

on the lawyer's fitness to practice law." Standard 5.14. Here, I found that the factual basis did not demonstrate that Respondent acted knowingly, or with conscious knowledge of the nature or attendant circumstances, with respect to the conduct underlying his conviction. Therefore, the most serious penalty under this Standard that can be imposed is informal reprimand.

Under Standard 6.1, suspension "is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes adverse or potentially adverse effect on the legal proceeding." Standard 6.12. Censure "is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding." Standard 6.13. Here, nothing in the factual basis demonstrates that Respondent acted knowingly with regard to submitting any false statements to a court. In fact, the factual basis does not even involve the submission of false statements to a court, but rather the incorrect filing of a form with the federal government. I thus believe that Respondent's conduct can at most be categorized as demonstrating negligence or reckless indifference with respect to a violation of Standard 6.1.

AGGRAVATING AND MITIGATING FACTORS

I find the following aggravating factors apply:

- (a) **Substantial experience in the practice of law:** Respondent has currently been a practicing Arizona attorney for 15 years, although he had only been a practicing Arizona attorney for 10 years at the time of the incident; and
- (b) **Illegal conduct:** Respondent pled guilty to Facilitation of Money Laundering in the Second Degree, a class 6 undesignated felony and was sentenced to 18-months unsupervised probation. That probation, however, has now ended and his conviction has reportedly been designated a class 1 misdemeanor.

I find the following mitigating factors apply:

- (a) **Absence of prior disciplinary record:** Respondent has been an Arizona attorney for 15 years without a disciplinary record.
- (b) **Absence of a dishonest or selfish motive:** There is no evidence that Respondent's conduct resulted from a dishonest or selfish motive; other than, inferentially, the desire to receive a legal fee for rendering lawful legal services.
- (c) **Timely good faith effort to make restitution or rectify consequences of misconduct:** With respect to Count 1, upon learning of his accounting errors, Respondent immediately took action to correct his accounting methods and bring them in line with State Bar requirements. Respondent made whole the clients whose money had not been properly accounted for and no clients suffered actual injury. Respondent also immediately self-reported the accounting errors to the State Bar. Further, Respondent immediately hired the services of a bookkeeper to improve the record keeping for his trust account; she has submitted a letter detailing Respondent's diligent efforts to comply with the Bar's rules for handling client funds. She also stated that Respondent's bookkeeping practices are now in compliance with the State Bar regulations.
- (d) **Full and free disclosure to disciplinary board or cooperative attitude toward proceedings:** Respondent has been open and forthcoming, cooperating fully in the State Bar's investigation throughout every stage of this disciplinary proceeding. With respect to issues regarding Respondent's management of his trust account, Respondent self-reported the discrepancy to the State Bar and fully cooperated with the ensuing investigation.
- (d) **Character or reputation:** Respondent has provided numerous letters attesting to his good character and reputation. Each one said that Respondent was honest and trustworthy; that Respondent takes full responsibility for his actions; and that Respondent has suffered a great deal from the criminal

proceedings and conviction. These letters were unanimous in their support of Respondent. The following statements are taken from these letters:

Rosemary Marquez, Respondent's law partner during the events at issue:

- "Hector has always had the great gift of patience. His patience with family law clients amazed me and the others in our firm. We frequently commented about what a true 'counselor' Hector was to these clients who were going through horrible divorce and child custody issues. His patience was above and beyond what any client could afford. Nonetheless, Hector spent hours listening and comforting."
- "The public embarrassment and humiliation that normally accompany criminal charges have been exponential for Hector. . . . In addition to the high personal costs, the monetary impact on Hector and his family can not be ignored. Legal costs alone caused him to sell his share of the office building. The bulk of the criminal caseload, through the U.S. District Court indigent defense contract, ceased the moment of his arrest. Our associates left, and our practice diminished."
- "Hector has endured significant emotional, financial, and professional turmoil over the past five years."

Hon. Jacqueline Marshall, Federal Magistrate Judge, United States District Court for the District of Arizona.

- "I offer my comments from my perspective as a lawyer and judge as well as a family friend and colleague of Mr. Montoya."
- "As a criminal defense attorney, Hector gave his clients the best defense while maintaining a professional focus." "During trial, he treated all people involved . . . with respect and a strong sense of dignity."
- While I was a federal magistrate judge, Hector "was always steadfast and dependable, was never late to court, and never missed a filing deadline."

- “I have seen Hector handle his arrest and conviction with poise and dignity. His determination to recover from his ethical lapse is yet another example of his strength of character. Our legal profession needs lawyers like Hector Montoya, lawyers who understand that all people, even successful leaders, can use poor judgment, endure public and private humiliation, but ultimately bounce back and be successful again.”

Hon. Roberto Montiel, retired judge:

- “My impression of Hector is that he was always very polite and professional, both in his dress and demeanor, and well-prepared in the proceedings in which he was appearing. I considered Hector to be credit to the legal profession.”
- “I still believe Hector is an honest and upright man.”

Jesse Figueroa, Assistant United States Attorney:

- “I have also had the opportunity to observe Hector in his practice of law. He is always well prepared and represents his clients well. Hector has a reputation as an extremely competent and ethical lawyer. He is trustworthy. His word is his bond.”
- “Hector and his family have endured much and suffered greatly as a result of this situation.”
- “Hector continues to have the reputation as being an honest, ethical and trustworthy attorney.”

Rev. John P. Lyons, the Priest at Respondent’s church:

- “As a consequence of [the criminal] prosecution, Hector and his wife Melinda approached me out of concern for their children to help shield their children from the negative backlash from the criminal prosecution. That criminal prosecution, however, has not changed my opinion of Hector’s personal and moral character. I believe that Hector has accepted responsibility for what he has done in the past and

is ready to accept the consequence of that conduct and move forward with his future. I still believe him to be a man of integrity with strong moral character.”

Rachel Pross, Respondent’s bookkeeper and former client:

- Mr. Montoya “was more than happy to provide me with whatever information I requested. He made it clear from day one that his goal was to bring his accounting practices completely in line with State Bar guidelines.”
- “Overall, I was very impressed with Mr. Montoya’s hands-on approach to learning how to prevent accounting mistakes from occurring in the future and his willingness to take advice and criticism with a very positive attitude.”
- “It is my belief that Mr. Montoya’s accounting practices have vastly improved and are in compliance with State Bar regulations. . . . I believe Hector is focused on preventing errors and swiftly correcting them if and when they occur.”
- “I hold Mr. Montoya in high regard. He represented my husband very well, and he has been a pleasure to work with as a client. . . . I believe he is an honorable person and an excellent attorney.”

Eugene N. Goldsmith, professional acquaintance:

- “I always found Hector to be ethical and honest. Hector was also professional towards opposing counsel and clients.”
- “I do know that the prosecution had a tremendous effect on [Hector] personally and professionally, and affected his thriving practice and placed a strain on Hector financially and personally. Despite the criminal prosecution, I still hold Hector in high regard and our firm still continues to work with him.”

Enrique Serna, City Manager South Tucson:

- As a consequence of his criminal proceedings, Mr. Serna believes that Hector “will not let the crisis go to waste. He will be a stronger

advocate in his profession . . . and the criminal justice system will be better off because of him.”

- (j) **Delay in disciplinary proceedings:** These proceedings are taking place more than 5 years after the conduct that gave rise to this matter. Moreover, Respondent’s criminal probation has reportedly ended with his conviction being classified as a misdemeanor;
- (k) **Imposition of other penalties or sanctions:** Respondent was sentenced to 18-months unsupervised probation.

Moreover, over the past five years, Respondent has incurred substantial fees in his criminal defense and has suffered significant professional and personal hardship as a result the arrest and subsequent criminal conviction. Respondent and his wife, as detailed in the character letters, have lost many personal and professional connections as a result of the very public arrest and subsequent criminal process. Finally, Respondent has spent close to \$250,000 in legal and expert fees in defending the charges brought against him.

- (l) **Remorse:** Respondent testified that he understands his role in the events that led to his indictment and criminal conviction, including his motivations and that he deeply regrets those actions and any potential harm that they might have caused. It is also clear that Respondent also feels a great deal of remorse for the pain that his actions have caused his family, his colleagues and friends, and how they may have negatively impacted the legal profession and justice system. Because of the genuine remorse expressed by Respondent I find that there is no reasonable probability the Respondent will repeat the conduct that led to his criminal conviction.

PROPORTIONALITY REVIEW

The following cases establish that the discipline I propose is proportionate to similar cases:

In *In re Walker*, No. 99-0406, the respondent was charged with violation of ER 1.7 (Conflict of Interest) and ER 8.4 (Misconduct) for allegedly extorting a sexual relationship out of his client in exchange for an insurance settlement. The respondent

was arrested and charged with public sexual indecency and prostitution and ultimately, respondent entered a diversion program. The evidence also showed that the allegations in the complaint were completely out of character for respondent. The hearing officer found that “[t]his violation arose out of negligence, poor judgment, rather than purpose. It was an aberration.” H.O. Rep. ¶ 43. In addition, the hearing officer found the presence of seven mitigating factors. The disciplinary commission agreed with the hearing officer’s findings of fact, but amended the sanction from censure to a 90-day suspension. Respondent then appealed the suspension to the Arizona Supreme Court.

The Supreme Court agreed with the hearing officer and concluded that public censure was the appropriate sanction. *In re Walker*, 200 Ariz. 155, 162, ¶¶ 27-29, 24 P.3d 602, 609 (2001). The court agreed that the respondent’s conduct was not intended to further his own personal or financial interests, that respondent made a timely and good faith effort to rectify the consequences of his conduct, and that he felt genuine remorse. Further, the court held that another mitigating factor in the case was the respondent’s “public and personal humiliation,” which included respondent’s very public arrest and trial, participation in a diversion program, settlement of a malpractice suit and subsequent mental health counseling. 200 Ariz. at 161, ¶ 25, 24 P.3d at 608. The Supreme Court also agreed with the hearing officer’s comment that what happened to respondent as a result of his conduct would be a sufficient deterrent to other attorneys.

In *In re Michael St. George*, SB No. 98-0007, the respondent “failed to investigate or recognize that he was being used by a judge and another party to defraud a municipal court out of more than \$27,000.” He pled guilty to theft and was charged by the State Bar with violation of ER 8.4(d). His sanction was only censure. That respondent, like Mr. Montoya, took full responsibility for his actions, had no prior discipline in a long legal career, and presented “extensive evidence of good character.”

In *In re Robert Clark*, SB No. 98-0067, “the respondent plead guilty to one count of solicitation to unlawful possession of a narcotic drug and received a sentence of three years probation. The probation was terminated early and the offense was designated a class 1 misdemeanor.” The State Bar charged Mr. Clark with violation of ER 8.4(b),

SCR 51(a) and 57(a). Mr. Clark received censure, two years probation upon reinstatement, and costs. The sanction was reduced by “significant” mitigation.

In *In re Jack Levine*, SB No. 97-0325, respondent plead guilty to willful failure to pay income tax, which was a misdemeanor offense. After being charged by the State Bar with a violation of ER 8.4(b), he was sanctioned only by censure. In mitigation, Mr. Levine demonstrated much of the same factors as Mr. Montoya has demonstrated: absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board and cooperative attitude toward the proceedings, imposition of other penalties or sanctions, and remorse. See Standards 9.32(b), (e), (g), (k), and (l).

In *In re Timothy Ronan*, SB No. 97-0007, respondent mistakenly indicated on a claim for unemployment benefits that he had not earned any income and he plead guilty to criminal charges filed as a result of filing the “false claim.” The State Bar charged respondent with violations of ER 8.4(b) and (c) and SCR 51(a). The sanction was only censure and one year of probation. Mitigation factors included repayment of unemployment benefits, self-reporting to the State Bar, a fine and surcharge in the criminal matter and no prior discipline.

In *In re Beren*, 178 Ariz. 400, 874 P.2d 320 (1984), Beren was indicted for violations of state securities statutes. He pled to 12 counts of Facilitation to Commit Money Laundering, class 6 undesignated felonies, but which had been designated misdemeanors and then vacated prior to the disciplinary hearing. The convictions themselves were the only evidence presented by the State Bar and no evidence of the underlying conduct was provided. In particular, there was no finding of intentional conduct. The hearing officer specifically found, and the Disciplinary commission and Arizona Supreme Court agreed, that the conviction for a misdemeanor offense of facilitation of money laundering was not a “serious crime” and that it did not reflect adversely on the lawyer’s “honesty, trustworthiness or fitness as a lawyer.” 178 Ariz. at 402, 874 P.2d at 322. The court did not impose any discipline.

RECOMMENDATION

The purpose of attorney discipline is not to punish the lawyer, but to protect the public. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). Considering

the Respondent's conviction alone, the *Beren* case leads to the conclusion that no discipline should be imposed on the basis of the conviction. Respondent here has been convicted of the same crime as in *Beren* and like *Beren*, has reportedly had his conviction designated as a misdemeanor. The *Beren* court found that the misdemeanor convictions for *twelve counts* of facilitation of money laundering were neither "serious crimes" nor did they adversely reflect on the lawyer's "honesty, trustworthiness or fitness as a lawyer." 178 Ariz. at 402, 874 P.2d at 322.

The focus of this case must then turn towards the examination of the factual basis, the aggravating factors, and the extensive mitigating factors present in this case. Giving consideration to Respondent's otherwise unblemished record as a lawyer, the passage of five years since the events in question and Respondent's continued unblemished record during this period, the letters submitted attesting to his character, and his genuine expression of remorse and contrition during the hearing, I conclude that the public is not in danger that Respondent will repeat the conduct that led to his conviction. Moreover, Respondent's experience with the criminal justice system, including the humiliation that he and his family experienced, along with the substantial cost to him of his criminal defense, will, without further discipline, deter others from engaging in similar conduct.

Finally, State Bar counsel's comments made during the hearing in support of the Tender of Admissions also support my findings. State Bar counsel stated he had had the opportunity to meet with Respondent and ask him questions and as a result, found Respondent to be fully cooperative with the State Bar, honest in his answers, and genuinely remorseful for his actions. State Bar counsel also acknowledged that the criminal and bar proceedings have greatly impacted Respondent, personally and professionally and that Respondent has learned from his prior conduct. State Bar counsel was particularly persuaded that Respondent chose on his own initiative to stop representing criminal drug defendants and found that showed "at least initial rehabilitation to get himself away from the circumstances which led to the – this unfortunate matter." Finally, State Bar counsel stated that no evidence in the case suggested that the money involved in this case was actually derived from an illegal source, as it is required to be under the money laundering statutes.

For all of the foregoing reasons, and giving consideration to the entire record in this matter, I recommend the following modification to the sanction in the Tender of Admissions, the Agreement for Discipline by Consent and the Joint Memorandum in Support of Agreement for Discipline by Consent:

- a. Censure
- b. Probation for two years effective from the date Respondent's current probationary period ends.
- c. Referral to the Law Office Management Assistance Program.
- d. Follow any further recommendations made by the LOMAP staff after their initial assessment process, particularly with reference to the Respondent's corrective measures and rehabilitation with regard to the handling of Trust Account matters.

DATED this 12th day of November, 2009.

David M. Waterman / Heica DiAmore
David M. Waterman
Hearing Officer 8J

Original filed with the Disciplinary Clerk
this 12th day of November, 2009.

Copy of the foregoing mailed
this 13 day of November, 2009, to:

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