

SUPREME COURT OF ARIZONA

In the Matter of a Member of the)	Arizona Supreme Court
State Bar of Arizona,)	No. SB-02-0124-D
)	
)	Disciplinary Commission
)	Nos. 00-0429
WILLIAM J. DOWNEY,)	00-1469
Bar No. 007379,)	00-2058
)	
)	AMENDED
)	MEMORANDUM DECISION
Respondent.)	AND ORDER
)	(Not for Publication
_____)	Ariz. R. Sup. Ct. 111)

REVIEW FROM DISCIPLINARY COMMISSION

REMANDED

KIMERER & DERRICK	Phoenix
by Michael D. Kimerer	
and Holly R. Gieszl	
Attorneys for Respondent	
STATE BAR OF ARIZONA	Phoenix
by Robert B. Van Wyck, Chief Bar Counsel	
and James D. Lee, Senior Bar Counsel	
Attorneys for State Bar of Arizona	
BRYAN CAVE, L.L.P.	Phoenix
by Mark I. Harrison	
and Dawn R. Sinclair	
Attorneys for Amicus Curiae	

B E R C H, Justice

¶1 On January 9, 2003, this court heard oral argument regarding the appropriate discipline to impose upon Respondent William J. Downey. Respondent had been found by a hearing officer of the State Bar to have violated the Rules of Professional Conduct

by failing to hold the property of clients or others associated with his representation of clients separate from his personal and business funds, failing to promptly and accurately record all trust account transactions, failing to promptly deliver to third persons funds they were entitled to receive, failing to maintain and preserve trust records, failing to observe the Supreme Court's Trust Account Guidelines, failing to use internal controls to safeguard the funds held in trust, failing to maintain appropriate trust records, and failing to respond promptly and completely to State Bar inquiries. The charges against Respondent stemmed from his commingling of personal and client funds in his trust account and his use of his trust account as a source from which to pay personal and business expenses. Some acts were deemed to be knowing rather than negligent because they continued to occur after Respondent had been educated through consultation with a Law Office Management Assistance Program representative to learn about trust account responsibilities. This conduct was found to have violated Rule 42, Ariz. R. Sup. Ct., ER 1.15(a) and (b), ER 8.1(b), Rule 43(a) and (d)(1.a, 1.c, 1.d, 1.e, 2.b, 2.c, 2.d, and 2.f), Rule 44(a) and (b)(4), and Rule 51(h) and (i). The hearing officer recommended, among other things, that Respondent be suspended from the practice of law for six months.

¶12 The members of the disciplinary commission adopted the hearing officer's findings, but reduced the sanction from a six-month to a three-month suspension.

¶13 At oral argument before this court, it was revealed that new evidence was available that the parties acknowledged might bear on the appropriate disposition of these charges and other charges pending against the Respondent.

¶14 In light of the foregoing, we conclude that the interests of justice require that this matter be remanded to the hearing officer for further proceedings. In the interim, Respondent will be placed on suspension from the practice of law, pending final determination of discipline. Ariz. R. Sup. Ct. 52(c) (allowing interim suspension by court). We base the imposition of interim suspension upon the showing on the record that Respondent "appears to be . . . engaging in conduct the continuation of which will result in substantial harm, loss or damage to the public, the legal profession or the administration of justice." *Id.* § (c)(1). Therefore,

¶15 **IT IS ORDERED** that Respondent William J. Downey is hereby placed on interim suspension from the practice of law.

¶16 **IT IS FURTHER ORDERED** that such suspension shall continue in effect until further order of this court.

¶7 **IT IS FURTHER ORDERED** remanding this matter to a hearing officer for further proceedings.

DATED this 10th day of January, 2003.

Rebecca White Berch, Justice

CONCURRING:

Charles E. Jones, Chief Justice

Michael D. Ryan, Justice