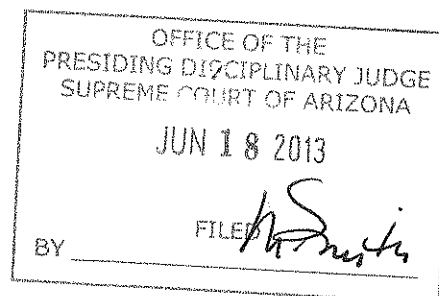


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Respondent's Counsel

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

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

**John MacMullin,
Bar No. 013049,**

Respondent.

PDJ-2013-9030

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

[State Bar No. 11-3915]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent John MacMullin, who is represented in this matter by counsel, Nancy A. Greenlee, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER(s) 1.7, 3.1, and 8.4(d). Upon acceptance of this agreement,

Respondent agrees to accept imposition of the following discipline: Reprimand with Two Years of Probation, the terms of which are set forth in the attached section entitled "Standard Terms along with the following" (pgs 16-17). The two year term of probation is subject to early termination if appropriate. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on May 19, 1990.

COUNT ONE (State Bar File No. 11-3915)

2. On or about April 27, 1995, Respondent filed several documents on behalf of his mother, Kate L. MacMullin (hereinafter referred to as "MacMullin"), and his aunt, Hubbard including, but not limited to, affidavits and a petition for the appointment of an attorney, psychologist and visitor for MacMullin's and Hubbard's stepmother, Levering.

3. MacMullin was subsequently appointed by the court as Levering's guardian, and Hubbard was appointed as Levering's conservator. In or around June of 2002, Respondent and Hubbard began disputing the rights and obligations of each, as well as their claimed entitlement to payment for the services rendered by

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

them and other family members. They also discussed certain tax errors made in connection with the tax returns for the estate.

4. At around this time, Respondent consulted with Thomas Shumard, an attorney who had practiced in this area of law for many years and was generally regarded in the legal community as quite knowledgeable about such matters. Mr. Shumard advised Respondent about the need to obtain Hubbard's consent before continuing the representation. Respondent was further advised that if she did not consent, he must file a motion to withdraw.

5. Following Mr. Shumard's advice, sometime in 2003, Respondent mailed Hubbard a letter on his firm letterhead stating that he identified the existence of a conflict the prior summer and that he needed Hubbard to sign a letter acknowledging and waiving the existing conflict between Respondent, as counsel for Hubbard and MacMullin, as proposed personal representative, and as one of Levering's beneficiaries, Hubbard, as conservator, and possibly MacMullin as guardian.

6. The document was prepared for Hubbard's signature alone and was not signed.

7. The conflicts in this case were not subject to waiver or consent.

8. During March of 2003, letters were mailed by and between Respondent and Hubbard and various individuals regarding the ongoing disputes between Respondent and Hubbard.

9. On or about April 17, 2003, Respondent filed a motion to withdraw as the attorney for Hubbard. He stated that he intended to remain counsel of record for his mother MacMullin.

10. On April 29, 2003, Respondent filed an objection to the accounting and attached the letters by and between Respondent and Hubbard as well as a partial transcript of a June 21, 2002 recorded proceeding wherein he questioned Hubbard regarding the nature of their agreement regarding Hubbard's participation and compensation as Conservator.

11. By minute entry dated August 26, 2003, the Court granted Respondent's motion to withdraw and approved the fees and costs of Respondent and Doyle.

12. On September 3, 2003, Respondent filed a pleading to remove Hubbard as conservator of the Levering estate based upon his allegations that Condill, Hubbard's stepson, and the husband of one of the takers under the will, committed tax malpractice in preparing the tax returns for the estate. Respondent further requested that the Court appointed him the successor conservator. This pleading was objected to by both Hubbard's attorney and Levering's attorney.

13. On September 22, 2003, the Court held a hearing regarding Respondent's motion and raised, on its own motion, "the issue of multiple conflicts of interest in (Respondent's) petitioning for appointment as successor conservator over the objections of his former client".

14. The Court noted that under the principles set forth in the case of *Matter of Estate of Shano*, 177 Ariz. 550, 869 P2d 1203 (1986), the conflicts may be irreconcilable and not subject to waiver as Respondent is:

- a. Levering's stepson;
- b. The drafter of the estate planning documents;
- c. A beneficiary of the estate;
- d. The current attorney of record for the guardian of record;
- e. The former attorney of record for the conservator of record; and
- f. An adversary of his former client.

15. The Court then scheduled a hearing to determine whether Respondent was barred from prosecuting his petition because of one or more conflicts of interest and barred by ethical constraints from taking any adverse position to his former client.

16. On November 19, 2003, a different judge held the hearing and found that Respondent did have a conflict of interest prohibiting his appointment as successor conservator. The Court further found that there was no good cause to remove Hubbard as conservator.

17. On December 6, 2003, Levering died.

18. Respondent filed for informal probate of Levering's Will and was informally appointed Personal Representative as set forth by the 1994 Will.

19. On or about February 13, 2003, four of the devisees petitioned the Court to remove Respondent as Personal Representative citing Respondent's various roles in the proceedings.

20. On March 10, 2004, the Court ordered that Respondent be immediately removed as Personal Representative of the estate.

21. Respondent again consulted Thomas Shumard about his alternatives and followed his advice to file a motion for new trial and if denied, an appeal regarding his removal as Personal Representative.

22. On March 25, 2004, Respondent filed a motion for new trial and stay order in his role as Personal Representative of the estate.

23. On March 30, 2004, the Court denied the motion for new trial and request for stay order.

24. On April 8, 2004, Respondent filed a motion for offset in his role as pro per heir requesting, among other things, an order granting a monetary set off against the estate share of one of the heirs for payments and fees by the Conservator to Condill, along with interest and costs.

25. Between 2004 and 2012, Respondent filed:

- a. An unsuccessful appeal regarding his removal as Personal Representative;
- b. An appeal regarding the lower court's approval of the Conservator's request for fees [1 CA-CV 06-0333];
- c. An unsuccessful appeal regarding the lower court's approval of the Special Administrator's request for fees [1 CA-CV 06-0675]; and
- d. A special action regarding the assessment/offset of the Conservator's fees and Special Administrator's fees [1 CA-SA 11-0155];
- e. An appeal regarding certain discovery rulings, change of judge and alleged bad faith of the Special Administrator [1 CA-CV 12-0326].

25. With regard to Respondent's appeal of his removal as Personal Representative, the Court of Appeals found that Respondent's appeal was "completely devoid of merit".

26. The Court of Appeals affirmed in part regarding the lower court's award of the Conservator's fees and remanding in part to determine the exact balance owed.

27. The Court of Appeals found that the Conservator's fees were to be assessed against the Estate and not Respondent but that the Special Administrator's fees were to be assessed solely against Respondent pursuant to "Arizona Rule of Civil Appellate Procedure 25, for the reason that an appeal (Respondent) brought had no merit." The Court of Appeals also denied Respondent's request to consolidate.

28. On April 9, 2013, the Court of Appeals again "disagree(d) with all of MacMullin's contentions", and affirmed the lower court's determination. The final accounting for the probate is now awaiting the probate court's approval.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.7, 3.1, and 8.4(d).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss Rule 42, Ariz. R. Sup. Ct., ER 1.3, as ERs 3.1 and 8.4(d) more accurately fit the nature of the misconduct at issue herein.

RESTITUTION

While restitution is not an issue in this matter, Respondent expressly agrees that the court-ordered sanction of \$1,200 pursuant to the decree of distribution, will be paid out of his share of the estate as an off-set, as ordered by the probate court, or paid as a term of probation.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Reprimand with Two Years of Probation, subject to early termination.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The parties agree that *Standards* 4.33 and 6.23 are the appropriate *Standards* given the facts and circumstances of this matter.

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

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

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent negligently engaged in conduct which constituted a concurrent conflict of interest, negligently filed meritless pleadings as part of the underlying lawsuit and appeal, and engaged in conduct which was prejudicial to the administration or justice. The parties agree that Respondent's conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential harm to his client, the profession, and the legal system.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(d) multiple offenses.

In mitigation:

Standard 9.32(c) personal or emotional problems. Respondent was involved in an automobile accident on April 5, 2002, where he suffered head injuries in addition to soft tissue injuries. Respondent was advised by his doctor to limit his exposure to stressful situations because his emotional reactions might be adversely

impacted by the head injury for roughly six month to a year following the accident. Respondent and Hubbard's relationship deteriorated substantially following the accident in April 2002. While Respondent thought that he was carefully monitoring his condition in the summer of 2002, it is apparent with hindsight that the head trauma contributed to the difficulties he experienced during that time period.

Standard 9.32(f) inexperience in the practice of law. At the time that Respondent drafted the Levering Will, he was a relatively new attorney and did not have extensive experience in estates, trust and probate matters.

Standard 9.32(k) imposition of other penalties or sanctions. Respondent was assessed the costs of the unsuccessful appeal in the amount of \$1,200.00.

Proportionality

In *In re Cook*, SB-05-0085-D (2010), Cook accepted a censure with two years of probation (LOMAP/MAP) and CLE. Cook engaged in concurrent conflicts of interests by representing both the debtors and creditors in the same bankruptcy case without an appropriate written waiver. In addition, Cook failed to comply with rules of procedure, failed to pursue client objectives, failed to effectively communicate with clients, failed to clarify the scope of his representation, and filed a non-meritorious fee application which was prejudicial to the administration of justice. There were four aggravating factors: *Standard 9.22(a)* prior disciplinary history, (c) a pattern of misconduct, (d) multiple offenses, and (i) substantial experience in the practice of law, along with five mitigating factors: *Standard 9.32(b)* absence of dishonest or selfish motive, (d) timely good faith effort to make restitution or to rectify consequences of misconduct, (g) character or reputation, (k) imposition of other penalties or sanctions, and (l) remorse. Cooks was

sanctioned for violations of Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.7, 3.1, 3.2, 5.3, and 8.4(d).

In *In re Droeger*, SB-09-0119-D (2009), Droeger accepted a censure and probation requiring that he attend the CLE: Ten Deadly Sins of Conflict. Droeger engaged in a conflict of interest by representing a client with interests directly adverse to a will and codicil that Respondent drafted and witnessed for another client. Droeger further delayed the probate process and caused additional costs to be incurred against the estate. There was one aggravating factor: *Standard* 9.22(i) substantial experience in the practice of law. There were two mitigating factors: *Standard* 9.32(a) absence of a prior disciplinary record and (l) remorse. Droeger was sanctioned for violating Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.7, 3.7, and 8.4(d).

In *In re Shell*, SB-09-0059-D (2009), Shell was censured and placed on probation for one year with LOMAP and CLE. Shell engaged in a conflict of interest by representing both an individual and family members with concurrent interests in a criminal matter. Respondent further failed to advise his client in writing of the scope of representation. There were four aggravating factors: *Standard* 9.22(a) prior disciplinary offenses, (g) refusal to acknowledge wrongful nature of conduct, (h) vulnerability of victims and (i) substantial experience in the practice of law. There was one mitigating factor: *Standard* 9.32(a) absence of prior disciplinary record. Shell was sanctioned for violations of Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.5(b), 1.7, and 8.4(d).

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: The presumptive sanction is appropriate as the misconduct was unique in that it involved family members, and occurred at a time early in Respondent's career as an attorney.

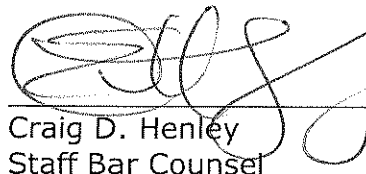
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand with Two Years of Probation, subject to early termination if appropriate, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

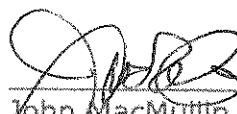
DATED this 18th day of June, 2013.

STATE BAR OF ARIZONA


Craig D. Henley
Staff Bar Counsel

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

DATED this 17th day of JUNE, 2013.


John MacMullin
Respondent

DATED this 17th day of June, 2013.


Nancy A. Greenlee
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this ____ day of _____, 2013.

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

DATED this _____ day of _____, 2013.

John MacMullin
Respondent

DATED this _____ day of _____, 2013.

Nancy A. Greenlee
Counsel for Respondent

Approved as to form and content

Maret Vessella

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 18th day of June, 2013.

Copies of the foregoing mailed/emailed
this 18th day of June, 2013, to:

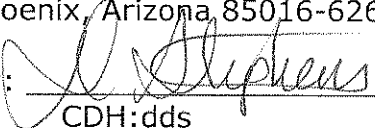
Nancy A. Greenlee
Attorney at Law
821 East Fern Drive North
Phoenix, Arizona 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

Copy of the foregoing emailed
this 18th day of June, 2013, to:

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

Copy of the foregoing hand-delivered
this 18th day of June, 2013, to:

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

By: 

CDH:dds

STANDARD PROBATION TERMS along with the following:

TEN DEADLY SINS LANGUAGE

Respondent shall complete the State Bar of Arizona CLE TEN DEADLY SINS OF CONFLICT. Respondent shall contact State Bar of Arizona publications at 602-340-7318 to either obtain and listen to the CD or obtain and view the DVD entitled "The Ten Deadly Sins of Conflict" within ninety (90) days of the judgment and order. Respondent may alternatively go to the State Bar website (www.myazbar.org) and complete the self-study online version. Respondent shall provide Bar Counsel with evidence of completion by providing copies of handwritten notes. Respondent shall be responsible for the cost of the CD, DVD, or online self-study.

MAP

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at 602-340-7334 or 800-681-3057, within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment. Corpcare and State Bar Compliance Monitor, Yvette Penar, shall develop "Terms and Conditions of Probation" if Corpcare determines that the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will begin to run at the time of the entry of the final judgment and order and will conclude two years from that date or upon Respondent's completion of all probation terms. Respondent shall be responsible for any costs associated with MAP.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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

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

**JOHN MACMULLIN,
Bar No. 013049**

Respondent.

PDJ-2013-9030

FINAL JUDGMENT AND ORDER

[State Bar No. 11-3915]

FILED JULY 8, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on June 18, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **John MacMullin**, is hereby Reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this Order.

IT IS FURTHER ORDERED that Respondent shall be placed on probation for a period of two years effective the date of this Order and subject to early termination upon completion of all probation terms.

IT IS FURTHER ORDERED that Respondent shall complete all of the following probation terms:

TEN DEADLY SINS OF CONFLICT

Respondent shall contact State Bar of Arizona publications at 602-340-7318 to either obtain and listen to the CD or obtain and view the DVD entitled "The Ten

Deadly Sins of Conflict” within ninety (90) days of the judgment and order. Respondent may alternatively go to the State Bar website (www.myazbar.org) and complete the self-study online version. Respondent shall provide Bar Counsel with evidence of completion by providing copies of handwritten notes. Respondent shall be responsible for the cost of the CD, DVD, or online self-study.

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Respondent shall contact the State Bar’s Member Assistance Program (MAP), at 602-340-7334 or 800-681-3057, within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment. Corpcare and State Bar Compliance Monitor, Yvette Penar, shall develop “Terms and Conditions of Probation” if Corpcare determines that the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will begin to run at the time of the entry of the final judgment and order and will conclude two years from that date subject to early termination upon successful completion of all of the terms of probation. Respondent shall be responsible for any costs associated with MAP.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing

terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,200.00. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 8th day of July, 2013.

/s/ William J. O'Neil

**The Honorable William J. O'Neil
Presiding Disciplinary Judge**

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 8th day of July, 2013.

Copies of the foregoing mailed/emailed
this 8th day of July, 2013, to:

Nancy A. Greenlee
Attorney at Law
821 East Fern Drive North
Phoenix, Arizona 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

Copy of the foregoing hand-delivered/emailed
this 8th day of July, 2013, to:

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

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

by: MSmith