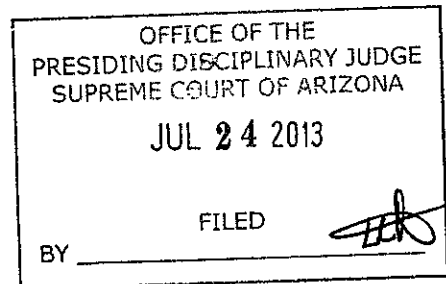


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Respondent

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

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

**Richard S. Madril,
Bar No. 014533,**

Respondent.

PDJ-2013-9024

**MODIFIED AGREEMENT FOR
DISCIPLINE BY CONSENT**

State Bar No. 12-1221

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Richard S. Madril, who has chosen not to seek the assistance of counsel, hereby submit their Tender of Admissions and Modified Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. On December 20, 2012, the Attorney Discipline Probable Cause Committee ("ADPCC") issued an Order of Admonition, Probation, Fee Arbitration, Law Office Management Assistance Program ("LOMAP") and Costs as to Respondent ("Admonition Order"). A copy of the Admonition Order is attached hereto as Exhibit "A." On January 2, 2013, Respondent advised the State Bar that he "decided to appeal and demand a formal proceedings [sic] be instituted as per Rule 55(c)(4)(B), Ariz. R. Sup. Ct." A copy

of Respondent's January 2, 2013 letter is attached hereto as Exhibit "B." On March 5, 2013, the ADPCC issued an order vacating its Admonition Order and directing the State Bar to prepare and file a complaint against Respondent. A copy of the ADPCC's order vacating its prior Admonition Order is attached hereto as Exhibit "C." Pursuant to the ADPCC's March 5, 2013 order, the State Bar filed its complaint on March 15, 2013.

Respondent now 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, Ariz. R. Sup. Ct., ER(s) 1.4, 1.5(b), 1.5(d)(3), and 1.15. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline, which was initially ordered by the ADPCC in the ADPCC's Admonition Order: Admonition with one year probation to include LOMAP and Fee Arbitration. 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 "D."

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.

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 15, 1993.

COUNT ONE (State Bar File No. 12-1221)

2. In November of 2006, Blanca Burkard's ("Ms. Burkard") boyfriend, Isidro Martinez a/k/a Avel De La Vara Vasquez ("Mr. Vara Vasquez"), was arrested and charged with drugs and weapons offenses.

3. Ms. Burkard retained Respondent and paid him \$10,000.00 to represent Mr. Vara Vasquez.

4. Respondent did not communicate in writing the scope of the representation or the basis or rate of the fee and expenses for which Mr. Vara Vasquez or Ms. Burkard would be responsible. Respondent contends that he previously represented Ms. Burkard on other cases and charged her the rate of \$250.00 per hour. However, Ms. Burkard believed that her and Respondent's agreement was that Respondent would represent Mr. Vara Vasquez for a flat fee.

5. Ms. Burkard paid \$50,000.00 to obtain Mr. Vara Vasquez's release on bond.

6. On November 3, 2006, Respondent posted the bond. Mr. Vara Vasquez was subsequently released and then deported to Mexico.

7. The court scheduled an arraignment for Mr. Vara Vasquez for November 20, 2006 and then December 12, 2006. Mr. Vara Vasquez failed to attend either arraignment because he was in Mexico.

8. The court scheduled a bond forfeiture hearing for February 22, 2007.
9. On February 22, 2007, the court exonerated the bond in the amount of \$10,000.00, forfeiting \$40,000.00 to the State. The clerk of the court issued a check in the amount of \$10,000.00 to Respondent.
10. Respondent did not inform Ms. Burkard or Mr. Vara Vasquez of the bond exoneration monies at this time because he contends that they were somewhere in Mexico.
11. Respondent never returned the \$10,000.00 for the bond exoneration to Ms. Burkhard or Mr. Vara Vasquez.
12. Respondent also did not provide Ms. Burkard or Mr. Vara Vasquez a statement or bill relating to his services around this time, and not until November of 2010 and February of 2011.
13. Respondent kept the \$10,000.00 as alleged additional compensation for his services. Respondent contends that he had two conversations with Mr. Vara Vasquez regarding using any exonerated bond monies to pay his fees, once prior to when the bond monies were exonerated and once in December of 2010 after the bond monies were exonerated. While Respondent thought he obtained Mr. Vara Vasquez's consent to use the bond monies to pay his fees, Respondent did not adequately communicate or explain the use of the bond monies to pay his fees to Ms. Burkard or Mr. Vara Vasquez.
14. Mr. Vara Vasquez returned to the United States in November of 2010 and was again arrested on similar additional charges and on the prior charges.

15. In November 2010, Ms. Burkard again retained Respondent to represent Mr. Vara Vasquez. Ms. Burkard paid Respondent \$15,000.00 for this representation.

16. Respondent again did not communicate in writing to Mr. Vara Vasquez or Ms. Burkard the scope of the representation or the basis or rate of the fee and expenses for which Mr. Vara Vasquez or Ms. Burkard would be responsible.

17. In January of 2011, Ms. Burkard terminated Respondent because of communication issues and because she did not think that Respondent was performing any work on behalf of Mr. Vara Vasquez.

18. Around this time, Ms. Burkard and Mr. Vara Vasquez allege that they learned that Respondent received \$10,000.00 from the bond exoneration for the 2006 case.

19. On February 18, 2011, Mr. Vara Vasquez's new attorney sent a letter to Respondent requesting that Respondent return the \$15,000.00 that Ms. Burkard paid him to represent Mr. Vara Vasquez relating to Mr. Vara Vasquez's 2010 arrest.

20. Ms. Burkard subsequently retained a new attorney.

21. On April 15, 2011, Ms. Burkard's attorney sent a letter to Respondent stating that Ms. Burkard paid Respondent \$15,000.00, Respondent did not do any work in exchange for this amount, and that Respondent kept \$10,000.00 of an exonerated bond without the permission or knowledge of Ms. Burkard. Ms. Burkard's attorney demanded \$25,000.00 from Respondent.

22. To date, Respondent has not refunded any money to Ms. Burkard or Mr. Vara Vasquez.

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 1.4, 1.5(b), 1.5(d)(3), and 1.15.

RESTITUTION

Respondent agrees to fee arbitration in order to address any restitution owed to Ms. Burkard.

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: Admonition with one year probation to include LOMAP and Fee Arbitration with Complainant Blanca Burkard. Respondent agrees to pay any fee arbitration award entered against him within thirty (30) days of the date of the award.²

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.4, 1.5(b), 1.5(d)(3), and 1.15. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will

² Respondent and Ms. Burkard have already agreed to fee arbitration and are currently awaiting the appointment of a fee arbitrator.

commence at the time of the entry of the judgment and order and will conclude one year from that date. Respondent shall be responsible for any costs associated with LOMAP.

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 *Standard* 7.3 applies to Respondent's failure to communicate in writing the scope of the representation or the basis or rate of the fee because Respondent previously represented Ms. Burkard. *Standard* 7.3 provides that: "Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

The parties further agree that *Standard 4.13* applies to Respondent's use of the bond monies to pay his fees because Respondent states that he discussed with Mr. Vara Vasquez the use of the bond monies to pay his fees. *Standard 4.13* provides: "Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client."

The duty violated

As described above, Respondent's conduct violated his duty as a professional and his duty to his client.

The lawyer's mental state

The parties agree that Respondent acted negligently when he failed to provide a written agreement conveying the scope of the representation and the basis or rate of the fee and expenses, that Respondent acted negligently when he applied the bond exoneration monies to his outstanding fees without sufficient explanation to his client, and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

The parties agree that there was potential harm to Respondent's client.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(i): Substantial experience in the practice of law.

In mitigation:

Standard 9.32(a): Absence of a prior disciplinary record.

Discussion

The parties have agreed that based on mitigating circumstances and the specific facts of this case, a lesser sanction of admonition is appropriate. This determination was based on the following: The State Bar gives great weight to Respondent's lack of disciplinary history. Additionally, the majority of the underlying misconduct occurred in late 2006 and early 2007, over six years ago. Although the State Bar requested Respondent's complete file relating to this matter, Respondent could not produce a complete file because of the age of the file. Respondent contends that certain documents were lost. Ms. Burkard similarly could not produce certain documents, including receipts allegedly showing how much she paid Respondent. Additionally, Mr. Vara Vasquez currently resides in Mexico and, therefore, it may be difficult to obtain his appearance if this matter were to go to hearing.

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 that the ADPCC originally ordered 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 an admonition with one year of probation (LOMAP, fee

arbitration) and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit "E."

DATED this 24th day of July, 2013.

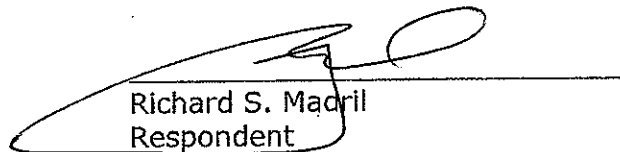
STATE BAR OF ARIZONA



Nicole S. Kaseta
Staff Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 21st day of July, 2013.



Richard S. Madril
Respondent

Approved as to form and content



Mafet Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 24th day of July, 2013.

Copies of the foregoing mailed/emailed
this 24th day of July, 2013, to:

Richard S. Madril

6025 South Holly Drive
Tucson, Arizona 85706-4630
Email: RichMadril@yahoo.com
Respondent

Copy of the foregoing emailed
this 24th day of July, 2013, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 24th day of July, 2013, to:

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

By: *Richard T. Brown*
NSK/rtb

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

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

**RICHARD S. MADRIL,
Bar No. 014533**

Respondent.

PDJ-2013-9024

FINAL JUDGMENT AND ORDER

State Bar No. 12-1221

FILED JULY 29, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Modified Agreement for Discipline by Consent filed on July 24, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Richard S. Madril**, is hereby admonished for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that Respondent be placed on probation for a period of one year. The probation period will commence at the time of entry of this judgment and order and will conclude one year from that date.

IT IS FURTHER ORDERED that during the probation period of one (1) year, Respondent shall also complete the following:

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of the final

judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.4, 1.5(b), 1.5(d)(3), and 1.15. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude one year from that date. Respondent shall be responsible for any costs associated with LOMAP.

FEE ARBITRATION

Respondent shall agree to timely participate in fee arbitration with Complainant Blanca Burkard and shall pay any fee arbitration award that may be entered against him within thirty days of the date of the award.

NON-COMPLIANCE

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 29th 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 29th day of July, 2013.

Copies of the foregoing mailed/emailed
this 29th day of July, 2013, to:

Richard S. Madril
6025 South Holly Drive
Tucson, Arizona 85706-4630
Email: RichMadril@yahoo.com
Respondent

Copy of the foregoing hand-delivered/emailed
this 29th day of July, 2013, to:

Nicole S. Kaseta
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
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by: MSmith