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BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **Emile J. Harmon** **Bar No. 024409** Respondent.	**PDJ-2012-9026** **AGREEMENT FOR DISCIPLINE BY CONSENT** [State Bar Nos. 10-1305, 10-1521, 10-2090, 10-2134, 10-2305, 10-2328, 11-0064, 11-0196, 11-0369, 11-1904, and 12-0348]

I. INTRODUCTION

The State Bar of Arizona (State Bar), through undersigned Bar Counsel, and Respondent Emile J. Harmon, who is represented in this matter by counsel, Ralph W. Adams, hereby submit this Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. In addition to the ten counts charged in the Complaint in this matter, the parties have agreed to submit an additional count that has not been presented to the Attorney Discipline Probable Cause Committee, pursuant to Rule 57(a)(3)(B), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on all counts contained herein, 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) 1.3, 1.4(a)(3), 1.5, 1.15(d), 1.16(d), 3.2, 3.4(c), 5.3, 8.1(b), and Rules 54(d)(2), 54(d), and 54(e), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Respondent shall be suspended for 60-days and placed on two years of probation subject to LOMAP and MAP monitoring and Fee Arbitration, as well as payment of the State Bar's Administrative Costs and Expenses. 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."

II. 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 June 29, 2007.

COUNT ONE (File no. 10-1305/Mormile)

2. On or about July 22, 2009, Antonio Mormile (Mr. Mormile) attained a divorce from his wife by Consent Decree.

[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.

3. The Consent Decree established that Mr. Mormile would pay his ex-wife approximately $1000.00 in child support each month.

4. Mr. Mormile's Consent Decree incorporated a parenting plan for joint custody of Mr. Mormile's minor daughters. The parenting plan included a schedule of parenting time.

5. Sometime after the conclusion of the divorce proceedings, Mr. Mormile wanted to take his daughters to Italy for vacation time and needed the modification in the parenting plan to accommodate that vacation. Mr. Mormile also wanted to modify his child support amounts.

6. On or about January 22, 2010, Mr. Mormile retained Respondent for the above-referenced purposes with an hourly fee agreement that contained a provision for a non-refundable earned-upon-receipt portion in the amount of $1561.

7. On or about February 2, 2010, Respondent filed a Petition to Modify Child Support and Parenting Time (Petition).

8. The Petition requested a drop in the payment of child support to approximately $800 per month, a modification of his regular parenting time, and a request to take his daughters to Italy in September. Custody of the children was not specifically addressed.

9. By Minute Entry dated February 9, 2010, the Court denied the Petition without prejudice pursuant to ARS § 25-411(A). The Minute Entry stated Complainant could re-file the Petition after July 22, 2010. The Minute Entry was filed February 22, 2010.

10. No exceptions to ARS § 25-411(A) were discussed by Respondent in the Petition.

11. On February 23, 2010, Respondent informed Mr. Mormile that the Petition was denied and discussed strategic steps to take following the dismissal of the Petition, including possibly filing a Motion for Reconsideration.

12. Though Respondent drafted a Motion for Reconsideration, it was not filed by Respondent on behalf of Mr. Mormile.

13. If these matters were to proceed to a hearing, Respondent would testify that he did not file the Motion for Reconsideration as he was instructed by Mr. Mormile to not file anything further if it was going to cost any more money.

14. Although Respondent would testify that he did communicate with Mr. Mormile, his client file has no record of any communication with Mr. Mormile after February 23, 2010.

15. If these matters were to proceed to a hearing, Respondent would testify that between February 23 and April 6, 2010, Mr. Mormile contacted Respondent on two occasions. Respondent would testify that during the first conversation, Mr. Mormile informed Respondent that he had already left the country and during the second conversation Mr. Mormile included a third party to the phone call who Mr. Mormile contended to Respondent was a police authority.

16. If these matters were to proceed to a hearing, Mr. Mormile would testify that he did not have any contact with Respondent after February 23, 2010.

17. Respondent provided an invoice to Mr. Mormile dated March 7, 2010 reflecting that Respondent performed $1368.50 worth of work for Mr. Mormile.

18. On or about April 6, 2010, Respondent filed a motion to withdrawal from Mr. Mormile's matter.

19. If these matters were to proceed to a hearing, Mr. Mormile would have testified that Respondent did not inform him that Respondent was withdrawing from the case.

COUNT TWO (File No. 10-1521/Tracy)

20. On or about February 16, 2010, Dale Tracy (Mr. Tracy) retained Respondent to help him stop action by the State of Arizona to recover arrearages for late child support payments and recover overpayments in child support made by Mr. Tracy.

21. If these matters were to proceed to a hearing, Respondent would testify that at the time Mr. Tracy retained Respondent, Mr. Tracy told Respondent he was residing in Tucson, Arizona.

22. If these matters were to proceed to a hearing, the State Bar would present evidence that Mr. Tracy resided in Cleveland, Ohio at the time he retained Respondent.

23. Mr. Tracy subsequently relocated to Arizona from Cleveland, Ohio. After relocating to Arizona, Mr. Tracy met with Respondent at his office and was introduced to attorney Diana McCulloch (Ms. McCulloch).

24. At all times relevant, Ms. McCulloch had a solo law practice and was not an employee or associate of Respondent's law firm.

25. Respondent paid Ms. McCulloch directly for services she provided to Mr. Tracy in connection with his matter.

26. Respondent collected a total of $3500.00 for Mr. Tracy for legal services provided to Mr. Tracy by Respondent. A portion of the total fee collected was paid to Ms. McCulloch by Respondent.

27. By facsimile (fax) dated May 19, 2010, Mr. Tracy demanded an accounting of Respondent's time on the matter and a refund of his fees. The fax was signed by Mr. Tracy.

28. By fax dated May 24, 2010, Mr. Tracy wrote to Respondent and again asked for a full accounting of Respondent's time and a refund. The fax was signed by Mr. Tracy.

29. Respondent did not provide Mr. Tracy with an accounting of Respondent's time. However, Respondent would testify that he did provide detailed billing statements to him.

30. Respondent's client file for Mr. Tracy did not contain any records of detailed billing statements sent to Mr. Tracy.

31. By letter dated May 21, 2010, Respondent stated, in part, to Mr. Tracy:

> Please be advised that we will work with you and continue to help process your child support arrearages and child support Order in Arizona, however, we can not take an unethical position and allege something different to your North Carolina attorney by providing him paperwork and documents something different than we have filed... At this point, especially due to the potential ethical nature of this matter, we are unsure whether we can continue to represent you. However, we like you and up until this last week you have been a pleasant client to work with. If we can clarify some of these issues, get on the same page and get some honest disclosure we can continue to work together and move forward. If you do not feel this is an adequate plan or you disagree with the general tone set forth in this letter, it would be best if we withdrew and we will file to withdraw we will mail the same to you with consent. [sic] One or both of us will call you after you have had a few moments to digest this correspondence with how you wish to proceed (assuming you are inclined to proceed in the matters in Arizona concerning child support).

32. On or about June 21, 2010, Respondent's Motion to Withdraw was granted.

COUNT THREE (File No. 2090/Hurd)

33. On or about May 19, 2010, Micaela Acosta (Ms. Acosta) retained Respondent to file a Chapter 7 bankruptcy.

34. Ms. Acosta is fluent in Spanish and speaks little to no English.

35. Respondent is not fluent in Spanish.

36. Respondent's fee agreement with Ms. Acosta reflected he would charge her a $1749.00 "non-refundable retainer" totaling $1400.00 in fees and $349.00 in costs.

37. Respondent's fee agreement failed to inform Ms. Acosta that she could discharge Respondent at any time and that in that event she may be entitled to a full or partial refund.

38. By check dated May 19, 2010, Ms. Acosta's employer, Patricia Hurd (Ms. Hurd) paid Respondent $1749.00.

39. On or about May 19, 2010, Respondent asked Ms. Acosta to provide him with appropriate financial information and paperwork so that Respondent could file a bankruptcy petition.

40. On or about late May 2010, Ms. Acosta's adult daughter, Gladis, provided the requested paperwork to Respondent.

41. Gladis speaks English, was Respondent's primary contact with Ms. Acosta, and served as an interpreter for Ms. Acosta.

42. Respondent met with Gladis in person approximately three times between May 2010 and January 2011.

43. By letter dated October 28, 2010, Respondent wrote to Ms. Acosta seeking authorization to file Ms. Acosta's bankruptcy petition. The letter to Ms. Acosta was written in English.

44. Respondent's October 28, 2010 letter is the only written correspondence Respondent had with Ms. Acosta during the entire period of Respondent's representation.

45. On or about October 28, 2010, Respondent filed a voluntary Chapter 7 bankruptcy petition on behalf of Ms. Acosta, Case No. 2:10-bk-34949-SSC.

46. In the bankruptcy petition, Respondent reported his total fees as $1600.00.

47. An initial creditors meeting was scheduled in Ms. Acosta's bankruptcy mater to occur on November 29, 2010.

48. On or about November 29, 2010, Respondent failed to appear at the creditors meeting. The meeting was subsequently rescheduled to January 14, 2011. Respondent appeared at that hearing and the matter proceeded as scheduled.

49. Respondent failed to appear at the November creditor's meeting because his non-lawyer assistant failed to notify Respondent of the hearing.

50. On or about March 7, 2011, Ms. Acosta's bankruptcy was successfully discharged.

COUNT FOUR (File No. 2134/Carson)

51. At all times relevant, Michelle Carson (Ms. Carson) was an attorney licensed to practice law in the State of Arizona

52. Sometime in June 2010, Ms. Carson retained Respondent to help her collect past due child support and other monies owed pursuant to the divorce decree from her ex-husband.

53. On or about July 1, 2010, Respondent filed a post-decree petition on behalf of Ms. Carson to enforce the divorce decree, seeking payment of child support arrearages, and seeking contempt against Ms. Carson's ex-husband, Maricopa County Superior Court Case No. FC2006-000375.

54. If these matters were to proceed to a hearing, Ms. Carson would testify that between June 2010 and September 10, 2010, Respondent did not communicate with, correspond with, or meet with Ms. Carson about her pending matter.

55. Although Respondent would testify that he did have communications with Ms. Carson, Respondent's client file for Ms. Carson does not reflect any correspondence or communication with Ms. Carson between June 2010 and September 10, 2010.

56. On or about September 11, 2010, Ms. Carson met with Respondent at a pool party both were attending that was hosted by a mutual friend.

57. If these matters were to proceed to a hearing, Ms. Carson would testify that, while at the pool party, she asked Respondent for an accounting of his time on her pending matter. Respondent would testify that she did not ask for an accounting at that time.

58. On or about November 2, 2010, a resolution management conference was conducted in Ms. Carson's matter.

59. Also on November 2, 2010, Respondent was conducting a trial in an unrelated matter, FN2009-004231, but scheduled an approximate ten minute recess to appear telephonically at Ms. Carson's resolution management conference.

60. Respondent did not inform Ms. Carson he would be in trial or would be appearing at her resolution management conference by phone.

61. By letter dated November 7, 2010, Respondent informed Ms. Carson that "it is wise for you to get new counsel as I do not feel comfortable with anyone who knows our mutual acquaintance, therefore it is certainly not productive to have an attorney/client relationship."

62. If these matters were to proceed to a hearing, Respondent would testify that he represented the "mutual acquaintance" and that Ms. Carson was fully aware that he represented her. In fact, the mutual acquaintance was the owner of the residence at which the two were present at the party.

63. If these matters were to proceed to a hearing, Ms. Carson would testify that she did not understand who the "mutual acquaintance" referenced by Respondent in his letter to her was.

64. If these matters were to proceed to a hearing, Ms. Carson would testify that between June and November 2010 she attempted to call and speak with Respondent several times but did not receive return calls.

65. Respondent's client file for Ms. Carson does not document any communication between Respondent and Ms. Carson other than the November 7 letter from Respondent.

COUNT FIVE (File No. 10-2305/Pamachena)

66. On or about July 29, 2010, Roger Pamachena (Mr. Pamachena) retained Respondent to file a Chapter 13 bankruptcy for him and his wife (collectively, "the Pamachenas").

67. Respondent charged Mr. Pamachena $4,000.00 for the representation. Mr. Pamachena paid Respondent $1,500.00 as a "NON-REFUNDABLE deposit" when he and his wife signed Respondent's fee agreement.

68. Respondent's fee agreement failed to notify the Pamachenas that they had a right to terminate Respondent's representation and that, should they do so, they may be entitled to a full or partial refund of their fee.

69. On or about August 25, 2010, Respondent filed a Chapter 7 petition on behalf of the Pamachenas.

70. Respondent filed a Chapter 7 petition rather than the Chapter 13 petition based on an error made by his non-lawyer assistant.

71. On or about August 26, 2010, Respondent filed a request that the Chapter 7 petition be converted to a Chapter 13 petition. The Court granted Respondent's request.

72. On or about September 20, 2010, a deficiency notice was sent to Respondent for failing to provide a declaration of electronic filing.

73. By Order dated on or about November 5, 2010, the Pamachenas' bankruptcy case was dismissed based on the deficiency. However, the automatic stay was still in place.

74. If these matters were to proceed to a hearing, Mr. Pamachena would testify that his car was repossessed after the bankruptcy had been dismissed.

75. On or about November 10, 2010 Respondent filed a motion to reinstate the bankruptcy proceedings which was granted the same day.

76. Mr. Pamachena's car was returned to him after the bankruptcy was reinstated. The car was returned because the repossession company had violated the automatic stay. Respondent was successful in obtaining sanctions in the amount of $500.00 against the repossession company.

77. Respondent continues to represent the Pamachenas in their bankruptcy matter and is currently seeking damages against the repossession company for taking Mr. Pamachena's car.

COUNT SIX (File No. 10-2328/Nelson)

78. On or about July 14, 2010, Jennifer Nelson (Ms. Nelson) retained Respondent during an initial consultation to represent her in a divorce from her then husband. It was a divorce involving no children and little property.

79. Respondent did not meet with Ms. Nelson in person again after the initial consultation.

80. Respondent's client file for Ms. Nelson does not contain a writing describing the scope of the representation and the basis or rate of the fee and expenses for which Ms. Nelson would be responsible. Respondent would testify that such an agreement was executed, however, he was unable to locate it in his file.

81. On or about July 19, 2010, Respondent filed a dissolution petition and a preliminary injunction on behalf of Ms. Nelson in Maricopa County, FN2010-092275.

82. On or between July 19, 2010, and July 21, 2010, Ms. Nelson and her father, Greg Nelson, paid Respondent's fee for his representation, totaling $2000.00. The fee was provided to Respondent's assistant.

83. On or about July 21, 22, and 23, 2010, Respondent's chosen process serving company unsuccessfully attempted on three occasions to serve the divorce petition on Ms. Nelson's husband.

84. Respondent provided the documents to a qualified process server who was unable to perfect service because the husband, based upon information and belief, was avoiding service.

85. On or after July 23, 2010, Ms. Nelson was informed by Respondent's staff that the process servers were unable to find her husband and serve him.

86. If these matters were to proceed to a hearing, Ms. Nelson would testify that on or between July 23 and July 27, 2010, she independently met with her husband for mediation discussions without Respondent and provided her husband with a copy of the divorce petition.

87. On or about July 27, 2010, Ms. Nelson's husband's acceptance of service was filed with the Court.

88. By Minute Entry dated on or about September 8, 2010, the Court set a Resolution Management Conference for October 26, 2010.

89. If these matters were to proceed to a hearing, Ms. Nelson would testify that she did not receive notification from Respondent's office that the Resolution Management Conference had been scheduled and that she learned of the date of the conference from her husband. She would further testify that when she

called Respondent's office to verify the time and date of the conference, Respondent's staff informed her that no such conference had been scheduled.

90. Respondent's client file for Ms. Nelson documents that on and between July 19 and September 2, 2010, Respondent directly spoke to Ms. Nelson about her case a total of four times, including the initial consultation.

91. By letter dated October 9, 2010, Ms. Nelson terminated Respondent's representation of her in her divorce proceedings. In her letter, Ms. Nelson requested that Respondent provide her a final accounting of the work performed in her case.

92. Although Respondent did not provide a specific accounting of his time to Ms. Nelson, Respondent would testify he did provide her with detailed billing statements.

93. Respondent's client file for Ms. Nelson did not contain copies of any detailed billing statements or any indication that such billing statements were provided to Ms. Nelson.

94. On or after October 9, 2010, Respondent did not file a motion to withdraw from Ms. Nelson's matter or otherwise notice the Court that he was no longer representing Ms. Nelson.

95. On October 22, 2010, the parties presented a Consent Decree to the Court which was accepted.

96. On or about May 19, 2011, Ms. Nelson's ex-husband filed a post-decree petition in the matter. At that time, Respondent was still listed as the attorney of record for Ms. Nelson by the Court's docket.

COUNT SEVEN (File No. 11-0064/Siivola)

97. On or about late 2007, Dennis Siivola (Mr. Siivola) retained Respondent and paid him $3000.00 to review numerous documents and perform other legal services.

98. Mr. Siivola first met with Respondent at Respondent's office and Respondent was provided "thousands of documents" from Mr. Siivola regarding his matters.

99. The documents provided to Respondent by Mr. Siivola consisted of, among many other items, Mr. Siivola's handwritten notes about various matters.

100. Respondent's internal billing records reflected Respondent spent a total of 6.8 hours reviewing the documents provided to him by Mr. Siivola.

101. If these matters were to proceed to a hearing, Respondent would testify that Respondent devoted more than 6.8 hours of his time reviewing documents, but only billed for 6.8 hours.

102. By letter dated "May 2003," Mr. Siivola wrote Respondent and asked for an accounting of Respondent's time, the return of all of Mr. Siivola's documents to him, and a full refund of his fees.

103. Respondent returned all of Mr. Siivola's documents to him, but did not provide Mr. Siivola an accounting of Respondent's time.

104. Respondent would testify at a hearing in this matter that Mr. Siivola was homeless and left no forwarding address.

105. The State Bar has also been unable to locate Mr. Siivola.

COUNT EIGHT (File No. 11-0196/Diversion Violation)

106. On or about March 25, 2009, Respondent was placed into diversion in State Bar File No. 08-1584.

107. On or about July 13, 2009, Respondent signed his Terms and Conditions of Diversion (Diversion Terms).

108. Paragraphs I(F)(7) and I(F)(8) of Respondent's Diversion Terms required Respondent to provide copies of his Trust Account records when so requested by the State Bar's Law Office Management Assistance Program (LOMAP).

109. By letter dated April 30, 2010, LOMAP requested Respondent provide it with a copy of his trust account records by May 14, 2010. Respondent failed to provide his trust account records to LOMAP.

110. By letter dated May 20, 2010, LOMAP requested Respondent provide it with a copy of his trust account records by June 3, 2010. Respondent subsequently provided LOMAP a copy of his trust account records up through May 2010.

111. By letter or phone conversation on or about July 13, 2010, LOMAP requested Respondent provide it with a copy of his trust account records from May 2010 through July 2010. Respondent failed to provide his trust account records to LOMAP.

112. By letter or phone conversation on or about September 30, 2010, LOMAP requested Respondent provide it with a copy of his trust account records from May 2010 through July 2010. Respondent failed to provide his trust account records to LOMAP.

113. By letter or phone conversation on or about October 27, 2010, LOMAP requested Respondent provide it with a copy of his trust account records from May

2010 through July 2010. Respondent failed to provide his trust account records to LOMAP.

114. By letter or phone conversation on or about November 4, 2010, LOMAP requested Respondent provide it with a copy of his trust account records from May 2010 through July 2010. Respondent failed to provide his trust account records to LOMAP.

115. By letter dated December 7, 2010, the State Bar demanded Respondent provide the requested trust account records to LOMAP by December 22, 2010. Respondent failed to provide his trust account records to LOMAP.

116. By letter dated January 25, 2011, the State Bar initiated a screening investigation asking Respondent to respond to the allegations that he violated a term of his diversion. The letter was sent to Respondent's address of record as maintained by the membership database and was not returned. The letter further warned Respondent that failing to respond could provide grounds for formal disciplinary proceedings.

117. Respondent failed to respond to the State Bar's January 25, 2011 letter.

118. By letter date March 4, 2011, the State Bar again asked Respondent to respond to the allegations that he violated a term of his diversion. The March letter included a courtesy copy of the State Bar's January letter and was sent to Respondent's address of record as maintained by the membership database and was not returned. The letter further warned Respondent that failing to respond could provide grounds for formal disciplinary proceedings.

119. By letter dated March 23, 2011, Respondent stated that he would provide the requested trust account documents to LOMAP.

120. By email dated May 24, 2011, LOMAP notified Bar Counsel that it had not received Respondent's trust account records.

121. The conduct as described in this count occurred prior to May 2011.

COUNT NINE (File No. 11-0369/DiRubbio)

122. On or about 2007, Vincent DiRubbio (Mr. DiRubbio) was divorced from his ex-wife (Ms. DiRubbio), Maricopa County Superior Court No. FC2006-003347.

123. On or before July 2010, Ms. DiRubbio retained Respondent to represent her in post-decree dissolution proceedings.

124. On or about July 2010, Mr. DiRubbio was served with a petition filed by Respondent on behalf of Ms. DiRubbio regarding child support and spousal maintenance in FC2006-003347.

125. Mr. DiRubbio subsequently retained Arizona attorney Yvonne Yragui (Ms. Yragui) to represent him in FC2006-003347.

126. On or about November 19, 2010, Ms. Yragui moved to compel Ms. DiRubbio's deposition.

127. By letter dated December 29, 2010 and sent to Respondent, a deposition of Ms. DiRubbio was scheduled for January 7, 2011.

128. Respondent and Ms. DiRubbio failed to appear at the January 7 deposition.

129. At the time of the scheduled deposition, the Court had not yet ruled on Ms. Yragui's request to compel a deposition. If these matters were to proceed to a hearing, Respondent would further testify that the deposition was not properly

noticed. The court later ruled that the deposition was not required and proceeded to the trial.

130. By Minute Entry dated January 25, 2011, the Court granted Ms. Yragui's Motion to Compel. The court later rescinded the order and held the trial as stated in the following paragraph.

131. On February 7, 2011, a trial was held regarding Mr. and Ms. DiRubbio's matter.

132. During the February 7, 2011 trial, Ms. DiRubbio was questioned by Ms. Yragui as to why she failed to appear at the scheduled deposition. Ms. DiRubbio testified that she was aware of some dates requested by Ms. Yragui but that no clear notice was provided regarding the January 7 deposition.

133. Ms. Yragui requested sanctions for the non-appearance on two occasions. The court denied both requests.

134. By letter dated March 4, 2011, the State Bar requested Respondent respond to the allegations made by Mr. DiRubbio in his bar charge. The letter was mailed to Respondent's address as maintained by membership records and was not returned. The letter further warned Respondent that failure to respond could provide grounds for formal discipline.

135. Respondent failed to respond to the State Bar's March 4, 2011 letter.

136. By letter dated April 11, 2011, the State Bar sent a second request to Respondent to respond to the allegations made by Mr. DiRubbio in his bar charge and provided a second copy of its original March 4 letter to Respondent. The April letter was mailed to Respondent's address as maintained by membership records

and was not returned. The letter further warned Respondent that failure to respond could provide grounds for formal discipline.

137. Respondent failed to respond to the State Bar's April 11 letter by the deadline imposed in the letter.

138. Although admittedly late, Respondent did respond to the State Bar.

COUNT TEN (File No. 11-1904/Leeper)

139. On or about August 21, 2007, Leona Leeper (Ms. Leeper) was injured after she was hit by the door of a non-moving car while acting as a school crossing guard.

140. On or about August 8, 2008, Ms. Leeper retained Respondent to represent her with a personal injury claim by way of a written fee agreement for a 1/3 contingent fee.

141. Respondent retained Arizona attorney Daniel Brill to work as co-counsel on Ms. Leeper's matter as an independent contractor.

142. Respondent's fee agreement did not notify Ms. Leeper that Mr. Brill would be retained to work on her matter. Ms. Leeper nevertheless implicitly consented to Mr. Brill's involvement in the matter.

143. On or about March 27, 2009, Respondent filed a complaint in Maricopa County Superior Court, CV2009-008918.

144. During the course of litigation, Complainant sought treatment for her injuries through Dr. Wolff at Southwest Spine and Sports.

145. During the course of litigation, Respondent told Ms. Leeper he would request Dr. Wolff provide records regarding his services in support of her case. Dr.

Wolff had an established lien prior to the time Ms. Leeper first contacted Respondent and his treatment had already concluded.

146. If these matters were to proceed to a hearing, Ms. Leeper would testify that she did not pay her medical bills to Southwest Spine and Sports based on Respondent's statements that he would secure a medical lien for Dr. Wolff's services.

147. If these matters were to proceed to a hearing, Gretchen Post would testify that Respondent did not contact Southwest Spine and Sports to issue a medial lien.

148. If these matters were to proceed to a hearing, Respondent would testify that he had discussions with Southwest Spine and Sports regarding the lien, including the fact that Respondent could not sign a lien for all medical treatment costs, but, only those related to the incident because the full extent of the treatment was not likely covered by the settlement.

149. Respondent's assistant was not performing adequately; nevertheless, Respondent admits his own failure to monitor and control her conduct.

150. On or about July 5, 2010, Ms. Leeper was scheduled to attend an Independent Medical Examination (IME) for CV2009-008918.

151. Ms. Leeper failed to appear at the IME because Respondent failed to notify her that the IME had been scheduled because his office assistant did not bring it to his attention.

152. Respondent failed to notify Ms. Leeper about the IME because his office assistant did not calendar the IME or provide him a copy of the notice setting the IME.

153. On or about August 26, 2010, opposing counsel filed a Motion for Summary Judgment (MSJ) in CV2009-008918.

154. Respondent failed to respond to the MSJ.

155. Respondent did not respond to the MSJ in part because his office assistant did not provide him a copy of the motion or calendar a response date.

156. By Minute Entry dated October 13, 2010, opposing counsel's MSJ was granted.

157. Respondent failed to inform Ms. Leeper that the MSJ had been filed and granted.

158. On or about February 7, 2011, the Court issued a judgment that dismissed CV2009-008918.

159. Respondent failed to inform Ms. Leeper that her case had been dismissed.

160. By letter dated June 22, 2011, the State Bar requested Respondent respond to the allegations made by Ms. Leeper in her bar charge. The letter was mailed to Respondent's address as maintained by membership records and was not returned. The letter further warned Respondent that failure to respond could provide grounds for formal discipline.

161. Respondent failed to respond to the State Bar's June 22, 2011 letter.

162. By letter dated August 4, 2011, the State Bar sent a second request to Respondent to respond to the allegations made by Ms. Leeper in her bar charge and provided a second copy of its original June 22 letter to Respondent. The April letter was mailed to Respondent's address as maintained by membership records and was

not returned. The letter further warned Respondent that failure to respond could provide grounds for formal discipline.

163. Respondent failed to respond to the State Bar's August 4, 2011 letter.

COUNT ELEVEN (File No. 12-0348/Franks)

164. Respondent represented Julie Robinson (Ms. Robinson) in dissolution proceedings with co-counsel, Diana McCulloch (Ms. McCulloch) in Maricopa County Superior Court, FC2011-001345. The matter was set for a trial to occur on October 20, 2011.

165. Ms. Robinson was seeking a divorce from David Goodman (Mr. Goodman). Ms. Robinson had a child with Mr. Goodman and custody of the child was at issue in Ms. Robinson's dissolution proceedings.

166. In a prior unrelated matter, Mr. Goodman obtained a divorce from Betsy Pregulman (Ms. Pregulman) in Maricopa County Superior Court, FC2005-002212.

167. In Ms. Pregulman's matter, a custody evaluation regarding Mr. Goodman was performed and placed under seal by the Court. A separate confidential juvenile proceeding was also undertaken which resulted in the termination of Mr. Goodman's parental rights to his child in common with Ms. Pregulman.

168. Respondent believed that the reasons Mr. Goodman's parental rights were terminated in 2005 may be relevant to Ms. Robinson's matter.

169. Sometime in August 2011, Ms. Robinson informed Respondent and Ms. McCulloch that Mr. Goodman's parental rights had been severed in Ms. Pregulman's matter.

170. On October 13, 2011, Ms. McCulloch requested and obtained a subpoena *duces tecum* (subpoena) demanding that Ms. Pregulman provide a copy of "any and all custody evaluations relating to FC2005-002212" and "any and all orders relating to custody and termination of parental rights of David Goodman in relation to FC2005-002212."

171. On October 19, 2011, attorney Todd Franks (Mr. Franks), on behalf of Ms. Pregulman, filed a request to quash Ms. McCulloch's subpoena on the grounds that the requested records were protected by order of the court, that Ms. McCulloch did not take appropriate steps to unseal the records, and that Ms. Pregulman would be subjected to fines and contempt proceedings if she complied with the subpoena.

172. On October 20, 2011, oral argument was held regarding Mr. Frank's motion prior to the start of the trial. Respondent argued that the subpoena was necessary because Mr. Goodman's lawyer failed to disclose them pursuant to Rule 49, Ariz. R. Civ. P. and that the documents were relevant to the pending proceedings.

173. Prior to the start of the trial, the Court granted Mr. Frank's motion to quash and took his request for attorney's fees under advisement.

174. By Minute Entry dated December 13, 2011, the Court ordered Respondent and Ms. McCulloch to pay $4573.80 in attorney's fees to Ms. Pregulman by January 12, 2012.

175. Ms. McCulloch could not afford to pay the entire sanction up-front because she was undergoing bankruptcy proceedings at the time.

176. By letter dated December 27, 2011, Mr. Franks wrote a letter to Respondent and Ms. McCulloch requesting confirmation that they would pay the

fees as ordered by the Court by the imposed deadline. Respondent did not respond to Complainant's letter.

177. Neither Respondent nor Ms. McCulloch paid the court ordered attorney's fees to Ms. Pregulman by the imposed deadline.

178. On February 23, 2012, Mr. Franks requested the Court initiate contempt proceedings for failure to pay the Court's sanction.

179. By check dated February 27, 2012, Respondent paid $6519.68 to Ms. Pregulman encompassing the court ordered sanction, interest, and additional costs for Mr. Frank's time to request contempt proceedings. Ms. McCulloch has now repaid Respondent.

180. By Notice dated March 1, 2012, Mr. Franks withdrew his request for contempt proceedings.

III. 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.

COUNT ONE (File No. 10-1305/Mormile)

Respondent conditionally admits that his conduct violated Rule 42, ERs 1.4(a)(3), 1.5, and 1.16(d), Ariz. R. Sup. Ct.

COUNT TWO (File No. 10-1521/Tracy)

Respondent conditionally admits that his conduct violated Rule 42, ERs 1.5, 1.15(d), and 1.16(d), Ariz. R. Sup. Ct.

COUNT THREE (File No. 10-2090/Hurd)

Respondent conditionally admits that his conduct violated Rule 42, ERs 1.3, 1.4(a)(3), and 5.3, Ariz. R. Sup. Ct.

COUNT FOUR (File No. 10-2134/Carson)

Respondent conditionally admits that his conduct violated Rule 42, ERs 1.4(a)(3), 1.5, and 5.3, Ariz. R. Sup. Ct.

COUNT FIVE (File No. 10-2305/Pamachena)

Respondent conditionally admits that his conduct violated Rule 42, ERs 1.5(d)(3) and 5.3, Ariz. R. Sup. Ct.

COUNT SIX (File No. 10-2328/Nelson)

Respondent conditionally admits that his conduct violated Rule 42, ERs 1.4(a)(3), 1.5(b), 1.15(d), 1.16(d), and 5.3, Ariz. R. Sup. Ct.

COUNT SEVEN (File No. 11-0064/Siivola)

Respondent conditionally admits that his conduct violated Rule 42, ERs 1.5 and 1.15(d), Ariz. R. Sup. Ct.

COUNT EIGHT (File No. 11-0196/Diversion Violation)

Respondent conditionally admits that his conduct violated Rule 42, ER 8.1(b) and Rules 54(d) and 54(e), Ariz. R. Sup. Ct.

COUNT NINE (File No. 11-0369/DiRubbio)

Respondent conditionally admits that his conduct violated Rule 42, ER 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct.

COUNT TEN (File No. 11-1904/Leeper)

Respondent conditionally admits that his conduct violated Rule 42, ERs 1.3, 1.4(a)(3), 5.3, 8.1(b), and 8.4(d), and Rule 54(d), Ariz. R. Sup. Ct.

COUNT ELEVEN (File No. 12-0348/Franks)

Respondent conditionally admits that his conduct violated Rule 42, ERs 3.2, 3.4(c), 8.4(d), and Rule 54(c), Ariz. R. Sup. Ct.

IV. CONDITIONAL DISMISSALS

COUNT SIX (File No. 10-2328/Nelson)

The State Bar conditionally agrees to dismiss the allegation that Respondent's conduct violated Rule 42, ER 1.3, Ariz. R. Sup. Ct. because Respondent made reasonable attempts to serve Ms. Nelson's husband.

COUNT NINE (File No. 11-0369/DiRubbio)

The State Bar conditionally agrees to dismiss the allegation that Respondent's conduct violated Rule 42, ER 1.4, Ariz. R. Sup. Ct. because the deposition was properly noticed or Ms. Yragui's request for a deposition had not yet been ruled upon at the time the deposition was scheduled.

COUNT TEN (File No. 11-1904/Leeper)

The State Bar conditionally agrees to dismiss the allegation that Respondent's conduct violated Rule 42, ER 1.5, Ariz. R. Sup. Ct. because Respondent provided a copy of Ms. Leeper's fee agreement to the State Bar after the Complaint was filed.

V. RESTITUTION

Respondent has agreed to address any restitution issues by cooperating with, and participating in, any request for Fee Arbitration made by any Complainant or client as they relate to any and all counts addressed by this consent agreement.

VI. 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:

Respondent shall be suspended from the practice of law for sixty (60) days. Upon reinstatement, Respondent shall be placed on probation for a term of two (2) years. Respondent shall cooperate with and participate in any request for Fee Arbitration filed by any client or Complainant as it relates to any count referenced in this consent agreement. Respondent shall pay the State Bar's Administrative Costs and Expenses, and shall pay the Court's costs and expenses for formal disciplinary proceedings. Respondent's terms of probation shall be as follows:

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 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, 3.4, and 5.3, and Rule 54. 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 two (2) years from that date. Respondent shall be responsible for any costs associated with LOMAP.

MAP

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at 602-340-7332, within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment. The director of MAP shall develop "Terms and Conditions of Probation" if he 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 (2) years from that date. 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.

VII. 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 multiple *Standards* are applicable in this matter but agree to address the most egregious *Standard* in order to preserve judicial economy. The parties agree that *Standard* 4.42 is the appropriate *Standard* to consider given the facts and circumstances of this matter and that it encompasses the majority of Respondent's misconduct in these collective matters. *Standard* 4.42 provides that "suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."

The parties agree that the root of Respondent's conduct in this matter stemmed from his inability to properly control or supervise his law firm. Respondent's repetitive communication problems with his clients and repetitive

diligence issues, often a result of poor employee supervision, created confusion amongst his clients and prevented Respondent from keeping proper track of his cases and their needs as they progressed. As a result, Respondent missed hearings, missed deadlines, and failed to timely respond to pending motions that caused actual injury to some clients and potential injury to others. The parties agree that this pattern of misconduct is prevalent when viewing the referenced counts as a whole and is the core issue of concern in this matter. The parties further agree that the breadth of the pattern warrants a short-term suspension.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent consistently neglected his clients' matters and supervision of his office staff and that his 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 actual and potential harm done to Respondent's clients, the profession, and the legal system.

Aggravating and mitigating circumstances

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

In aggravation:

1. *Standard* 9.22(c) – Pattern of Misconduct
    a. All counts referenced in this consent agreement demonstrate a recurring theme regarding Respondent's lack of diligence and communication in Respondent's various client matters, either directly or through the lack of supervision of his non-lawyer employees.
2. *Standard* 9.22(d) – Multiple Offenses
    a. Respondent's conduct affected no less than nine different clients over eleven different matters.

In mitigation:

1. *Standard* 9.32(a) - Absence of a Prior Disciplinary Record
2. *Standard* 9.32(b) - Absence of dishonest motive
3. *Standard* 9.32(c) – Personal or Emotional problems (See Exhibit B filed under seal).
4. *Standard* 9.32(d) – Effort to Rectify Consequences if Misconduct
    a. Respondent corrected the provisions of his bankruptcy fee agreement to include appropriate refund language pursuant to ER 1.5(d).
5. *Standard* 9.32(f) – Inexperience in the Practice of Law
    a. Respondent was admitted to the bar on June 29, 2007 and had been practicing law for approximately three years at the time most of the conduct in these matters occurred. Respondent also opened

his own law firm immediately after law school with no other legal experience.

6. *Standard* 9.32(g) – Character and Reputation (See Exhibit C)

7. *Standard* 9.32(k) – Remorse. Respondent has demonstrated his remorse through voluntary involvement with LOMAP and MAP, imposition of numerous new office procedures and hiring practices (See Exhibit D) and, full cooperation with the State Bar.

Discussion

The parties have conditionally agreed that a greater or lesser sanction of a 60-day suspension would not be appropriate under the facts and circumstances of this matter. This agreement was based heavily on Respondent's mitigating evidence which supported his efforts to correct his behavior and curtail the problems he created by not sufficiently supervising his staff and not sufficiently communicating with his clients. The parties recognize that without the mitigation as supported by the evidence attached and discussed in more detail in Exhibit "C," a longer suspension would be appropriate given the pattern of misconduct established in these matters. However, Respondent appears to have taken proactive steps to address his personal problems and struggles which, in turn, have helped him improve his law practice. Respondent has also taken proactive steps to change the culture and nature of his law practice, including engaging in more careful hiring practices and implementing new software and internal policies designed to keep him on track with his clients' matters and constant communication with them about their matters. Respondent has also learned the value of saying "no" to certain clients and has reduced his caseload to a more manageable level.

As such, the parties agree that a longer suspension runs the danger of negating and discouraging Respondent's progression, and that a shorter suspension would not serve the purposes of protecting the public and the profession.

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.

VIII. 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 a 60-day suspension, two years of probation, and the imposition of all appropriate costs and expenses, as stated herein. A proposed form order is attached hereto as Exhibit "E."

/ / /

/ / /

DATED this 29 day of June, 2012.

STATE BAR OF ARIZONA

Russell J. Anderson, Jr.
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 _____ day of _____, 2012.

Emile J. Harmon
Respondent

DATED this _____ day of _____, 2012.

Ralph W. Adams
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

DATED this _____ day of _____, 2012.

STATE BAR OF ARIZONA

_____
Russell J. Anderson, Jr.
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 _____ day of _____, 2012.

_____
Emile J. Harmon
Respondent

DATED this 22 day of July, 2012.

_____
Ralph W. Adams
Counsel for Respondent

Approved as to form and content

_____
Maret Vessella
Chief Bar Counsel

DATED this _____ day of _____, 2012.

STATE BAR OF ARIZONA

_____
Russell J. Anderson, Jr.
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 _____ day of _____, 2012.

_____
Emile J. Harmon
Respondent

DATED this 23rd day of July, 2012.

_____
Ralph W. Adams
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 24th day of July, 2012.

Copies of the foregoing mailed/emailed
this 24th day of July, 2012, to:

Ralph W. Adams, Bar No. 015599
Adams & Clark, PC
520 E. Portland Street, Suite 200
Phoenix, AZ 85004-1843
Email: thefirm@adamsclark.com
Respondent's Counsel

Copy of the foregoing emailed
this 24th day of July, 2012, 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 24th day of July, 2012, to:

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

By: Diane C. Heller
RJA:dch