IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **LARRY JOSEPH BUSCH, JR., Bar No. 023133** Respondent.	**PDJ 2014-9077** **FINAL JUDGMENT AND ORDER** State Bar No. 13-0654 **FILED DECEMBER 30, 2014**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Modified Agreement for Discipline by Consent filed on December 23, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Larry Joseph Busch Jr.**, is hereby suspended for a period of six (6) months and one (1) day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this Final Judgment and Order.

IT IS FURTHER ORDERED that Respondent shall fully participate in fee arbitration with Jean Higgins and Rodney Higgins, which Respondent has already initiated.

IT IS FURTHER ORDERED that the fee arbitrator shall issue an arbitration award in favor of Jean and Rodney Higgins in the amount of $14,000.00, if the arbitrator finds that Respondent has not fully participated in fee arbitration.

IT IS FURTHER ORDERED that Respondent shall pay any fee arbitration award to Jean and Rodney Higgins within thirty (30) days of the date the fee arbitrator issues the fee arbitration award.

IT IS FURTHER ORDERED that Respondent shall not file any application for reinstatement prior to his entire payment of the fee arbitration award in full.

IT IS FURTHER ORDERED that upon reinstatement, Respondent shall be placed on probation with the terms and conditions of probation, including the length of probation, to be determined at the time of reinstatement.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing 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, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $1,233.82, within thirty (30) days from the date of service of this Order. 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 30th day of December, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 30th day of December, 2014.

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by: JAlbright

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **LARRY JOSEPH BUSCH, JR., Bar No. 023133** Respondent.	**No. PDJ-2014-9077** **ORDER ACCEPTING MODIFIED AGREEMENT FOR DISCIPLINE BY CONSENT** [State Bar No. 13-0654] **FILED DECEMBER 30, 2014**

An Agreement for Discipline by Consent (Agreement) was filed on December 5, 2014, under Rule 57(a)(3), Ariz. R. Sup. Ct. The complaint was filed on August 29, 2014. Mr. Busch has voluntarily waived the right to an adjudicatory hearing on all the charges, if the conditional admission and proposed form of discipline is approved.

In 2010, Mr. Busch was retained to assist his clients regarding their credit card debt. He told his clients he would dispute the debt and if the creditor(s) sued he would attempt to settle. He instructed his clients to stop paying their credit card bills, which they did. They paid Mr. Busch approximately $17,000 for his services.

Starting in July, 2011, Mr. Busch told his clients he sent letters to the creditors to "validate" the "purported debt." In 2011, Mr. Busch and his clients agreed he

should attempt to settle the debt rather than dispute the debt. The parties agree Mr. Busch was not diligent in representing his clients.

When a creditor sued his clients, Mr. Busch did initial work defending the case. However, when the creditor moved for summary judgment, he did not respond to it. On May 9, 2012, the motion was granted due to his lack of response. Mr. Busch was informed by his clients in writing, on multiple occasions, the creditor had threatened them with a garnishment. Mr. Busch did not respond to his clients.

Another creditor sued the clients. Mr. Busch was informed of this multiple times, in writing, by his clients, but did not respond to them. His clients forwarded him a motion for default judgment filed against them. He did nothing. After his clients were informed by the creditor of the judgment entered against them, they again wrote Mr. Busch. He responded "I'll call them and get a settlement worked out." He did not do so. When they were garnished, Mr. Busch misled his clients and later misled the State Bar.

When a third creditor sued, his clients again wrote him on two occasions. Mr. Busch informed his clients he had disputed the account. Suit was filed, and his clients repeatedly wrote Mr. Busch. He did nothing. When default was filed, his clients notified him in writing. He replied, "…we'll get an answer filed to stop the default." He did nothing. Judgment was entered against his clients. The parties agree, Mr. Busch misrepresented to the State Bar that he tried to negotiate the matter.

Other creditors sued. Despite being repeatedly notified in writing by his clients of these matters, Mr. Busch did not respond and judgments were entered against his clients. The parties stipulate when garnishments were issued against his clients, Mr. Busch "refused to communicate" with his clients. When the State Bar requested

information from Mr. Busch, Mr. Busch did not provide the information and documentation.

Mr. Busch admits violations of ERs 1.2(a), 1.3, 1.4, 1.5(a), 8.4(c), 8.4(d), 8.1(b) and Rule 54(d).

Discussion

Bar Counsel must serve notice of this agreement to complainant(s). That notice was sent to the complainant by letter dated November 5, 2014. Included within that letter was a notification of the opportunity for the complainants to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. No objection was filed.

Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate". Under Rule 53(b)(3), Ariz. R. Sup. Ct. On December 10, 2014, the PDJ recommended modifications. Those modifications were accepted by parties with the filing of a formal Modified Agreement for Discipline by Consent.

Accordingly,

IT IS ORDERED incorporating by this reference the Agreement for Discipline, by Consent, the PDJ Order recommending modifications, the Modified Agreement for Discipline by Consent and any supporting documents. The Agreement is modified accordingly.

IT IS ORDERED the Agreement for Discipline by Consent as modified is accepted. A Final Judgment and Order was submitted simultaneously with the Modified Agreement. Costs as submitted are approved in the amount of $1,233.82.

A formal proposed judgment was submitted, reviewed and approved. Now therefore, the final judgment and order is signed this date.

DATED this 30th of December, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 30th of December, 2014, to:

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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **LARRY JOSEPH BUSCH, JR., Bar No. 023133,** Respondent.	**PDJ 2014-9077** **MODIFIED AGREEMENT FOR DISCIPLINE BY CONSENT** State Bar No. 13-0654

The State Bar of Arizona ("State Bar"), through undersigned Bar Counsel, and Respondent, Larry Joseph Busch Jr., who is represented by Kerrie M. Droban, hereby submit their Tender of Admissions and Modified Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.. By filing this Modified Agreement for Discipline by Consent, the parties accept the Presiding Disciplinary Judge's proposed modifications in the December 10, 2014 Order Requesting Modification of Agreement for Discipline by Consent.

Respondent voluntarily waives the right to an aggravation/mitigation hearing[1], 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.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of the consent agreement filed on December 5, 2014 was provided to the complainant by letter dated November 5, 2014. Notice of this modified consent agreement was provided to complainant via email on December 15, 2014. Complainant has been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.2(a), 1.3, 1.4, 1.5(a), 8.4(c), 8.4(d), 8.1(b), and Rule 54(d), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline:

A. Respondent shall be suspended from the practice of law in Arizona for a period of six months and one day;

B. Respondent has already initiated mandatory fee arbitration with Complainant Jean Higgins and her husband, Rodney Higgins. Attached as Exhibit "A" is a copy of the Petition for Arbitration of Fee Dispute that Respondent submitted to the State Bar. Respondent shall fully participate in this fee arbitration. If the fee arbitrator finds that Respondent has not fully participated in this fee

[1] Respondent failed to timely answer the State Bar's complaint. Consequently, the Presiding Disciplinary Judge entered a default on October 1, 2014 and subsequently scheduled an aggravation/mitigation hearing for November 5, 2014. In lieu of proceeding with an aggravation/mitigation hearing, the parties submit this Modified Agreement for Discipline by Consent.

arbitration, the fee arbitrator shall issue an award in favor of Jean and Rodney Higgins in the amount of $14,000. Respondent shall pay any fee arbitration award within thirty (30) days from the date the fee arbitrator issues the award, and Respondent shall not file any application for reinstatement prior to paying the fee arbitration award in full; and

C. Upon reinstatement, Respondent shall be placed on probation with terms and conditions of probation to be determined at the time of reinstatement.

Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within thirty (30) days from the date of this order, and if costs are not paid within the thirty (30) days, interest will begin to accrue at the legal rate.[2] The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "B."

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 March, 16, 2005.

COUNT ONE (File no. 13-0654/ Higgins)

2. In 2010, Rodney and Jean Higgins ("the Higgins") retained Respondent to assist them regarding their credit card debt. Respondent and the Higgins agreed to dispute the debt and, if the creditor(s) filed a lawsuit, then Respondent would attempt to settle the matter. Respondent instructed the Higgins to stop paying their credit card bills and they did so.

[2] 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 Higgins agreed to pay Respondent a certain amount per credit card account and the Higgins eventually paid Respondent a total of approximately $17,000.

4. Starting in July of 2010, Respondent allegedly sent letters to creditors requesting that they "validate" the "purported debt."

5. In 2011, Respondent and the Higgins agreed that Respondent should attempt to settle the debt rather than dispute the debt, including by representing the Higgins after certain creditors filed complaints against the Higgins seeking to collect on the debt.

6. Respondent was not diligent in representing the Higgins in these collection actions.

7. For example, Respondent was not diligent in representing the Higgins in *Target National Bank v. Higgins*, Maricopa County Superior Court case no. CV2011-001935.

8. After Target National Bank ("Target") filed its complaint naming the Higgins as defendants, Respondent filed an answer and a motion to dismiss. The court dismissed the case on July 27, 2011.

9. On August 5, 2011, Target filed a motion to vacate the dismissal.

10. Respondent did not respond to the motion to vacate and, on September 20, 2011, the court granted the motion.

11. On December 20, 2011, Target filed a motion for summary judgment. The court granted this motion on March 16, 2012 because Respondent did not respond to it.

12. On May 9, 2012, the court entered a judgment against Ms. Higgins and in favor of Target.

13. On January 2, 2013, Target filed an application for a writ of garnishment seeking to garnish Ms. Higgins' earnings.

14. On January 11, 2013, Ms. Higgins emailed Respondent stating: "I just received this scary letter in the mail [from Target]. I cannot afford to have my wages garnished. Please let me know what we need to do to stop this. . . ."

15. Respondent did not respond to this email.

16. On January 12, 2013, Ms. Higgins emailed Respondent again, writing: "I am trying to figure out why we had no warning from . . . [Target] regarding a garnishment of my wages. . . . Please let me know what we need to do as I will be in big trouble without my wages."

17. Respondent did not respond to this email.

18. On January 23, 2013, Ms. Higgins emailed Respondent: "I just received my paycheck today and it's garnished. . . . Can you please contact us."

19. Respondent did not respond to this email.

20. On January 26, 2013, Ms. Higgins again emailed Respondent stating "[w]hat have you found out about this case? Please let us know as soon as possible."

21. Respondent did not respond to this email.

22. Ms. Higgins also sent Respondent text messages regarding the same. Respondent did not respond to these text messages.

23. Respondent also was not diligent in representing the Higgins in *Razor Capital, LLC v. Higgins*, Hassayampa Justice Court case no. CC2012-010770.

24. On December 7, 2011, Razor Capital, LLC ("Razor Capital") sent a letter to Mr. Higgins demanding payment and stating that it would assume the debt was valid unless it heard from Mr. Higgins within 30 days.

25. On January 4, 2012, Ms. Higgins emailed Respondent regarding the December 7, 2011 letter and wrote: "Just wondering if we need to respond to this. The letter states 30 days which are almost up."

26. Respondent did not respond to this email.

27. On January 22, 2012, Ms. Higgins emailed Respondent stating: "We just received this summons . . . . I just copied the first page so you could see the case number etc. When would be a good time to get this to you?"

28. Respondent did not respond to this email.

29. On March 6, 2012, Ms. Higgins again emailed Respondent: "We received another letter in the mail today from . . . [Razor Capital]. I think we gave a copy of this to you when we saw you last time. They say we have 10 days to respond. . . . Let me know if you want the papers or if we need to do anything."

30. Respondent did not respond to this email.

31. On March 11, 2012, Ms. Higgins sent Respondent an email attaching an entry of default that Razor Capital filed and wrote: "Is there anything we need to do?"

32. On April 3, 2012, Razor Capital sent a letter to Mr. Higgins enclosing a motion for default judgment. Ms. Higgins forwarded this to Respondent and wrote "[p]lease let me know what this means and if we need to do anything about this."

33. Respondent did not respond to this email.

34. On April 5, 2012, the court entered Razor Capital's requested judgment and Razor Capital sent a letter to Mr. Higgins regarding the judgment.

35. On April 27, 2012, Ms. Higgins forwarded this letter to Respondent stating: "Can you either call me or send me an email as I don't know what they will do next."

36. On the same day, Respondent responded and wrote: "I'll call them and get a settlement worked out." Respondent did not do so.

37. On May 7, 2012, Ms. Higgins again emailed Respondent: "I am just checking in to see if you have spoken to anyone yet regarding the settlement."

38. Respondent did not respond to this email.

39. On May 9, 2012, Razor Capital filed an application for a writ of garnishment with the court.

40. On May 17, 2012, Ms. Higgins emailed Respondent, writing: ". . . I am desperate. This morning I found out all our money is gone from our checking accts. I called the bank and they said all our accts. have been garnished. I had extra money as I need dental surgery now I can't even pay for that. Right now, all our money is gone. I know it is . . . [Razor Capital] as they had threatened us if we didn't settle. Could . . . you please call me to let me know you are getting my messages."

41. On the same day, Respondent replied: "I contacted . . . [Razor Capital's attorney], and unfortunately they cannot agree to any settlement until the funds are released by the bank via a judgment filed with the court. The only thing they could do is accept payment in full. . . . Please contact the bank and see if they will give you any information. . . ."

42. In response to the bar charge, Respondent misrepresented to the State Bar that he was not advised of the Razor Capital case until the Higgins received a notice of garnishment and, at that point, "little could be done as the judgment had been entered for 30 days."

43. Respondent also was not diligent in representing the Higgins in *Capital One Bank v. Higgins*, Hassayampa Justice Court case no. CC2012-211763.

44. On June 8, 2012, Ms. Higgins emailed Respondent regarding a letter she received from Capital One Bank ("Capital One") and wrote: "Can we . . . prevent another judgment against us."

45. Respondent did not timely respond to this email.

46. On June 12, 2012 and June 25, 2012, Ms. Higgins followed up with Respondent regarding the Capital One letter.

47. On June 25, 2012, Respondent replied and informed Ms. Higgins that he recently disputed this account.

48. On October 26, 2012, Capital One filed its complaint against the Higgins.

49. On November 12, 2012, Ms. Higgins informed Respondent that she got served "with papers" from Capital One. She asked Respondent "[i]s there anytime today we can get this to you? . . . Can we just get them settled . . . ." Respondent replied on the next day stating Capital One has not been very reasonable about settling.

50. On November 15, 2012, Ms. Higgins again directed Respondent to try and settle the Capital One account.

51. On December 13, 2012, Capital One sent Ms. Higgins and Respondent a Notice of Application for Entry of Default.

52. On December 14, 2012, the court entered the requested default and served a copy of the same on Respondent. The next day, Ms. Higgins emailed Respondent a copy of the default and wrote "[i]t looks like they need a response within 10 days or more trouble."

53. Respondent replied ". . . we'll get an answer filed to stop the default." Respondent did not file an answer.

54. On February 1, 2013, Capital One sent a letter to Ms. Higgins and Respondent enclosing a Request for Entry of Default Judgment.

55. Respondent did not respond to the request for entry of a default judgment and the court entered the requested judgment on February 6, 2013.

56. In his response to the bar charge, Respondent misrepresented to the State Bar that he did not know of the Capital One complaint until January 15, 2013 and, at that point, he tried to negotiate a settlement but was unsuccessful in doing so.

57. Respondent was also not diligent in representing the Higgins in *GE Capital Retail Bank v. Higgins*, Hassayampa Justice Court case no. CC2012-003642.

58. On January 24, 2012, Ms. Higgins emailed Respondent a summons she received from GE Capital Retail Bank ("GE Capital") and wrote: "Let me know what you want me to do next."

59. Respondent did not respond to this email.

60. On March 8, 2012, GE Capital sent Respondent an application for entry of default. The court entered the default and copied Respondent on this default.

61. On April 18, 2012, GE Capital sent a motion for entry of default judgment to Respondent.

62. On April 25, 2012, the court granted GE Capital its requested judgment.

63. On November 12, 2012, Ms. Higgins emailed Respondent: "I just wanted to make sure you had the last one from GE Capital. . . . We gave you the summons. . . . I am sure you have all the court record. It would be so nice to get this all settled. . . . We just can't afford to have any more garnishments."

64. Respondent did not respond to this email.

65. In his response to the bar charge, Respondent misrepresented to the State Bar that he "was unaware of the lawsuit."

66. Respondent was also not diligent in representing the Higgins in *Citibank v. Higgins*, Maricopa County Superior Court case no. CV2010-032549.

67. Citibank filed a complaint naming the Higgins as defendants on November 24, 2010.

68. On January 3, 2011, Respondent filed a motion to dismiss.

69. On February 4, 2011, the court denied Respondent's motion to dismiss.

70. On March 16, 2011, Citibank filed a motion for summary judgment.

71. Respondent did not file a response to the motion for summary judgment and, on April 25, 2011, the court entered judgment against Rodney Higgins.

72. On December 18, 2012, Ms. Higgins contacted Respondent and informed him that she received a letter from Citibank. Ms. Higgins asked Respondent "[w]hat do you want us to do with this?"

73. Respondent did not respond to this email.

74. On February 26, 2013, Citibank filed an application for a writ of garnishment.

75. Citibank subsequently garnished Mr. Higgins' wages.

76. Respondent refused to communicate with the Higgins regarding the garnishment.

77. On April 14, 2014, bar counsel requested from Respondent certain information and documentation by April 30, 2014. Respondent did not provide the requested information and documentation by April 30, 2014.

78. On June 4, 2014, bar counsel sent Respondent a letter regarding the outstanding information and documentation. On June 6, 2014, Respondent unilaterally provided himself with an extension of time to respond by June 19, 2014.

79. On June 19, 2014, bar counsel's assistant called Respondent regarding the outstanding information and documentation.

80. On June 20, 2014, Respondent emailed bar counsel's assistant and stated that he was trying to obtain some remaining documents and would like an extension until July 31, 2014. Bar counsel did not provide the requested extension. On June 25, 2014, Respondent provided some of the information/documentation requested by bar counsel but not all of the documentation requested from Respondent.

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 1.2(a), 1.3, 1.4, 1.5(a), 8.4(c), 8.4(d), 8.1(b), and Rule 54(d), Ariz. R. Sup. Ct.

RESTITUTION

Although the Higgins paid Respondent approximately $17,000, Respondent performed some work for the Higgins, including by settling two cases, sending out letters to creditors asking them to validate certain debt, and by filing two motions to dismiss. Additionally, Ms. Higgins informed the State Bar that she cannot attribute the payments that she made to Respondent to specific cases. Instead, when she made payments to Respondent, the payments related to Respondent's anticipated work on all cases. Because of this, fee arbitration is appropriate and not an order of restitution.

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:

A. Respondent shall be suspended from the practice of law in Arizona for a period of six months and one day;

B. Respondent has already initiated mandatory fee arbitration with the Higgins. *See* Exhibit "A". Respondent shall fully participate in this fee arbitration. If the fee arbitrator finds that Respondent has not fully participated in this fee arbitration, the arbitrator shall issue a fee arbitration award in favor of the Higgins in the amount of $14,000. Respondent shall pay any fee arbitration award within thirty (30) days from the date the fee arbitrator issues the

award, and Respondent shall not file any application for reinstatement prior to paying the fee arbitration award in full; and

C. Upon reinstatement, Respondent shall be placed on probation with terms and conditions of probation to be determined at the time of reinstatement.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the above 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 thirty (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.

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* 4.42 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.42 provides:

Suspension is generally appropriate when:

(a) A lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or

(b) A lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

In this matter, Respondent knowingly failed to perform services for a client, which caused actual injury to his client in the form of judgments being entered against his client and the client's wages and/or bank accounts being garnished.

Specifically, in *Target National Bank v. Higgins*, Maricopa Superior Court case no. CV2011-001935, Respondent failed to respond to a motion to vacate a dismissal, failed to respond to a motion for summary judgment, and failed to communicate with his client regarding a writ of garnishment despite having knowledge regarding the same.

In *Razor Capital, LLC, v. Higgins*, Hassayampa Justice Court case no. CC2012-010770, Respondent failed to file an answer to the complaint, failed to communicate with his client regarding this case, failed to respond to a letter from the creditor demanding payment, failed to respond to an entry of default, and failed to respond to a motion for default judgment despite having knowledge regarding the same.

In *Capital One Bank v. Higgins*, Hassayampa Justice Court case no. CC2012-211763, Respondent failed to respond to a letter from the creditor, failed to communicate with his client, failed to attempt to settle the matter as directed by his client, failed to file an answer to the complaint, failed to oppose the entry of a default, and failed to respond to a motion for a default judgment despite having knowledge regarding the same.

In *GE Capital Retail Bank v. Higgins*, Hassayampa Justice Court case no. CC2012-003642, Respondent failed to communicate with his client regarding a complaint, failed to file an answer to the complaint, and failed to oppose a default and a default judgment despite having knowledge regarding the same.

In *Citibank v. Higgins*, Maricopa County Superior Court case no. CV2010-032549, Respondent failed to file a response to a motion for summary judgment and failed to communicate with his client regarding the judgment being entered and regarding a writ of garnishment despite having knowledge regarding the same.

The parties further agree that *Standard* 7.2 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 7.2 provides:

> Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and cause injury or potential injury to a client, the public, or the legal system.

Respondent knowingly engaged in conduct that is a violation of his duty as a professional, causing actual injury to his client. Respondent knowingly charged and collected approximately $17,000 from his client but performed minimal work for such client. Respondent also knowingly failed to timely respond to bar counsel's April 14, 2014 request for information and, when he did respond, Respondent

knowingly failed to provide bar counsel all requested information/documentation. Respondent also knowingly misrepresented to the SBA that: (1) he was unaware of *Razor Capital, LLC v. Higgins*, Hassayampa Justice Court case no. CC2012-010770, until after his client received a notice of garnishment; (2) he was unaware of *Capital One Bank v. Higgins*, Hassayampa Justice Court case no. CC2012-211763, until after the plaintiff obtained a default; and (3) he was unaware of *GE Capital Retail Bank v. Higgins*, Hassayampa Justice Court case no. CC2012-003642.

The duty violated

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

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent knowingly failed to perform services for his client, knowingly charged and collected approximately $17,000 from his client even though he performed minimal work, knowingly failed to timely respond to the bar counsel's April 14, 2014 letter, knowingly misrepresented to the State Bar his knowledge of certain complaints filed against his client, 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 harm to Respondent's client in the form of judgments being entered against his client and the client's wages and/or bank accounts being garnished, and that there was potential harm to the profession.

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:

Standard 9.22(b): Dishonest or selfish motive. Respondent collected approximately $17,000 from his client but then failed to defend his client in certain collection lawsuits. Respondent then misrepresented to the State Bar his knowledge of certain of those lawsuits.

Standard 9.22(c): A pattern of misconduct. Respondent failed to communicate and was not diligent in representing the Higgins in the numerous lawsuits discussed above. Additionally, in State Bar File No. 10-1496, Respondent was diverted to LOMAP for violating ERs 1.3, 1.4, and 8.4(d).

Standard 9.22(d): Multiple offenses. *See* discussion relating to *Standard* 9.22(c).

Standard 9.22(e): Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent knowingly failed to timely respond to bar counsel's April 14, 2014 request for information and, when he did respond, Respondent knowingly failed to provide bar counsel all requested information/documentation.

Standard 9.22(f): Submission of false evidence, false statements, or other deceptive practices during the disciplinary process. Respondent knowingly misrepresented to the State Bar that: (1) he was unaware of *Razor Capital, LLC v. Higgins*, Hassayampa Justice Court case no. CC2012-010770 until after his client

received a notice of garnishment; (2) he was unaware of *Capital One Bank v. Higgins*, Hassayampa Justice Court case no. CC2012-211763 until after the plaintiff obtained a default; and (3) he was unaware of *GE Capital Retail Bank v. Higgins*, Hassayampa Justice Court case no. CC2012-003642.

Standard 9.22(g): Refusal to acknowledge wrongful nature of conduct. In his response to the bar charge, Respondent stated that he did not believe that he "failed . . . in representing" the Higgins.

In mitigation:

Standard 9.32(a). Absence of a prior disciplinary record.[3]

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: Given the multitude of aggravating factors, including the fact that Respondent misrepresented his knowledge of certain cases pending against his client to the State Bar, a long term suspension is appropriate. The parties believe that a six month and one day suspension will adequately protect the public. 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.

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[3] As stated, Respondent was diverted to LOMAP in State Bar File No. 10-1496. Respondent's diversion is not discipline; however, *In re Zawada*, 208 Ariz. 232, 238, n. 4, 92 P.3d 862, 869 (2004), holds that absence of a prior disciplinary record is accorded little or no consideration when there is evidence of prior, known misconduct. *Id.*

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 six month and one day suspension, probation to be determined upon reinstatement, fee arbitration, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "C."

DATED this 23rd day of December, 2014.

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. 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 20th day of December, 2014.

Larry Joseph Busch, Jr.
Respondent

DATED this 22 day of December, 2014.

Kerrie M. Droban
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
of the Supreme Court of Arizona
this 23rd day of December, 2014.

Copies of the foregoing mailed/emailed
this 23rd day of December, 2014, to:

Larry Joseph Busch Jr.
Busch Law Center LLC
39506 North Daisy Mountain Drive, Suite 122-626
Phoenix, AZ 85086-1665
Larry@BuschLawCenter.com
Respondent

Copy of the foregoing emailed
this 23rd day of December, 2014, to:

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

Copy of the foregoing hand-delivered
this 23rd day of December, 2014, to:

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

by:
NSK: jld

EXHIBIT "A"

STATE BAR OF ARIZONA

Petitioner Check List for Completing Petition for Fee Arbitration

Dear Petitioner(s):

Please make sure you follow the check list below for submitting your petition for fee arbitration. Failure to follow these steps will cause serious delays in the processing of your petition and may even lead to its rejection:

1. Read the Rules of Arbitration of Fee Disputes.

2. Fill out the Petition form fully and completely. If you need additional room, you can attach additional pages to the Petition.

3. List all persons/entities involved in the fee dispute including all persons who signed a fee agreement or agreed to pay fees and costs.

4. Provide **copies** of documents relating to the dispute, including (1) any writing that establishes the fee arrangement between you and the Respondent, (2) billings, (3) invoices, (4) receipts and (5) any correspondence relating to the fees and costs that are in dispute. You do not need to include all documents relating to the representation or that were filed in court.

5. Sign **BOTH** the Petition and the Agreement to Arbitrate forms and **mail or deliver** them to the State Bar at the address listed above.

6. Retain a copy of the Petition and the Agreement to Arbitrate for your files.

7. If you have additional questions regarding the Petition or the Fee Arbitration Program, you can reach the Fee Arbitration Program Coordinator at feearb@azbar.org or 602-340-7379.

8. Notify the Fee Arbitration Coordinator with any change in contact information for you such as a change in address, phone number or email.

9. You will receive communications from the Fee Arbitration Program or the Arbitrator by mail and/or email regarding the status of the matter, appointment of an arbitrator and scheduling of the hearing.

Thank you for your participation in the Fee Arbitration Program.

STATE BAR OF ARIZONA

STATE BAR OF ARIZONA
FEE ARBITRATION COMMITTEE

BASIC STEPS IN RESOLVING A FEE DISPUTE

The following is a summary of the steps involved in the arbitration of fee disputes before the State Bar Committee established for that purpose.

The complete rules of procedure governing the resolution of fee disputes are attached, together with the forms needed to file for arbitration. A copy of Ethical Rule 1.5 regarding fees also is attached.

The **signed** documents should be mailed to:

State Bar of Arizona
Attn: Fee Arbitration
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266

STEP ONE - FILLING OUT AND MAILING THE FORMS

Read the attached Rules of Arbitration of Fee Disputes. Sign and complete the following forms:

1. Petition for Arbitration

2. Agreement to Arbitrate

Sign Both Forms And Return Them To The State Bar At The Address Above. DO NOT FAX OR EMAIL FORMS.

Please include copies (not originals) of documents including the fee or retainer agreement/letter, billings, invoices, receipts or correspondence that deal with the fees charged/paid in this matter.

The Fee Arbitration Program cannot access the information in your written Bar Charge file/complaint, if one exists. You must provide any information you wish to have considered in your fee dispute matter directly to the Fee Arbitration Program

***PLEASE NOTE*: If someone other than the client paid all or part of the attorney's fees, then that person also must sign these forms. **Forms not completed or signed will be returned causing a delay in the processing of the file.**

Forms and Attachments must be submitted in single-sided, loose-leaf form. DO NOT USE STAPLES, TABS OR BINDERS.

STEP TWO - CONTACTING THE OPPOSING PARTY AND TAKING JURISDICTION

The State Bar will send copies of the forms to the opposing party, who will have an opportunity to respond. If the opposing party agrees to arbitrate, both parties will be bound by the award.

If the opposing party declines to arbitrate or does not respond, you will be notified and the file will be closed.

The petition will be reviewed to make sure that the dispute is within the Committee's jurisdiction. If the dispute is not within the Committee's jurisdiction, you will receive a letter explaining why the Committee declined jurisdiction.

STEP THREE - APPOINTMENT OF ARBITRATORS

A member of the Committee will appoint the arbitrator(s) to hear the dispute. Both parties will receive written notice of the appointment of the arbitrator(s). If either party objects to any or all of the arbitrator(s) chosen, a written objection must be sent to the State Bar within ten (10) days after personal service or date of the notice of the name(s) of the arbitrator(s).

STEP FOUR - SETTING TIME FOR HEARING

Both parties will receive written notice of the date, time and location of the hearing at least fifteen (15) days before the hearing date. This notice will be served personally or by first class mail. If either party has not kept the State Bar informed of any changes in address, this notice will go to the last known address and will constitute notice.

STEP FIVE - THE ARBITRATION HEARING

At the arbitration hearing, both parties may present witnesses and documentary evidence and you both may be represented by an attorney. Witnesses may be cross-examined at the hearing. Any party to the arbitration may make arrangements to have the hearing recorded by a court reporter or by electronic tape recording at the party's own expense, provided notice is given to the opposing party and the arbitrator(s) at least three (3) days prior to the scheduled hearing.

If either party fails to appear at the hearing without good cause, the arbitrator(s) may proceed with the hearing and resolve the dispute upon the evidence produced.

STEP SIX - THE ARBITRATION AWARD

A sole arbitrator is requested to render the award, in writing, within twenty (20) days after the close of the hearing and a panel should issue an award within forty (40) days after the close of the hearing. These are only suggested time frames - they are not mandatory. A signed copy of the award will be mailed to each party upon receipt and review by the State Bar office.

STEP SEVEN - AWARD IS FINAL AND BINDING

The arbitration award is final and binding on all parties who agree to arbitrate by signing the Agreement to Arbitrate. The parties will have thirty (30) days to comply with the award unless the arbitrator indicates otherwise. The award may be enforced by any court of competent jurisdiction.

STATE BAR OF ARIZONA

Rev. 5/2012

STATE BAR OF ARIZONA
FEE ARBITRATION COMMITTEE

PETITION FOR ARBITRATION OF FEE DISPUTE

RETURN **ORIGINAL** FEE ARBITRATION FORMS TO:

State Bar of Arizona
Attn: Fee Arbitration
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
(602) 340-7379

DO NOT WRITE IN THIS SPACE
STATE BAR USE ONLY

FILE NUMBER: _____
DATE RECEIVED: _____

Please type or print. Answer each *applicable* question completely. Do not write on the back of the pages. Use additional sheets as required.

1. **Client's*** name, address, telephone number and e-mail address:

Rodney and Jean Higgins
Name
4433 W. Heyerdahl Dr.
Address
New River, AZ 85087
City State Zip Code
507-358-3272 — *Telephone Number*
rjchiggins@aol.com — *E-mail Address*

2. **Attorney/Law Firm's** name, address, telephone number and e-mail address:

Larry J. Busch, Jr.
Name
Busch Law Center, LLC
Law Firm
39506 N. DAISY MOUNTAIN DR., STE. 122-626
Address
ANTHEM, ARIZONA 85086
City State Zip Code
623-298-4220 — *Telephone Number*
Larry@BuschLawCenter.com — *E-mail Address*

***If this fee dispute is between two attorneys, please use this space to indicate the name of the attorney initiating fee arbitration.**

3. If the attorney was paid by someone other than the client, give the name, address, email address and telephone number of the person who paid the attorney. That person also must sign these forms.

N/A

Name

Address

City State Zip Code

Telephone Number *E-mail Address*

4. Was a fee or retainer agreement signed? Yes__X__ No____ If you have one, please provide a copy of the fee agreement. If you do not have a copy, please specify the nature of the fee agreement (hourly, contingent, flat fee, earned upon receipt, etc.).

See Attached

5. Type of case:

Assist client with credit card debt

6. What was the total amount of the fees and/or costs charged for the representation?

$17,000.00

7. How much of the total fees and/or costs charged has been paid?

100%

8. What is the EXACT DOLLAR AMOUNT in dispute?

$17,000.00

9. What dollar amount do you think is a reasonable fee for the services rendered, and why?

$17,000.00 was the agreed-upon fixed fee for the services provided

10. In what county in Arizona were the legal services performed?

Maricopa

11. Why are the fees and/or costs in dispute? Be specific. (If you need additional space, please add separate pages.)

Mr. and Mrs. Higgins were informed about the process and the risks involved, including the risk that their creditors may file lawsuits against them. This was debt which they owed and which they could not discharge in bankruptcy (according to what they told me of their consultation with a bankruptcy attorney. I attempted to settle various debts, some were successful and others were not.

I also advised them to again consult with a bankruptcy attorney prior to their last several lawsuits because the strategy was not effectively removing their debts due to the number of lawsuits and the limited funds they had to settle more than one account at any given time. After this consultation, they elected to continue with the strategy of attempting to settle accounts. Unfortunately, not all, attempts at settling accounts were successful due to limited funds they had to settle accounts and the amounts being demanded for settlements, or the limited timeframe for paying settlements.

Regarding the litigation, we had no defenses to the claims of their creditors. The strategies used were to attempt to delay long enough for the statute of limitations to expire, or to create a situation to obtain a favorable settlement at a much lower total than the amount on the account.

Mr. and Mrs. Higgins are claiming that they were subjected to judgments and garnishments; however this was a known and fully disclosed risk of undertaking these strategies to address their more than $103,000 in unsecured debt.

12. On what date did the attorney - client relationship end? Approximately April 2013

13. Has a lawsuit been filed regarding these fees? Yes____ No__X__ If yes, this lawsuit MUST be dismissed or stayed before fee arbitration will go forward.

14. Name, address, telephone number and e-mail address of the attorney representing you in this fee arbitration, if any:

Kerrie Droban
Name

Droban & Co., PC
Law Firm

39506 N. DAISY MOUNTAIN DR., STE. 122-441
Address

Anthem, AZ 85086
City State Zip Code

480-612-3058 kerriedroban@yahoo.com
Telephone Number *E-mail Address*

I hereby certify, under penalty of perjury, that the foregoing information is true and correct.

I agree to keep the State Bar of Arizona apprised of my address at all times during these proceedings; my failure to notify the State Bar of any changes in my address shall constitute waiver of notice of hearing.

Signature December 19, 2014
Date

Larry J. Busch, Jr.
Printed Name

Signature *Date*

Printed Name

STATE BAR OF ARIZONA

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STATE BAR OF ARIZONA
FEE ARBITRATION COMMITTEE

AGREEMENT TO ARBITRATE

FILE NUMBER

This Agreement is made between Rodney and Jean Higgins, the Client, and Larry J. Busch, Jr., the Attorney or Law Firm, regarding a fee dispute that exists between them, the nature of which is set forth in the Petition for Arbitration now on file.

Said parties expressly consent and agree as follows:

1. An avowal that the Parties have attempted to resolve the dispute and are unable to do so, or have a reasonable belief that such an effort would be useless.

2. An agreement to hold harmless from suit the State Bar and its employees, the members of the Committee, the Arbitrator, and all others participating in good faith in the arbitration proceedings.

3. An acknowledgment that the Award of the Arbitrator is final and binding upon the Parties and that such Award may be enforced by any court of competent jurisdiction.

4. An agreement to keep the State Bar apprised of any change in address occurring subsequent to filing the Petition. A failure to keep the State Bar so apprised will be deemed waiver of notice of hearing.

5 An agreement that said dispute will be heard and determined by the Committee in accordance with the Rules of Arbitration of Fee Disputes, copies of which have been delivered to and read by each of the Parties and which Rules expressly are accepted.

6. An agreement to submit to the Arbitrator, the State Bar of Arizona Fee Arbitration Program Coordinator, and the opposing Party, no later than ten (10) days prior to the Hearing, all relevant records pertaining to the dispute, including but not limited to, the Fee Agreement, all billings, and all documents to be introduced into evidence at the hearing directly related to the Fee Dispute.

7. An avowal that no civil litigation regarding this Fee Dispute has been filed or if a civil suit was filed, it has been dismissed or stayed.

8. An agreement to arbitrate the dispute to conclusion, absent a subsequent written agreement signed by all Parties, agreeing to dismiss the dispute.

9. An agreement that a Lawyer Party will not charge fees and/or costs for participation in a Fee Arbitration.

10. An avowal by the Attorney that he/she has an ethical obligation to appear if he/she has signed the Agreement to Arbitrate. Any Attorney who signs the Agreement to Arbitrate can and does obligate the firm to participate in the Fee Arbitration.

11. An avowal by the Attorney that he/she has the authority to bind the firm to participation in Fee Arbitration.

12. An avowal by the Attorney that he/she will arrange for the firm to participate in the Fee Arbitration process, including, but not limited to, advising the firm's managing partner of the fee dispute.

Each party has signed this agreement on the date set opposite his/her signature.

Client's Signature	*Date*	
Additional Client's/ Payor's Signature (if applicable)	*Date*	
Attorney's Signature	*Date*	December 19, 2014
Attorney's Signature	*Date*	12/19/2014

*In an arbitration proceeding where the amount in controversy is more than $20,000, any party may request that the matter be heard by a fee arbitration panel of three (3) persons (See Rule V.A., Rules of Arbitration of Fee Disputes). Please check the following box if the amount in controversy is more than $20,000 and you would like this matter assigned to a three-member panel.

☐ I /we request a three (3) person panel for this Fee Arbitration.

☑ I/we do not request a three (3) person panel to hear this Fee Arbitration.

STATE BAR OF ARIZONA

Rev.5/30/2012

STATE BAR OF ARIZONA
FEE ARBITRATION COMMITTEE

RULES OF ARBITRATION OF FEE DISPUTES

As promulgated by the Fee Arbitration Committee and adopted by the Board of Governors of the State Bar of Arizona ("State Bar".)

I. PURPOSE COMPOSITION OF THE COMMITTEE, AND DEFINITIONS

A. The purpose of the State Bar of Arizona Fee Arbitration Committee (hereinafter designated as the "Committee") is to provide a forum for the binding arbitration of Fee Disputes. This program is available to all parties who agree to be bound by the Award.

B. The Committee shall consist of members appointed by the president of the State Bar, one of whom must be designated by the president as chair of the Committee.

C. Definitions:

Agreement to Arbitrate or **Agreement**: The approved State Bar form signed by all Parties consenting to arbitration of a Fee Dispute.

Attorney or **Lawyer**: A person admitted to the practice of law in the State of Arizona, or any person who appears, participates or otherwise engages in the practice of law in the State of Arizona over whom the Committee has jurisdiction pursuant to the Rules of the State Bar.

Award: The final written determination of the Arbitrator(s) in a Fee Dispute.

Client: Any party who enters into a Fee Agreement with a Lawyer for legal services and/or advice.

Fee Dispute: A disagreement between a client/payer and the Attorney charging the fees, or between two Attorneys, regarding the reasonableness of legal fees and/or costs arising out of a representation concerning or involving an Arizona legal matter.

Fee Agreement: Any agreement between a Lawyer and Client containing the terms and conditions of their relationship. May also be called a retainer letter, retention letter, retainer agreement, employment letter or agreement, advance deposit letter or agreement, etc.

Fee Arbitration Program Administrator: The staff person or designee of the State Bar responsible for administering the State Bar Fee Arbitration Program.

File: The Committee's records and papers in a specific Fee Arbitration matter.

Party: The Client, Lawyer, the Lawyer's assignee and any third person or entity who has been joined by the Client or Lawyer in the Fee Dispute.

Petition: A written request for Fee Arbitration on the form approved by the Committee and the State Bar.

Petitioner: The Attorney or Client requesting Fee Arbitration.

Respondent: The Attorney or Client with whom the Petitioner has a Fee Dispute.

Rules: The Rules of Arbitration of Fee Disputes as promulgated by the Committee and adopted by the Board of Governors of the State Bar.

II. JURISDICTION OF THE COMMITTEE

A. The Committee's jurisdiction includes the Arbitration of Fee Disputes:

1. Between and among Attorneys when the fee arrangement arose, where both Parties agree to be bound by executing an Agreement to Arbitrate in the form provided by the State Bar of Arizona;

2. Between a Client and their Attorney, where both Parties agree to be bound by executing an Agreement to Arbitrate;

3. Between an Attorney licensed to practice in Arizona when the Client-Attorney relationship that gave rise to the fee dispute began and a third Party who has paid or agreed to pay the Attorney's fees, only if the Client joins as a co-Petitioner or co-Respondent, as the case may be, and all Parties agree to be bound by executing an Agreement to Arbitrate;

4. Between a Client and the law firm to which the fee in dispute may be owed or has been paid, where all Parties agree to be bound by executing an Agreement to Arbitrate. In such case, Agreements to Arbitrate must be executed by any Attorney of the firm;

5. Where ordered by a Court of competent jurisdiction; or

6. As a result of any disciplinary investigation or proceeding conducted pursuant to the Rules of the Arizona Supreme Court, including diversion agreements between a respondent and the State Bar or orders of the Attorney Discipline Probable Cause Committee, Presiding Disciplinary Judge or a Hearing Panel.

Committee Comment:

1) *The State Bar Fee Arbitration Program only has jurisdiction over the reasonableness of fees as defined by ER 1.5. For example, the program has no jurisdiction to arbitrate liens filed by third parties against awards being held in attorney trust accounts under ER 1.15.*
2) *A dispute over the reasonableness of the fees must exist between the Client and the Attorney for the matter to qualify for Fee Arbitration. The State Bar Fee Arbitration Program is not to be used by Parties as a collection agency.*
3) *Attorneys admitted pro hac vice to the State Bar are subject to the Committee's jurisdiction.*

B. Except as ordered by a Court of competent jurisdiction, the Committee will not have jurisdiction over a Fee Dispute:

1. If any Party declines to execute the Agreement to Arbitrate in the form provided by the State Bar.

2. If there already has been a determination made as to the validity of the fee;

3. If an action on the dispute is pending in another forum;

4. If the dispute is in the nature of a compulsory counter-claim that could have been raised in another proceeding;

5. In the absence of a stipulation of the Parties, if the Petition is filed more than three years after the Attorney-Client relationship has been terminated or the final billing has been received by the Client, whichever is longer; or

6. If the amount in controversy is less than $500.

C. Any member of the Committee, or staff to the Committee, may decline jurisdiction in a particular case where the interests of justice would be served by dismissal or where Fee Arbitration is unlikely to lead to a resolution of the Fee Dispute.

III. SCOPE OF THE FEE ARBITRATION HEARING

A. The issue before an Arbitrator or a Fee Arbitration panel (hereinafter collectively referred to as "the Arbitrator"), in accordance with ER 1.5, Ariz. R.S.Ct. 42. (attached), is whether the fees charged were reasonable for the work that was performed. If disputed, the Arbitrator also may determine the reasonableness of costs.

B. The issues regarding reasonableness of fees and costs will be limited to those set forth in the Petition, the Respondent's response, other written submissions by the Parties, and the testimony and written evidence presented at the hearing.

IV. STARTING THE ARBITRATION: PETITION-AGREEMENT-RESPONSE

A. Arbitration proceedings must be initiated by filing a signed Petition for Arbitration and Agreement to Arbitrate with the State Bar office in Phoenix. The Petition for arbitration (the "Petition") and Agreement to Arbitrate (the "Agreement") must be in the form provided by the State Bar.

B. The Parties' signatures on the Agreement must constitute:

1. An avowal that the Parties have attempted to resolve the dispute and are unable to do so, or have a reasonable belief that such an effort would be useless.

2. An agreement to hold harmless from suit the State Bar and its employees, the members of the Committee, the Arbitrator, and all others participating in good faith in the arbitration proceedings.

3. An acknowledgment that the Award of the Arbitrator is final and binding upon the Parties and that such Award may be enforced by any court of competent jurisdiction.

4. An agreement to keep the State Bar apprised of any change in address occurring subsequent to filing the Petition. A failure to keep the State Bar so appraised will be deemed waiver of notice of hearing.

5. An agreement that said dispute will be heard and determined by the Committee in accordance with the Rules of Arbitration of Fee Disputes, copies of which have been delivered to and read by each of the Parties and which Rules expressly are accepted.

6. An agreement to submit to the Arbitrator, the State Bar of Arizona Fee Arbitration Program Coordinator, and the opposing ~~p~~Party, no later than ten (10) days prior to the Hearing, all relevant records pertaining to the dispute, including but not limited to, the Fee Agreement, all billings, and all documents to be introduced into evidence at the hearing directly related to the Fee Dispute.

7. An avowal that no civil litigation or arbitration regarding this Fee Dispute has been filed or if a civil suit or arbitration was filed, it has been dismissed or stayed.

8. An agreement to arbitrate the dispute to conclusion, absent a subsequent written agreement signed by all Parties, agreeing to dismiss the dispute.

9. An agreement that a Lawyer Party will not charge fees and/or costs for participation in a Fee Arbitration.

10. An avowal by the Attorney that he/she has an ethical obligation to appear if he/she has signed the Agreement to Arbitrate. Any Attorney who signs the Agreement to Arbitrate can and does obligate the firm to participate in the Fee Arbitration.

11. An avowal by the Attorney that he/she has the authority to bind the firm to participation in Fee Arbitration.

12. An avowal by the Attorney that he/she will arrange for the firm to participate in the Fee Arbitration process, including, but not limited to, advising the firm's managing partner of the fee dispute

C. Upon receipt of the forms initiating a Fee Arbitration, the State Bar office must forward to the Respondent a copy of the Petition and Agreement. The State Bar office will request that the Respondent sign and return a copy of the Agreement with a response to the Petition. A failure to return the Agreement within twenty (20) days from the date of the transmittal letter from the State Bar will be construed as a declination to arbitrate. Upon receipt of the Agreement and response, the State Bar office will forward a copy of each to the Petitioner. If an Agreement is not timely received, the matter must be dismissed and the Petitioner(s) notified of the dismissal.

D. Parties are responsible for providing two (2) copies of their responses, replies or other documentary evidence in sole arbitrator matters and four (4) copies in panel matters.

E. The State Bar office must forward a copy of the complete File to a member of the Committee for appointment of an Arbitrator.

F. The Arbitrator, in his/her sole discretion, may authorize additional discovery procedures or may limit discovery.

Committee Comment:

The use of discovery procedures in Fee Dispute arbitration is discouraged and should be granted only in the extraordinary case where the fee is of some magnitude and after consideration of whether the Parties are represented by counsel.

G. A member of the Committee, staff to the Committee, or the Arbitrator may grant extensions for any act required by these rules.

V. SELECTION OF THE ARBITRATION PANEL; OBJECTIONS TO PANEL MEMBERS

A. In an arbitration proceeding where the amount in controversy is more than $20,000, any Party may request in the Agreement that the matter be heard by a Fee Arbitration panel of three (3) persons. If such a request is made, upon receipt of the file, a member of the Committee must appoint three (3) persons to serve as an arbitration panel. The panel must consist of two (2) members of the State Bar and one (1) layperson. One of the Lawyers on the panel must be designated as the panel chair. Absent such a request, a member of the Committee must appoint one (1) member of the State Bar to serve as the sole arbitrator.

B. In an arbitration proceeding where the amount in controversy is $20,000 or less, a member of the Committee must appoint one (1) member of the State Bar to serve as the sole Arbitrator.

Committee Comment:

Parties are advised that if a panel is requested, the arbitration process will likely require additional time to accommodate recruiting panel members and coordinating with the three arbitrators' and the Parties' schedules, setting the hearing date, as well as additional time necessary to prepare and issue the Award.

C. Arbitrators will be chosen in the same Arizona county in which services were performed, or in which either Client or payer resides, the law firm has an office, or the attorney works, in accordance with Rule VI.A. if practicable.

Committee Comment:

The Arbitrator can reside in the county, travel to the county, hold a telephonic hearing, or have the Parties stipulate for the Arbitrator to determine the matter based on paper submissions see VI. J.

D. The member of the Committee must advise all Parties of the name(s) of the appointed Arbitrator(s) by notice served personally or by first class mail. Within ten (10) days following personal service or date of the notice, any Party to the proceedings may file with the State Bar office in Phoenix an objection to the appointment of any of the Arbitrator(s). The State Bar office must promptly inform the member of the Committee of any objection. Upon notice of an objection, a new Arbitrator must be selected to replace each Arbitrator objected to, which selection is binding upon the Party previously having objected.

E. The State Bar office, with the assistance of the Committee, will maintain a list of laypersons who have indicated a willingness to act as arbitration panel members. The member of the Committee may select laypersons from sources other than such list in appointing panels.

Committee Comment:

The list of laypersons from which Arbitration panel members may be chosen should be as broad-based as possible. Every layperson who actually serves as an Arbitrator will be given a copy of ER 1.5, Ariz. R.S.Ct. 42. which sets forth the factors to be considered in determining the reasonableness of a fee.

VI. VENUE OF HEARING; CONDUCT OF HEARING; RIGHT TO PRESENT EVIDENCE; RIGHT TO COUNSEL; NOTICE OF HEARING; RIGHT TO RECORD HEARINGS; EFFECT OF FAILURE TO APPEAR; POSTPONEMENT.

A. In the absence of a stipulation of the Parties to the contrary, or a finding by the Arbitrator of a more convenient forum, the venue of the hearing must be: 1) the county in Arizona where the services were performed; or 2) the county in Arizona where the Parties contracted for the services.

B. The Arbitrator must set a date, time, and location for the hearing and must notify the Parties by personal service delivery, email with all parties consent, or by first class mail. The notice must be delivered or mailed not less than fifteen (15) days before the hearing unless the Arbitrator and all Parties agree on a shorter period. In the notice of the hearing, the Parties must be informed of their right to present witnesses and documentary evidence and to be represented by counsel.

C. Emailing to parties' provided email address with all parties consent or mailing of the notification of hearing by first class mail to the last known address of the Parties will constitute notice. A Party's appearance at a scheduled hearing shall constitute a waiver of any deficiency in the notice of the hearing.

D. Any Party to the arbitration may make arrangements to have the hearing recorded by a court reporter or by electronic tape recording at the Party's own expense, provided notice is given to the opposing Party and the Arbitrator at least three (3) days prior to the scheduled hearing. In the event a hearing is tape recorded, the requesting Party must provide necessary equipment and tapes as required by the Arbitrator. Any Party to the arbitration is entitled to acquire at his/her own expense a copy of the reporter's transcript of the testimony by making arrangements directly with the reporter. When no Party to the arbitration requests that the hearing be recorded and the Arbitrator deems it necessary to have the hearing recorded, a court reporter may be employed for such purpose if authorized by the chair of the Committee in consultation with the CEO/Executive Director of the State Bar.

E. At the time and place set for the hearing, the Arbitrator, immediately prior to commencement of the Hearing, must advise the Parties of the option to engage in settlement discussions. The Arbitrator with the consent of all Parties may facilitate the settlement discussions. If no settlement is reached, the Arbitrator will proceed with the hearing. In the event settlement is reached, the Arbitrator must prepare an Award setting forth the terms of the Parties' agreement including without limitation the amount to which each Party is entitled, if any, the time in which such amounts are to be paid and any other terms agreed to by the Parties. The Award issued pursuant to this rule, may upon compliance with applicable process, be enforced by any court of competent jurisdiction.

F. The testimony of witnesses must be given under oath. The Arbitrator must administer oaths to witnesses.

G. The Arbitrator must preside at the hearing and must determine questions of procedure and the relevancy and materiality of the evidence offered. He/she must exercise all powers relating to the conduct of the hearing. Conformity to the legal rules of evidence is not required. In cases between Clients and Attorneys the burden of proof by a preponderance of the evidence as to the reasonableness of the fee is on the Attorney. In all other cases, the burden of proof is on the Petitioner.

H. If at the time set for the hearing all Arbitrators are not present, the hearing must be postponed unless the Parties agree that the hearing may proceed with one Lawyer member of the panel as the sole Arbitrator. A hearing must not be conducted by or proceed with two (2) members of the panel acting as Arbitrators.

I. If any Party to an arbitration who has been duly notified fails to appear at a scheduled hearing without good cause as determined by the Arbitrator, the Arbitrator may proceed with the hearing and determine the controversy upon the evidence produced. Any Award rendered will have the same force and effect as if the Parties personally attended.

J. Upon request of a Party for good cause, or upon his/her/their own determination, the Arbitrator may postpone or adjourn the hearing from time to time as necessary.

K. Upon stipulation of the Parties to waive a hearing, the Arbitrator may determine the controversy solely on the basis of the File, or by a conference telephone call, the expense for which must be borne by the respective Parties.

L. If the Parties settle the matter before appearing at the Arbitration Hearing, the Arbitrator must notify the Fee Arbitration Administrator within 10 days of the settlement.

M. Any Party and any witness may testify telephonically.

Committee Comment:

It is generally not necessary to introduce Attorney work product as evidence in the Fee Arbitration hearing; the Fee Arbitration Program, is not a forum to address malpractice claims. If the volume of work produced is an issue, it can be demonstrated by bringing the necessary documents to the hearing, but not submitting them as exhibits. The Parties are cautioned not to submit originals to the State Bar, the opposing Parties or the Arbitrator. The State Bar and the Arbitrator are not responsible for any lost original documents.

VII. RENDITION; FORM; SERVICE OF ARBITRATION AWARD; SETTLEMENTS; COMPLIANCE; AND OBJECTIONS

A. The hearing must be held promptly, but not longer than ninety (90) days after receipt by the Arbitrator of the Agreement. The sole Arbitrator should render the Award within twenty (20) days after the close of the hearing. A panel must render its Award by majority vote within forty (40) days after the close of the hearing. The foregoing time limits are not jurisdictional.

B. Awards must be in pleading format; on lined, numbered paper; and signed by at least one Arbitrator. The Award must include: 1) a preliminary statement reciting the jurisdictional factors; 2) A list of all persons present at the hearing; 3) a brief statement of the dispute, the amount charged, and the amount paid; 4) the findings of fact, including a determination of the reasonableness of the fee; and 5) the monetary relief if any, stating a specific sum and exactly which Party receives that sum. Where appropriate, an award of interest may be made consistent with Arizona law. The Arbitrator may not award attorney's fees or costs incurred in the arbitration.

Committee Comment:

All matters which go to hearing must result in a written Award. The Award must be written by at least one Arbitrator and not authored by the Parties. However, an Award for a matter settled at hearing may incorporate a Settlement Agreement, which must be signed by all Parties and the Arbitrator, and included as an attachment to the Award, to ensure that the Settlement Agreement becomes enforceable if the Award is filed and converted into a judgment. Arbitrators are encouraged to provide sufficient analysis and facts in the Award to explain the reasoning behind the Award.

C. The original Award must be forwarded only to the Phoenix office of the State Bar for review and processing. The State Bar staff will send the Award to the Parties.

D. The Parties have thirty (30) days from the date upon which a copy of the Award is mailed to them to comply with the Award. If the Parties fail to comply with the Award within that time, the Award may be judicially confirmed pursuant to Arizona's Uniform Arbitration Act, A.R.S. § 12-1501, et seq. Any objections or modifications to the Award may only be raised through this procedure.

VIII. RELIEF GRANTED BY AWARD; APPLICATION TO COURT; CONFIDENTIALITY; ENFORCEABILITY OF AWARD; ATTORNEY NON-COMPLIANCE WITH AWARD

A. The Award must state the amount to which each Party is entitled, if any.

B. Service of the Award on the Parties will terminate: 1) all claims and interests of the Parties against one another in the subject matter of the arbitration; and 2) all rights of the Attorney to retain possession of any property of the Client pertaining to the subject matter of the arbitration that is not awarded to the Attorney in the Award.

C. Payment of the amount awarded will constitute a complete satisfaction of all claims arising out of the subject matter of the arbitration.

D. With the exception of the Award itself, all records, documents, Files, proceedings and hearings pertaining to arbitration of any Fee Dispute under these rules will not be open to the public or to any person not involved with the dispute, but must be open to any court seeking to confirm or set aside such Award, or to comply with other law or a final order of a court or tribunal of competent jurisdiction directing the Fee Arbitration Committee or Program to disclose such information; and to the Lawyer Regulation Office, the Law Office Management Assistance Program, the Member Assistance Program, and the Board of Legal Specialization of the State Bar. A Fee Arbitrator, Fee Arbitration Panel Member, Fee Arbitration Committee Member, or Fee Arbitration Program Coordinator must reveal such information from the file to the extent they reasonably believe necessary to prevent a party from committing any criminal act, especially one that they believe is likely to result in death or substantial bodily harm. The State Bar must retain all original Awards. Arbitrators are encouraged to retain their arbitration Files for a period of two years after issuance of the Award.

E. Any binding Award may be enforced by the superior court of the county in which the arbitration hearing was held.

F. If an Attorney fails to comply with the Award within thirty (30) days from the date the Award is mailed to the Parties, in the absence of a timely filed objection, such failure will result in a referral to the Lawyer Regulation Office for Disciplinary Investigation.

IX. ARBITRATION OF FEE DISPUTES BETWEEN AND AMONG ATTORNEYS

A. The Committee will accept jurisdiction of disputes between and among attorneys only when all parties agree to be bound by the award.

B. The Arbitrator may determine whether the fee in dispute should be divided and, if so, in what proportion.

X. COMMUNICATION BETWEEN THE PARTIES AND ARBITRATOR

Verbal communication between the Parties and Arbitrators is to be avoided, if possible. Arbitrators are advised to have an associate or a secretary handle scheduling problems. All written communication to and from the Arbitrators should be copied to all Parties, their counsel, if any, and the State Bar. Ex-parte communication must be reported promptly to the opposing Party.

Amended by the Board of Governors of the State Bar of Arizona this 30th day of May 2012.

Joseph A. Kanefield, President
State Bar of Arizona

Renee Gerstman, Chair
State Bar of Arizona Fee Arbitration Committee

Rules Amended May 30, 2012

The Ethical Rules of the Supreme Court of Arizona
ER 1.5 FEES (as of 01/01/2012)

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) the degree of risk assumed by the lawyer.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing before the fees or expenses to be billed at higher rates are actually incurred. The requirements of this subsection shall not apply to court-appointed lawyers who are paid by a court or other governmental entity.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof;
(2) a contingent fee for representing a defendant in a criminal case; or
(3) a fee denominated as "earned upon receipt," "nonrefundable" or in similar terms unless the client is simultaneously advised in writing that the client may nevertheless discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to paragraph (a).

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) each lawyer receiving any portion of the fee assumes joint responsibility for the representation;
(2) the client agrees, in a writing signed by the client, to the participation of all the lawyers involved, including the share each lawyer will receive; and
(3) the total fee is reasonable.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. When the scope of the representation changes, in a material way, the lawyer should notify the client about the changes in writing. In a new client-lawyer relationship, however, a written understanding as to fees and expenses must be promptly established. Generally, furnishing the client with a simple memorandum or copy of the lawyer's customary fee arrangements will suffice, provided that the writing states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or

disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule, including consideration of the degree of risk assumed by the lawyer at the outset of the representation. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider all of the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See ER 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to ER 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of ER 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should discuss with the client alternative basis for the fee and explain their implications.

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Disclosure of Refund Rights for Certain Prepaid Fees

[7] Advance fee payments are of at least four types. The "true" or "classic" retainer is a fee paid in advance merely to insure the lawyer's availability to represent the client and to preclude the lawyer from taking adverse representation. What is often called a retainer but is in fact merely an advance fee deposit involves a security deposit to insure the payment of fees when they are subsequently earned, either on a flat fee or hourly fee basis. A flat fee is a fee of a set amount for performance of agreed work, which may or may not be paid in advance but is not deemed earned until the work is performed. A nonrefundable fee or an earned upon receipt fee is a flat fee paid in advance that is deemed earned upon payment regardless of the amount of future work performed. The agreement as to when a fee is earned affects whether it must be placed in the attorney's trust account, see ER 1.15, and may have significance under other laws such as tax and bankruptcy. But the reasonableness requirement and application of the factors in paragraph (a) may mean that a client is entitled to a refund of an advance fee payment even though it has been denominated "nonrefundable," "earned upon receipt" or in similar terms that imply the client would never become entitled to a refund. So that a client is not misled by the use of such terms, paragraph (d)(3) requires certain minimum disclosures that must be included in the written fee agreement. This does not mean the client will always be entitled to a refund upon early termination of the representation (e.g., factor (a)(2) might justify the entire fee), nor does it determine how any refund should be calculated (e.g., hours worked times a reasonable hourly rate, quantum merit, percentage of the work completed, etc.), but merely requires that the client be advised of the possibility of the entitlement to a refund based upon application of the factors set forth in paragraph (a). In order to be able to demonstrate the reasonableness of the fee in the event of early termination of the representation, it would be advisable for lawyers to maintain contemporaneous time records for all representations undertaken on any flat fee basis.

Division of Fee

[8] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee by agreement between the participating lawyers if all assume responsibility for the representation as a whole and when the client agrees, in a writing signed by the client, to the arrangement, including the share that each lawyer is to receive. A lawyer should only refer a matter to a lawyer who the referring lawyer reasonably believes is competent to handle the matter. See ER 1.1. If the referring lawyer knows that the lawyer to whom the matter was referred has engaged in a violation of these Rules, the referring lawyer should take appropriate steps to protect the interests of the client. Except as permitted by this Rule, referral fees are prohibited by ER 7.2(b).

[9] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes Over Fees

[10] The State Bar of Arizona has established an arbitration procedure for the resolution of fee disputes. Each lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Larry J. Busch, Jr.
Attorney At Law

www.BuschLawCenter.com

Licensed in Arizona and Missouri

May 3, 2010

Rodney & Jean Higgins
4433 W Heydahl Dr.
New River AZ 85087

PRIVILEGED AND CONFIDENTIAL

RE: Engagement for the Debt Elimination Program

Dear Rodney and Jean:

We are pleased that you have chosen Busch Law Center, LLC to provide legal services for you in regard to disputing your debt. We look forward to working with you on this matter.

It is agreed that Busch Law Center, LLC shall act as your attorney in defense of a credit card or other debt collection matter and shall act in your best interest to defend you in such action. Busch Law Center, LLC and its agents and affiliates consists of licensed attorneys engaged in the practice of law who: 1) provide methods to dispute and render debts uncollectible; and 2) provide aggressive defenses against lawsuits filed to collect on debts; 3) provide credit repair services. We shall use our legal resources and litigation skills to assist you.

Fees

In accord with our regular practice relating to new clients and new matters, we are writing to confirm my engagement and outline our billing procedures. In establishing this fee, we have taken into account special difficulties, if any, in performing my services, the amount of time involved in the matter, the level of skill or expertise required and the efficiency with which the services are performed.

For initial costs and for debt dispute operations to commence, you shall pay **$500.00** for each account submitted to the program at the time of signing of this agreement, representing a one time upfront payment to initiate legal representation. These fees shall be deemed non-refundable earned-upon-receipt payment and must be deposited with my firm before we begin any work on this matter.

You agree to an additional fee equal to Ten Percent (10%) of your total debt, which we will be assisting you to dispute. You will pay such additional fee in 12 monthly payments, the first of which is due 30 days after the initial fees are paid and monthly thereafter beginning on the same day of each month until paid in full. Payments are non-refundable earned-upon-receipt payments for administrative costs, ongoing expenses, and minimal legal fees. Busch Law Center, LLC shall continue to work on your file provided payments are made monthly and we receive your cooperation, as discussed below. For your information, my normal hourly rate is $275.00, and my assistant's hourly rate is $120.00. Amounts which are overdue shall be charged interest at the rate of 1.5% per month (18% per annum), and you agree to pay for any collection costs incurred by Busch Law Center, LLC if we engage collection services or incur costs in collecting the fees owed.

Litigation

In the event it becomes necessary to defend you in any lawsuit filed by one of your creditors regarding the debts which are included in the Debt Elimination Program, you will pay any filing fees, court costs, process server fees, or any other costs or expenses. We will defend such lawsuit as part of our fee agreement as described above. And judgment which we receive on your behalf shall be shared on a Fifty Percent (50%) contingent fee basis, except for any attorneys' fee award, which shall be payable to our firm.

Contingent Fee

In the event we file a lawsuit against any of your creditors or any third party collection agencies for violations of the Fair Debt Collection Practices Act or any other law, we shall represent you on a Fifty Percent (50%) contingent fee basis. You shall pay any filing fees, court costs, process server fees, or any other costs. We may include claims in this lawsuit which contain the potential award of punitive damages against the creditor or debt collector. Punitive damages are issued to punish the intentional wrongdoing of a party and are designed to punish past behavior and deter future similar behavior. If a court awards punitive damages on any claim, we shall receive Fifty Percent (50%) of such damage award and you shall receive the remainder.

Terms of Representation

1. **COOPERATION:** You agree to cooperate with Busch Law Center, LLC and other agents to provide all information requested and necessary to dispute the debt and defend any lawsuit filed against you regarding those debts. You acknowledges that without all the necessary information, the dispute and defense procedures may be compromised. You agree to promptly respond to phone calls, letters and emails and immediately inform Busch Law Center, LLC of changes in contact information. If you fail to comply, this may be a basis for Busch Law Center, LLC withdrawing from the case.

2. **SERVICES:** Busch Law Center, LLC agrees to file an appearance and take whatever steps possible to legally stop, delay, and dispute the debts. Busch Law Center, LLC may employ legal and other experts to assist in document, paralegal and other related services. Disputing the debts may result in debts some or all of the debt becoming uncollectible. Appeals are not a part of legal services.

3. **APPROVAL:** Upon receipt of any written offers to settle the debt matter, Busch Law Center, LLC will inform you and you will be required to give a timely, thoughtful response. Time is of the essence.

4. **NO GUARANTEE:** You acknowledges that you fully understand that when an underlying debt is disputed, the creditor is seeking to get a judgment and collect upon the claimed debt. That would mean the you would be required to pay the debt or face other debt collection methods. Disputing and defending the debt from your creditors may leave you with the following results *(please note that this is not an exhaustive list of results)*:

    a) Your credit may be adversely affected and may drop, potentially severely.

    b) The creditor or debt collector may file a lawsuit against you, which may result in a judgment against you for the full amount claimed, plus interest, attorneys' fees, court costs, and other costs.

    c) You may not be able to obtain a credit card or other revolving credit for several years.

    d) You may not be able to obtain a loan to purchase a home, car, appliance, or other financed purchase for several years.

    e) You acknowledge and understand that Busch Law Center, LLC makes no guarantees as to the result of the debt dispute and/or litigation defense.

5. **INDEMNIFICATION:** You agree to indemnify and hold harmless Busch Law Center, LLC and other Busch Law Center, LLC associates, agents, experts and venders, who may have worked on your file, for any liability or claim for damages regarding the any breach by you with respect to this litigation defense procedure.

6. **WAIVER:** Some resulting agreements may require the you to waive any rights to future legal action against the creditor or debt collector regarding settling the debt. You are encouraged to consult with an independent attorney regarding waiver of that right if an agreement is offered with this language.

7. **LIMITATION OF LIABILITY:** In recognition of the relative risks and benefits of the project to both you and Busch Law Center, LLC, the risks have been allocated such that the you agree, to the fullest extent permitted by law, to limit the liability of Busch Law Center, LLC to you for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate o the Client shall not exceed the total fee paid by you for services rendered in disputing the debt and/or defending any lawsuit.

Dual Representation

It is important that you understand that in asking us to represent you both, I must and will treat all communications and actions between either of you and us as common knowledge to be shared by both (while maintaining strict confidentiality as to anyone else). Furthermore, I cannot take action for one of you that is not known and agreed to by the other. Either of you can

terminate this joint representation at any time, but the other would have to know of that development. If you have a disagreement which requires litigation to resolve, I will not be able to represent either of you and each of you would need to hire to separate attorneys to handle the dispute.

Termination

You have the right to terminate this engagement at any time. However, you will be responsible for payment of all fees and expenses incurred on your behalf prior to the termination. I may also terminate the engagement at any time, but will endeavor to give you sufficient notice to enable you to retain substituted counsel.

Limited Representation

Our representation of you in this matter will not extend to representing other entities, or individuals employed by or associated with you, unless specifically requested by you and documents by separate written engagement agreement. This limitation is necessary to make certain that we avoid any potential conflicts of interest which may exist between you and other persons and entities. You agree that any other services requested by you will be at Busch Law Center, LLC's standard billing rates or fee schedule at the time such services are requested.

File Retention

The undersigned client understands and agrees that the attorneys' file in this matter will be retained and ultimately destroyed by the attorneys in accordance with Busch Law Center, LLC's file retention policy. You are entitled to possession of your file in this matter subject to the relevant attorneys' lien statues in Arizona applicable to this matter, and you agree that if you do not request the contents of the file from the undersigned attorney with in one (1) year from the date the case is closed, your file may be destroyed after that date.

Communication

In order to maintain the most efficient and economic means of providing my services to you, my office seeks to utilize any and all forms of communication available based upon your matter and situation. Therefore, please keep in mind that we will make use of mobile phones, email, and other electronic means of communication. You must be aware that there are risks associated with use of these forms of communication including interception and other security vulnerabilities which may affect the confidentiality of any information transmitted. You hereby authorize us to use all these forms of communication **UNLESS NOTIFIED BY YOU IN WRITING TO THE CONTRARY.**

Representation Requirements

Before this firm can undertake its duties as outlined above, the following requirements must be met:

(1) You must sign and return the original of this engagement letter, thereby acknowledging that you have read it and that you consent to the terms and conditions of our duties in this matter (keep one original for your records);

(2) You must deposit any requested advance and/or administrative fees with this firm;

(3) You must cooperate with Busch Law Center, LLC in representing your interests and provide us with all relevant information and documentation requested.

Confidentiality

All information that you provide to Busch Law Center, LLC is held in the strictest confidence and is considered attorney-client privileged information. The only exceptions to this policy information necessary for filing documents with government entities, court proceedings, required to be released by law or court order, or information approved by you for release to third parties. In accordance with the Graham-Leach-Bliley privacy of information act, Busch Law Center, LLC does not share your information with third parties. You hereby authorize Busch Law Center, LLC to release such information as necessary to any agents, affiliates, employees or experts who may assist in your case. Please note that due to the nature of the services we may provide you, this law firm could be classified as a debt relief agency under the United States Bankruptcy Code.

Once again, we appreciate the opportunity to work with you. If the terms of our engagement and billing practices as set out in this letter are satisfactory, please initial the Acknowledgements below, sign the enclosed copy of this letter and return it to us. *Upon receipt of the signed engagement letter and required advance and/or administrative fees, we will immediately begin to work on your legal matter.*

Yours very truly,
Busch Law Center, LLC

Larry J. Busch, Jr.
Attorney at Law

LJB
Enclosure

ENGAGEMENT ACKNOWLEDGMENT

ACKNOWLEDGEMENT (BY INITIALS)

JH RH WE HAVE READ, ACKNOWLEDGE AND UNDERSTAND THIS ENTIRE AGREEMENT AND HAVE THE OPPORTUNITY TO CONSULT WITH AN INDEPENDENT ATTORNEY AND HEREBY HAVE EXERCISED THAT RIGHT AND/OR WAIVE THE RIGHT.

JH RH WE UNDERSTAND THAT THE CREDITOR OR DEBT COLLECTOR WILL BE MAKING A BUSINESS DECISION REGARDING COLLECTING THE DEBT, AND BUSCH LAW CENTER, LLC HAS NO CONTROL OVER CREDITOR OR DEBT COLLECTOR DECISIONS. THE CREDITOR OR DEBT COLLECTOR MAY AGREE TO ALL, PART OR NONE OF THE PROPOSALS COMING FROM THE DEFENSE.

JH RH WE ACKNOWLEDGE THAT THE FEES UNDER THIS AGREEMENT CONSTITUTE PAYMENT FOR LEGAL SERVICES ASSOCIATED WITH DISPUTING AND/OR DEFENDING DEBTS ALLEGEDLY OWED.THIS MAY INCLUDE ADMINISTRATIVE DOCUMENTS TO BE FILED. NO OTHER LEGAL SERVICES ARE INCLUDED. THERE ARE NO GUARANTEES MADE AS TO THE OUTCOME OF THE LITIGATION.

JH RH WE ACKNOWLEDGE THAT WE MAY NOT BE MAKING MONTHLY PRINCIPAL AND INTEREST PAYMENT DURING THE DISPUTE OF THE DEBT AND/OR THE DEFENSE OF THE LITIGATION. BUSCH LAW CENTER, LLC OFFERS NO OPINION AS TO NON-PAYMENT.

WE hereby understand and agree to the engagement terms and billing practices hereinabove set forth.

Dated: 5/14/10 _____ Rodney Higgins

Dated: 5/14/10 _____ Jean Higgins

EXHIBIT "B"

Statement of Costs and Expenses

In the Matter of a Current Member of the State Bar of Arizona,
Larry Joseph Busch Jr, Bar No. 023133, Respondent

File No. 13-0654

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings **$1,200.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

10/27/14	Travel and mileage, service of subpoena	$ 33.82
Total for staff investigator charges		$ 33.82
TOTAL COSTS AND EXPENSES INCURRED		$1,233.82

Sandra E Montoya

Sandra E. Montoya
Lawyer Regulation Records Manager

11-5-14

Date

EXHIBIT "C"

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **Larry Joseph Busch, Jr., Bar No. 023133,** Respondent.	**PDJ 2014-9077** **FINAL JUDGMENT AND ORDER** State Bar No. 13-0654

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Modified Agreement for Discipline by Consent filed on December___, 2014 pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Larry Joseph Busch Jr.**, is hereby suspended for a period of six months and one day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this Final Judgment and Order.

IT IS FURTHER ORDERED that Respondent shall fully participate in fee arbitration with Jean Higgins and Rodney Higgins, which Respondent has already initiated.

IT IS FURTHER ORDERED that the fee arbitrator shall issue an arbitration award in favor of Jean and Rodney Higgins in the amount of $14,000.00 if the arbitrator finds that Respondent has not fully participated in fee arbitration.

IT IS FURTHER ORDERED that Respondent shall pay any fee arbitration award to Jean and Rodney Higgins within thirty (30) days of the date the fee arbitrator issues the fee arbitration award.

IT IS FURTHER ORDERED that Respondent shall not file any application for reinstatement prior to his entire payment of the fee arbitration award in full.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation with the terms and conditions of probation, including the length of probation, determined upon reinstatement.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing 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, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $1,233.82, within thirty (30) days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within thirty (30) days from the date of service of this Order.

DATED this _____ day of December, 2014.

_____
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 _____ day of December, 2014.

Copies of the foregoing mailed/emailed
this _____ day of December, 2014.

Kerrie M. Droban
Droban & Company PC
39506 N Daisy Mountain Dr., Ste 122
Anthem, Arizona 85086-1665
Telephone 480-612-3058
Email: kerriedroban@yahoo.com
Respondent's counsel
Copy of the foregoing emailed/hand-delivered
this _____ day of December, 2014, 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

Copy of the foregoing hand-delivered
this _____ day of November, 2014, to:

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

by:_____