Shauna R. Miller, Bar No. 015197
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7247
Email: LRO@staff.azbar.org

Ralph W. Adams, Bar No. 015599
Adams & Clark PC
520 E. Portland St Ste 200
Phoenix, AZ 85004-1843
Telephone: 602-258-3542
Email: thefirm@adamsclark.com
Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF TWO MEMBERS OF THE STATE BAR OF ARIZONA, **EDWARD D. FITZHUGH, Bar No. 007138,** **THOMAS A. WALCOTT, Bar No. 018681,** Respondents.	**PDJ-2012-9079** [State Bar File No. 11-1878] **CONSENT AGREEMENT** **Re: Respondent Walcott**

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

Respondent Walcott conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.7(a)(2), 3.4(a), 5.4(c), and 8.4(d) Ariz.R.Sup.Ct. Upon acceptance of this agreement, Respondent Walcott agrees to accept imposition of the following discipline: a thirty-day suspension. Respondent Walcott also agrees to pay the costs and expenses of the disciplinary proceeding.[1] The State Bar's Statement of Costs and Expenses is attached hereto as **Exhibit A.**

I. FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent Walcott was a lawyer licensed to practice law in the State of Arizona, having been first admitted to practice in Arizona on October 18, 1997.

Count One (File No. 11-1878)

Background Information:

2. On August 25, 2003, Mr. Madrigal, Jr., a fifteen year old, was shot and killed by Mesa Police at his parent's home. His parents, Mario and Martha Madrigal ("the Madrigals" "Mr. Madrigal" or Mrs. Madrigal"), and his brother, Bryant Madrigal, witnessed the shooting.
3. On the same date as the shooting, Edward D. Fitzhugh ("Respondent Fitzhugh") was hired by the Madrigals to represent them in a wrongful death action based upon the shooting.
4. In approximately March 2004, Mr. Madrigal fired Respondent Fitzhugh.

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[1] Respondent Walcott 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.

5. After working with several other lawyers, the Madrigals again approached Respondent Fitzhugh about representing them.

6. On February 17, 2005, the Madrigals signed a second fee agreement with Respondent Fitzhugh. Due to prior issues with the Madrigals, Respondent Fitzhugh added the following provision to his fee agreement.

Based upon these considerations, Clients, Mario and Martha Madrigal, agree, that should the attorney, at any time and for any reason, he (sic) does not continue representation, these clients agree to pay twenty-five percent (25%) of all monies received by them I (sic) this case plus the pro-rated costs incurred by the attorney. [2]

7. Identical lawsuits in Maricopa County Superior Court and Federal Court were filed before Respondent Fitzhugh withdrew from the representation.

Attorney Raymond Slomski was retained as Plaintiff's Counsel:

8. In 2006, the Madrigals hired Raymond Slomski ("Mr. Slomski") to represent them in the wrongful death actions filed in both Superior Court and Federal Court.

9. In 2008, a settlement in the wrongful death action for three million dollars was accepted by the Madrigals. If this matter were to go to hearing, Respondent Walcott would testify that Mr. Slomski took 40% of the recovery as fees in addition to his costs knowing that Respondent Fitzhugh had a claim for 25% of the recovery for his fees. For purposes of this agreement, the State Bar does not contest this proffered testimony.

10. On July 17, 2008, the probate court approved the settlement.

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[2]Respondent Fitzhugh did not charge to represent the minor son, Bryant Madrigal.

11. Based upon the settlement amount, Respondent Fitzhugh asserted he was entitled to 25% of the total recovery or $690,000.00.[3]

12. The Madrigals disputed Respondent Fitzhugh was entitled to $690,000.00. As a result, they did not authorize Mr. Slomski to distribute this money to Respondent Fitzhugh.

13. Instead, Mr. Slomski held the $690,000.00 in his trust account due to the fee dispute.

Respondent Fitzhugh hired Respondent Walcott to represent him:

14. Respondent Fitzhugh hired attorney Denise Quinterri to pursue his claim for fees. However, Quinterri's efforts were unsuccessful.

15. On December 3, 2009, Respondent Fitzhugh retained Thomas A. Walcott ("Respondent Walcott") for legal services in connection with the Madrigal fee dispute. The fee agreement provided that Respondent Walcott would represent Respondent Fitzhugh at a reduced hourly rate of $150.00 and would receive 10% of the gross amount recovered. If the case was settled within 45 days Respondent Walcott would only receive 5% of the gross amount.

16. On February 25, 2010, Respondent Walcott's billing entry noted "Telephone call with Ed re: new plan, civil complaint filing, agreement of contract rights, etc..."

17. On February 26, 2010, Respondent Walcott's billing entry noted "Request for information to Client re: assignment information."

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[3]25% of $3,000,000 is $750,000. Fitzhugh claimed fees of $690,000 because he did not assert a claim against the recovery for the surviving minor child.

18. If this matter were to proceed to hearing, Respondent Walcott would testify that Respondent Fitzhugh decided to assign his rights to the 25% of the settlement to Albert Carranza ("Mr. Carranza"), a long-time friend of Respondent Fitzhugh so that Respondent Fitzhugh would not have to sue the Madrigals, his prior clients. For purposes of this agreement, the State Bar does not contest Respondent Walcott's proffered testimony.

19. In order to facilitate the assignment and the breach of contract/fee dispute lawsuit, Respondent Fitzhugh also agreed to pay for Respondent Walcott's services as Mr. Carranza's attorney. Respondent Walcott and Mr. Carranza knew Respondent Fitzhugh was paying for Mr. Carranza's legal fees.

Respondent Fitzhugh assigned his fee claim to Mr. Carranza:

20. On or about March 1, 2010, Mr. Carranza signed a fee agreement with Respondent Walcott for representation in the fee dispute entitled Madrigal v. City of Mesa.

21. Although Respondent Walcott represented both Respondent Fitzhugh and Mr. Carranza, Respondent Walcott would testify that the representations were at different times during the matter and therefore there was no conflict requiring a signed, written conflict of interest waiver explaining the potential conflict. For purposes of this agreement, Respondent Walcott does not contest the State Bar's allegation that there was a conflict.

22. Around this time, Respondent Walcott drafted the assignment and had Respondent Fitzhugh review it.

23. On March 2, 2010, Respondent Fitzhugh and Mr. Carranza signed an assignment with the following provisions:

The Assignor (Fitzhugh) hereby assigns, transfers and sets over to Albert Carranza, as Assignee, all rights, title and interest held by the Assignor.

The Assignee (Carranza) shall be entitled to all money remaining to be paid under the contract, which rights are also assigned hereunder.

The Assignor (Fitzhugh) further warrants that it has full right and authority to transfer said contract and that the contract rights herein transferred are free of lien and encumbrance.

The assignment shall be binding upon the parties and inure to the benefit of the parties and their successors. This Assignment is not assignable or otherwise transferable.

24. Respondent Fitzhugh admitted the following:

    a. Mr. Carranza paid Respondent Fitzhugh one dollar for the assignment of all rights to collect the $690,000.00 in attorney's fees.

    b. The State Bar alleged that the assignment was a "straw man" assignment, that Respondent Walcott knew this, and he also knew that Respondent Fitzhugh would be paid the money collected from the lawsuit, not Mr. Carranza. If this matter were to proceed to hearing, Respondent Walcott would testify that he did not "know" the assignment was a "straw man" assignment, or that Respondent Fitzhugh would eventually receive any moneys collected, although he suspected as much. For purposes of this agreement, the State Bar does not contest the proffered testimony.

Respondent Walcott filed a breach of contract/fee dispute lawsuit:

25. On March 23, 2010, Respondent Walcott filed a breach of contract/fee dispute lawsuit ("fee dispute lawsuit") against the Madrigals. Mr. Carranza was listed as the Plaintiff.

26. Paragraph 23 of the complaint alleged that Plaintiff Carranza "received a full assignment of Attorney Fitzhugh's, as Assignor, contract rights under the matured agreement for full and fair consideration."

27. The State Bar alleged that Respondent Fitzhugh, Respondent Walcott, and Mr. Carranza all knew that Respondent Fitzhugh would receive the money collected. If this matter were to proceed to hearing, Respondent Walcott would testify that he did not "know" that Respondent Fitzhugh would eventually receive any moneys collected, although he suspected as much. For purposes of this agreement, the State Bar does not contest the proffered testimony.

28. Nevertheless, Mr. Slomski, the court, and opposing counsel and their clients, did not know Respondent Fitzhugh would receive the money collected. This fact was omitted from the fee dispute complaint.

29. On or about May 12, 2010, Respondent Walcott had a conversation with Mr. Madrigal. At this time, Mr. Madrigal informed Respondent Walcott that he had bills and needed money.

30. On May 12, 2010, Respondent Walcott emailed Respondent Fitzhugh about the approximately $150,000.00 in unspecified debt Mr. Madrigal claimed to owe and that he needed money.

Madrigal's Divorce:

31. The Madrigals decided to divorce after the death of their son.

32. On June 1, 2010, Judge Beene signed an order of dissolution for Mr. and Mrs. Madrigal.

33. In the divorce decree, Judge Beene addressed the issue of settlement funds as follows:

The parties have a contingency asset of settlement funds currently being retained by an attorney. Any net sum of the settlement funds received after costs and attorneys fees are paid shall be divided 33.3 percent to Mother, 33.3 percent to Father and 33.3 percent to the minor child.

34. On June 21, 2010, Respondent Walcott forwarded to Respondent Fitzhugh the Madrigal's dissolution decree.

Undisclosed Agreement to Pay Mr. Madrigal $60,000.00:

35. In February 2011, Mr. Madrigal and Respondent Walcott negotiated a settlement for $300,000.00. Mr. Madrigal did not consult an attorney and was not represented by counsel at the time the agreement was reached.

36. Mrs. Madrigal refused to settle.

37. In prior correspondence in several, separate letters to Mr. and Mrs. Madrigal, Respondent Walcott informed Mr. Madrigal that if Mr. Carranza were successful Mr. Madrigal and Mrs. Madrigal would owe approximately $110,000.00 in interest.

38. The email exchanges between Respondent Walcott and Respondent Fitzhugh establish that Respondent Fitzhugh had input in the strategy used by Respondent Walcott to negotiate with Mr. Madrigal in this manner.

39. Mr. Madrigal also negotiated an undisclosed agreement with Respondent Walcott. Mr. Madrigal's requirement for settlement was that Mr. Madrigal receive $60,000.00 of the $300,000.00 settlement. As a result, the net settlement to Mr. Carranza would be $240,000.00.

40. If this matter were to proceed to hearing, Respondent Walcott would testify that this term of settlement was Mr. Madrigal's idea and he insisted on this term in settling the claim. Mr. Madrigal also required the settlement terms and provisions be confidential. For purposes of this agreement, the State Bar does not contest the proffered testimony.

41. Respondent Walcott had Respondent's Fitzhugh's and Mr. Carranza's approval for the undisclosed agreement.

42. If this matter were to proceed to hearing, Respondent Walcott would testify that Respondent Fitzhugh believed the undisclosed agreement was necessary because Mr. Madrigal "wanted to come out ahead of Martha." For purposes of this agreement, the State Bar does not contest this proffered testimony.

43. Respondent Walcott described the agreement reached with Mr. Madrigal to Respondent Fitzhugh in an email:

The short of it is the agreement we reached is to settle for $300,000. Mario gets $60,000 back (our NET settlement amount is $240,000), and the rest of his half of $45,000 stays with Slomski to pay to Mario as residual amounts no (sic) included in the settlement or to do whatever else they may do. Frankly, I don't really care so long as we get the NET $240,000 free and clear quickly.

44. On February 17, 2011, Respondent Fitzhugh and Respondent Walcott engaged in an email conversation regarding Mr. Madrigal's concerns regarding his proposed settlement terms and the $60,000.00 going to Mr. Madrigal. In the email, Respondent Walcott expressed Mr. Madrigal's concerns as follows:

Mario is concerned that if Ray Slomski or the court finds out that he is getting the $60,000 this could be trouble because of the divorce order that says Bryant gets one-third of Mario's net amount left after settlement.

45. On the same date, Respondent Fitzhugh responded:

The Story to Slomski will be Mario wants his name on the check in exchange for a signed release.

Good job Tom!

46. If this matter were to go to hearing, Respondent Walcott would testify that this is an accurate statement reflecting the fact that Mr. Madrigal demanded the payment and co-endorsees as an essential term of settlement. For purposes of this agreement, the State Bar does not contest the proffered testimony.

47. Respondent Walcott also drafted a possible script for Mr. Madrigal to use when communicating with Mr. Slomski about the settlement. Respondent Walcott emailed this script to Respondent Fitzhugh for his consideration.

Mario to Ray Slomski:

I have determined that it is (sic) my best personal and financial interest to settle my portion of the case with Al Carranza regarding the attorney fee dispute with Fitzhugh. I have reached an agreement with Al Carranza to remove myself from the case with a full release and dismissal and it will not cost me any money out of my account or pockets. If I don't settle I will have to pay all or a part of the interest (about $110,000, at this point), as well as court costs and maybe attorney's fees to Carranza. I don't want to do that because it would ruin me and I can't have more continued stress from this case any more (sic). I want to be done. Please make (sic) to authorize the bank to release the funds in the settlement amount so that I can get this over with and protect myself from having to pay anything from myself. Thank you.

Thoughts?

48. On February 18, 2011, Respondent Fitzhugh reviewed the Notice of Settlement prepared by Respondent Walcott and made a few minor changes.

49. On February 24 and 25, 2011, three settlement agreements were finalized and signed.

a. The Rule 80 (d) Written Agreement signed by Respondent Walcott and Mr. Madrigal which provided the settlement amount remain confidential.

b. The Settlement Agreement and Release signed by Respondent Walcott and Mr. Carranza which set forth that Mr. Madrigal would pay Mr. Carranza $300,000.00 and there were no other agreements or understandings of any kind.

c. The Payment Agreement signed by Mr. Carranza, Mr. Madrigal and Respondent Walcott which set forth that after the $300,000.00 check from the Slomski trust account made payable to Carranza and Madrigal was issued, the parties would accompany one another to the bank and sign the check over for negotiation. The bank would then issue two drafts as follows:

One $240,000 check payable to the Walcott Law Firm and Al Carranza; and one $60,000 check to Mr. Madrigal.

Joint Notice of Settlement:

50. On February 28, 2011, Respondent Walcott filed a Joint Notice of Settlement with the court and requested an Order to Release Funds. Respondent Fitzhugh reviewed and approved the Notice of Settlement before it was filed.

51. On February 28, 2011, Respondent Walcott left a Notice of Settlement by Mrs. Madrigal's screen door with a letter explaining the settlement was with Mr. Madrigal only. The Notice was also mailed.

52. If this matter were to proceed to hearing, Respondent Walcott would testify that information regarding the settlement itself and the Notice of Settlement were provided in due course pursuant to the Rules of Court and standard

practice to other parties and counsel after filing and lodging with the Court. For purposes of this agreement, the State Bar takes no position on the proffered testimony.

53. On March 3, 2011, Judge Ditsworth, signed the order for immediate release of settlement funds.

54. On March 3, 2011, Respondent Walcott sent the signed order to Mr. Slomski with specific instructions as to the amount, manner, and method as to how the settlement funds should be released. The letter indicated that a settlement check or draft be issued in the amount of $300,000.00 to Mr. Carranza and Mr. Madrigal as co-signing payees.

55. Mrs. Madrigal objected to the settlement and release of funds.

56. Mr. Slomski refused to release the funds because several parties claimed an interest in these proceeds. Additionally, Mr. Slomski claimed the court orders issued by Judge Beene (divorce decree), the probate court, and Judge Ditsworth (fee dispute lawsuit), were in conflict.

Interpleader:

57. On March 4, 2011, Slomski filed an Interpleader action. Slomski asserted that Mrs. Madrigal and Bryant Madrigal had an interest in 2/3 of the money or were owed a total of $459,000.00 out of the $690,000.00. If this matter were to proceed to hearing Respondent Walcott would testify that Mr. Slomski's statement was incorrect because Respondent Walcott believes Mr. Slomski failed to correctly interpret the contingent interest language in Jugde Beene's decree of dissolution. For purposes of this agreement, the State Bar does not contest the proffered testimony.

58. In Response to the Interpleader, Respondent Walcott represented to the court that Bryant Madrigal had no interest in the $690,000.00. Respondent Walcott represented that Bryant Madrigal's interests in the settlement monies had previously been submitted and approved by the probate court and that, because Respondent Fitzhugh was not claiming any fees from funds recovered by Bryant Madrigal, Bryant Madrigal had no standing or claim in the interpled funds. Neither Bryant Madrigal not his minor conservatorship estate was a party to the civil action.

Order to Show Cause:

59. On March 14, 2011, Respondent Walcott filed an Order to Show Cause against Mr. Slomski in the fee dispute lawsuit because he failed to comply with Judge Ditsworth's order to release the $300,000.00.

60. On March 21, 2011, Mr. Slomski filed a Response to the Order to Show Cause. Mr. Slomski asserted that Respondent Walcott misrepresented the following information to the court:

    a. Mr. Madrigal could commit any amount up to his one-half interest in the funds.

    b. Respondent Walcott did not notify Mrs. Madrigal of the proposed $300,000.00 settlement with Mr. Madrigal prior to filing and lodging with the Court.

    c. Respondent Walcott asserted that Bryant Madrigal had no interest in the trust funds.

    d. Respondent Walcott claimed the trust was community property with each spouse entitled to a ½ interest pursuant to ARS 25-318 but failed

to include the applicable exception to this provision. The statue expressly provided that the assets are held in common "for which no provision is made in the divorce decree to the contrary." If this matter were to proceed to hearing, Respondent Walcott would testify that the exception does not apply, as the exception and statute need to be read *in para materia*. The "for which no provision is made" caveat in the statute does not mean that no reference is made, but, rather, it means for which no designation or characterization as separate property or community property is set forth. Respondent Walcott would further testify that, because the settlement funds received by the Madrigals were for wrongful death and, therefore, characterized as personal injury recovery monies, each of the Madrigals received ½ of the remaining funds as their sole and separate property, even though married. This characterization is confirmed and ratified by Mr. Slomski's distribution and settlement letter sent to the Madrigals upon resolution of the case. The State Bar believes this is a legal issue and takes no position on the proffered testimony.

61. Mr. Slomski also claimed that Respondent Walcott made false statements to the court, causing him to incur considerable expense in responding to various written correspondence and the motion for contempt. Judge Ditsworth denied the Request for Order to Show Cause, did not address Mr. Slomski's motion for sanctions, and then recused himself. If this matter were to proceed to hearing, Respondent Walcott would testify that his statements to

the court were not knowingly false. For purposes of this the State Bar does not contest the proffered testimony.

62. On March 21, 2011, Ben Jemsek ("Mr. Jemsek"), Mrs. Madrigal's attorney, filed a Rule 60(c) motion.

Bar Charge from Judge Mangum re: Walcott and Fitzhugh

63. Judge Mangum was assigned to the interpleader matter, which was separate from the fee dispute litigation and was in a different division under a different cause number.

64. On June 9, 2011, Judge Mangum held a status conference regarding the interpleader case and referred Respondents Fitzhugh and Walcott to the State Bar.[4]

65. Judge Mangum stated in his referral as follows:

I do not understand how Mr. Fitzhugh's contingent fee agreement is ethical.

... the assignment of the claim to Mr. Carranza seems suspect and seems to be an effort to withdraw from direct involvement, perhaps in the fashion of a holder in due course.

66. Judge Mangum was also concerned about the attempt to collect the $300,000.00 because it reduced the amount belonging to the mother and child assuming the Madrigals were entitled to the full amount. Judge Mangum noted: [5]

...I can't believe that they explained matters clearly to Judge Ditsworth to get him to sign the order without waiting for an objection.

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[4] Mr. Fitzhugh was not present at the hearing.
[5] Judge Mangum recused himself after the bar charge was submitted.

67. After the referral to the State Bar, Respondent Walcott filed a motion to withdraw as counsel for Mr. Carranza.

68. On July 13, 2011, Respondent Walcott was removed as counsel for Mr. Carranza.

69. On April 4, 2012, Judge Ronan granted a judgment for Mrs. Madrigal and Bryant Madrigal in the fee dispute lawsuit. Neither Respondent Fitzhugh nor Mr. Carranza received any money.

70. If this matter were to proceed to hearing Respondent Walcott would testify that Respondent Fitzhugh continues to hold an interest in the funds based on quantum meruit. The State Bar believes this is a legal issue and takes no position on the proffered testimony.

Cambridge Management Group Lien:

71. On March 29, 2011, Mr. Carranza signed paperwork with Cambridge Management Group ("CMG") to obtain $25,000.00 in funding to pursue the *Carranza v. Madrigal* lawsuit to obtain the $690,000.00 in attorney's fees owed to Respondent Fitzhugh which had been assigned to him.

72. Mr. Carranza retained separate counsel, Tamara Facciola ("Attorney Facciola") to advise him on the CMG transaction. On the same date, after a conversation with Attorney Facciola and at the request of CMG, Respondent Walcott signed an attorney acknowledgement of the irrevocable lien and assignment to CMG.

73. The contract with CMG stated the following:

Plaintiff (Carranza) has not and will not assign or encumber the Proceeds from the Litigation, except as otherwise provided herein. Plaintiff (Carranza) granted CMG the exclusive right of "first refusal" for any additional funding that Plaintiff may wish to obtain regarding

the litigation. Plaintiff (Carranza) may only grant additional liens, and/or assign and/or transfer a portion of the proceeds of the litigation subsequent to CMG's lien, with the written consent of CMG.

74. Mr. Carranza cashed the $25,000.00 check he received from CMG; however, if this matter were to proceed to hearing, Respondent Walcott would testify that he does not know who ultimately received the $25,000.00 or what the $25,000.00 loan was used for.

75. The State Bar alleged that Mr. Carranza and Respondent Fitzhugh discussed what to do with the money received from CMG. If this matter were to proceed to hearing, Respondent Walcott would testify that he did not receive any of the $25,000.00 nor did he have any conversations regarding application for or use of the funds acquired. For purposes of this agreement, the State Bar does not contest this proffered testimony.

76. On August 31, 2011, after Respondent Walcott withdrew as counsel in the fee dispute lawsuit, Respondent Fitzhugh signed paperwork acknowledging the irrevocable lien and assignment to CMG because the agreement required that CMG be notified of any change in counsel.

77. If this matter were to proceed to hearing, Respondent Walcott would testify he had no knowledge or information regarding Respondent Fitzhugh's failure to notify CMG that Respondent Fitzhugh filed a Motion to Substitute as Real Party in Interest in the fee dispute lawsuit.

78. If this matter were to proceed to hearing, Respondent Walcott would testify that he had no knowledge or information regarding Respondent Fitzhugh's failure to notify CMG there was an undisclosed agreement to pay Mr. Madrigal $60,000.00.

79. If this matter were to proceed to hearing Respondent Walcott would testify that he had no knowledge or information regarding Respondent Fitzhugh's failure to notify CMG about the approximately $150,000.00 in ISI liens Mr. Madrigal had. Additionally, ISI did not record any liens with the Recorder's office or otherwise publicize or provide documentation of any claims for payment until after the case settled as between Mr. Carranza and Mr. Madrigal. Respondent Walcott would also testify that he had met with ISI's principal, Marvin Woodworth ("Mr. Woodworth"), several times during the litigation and Mr. Woodworth remained silent on any issue regarding claims for payment. For purposes of this agreement, the State Bar does not contest the proffered testimony.

80. CMG would not have loaned the $25,000.00 to Carranza if it was aware of the $60,000.00 undisclosed agreement with Mr. Madrigal and the previously unknown and unclaimed ISI claims totaling approximately $150,000.00.

81. If this matter were to proceed to hearing Respondent Walcott would testify that he did not believe he had any duty or obligation to disclose any information to CMG because Mr. Carranza was represented in the CMG transaction by attorney Tamara Facciolo. For purposes of this agreement, the State Bar does not contest the proffered testimony.

CONDITIONAL ADMISSIONS

Respondent Walcott'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 Walcott conditionally admits as follows:

1. ER 1.7(a)(2). Respondent Walcott had a potential concurrent conflict of interest in representing both Respondent Fitzhugh and Mr. Carranza in the fee dispute lawsuit to recover attorney fees. There was a significant risk that Respondent Walcott's representation of Mr. Carranza would be materially limited by his own personal interest or his representation of Respondent Fitzhugh. Further, Respondent Walcott failed to obtain informed consent, confirmed in writing to represent Respondent Fitzhugh and Mr. Carranza at the same time.

2. ER 3.4(a). Respondent Walcott did not disclose the following information having potential evidentiary value to the opposing party and their counsel:

    a. That Respondent Fitzhugh was involved in the fee dispute lawsuit, providing input regarding the course of the litigation;

    b. That Mr. Madrigal would receive $60,000.00 from the $300,000.00 settlement of the fee dispute lawsuit;

    c. That the amount of money Mr. Carranza paid for the assignment was $1.00.

3. ER 5.4(c) Respondent Walcott permitted Respondent Fitzhugh to be unnecessarily involved in the legal services he provided to Mr. Carranza.

4. ER 8.4(d) Respondent Walcott engaged in conduct prejudicial to the administration of justice by engaging in the conduct he did. The statements, misrepresentations, and omissions throughout the representation required the opposing parties to file additional pleadings; required the court to conduct additional hearings; and may have required the court reassign the matter to a different judge.

Respondent Walcott conditionally admits that his conduct, as set forth above, violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.7(a)(2), 3.4(a), 5.4(c), and 8.4(d), Ariz.R.Sup.Ct.

CONDITIONAL DISMISSALS

For purposes of this agreement, the State Bar has conditionally agreed to dismiss the following rule violations, specifically: 3.3(a), 4.1(a) and 8.4(c), Ariz.R.Sup.Ct.

RESTITUTION

Restitution is not an issue in these matters.

SANCTION

Respondent Walcott 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: thirty day suspension.

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).

ABA *Standard* 6.12. Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

ABA Standard 6.13. Reprimand is generally appropriate when a lawyer is negligent in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

ABA *Standard* 4.32. Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

ABA Standard 4.33. Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client. As noted below, Respondent Walcott acted negligently with only potential injury.

Also 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.

Respondent Walcott's conduct violated his duty to his client, the profession, and the legal system; while he acted negligently, there was potential harm to the

client, the profession and to the legal system. While the State Bar has agreed to dismiss the knowing violations in order to reach an agreement, it believes, and for purposes of this agreement Respondent Walcott does not contest, that Respondent Walcott ignored Respondent Fitzhugh's misconduct. .

The presumptive sanction in this matter is suspension. The State Bar believes that the following aggravating and mitigating factors should be considered.

Aggravation, ABA *Standard* 9.22:

(c) Pattern of misconduct.

(i) Substantial experience in the practice of law.

Mitigation, ABA *Standard* 9.32:

(a) Absence of prior disciplinary record.

(b) Absence of dishonest motive.

(e) Full and free disclosure to the discipline board or cooperative attitude toward the proceedings.

(g) Character and reputation. The State Bar does not agree that this is a mitigating factor. Respondent Walcott has offered to provide letters to support this factor; however, the State Bar believes this information should have been provided earlier in the drafting process to allow the State Bar time to investigate his assertion.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. A thirty-day suspension serves the purposes of discipline in this matter.

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

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent Walcott believe that the objectives of discipline will be met by the imposition of the proposed sanction of a thirty-day suspension and the imposition of costs and expenses.

DATED this 11th day of January 2013.

STATE BAR OF ARIZONA

Shauna R. Miller
Senior Bar Counsel

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

DATED this _____ day of January 2013.

WALCOTT LAW FIRM, PLLC

Thomas A. Walcott
Respondent

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

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent Walcott believe that the objectives of discipline will be met by the imposition of the proposed sanction of a thirty-day suspension and the imposition of costs and expenses.

DATED this _____ day of January 2013.

STATE BAR OF ARIZONA

_____
Shauna R. Miller
Senior 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 11th day of January 2013.

WALCOTT LAW FIRM, PLLC

Thomas A. Walcott
Respondent

ADAMS & CLARK, PC

Ralph W. Adams
Respondent's Counsel

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 11th day of January, 2013.

Copies mailed/emailed
this 11th day of January 2013, to:

Ralph W. Adams
Adams and Clark PC
520 E Portland St Ste 200
Phoenix AZ 85004
Email: ralph@adamsclark.com
Counsel for Respondent Walcott

Copy of the foregoing emailed
this __day of January, 2013, to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 11th day of January, 2013, to:

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

by: _____
SRM:aq

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Thomas A Walcott, Bar No. 018681, Respondent

File No(s). 11-1878

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

09/07/11	Travel and mileage, attempt to contact witness	$	4.72
09/12/11	Travel and mileage, attempt to contact witness	$	4.72
Total for staff investigator charges		$	9.44

TOTAL COSTS AND EXPENSES INCURRED ***$1,209.44***

Sandra E. Montoya
Sandra E. Montoya
Lawyer Regulation Records Manager

1-7-13
Date