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BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **EDWARD D. FITZHUGH,** **Bar No. 007138,** Respondents.	**PDJ-2012-9079** **CONSENT AGREEMENT** **Re: Respondent Fitzhugh** [State Bar File Nos. 11-1877 and 11-2635[1]]

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

[1] File no. 11-1877 is being combined with file no. 11-2635. No complaint has been filed in 11-2635.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.5(a), 1.6(a), 1.8(b), 1.16(d), 3.3(a), 4.1, 8.4(a) and (d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: a six-month suspension, to begin no earlier than February 28, 2013, and six months of probation. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.[2] The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

FACTS

GENERAL ALLEGATIONS

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 December 22, 1981.

COUNT ONE (State Bar File No. 11-1877)

1. On August 25, 2003, Mario 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" or Mr. Madrigal" or Mrs. Madrigal"), and his brother, Bryant Madrigal, witnessed the shooting.
2. 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.
3. In approximately March 2004, Mr. Madrigal fired Respondent Fitzhugh.

[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.

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

5. If this matter were to proceed to hearing Respondent Fitzhugh would testify that he presented the Madrigals with a new proposed fee agreement. That fee agreement provided for a 35% contingency fee upon settlement or a 40% contingency fee after trial. Due to prior issues with the Madrigals, and in consideration of the work that Respondent Fitzhugh had already put into the matter, Respondent Fitzhugh added the following provision to his proposed 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. [3]

6. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that he asked the Madrigals to take a week to consider the new fee agreement and consult with outside counsel regarding it. The Madrigals did take a week to consider the agreement, and did consult with multiple outside counsel regarding the agreement. Respondent would also testify that these outside counsels included two of the firms that had represented them in the case. On February 17, 2005, the Madrigals signed a second fee agreement with Respondent Fitzhugh. For purposes of this agreement does not contest the proffered testimony.

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

7. If this matter were to proceed to hearing, Respondent would testify that soon after the second fee agreement was signed, Mr. Madrigal began to openly question Respondent Fitzhugh's handling of various aspects of the case. Mr. Madrigal attempted to assert himself in making legal decisions and strategy regarding the case. Respondent Fitzhugh would also testify that Glynn Gilcrease ("Mr. Gilcrease"), an experienced personal injury attorney who Respondent Fitzhugh knew, offered to assist him with the case. Mr. Gilcrease did assist in the handling of the case, and met with the Madrigals on multiple occasions both in their home and at his office to discuss the case with them. Respondent Fitzhugh would also testify that unbeknownst to him, the Madrigals did not sign a written agreement agreeing to Mr. Gilcrease's participation in the case.

8. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that for tactical reasons, he filed identical lawsuits in Maricopa County Superior Court and Federal Court. For purposes of this agreement, the State Bar does not contest the proffered testimony.

Respondent Fitzhugh Filed a Notice of Withdrawal:

9. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that in early December 2005, a new dispute emerged between Mr. Madrigal and Respondent Fitzhugh. Respondent Fitzhugh was scheduled to fly out of state to conduct a meeting with expert witnesses in the matter. Mr. Madrigal called Respondent Fitzhugh and demanded that Respondent Fitzhugh appear at his home within a half hour or that he was fired. Respondent Fitzhugh

informed Mr. Madrigal that he would not be able to appear at his home. Accordingly, Mr. Madrigal terminated Respondent Fitzhugh. The State Bar contests the fact the Mr. Madrigal terminated Respondent Fitzhugh.

10. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that because the expert witness meeting needed to be attended by the attorney representing the Madrigals, he cancelled the expert witness meeting that he was scheduled to conduct on December 8, 2005, and stopped payment on a check he had written to Dr. Wecht, one of the experts, schedule to be deposed. For purposes of this agreement, the State Bar does not contest the proffered testimony. On December 12, 2005, Respondent Fitzhugh filed a Motion to Withdraw in the Superior Court action.

11. Sometime after this date, the Madrigals filed a Response to Respondent Fitzhugh's Motion to Withdraw.

12. On December 22, 2005, Respondent Fitzhugh filed a Reply to the Madrigals Response. In explaining the need to withdraw in this reply, Respondent Fitzhugh stated the following:

Despite changes in attorneys and setbacks directly attributable to Mr. Madrigal's actions he persists in his destructive behavior...Counsel no longer believes this to be a winnable case; (sic) Mr. Madrigal will persist in his conduct.

13. Respondent Fitzhugh also mentioned that Bryant Madrigal was no longer receiving counseling.

14. While Respondent Fitzhugh felt his statements were opinion in nature and would not admissible against the Madrigals, the information in Respondent

Fitzhugh's above referenced statements was information relating to the representation, and therefore covered by ER 1.6.

15. Respondent Fitzhugh also filed a Motion to Withdraw in Federal Court, which was not opposed and did not contain the above quoted statements.

16. On December 21, 2005, District Court Judge Wake issued an order permitting both Mr. Gilcrease and Respondent Fitzhugh to withdraw in the federal matter. Judge Wake extended the existing case management order by three months.

Attorney Raymond Slomski was retained as Plaintiff's Counsel:

17. 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.

18. In 2008, a settlement in the wrongful death action for three million dollars was accepted by the Madrigals.

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

20. Based upon the settlement amount and his estimation that he had expended between 1,500 and 2,000 hours on the matter over a period of more than 18 months, Respondent Fitzhugh asserted he was entitled to 25% of the total recovery or $690,000.00. Respondent Fitzhugh send letters to Mr. Slomski regarding his claim.

21. 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.

22. Instead, Mr. Slomski held the $690,000.00 in his trust account out of Mr. and Ms. Madrigal's settlement amounts due to the fee dispute. Mr. Slomski's distribution sheet reflects that he did not withhold any amounts out of Brian Madrigal's settlement. Respondent Fitzhugh customarily waives the minor's fee, and did not attempt to collect against Brian Madrigal.

23. If this matter were to proceed to hearing, the State Bar would call Mr. Slomski to testify that he believed Respondent Fitzhugh's work on the Madrigal matter was worth little money because Respondent Fitzhugh's only contribution had been the notice of claim. Mr. Slomski would also testify that he also believed Respondent Fitzhugh damaged the relationship with the experts by cancelling the trip to view evidence at the last minute and cancelling payment on a check to one of the experts. For purposes of this agreement, Respondent Fitzhugh does not contest the fact that Mr. Slomski would so testify, but he disagrees with the testimony.

Respondent Fitzhugh's Fee claim:

24. Prior to his withdrawal in 2005, Respondent Fitzhugh worked on the Madrigal's lawsuit for approximately eighteen months.

25. During the investigation, the State Bar requested that Respondent Fitzhugh conduct a look back to determine if his fee was reasonable. Respondent Fitzhugh informed Bar Counsel that it was impossible to prepare a reconstruction of his time because of the number of hours expended and because too much time had elapsed. Respondent Fitzhugh could only provide a conservative estimate of hours.

26. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that he expended over $64,000.00 in advanced costs, $14,000.00 of which he was not reimbursed for. For purposes of this agreement, the State Bar does not contest the proffered testimony.

27. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that over the next year, he made attempts to informally resolve the fee dispute, proposing settlement offers, private mediation and State Bar Fee Arbitration. While fee arbitration was initially agreed to, the Madrigals ultimately declined to participate. For purposes of this agreement, the State Bar does not contest Respondent's proffered testimony.

Respondent Fitzhugh hired Respondent Walcott to represent him:

28. On December 3, 2009, Respondent Fitzhugh retained Thomas A. Walcott ("Respondent Walcott"), an experienced contract attorney, 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.

29. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that he sought advice from Respondent Walcott regarding his claim for attorney's fees. 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..." For purposes of this agreement, the State Bar does not contest Respondent's proffered testimony.

30. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that he was concerned about the bad publicity that would stem from suing his former clients, and expressed his concerns to Respondent Walcott. On February 26, 2010, Respondent Walcott's billing entry noted "Request for information to Client re: assignment information." For purposes of this agreement, the State Bar does not contest Respondent's proffered testimony.

31. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that it was decided that Respondent Fitzhugh would assign his rights to the 25% of the settlement to Albert Carranza ("Mr. Carranza") a long-time friend of Respondent Fitzhugh so Respondent Fitzhugh would not have to sue the Madrigals, his prior clients. Mr. Carranza was agreeable to participating in the assignment and pursuit of fees. In order to facilitate the assignment and the breach of contract/fee dispute lawsuit ("fee dispute lawsuit"), Respondent Fitzhugh also paid Respondent Walcott to represent Mr. Carranza. Respondent Walcott and Mr. Carranza knew Respondent Fitzhugh was paying for Mr. Carranza's legal fees.

Respondent Fitzhugh assigned his fee claim to Carranza:

32. 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.

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

34. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that he discussed the assignment with Respondent Walcott and was advised that he had researched the issue and found no prohibition on making such an assignment. Respondent Walcott further informed Respondent Fitzhugh that he had discussed the matter at length with State Bar Ethics Counsel Pat Sallen, and that Ethics Counsel had stated there was no prohibition against making such an assignment. Whether or not Respondent Walcott actually received that advice from Pat Sallen remains an issue not necessary to the resolution of this matter.

35. 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.

36. During the State Bar investigation, Respondent Fitzhugh admitted the following:

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

b. The assignment was a "straw man assignment."

c. Respondent Walcott knew it was "a straw man assignment."

d. While Mr. Carranza would recover the attorney's fees in the contract action, Respondent Fitzhugh would ultimately be paid the money collected in the fee dispute lawsuit, not Mr. Carranza.

Respondent Walcott filed the fee dispute lawsuit:

37. On March 23, 2010, Respondent Walcott filed the fee dispute lawsuit against the Madrigals. Mr. Carranza was listed as the Plaintiff.

38. The complaint made clear that the disputed fees were owed to Respondent Fitzhugh prior to his assignment of his claim to Mr. Carranza.

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

40. While Respondent Fitzhugh contends that the assignment was a full and legal assignment, Respondent Fitzhugh, Respondent Walcott, and Mr. Carranza all knew that Respondent Fitzhugh would ultimately receive the money collected.

41. While Mr. Slomski, the court, and opposing counsel and their clients were aware that the fees were originally owed to Respondent Fitzhugh and that Respondent Fitzhugh had made an assignment of them to Mr. Carranza, they were not informed that Respondent Fitzhugh would ultimately receive the

money collected. This fact was omitted from the fee dispute complaint, but all parties were made aware sometime during the negotiations and litigation that Respondent Fitzhugh was the real party at interest.

42. On or about May 12, 2010, Respondent Walcott had a conversation with Mr. Madrigal. At this time, Respondent Walcott was made aware that Mr. Madrigal had agreed to pay ISI, an investigative service, $147,000.00 of the $690,000.00 in disputed fees. If this matter went to hearing, Respondent Fitzhugh would testify that this amount was to be paid after the third party claim for attorney's fees owed to Respondent Fitzhugh was satisfied. The believes the amount owed is a legal issue State Bar takes no position on the proffered testimony.

43. On May 12, 2010, Respondent Walcott emailed Respondent Fitzhugh about the approximately $150,000.00 in liens Mr. Madrigal owed to ISI. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that no further proof was sent to Respondent Fitzhugh to support the legitimacy of those liens.

Madrigal's Divorce:

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

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

46. 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.

47. On June 21, 2010, Respondent Walcott's forwarded to Respondent Fitzhugh the Madrigal's dissolution decree. Respondent Walcott's billing entry for this date confirmed this fact.

48. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that he discussed the Madrigals' divorce decree with his counsel, Respondent Walcott, and was advised by Respondent Walcott that Respondent Walcott had researched the issue, finding that the decree only provided for a 33%/33%/33% split **of any remaining funds after** the attorney's fee dispute was resolved and paid, thereby still leaving each Madrigal with $345,000.00 in settlement authority. The State Bar believes this is a legal issue and takes no position on the proffered testimony.

Secret Side Agreement to Pay Mr. Madrigal $60,000.00:

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

50. Mrs. Madrigal refused to settle.

51. The sum of $300,000.00 was agreed to because both Respondent Fitzhugh and Respondent Walcott believed that if the settlement amount was less than Mr. Madrigal's ½ of the $690,00.000 or $345,000.00 then Mrs. Madrigal and Mr. Slomski had no basis to object to the settlement.

52. If this matter were to proceed to hearing, the State Bar would present evidence that Respondent Walcott told Mr. Madrigal that he would owe approximately $110,000.00 in interest alone if he did not settle now for the $300,000.00.

53. The email exchanges between Respondent Walcott and Respondent Fitzhugh establish that Respondent Fitzhugh knew Respondent Walcott was negotiating with Mr. Madrigal. Respondent Walcott also negotiated a side agreement with Mr. Madrigal. The plan was to return to Mr. Madrigal $60,000.00 of the $300,000.00 settlement. As a result, the net settlement amount to Mr. Carranza (and ultimately Respondent Fitzhugh) would be $240,000.00.

54. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that the settlement agreement contained a confidentiality clause that would prohibit the revealing of the terms of the settlement, including the side

agreement. This is common in civil settlement agreements, as there is not a rule requiring the court be informed of specific settlement terms. For purposes of this agreement, the State Bar does not contest the proffered testimony.

55. Respondent Walcott had Respondent Fitzhugh's and Mr. Carranza's approval for the side agreement.

56. The side agreement was necessary because Mr. Madrigal "wanted to come out ahead of Martha." Both Respondent Fitzhugh and Respondent Walcott knew this.

57. 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.

58. On February 17, 2011, Respondent Fitzhugh and Respondent Walcott engaged in an email conversation about what to do to keep the $60,000.00 going to Mr. Madrigal confidential.

In the email, Respondent Walcott stated the following:

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.

59. 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!

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

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?

61. On this same date, Respondent Walcott reviewed A.R.S. 25-318 Disposition of Property and the effect of the divorce decree. Respondent Walcott sent Respondent Fitzhugh an email concluding that although the divorce decree specified the remaining money should be split one-third, one-third, one-third, he believed that pursuant to the statute, Mr. Madrigal and Mrs. Madrigal each possessed an undivided one-half interest.

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

63. On February 24 and 25, 2011, three settlement agreements were finalized and signed by Respondent Walcott, Mr. Carranza and Mr. Madrigal.

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 Mr. Slomski trust account made payable to Mr. Carranza and Mr. 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 Mario Madrigal.

Joint Notice of Settlement:

64. 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.

65. Respondent Walcott failed to provide complete and accurate information to the court, to the opposing parties and their counsel in the Joint Notice of Settlement:

a. Respondent Walcott stated that Mr. Madrigal and Mrs. Madrigal each had a ½ interest in the settlement.

b. Respondent Walcott failed to disclose the precise language in the divorce decree which provided that Mr. Madrigal, Mrs. Madrigal and Bryant each were entitled to a contingent remainder 1/3 interest.

c. Respondent Walcott represented that there was no legal or other impediment to settlement.

d. Respondent Walcott failed to inform the court of the ISI liens.

e. Respondent Walcott failed to inform the court that Respondent Fitzhugh would ultimately receive the funds in question.

f. Respondent Walcott failed to disclose the side agreement with Mr. Madrigal for $60,000.00.

66. Respondent Fitzhugh would testify that these false statements, omissions, and/or misrepresentations were made by Respondent Walcott after having sent the Notice of Settlement to Respondent Fitzhugh for review.

67. On March 3, 2011, Judge Ditsworth, who was unaware of the side agreement with Mr. Madrigal, signed the order for immediate release of settlement funds.

68. 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.

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

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

71. During the State Bar investigation, Respondent Fitzhugh acknowledged that he knew that Mr. Madrigal wanted to come out ahead of Mrs. Madrigal in the settlement and this was the reason why the $60,000.00 side agreement was made with Mr. Madrigal.

Interpleader:

72. On March 4, 2011, Mr. Slomski filed an Interpleader action. Mr. Slomski asserted that Mrs. Madrigal and Bryant had an interest in 2/3 of the money or were owed a total of $459,000.00 out of the $690,000.00

Order to Show Cause:

73. 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.

74. 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 improperly concealed the proposed $300,000.00 settlement with Mr. Madrigal from Mrs. Madrigal and Bryant Madrigal which deprived them of the right to object.

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.[4]

75. Mr. Slomski also noted that Respondent Walcott's false statements to the court caused him to incur considerable expense in responding to various written correspondence and the motion for contempt.[5]

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

Bar Charge from Judge Mangum re: Walcott and Fitzhugh

77. Judge Ditsworth recused himself from the matter after discovering that he may not have been provided all of the information regarding the settlement.

78. Judge Mangum was then assigned to the matter.

79. On June 9, 2011, Judge Mangum held a status conference and referred Respondents Fitzhugh and Walcott to the State Bar. Respondent Fitzhugh was not present at the hearing.

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[4] The statue provides that the assets are held in common "for which no provision is made in the divorce decree to the contrary."

[5] It is a legal issue whether the dissolution and or probate actions impact the $300,000.00 settlement.

80. 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.

81. 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: [6]

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

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

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

Motion to Substitute Real Party In Interest.

84. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that he discussed with his counsel, Respondent Walcott, substituting in as Real Party at Interest and was advised by Respondent Walcott that he should do so. For purposes of this agreement, the State Bar does not contest the proffered testimony.

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[6] Judge Mangum recused himself and retired from the bench after the bar charge was submitted.

85. On July 28, 2011, Respondent Fitzhugh requested a Rule 17(a) Motion to Substitute as the Real Party in Interest in the pending Interpleader and the fee dispute actions. Respondent Fitzhugh stated:

As an attorney, Mr. Fitzhugh is not keen on filing suit against clients. To avoid that circumstance, Mr. Fitzhugh assigned his fee claim against the Madrigals to a long -time friend, Al Carranza, the current Plaintiff in the case. The decision to assign the claim and not bring suit in his own name was a business decision by Fitzhugh to avoid filing suit by name against a client. It was, in his opinion, good business. However, at this point in the litigation, the marginal benefit of not suing a client by name is outweighed by the apparent cost, time, and effort likely to occur with regard to the real party in interest issue. The substitution of the Plaintiff party will come as no surprise to Defendant's and it is not expected that Defendants will object to the substitution.

86. Judge Herrod who was assigned the Interpleader action permitted the substitution of Respondent Fitzhugh for Mr. Carranza as the real party at interest.

Mrs. Madrigal's Motion to Reconsider Substitution of Respondent Fitzhugh for Mr. Carranza:

87. Judge Ronan was subsequently assigned the fee dispute lawsuit.

88. Mr. Jemsek filed a Motion to Reconsider and Vacate Judge Herrod's order granting the substitution of Respondent Fitzhugh in Interpleader action.

89. On January 17, 2012, Judge Ronan vacated Judge Herrod's order granting the substitution of Respondent Fitzhugh as the real party in interest in the Interpleader action. Judge Ronan determined that Mr. Carranza, not Respondent Fitzhugh, was the real party in interest in the Interpleader action; that Mr. Carranza not Respondent Fitzhugh was a party to the

settlement agreement; and that Mr. Carranza, not Respondent Fitzhugh, was the beneficiary of Judge Ditsworth's order granting the release of funds. He made no specific finding as to the propriety of the straw man assignment.

90. In his findings, Judge Ronan noted that opposing counsel objected to the validity of the assignment for well over a year and found there was absolutely no justification for the delay in failing to name Respondent Fitzhugh as the proper party. Judge Ronan concluded that opposing counsel had been prejudiced by the lengthy and deliberate delay and therefore, the substitution should be denied.

91. Judge Ronan also found that the contingency fee agreement between Respondent Fitzhugh and his now former clients, the Madrigals, was unethical because it placed restrictions on the Madrigals ability to discharge their lawyer. Judge Ronan concluded that the fee agreement created a direct conflict of interest because it provided an incentive for Respondent Fitzhugh to withdraw from representation for any reason. Judge Ronan also concluded that Respondent Fitzhugh's second fee agreement violated numerous ethical rules and violated public policy and therefore, was unenforceable. At no point was there a hearing regarding the ethical propriety of Respondent's actions and fee agreement. The Judge did not address Respondent Fitzhugh's second cause of action for quantum meruit reimbursement.

92. Respondent Fitzhugh filed a Motion to Reconsider the court's order pursuant to Rule 56(d), however, Judge Ronan denied the Motion for Reconsideration on February 21, 2012.

93. On April 4, 2012, Judge Ronan granted a judgment for Mrs. Madrigal and Bryant Madrigal.

94. As a result of the above-mentioned rulings, neither Respondent Fitzhugh nor Mr. Carranza received any money.

95. To date, Respondent Fitzhugh has been paid no fees for his representation of the Madrigals either under contingency or quantum meruit.

96. Respondent Fitzhugh has now appealed the entire judgment.

Cambridge Management Group Lien:

97. 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.

98. On this same date, Respondent Walcott signed the attorney acknowledgement of the irrevocable lien and assignment to CMG.

99. 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.**

100. During investigation, the State Bar learned that Mr. Carranza cashed a $25,000.00 check he received from CMG; however, it is unknown who ultimately received the $25,000.00 and what the $25,000.00 loan was used for.

101. During the investigation, the State Bar learned that Mr. Carranza and Respondents Walcott and Fitzhugh discussed what to do with the money received from CMG.

102. On August 31, 2011, after Respondent Walcott withdrew as counsel, 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.

103. Both Respondents Walcott and Fitzhugh failed to notify CMG that Respondent Fitzhugh filed a Motion to Substitute as Real Party in Interest in the fee dispute lawsuit.

104. Respondent's Walcott and Fitzhugh also failed to notify CMG there was a side agreement to pay Mr. Madrigal $60,000.00.

105. Respondent's Fitzhugh and Walcott also failed notify CMG about the approximately $150,000.00 in ISI liens Mr. Madrigal had.

106. During the investigation, Counsel for CMG stated that CMG would not have loaned the $25,000.00 to Mr. Carranza if she was aware of the $60,000.00 side agreement with Mr. Madrigal and the ISI liens totaling approximately $150,000.00.

COUNT TWO (State Bar File No. 11-2635)

107. Respondent Fitzhugh represented Richard Venezia ("Mr. Venezia") and Carol Venezia ("Mrs. Venezia"), husband and wife, and their minor daughter, Ann Marie Venezia in a personal injury action. On October 13, 2008, Mr. Venezia was severely burned in an industrial accident. On March 20, 2009,

Respondent filed a complaint on their behalf (Venezia, et al v. GTE Corporation, CV2009-006922, Maricopa County Superior Court).

108. Prior to this action and the accident, Mr. Venezia filed for divorce on July 25, 2008. He dismissed the first divorce action on December 23, 2008, after the subject accident occurred.

109. Mrs. Venezia filed a second action for divorce on June 29, 2009, three months after the personal injury action was filed. Mrs. Venezia dismissed the second divorce action on July 23, 2010.

110. Mr. Venezia filed a third action for divorce on October 22, 2010.

111. After Mrs. Venezia filed the second action for divorce on June 29, 2009, she obtained an order of protection against Mr. Venezia. Respondent advised Mrs. Venezia that he had a conflict of interest and needed to withdraw. Respondent sent an August 5, 2009 letter to Mrs. Venezia stating "[d]ue to recent circumstances I have to withdraw as your attorney in this case. The documents will be filed with the court in the near future." However, Respondent Fitzhugh did not file the Motion to Withdraw until January 6, 2011. Respondent Fitzhugh would testify that this was due to his inability to locate Mrs. Venezia. Respondent was still Mrs. Venezia's attorney of record until the motion was granted on February 3, 2011.

112. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that over time, Respondent Fitzhugh learned that opposing counsel was having inappropriate, undisclosed contact with Mrs. Venezia and that he believed that Mrs. Venezia was providing information harmful to Mr.

Venezia's case to opposing counsel. For purposes of this agreement, the State Bar does not contest the proffered testimony.

113. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that Mrs. Venezia made a charge with the State Bar claiming that Respondent Fitzhugh had not provided her client file to her. Bar counsel found that Respondent Fithzugh had provided a copy of the file, but strongly urged Respondent Fitzhugh to keep Mrs. Venezia "in the loop" regarding the status of the matter and/or trial strategy. Respondent Fitzhugh would testify that he objected, but prior bar counel insisted. As proof that Ms. Venezia was forwarding this information to opposing counsel, Respondent devised a method to demonstrate such. For purposes of this agreement, the State Bar does not contest the proffered testimony.

114. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that in order to prove these suspicions and uncover the potential misconduct by opposing counsel, Respondent Fitzhugh developed a ruse in which he would send a letter to Mrs. Venezia with information she knew to be false and see if opposing counsel came into possession of such information. For purposes of this agreement, the State Bar does not contest the proffered testimony.

115. On February 4, 2011, Respondent Fitzhugh wrote Mrs. Venezia a letter with the following language:

> Once you filed for an Order of Protection, I gave up on the prospects of reconciliation so I could no longer represent you under those circumstances. Having you continue in the case would have made it so much more pleasant.

I've told Rick that had you and he stayed together it would have presented a better picture for the jury. For the sake of the case we will have to present at least an amicable yet divorced couple. I know that through all of this you have had communications with Ann Marie. If she told you about Rick's behavior those days before the accident you can never say a word about it otherwise neither Rick or [sic] you will get a dime....(Emphasis added.)

116. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that, contemporaneously, he sealed and mailed a letter to himself laying out the reasons for his action and an explanation for why it was conducted. This sealed letter was later opened in the presence of bar counsel to verify Respondent's plan. For purposes of this agreement, the State Bar does not contest the proffered testimony.

117. Mrs. Venezia made a complaint to the State Bar against Respondent Fitzhugh in a letter dated February 16, 2011, and included a copy of the February 4, 2011 letter.

118. When Respondent Fitzhugh was interviewed, he stated that he sent the letter to Mrs. Venezia as a ruse so he could prove that she was talking to Dustin Christner ("Mr. Christner"), the defendant's lawyer.

119. If this matter were to proceed to hearing, Respondent Fitzhugh would testify that Mr. Christner sent a letter to him in which he denied communicating with Mrs. Venezia, an unrepresented party. For purposes of this agreement, the State Bar does not contest the proffered testimony.

120. In a September 15, 2011, voice message to Mr. Christner in which Respondent Fitzhugh demanded release of the substance of the communications pursuant to ARCP 26.1, Respondent Fitzhugh says in part:

What do you do when you want to catch rats, Dustin? You put out the cheese. That letter was to determine how much Carol was in communication with you guys. I've got a signed and sealed affidavit that actually I mailed to myself a week before that letter was sent out describing the purpose of the letter, and you guys bit.

121. On June 1, 2011, the State Bar advised Mrs. Venezia of the following:

It appears that the conflict in [Respondent's] representation did not arise immediately at the outset of the litigation and that for some time your interests and your husband's interests were aligned. [Respondent] appears to have identified the conflict when it arose and although we believe he should have withdrawn more promptly, it also appears that he did not do so out of concern for your ability to find a new attorney. We are separately addressing this issue with [Respondent], as well as informing him that he is required to provide your file to you upon your request. Given the specific facts and circumstances of this matter, we do not believe further investigation is warranted at this time and are closing our file.

122. On November 1, 2011, after his withdrawal as Mrs. Venezia's counsel and after the closing of the State Bar's initial investigation, Respondent Fitzhugh filed a Motion for Separate Trial that was adverse to Mrs. Venezia's interests.

123. The Motion for Separate Trials included allegations and misstatements of fact. Examples include:

a. "Ms. Venezia obtained an Oder of Protection excluding Plaintiff and his eleven year old daughter Ann Marie from the premises." This is information learned during the joint representation and is in incorrect as reflected on the Order of Protection.

b. "Ms. Venezia had also looted the parties [sic] joint checking account of $26,000.00." This is information learned during the joint representation and did not fully explain the situation, as the account was a joint account that contained $51,039.00, leaving over $25,000.00 for Mr. Venezia,

c. "In October, 2008 the parties attempted a reconciliation. Ms. Venezia looted $35,000.00 in cash held at the security box located at Grove Street Safe." This is information was learned during the joint representation and is incorrect.

d. "Mr. Venezia's family and partner successfully resisted [Mrs. Venezia's] attempt to be appointed his Conservator." This is information learned during the joint representation and is incorrect as it was actually Mr. Venezia's brother who petitioned the court to become Mr. Venezia's Guardian and Conservator, not Mrs. Venezia.

e. "Ms. Venezia unannounced moved to Georgia abandoning Mr. Venezia and his eleven year old daughter. Ms. Venezia withdrew $10,000 from a checking account and $38,000 from a HELOC account and moved to Georgia to live with her former boyfriend/husband." This is information learned during the joint representation and is incorrect and/or did not fully explain the situation as Mrs. Venezia moved to Florida in April 2009 and removed $10,000.00 from their joint checking account, leaving Mr. Venezia with $14,591.00. Mrs. Venezia did withdraw funds from a joint HELOC when she moved, but this amount was against her sole and separate property that she owned prior to marrying Mr. Venezia. Mr. Venezia also withdrew money from the HELOC, without Mrs. Venezia's knowledge.

f. "After a year Ms. Venezia returned to Phoenix and attempted to reconcile with Mr. Venezia." This is information learned during the

joint representation and does not fully explain the situation as Mr. Venezia was the one who paid for Mrs. Venezia's air plane ticket to fly back to Phoenix, paid for her car to be shipped back to Phoenix, and pursued the reconciliation. Mrs. Venezia then dismissed the second divorce action on July 23, 2010.

g. "During that time coincidental matters arose in the Venezia personal injury case causing Plaintiff' counsel to question [sic] defense counsel Dustin Christner to comply with his ethical duty to disclose his conversations with the unrepresented party opponent who during that time was still married to Mr. Venezia .... Bar counsel insisted that Plaintiffs' counsel assist Ms. Venezia in her case because she was not represented." This is incorrect as bar counsel did not inform Respondent Fitzhugh that he had to "assist" Ms. Venezia, but rather that he needed to continue to communicate with Ms. Venezia.

h. "[T]o prove Ms. Venezia was passing information to defense counsel Plaintiffs' sent Ms. Venezia a letter containing blatantly false information. Rather than discard the false letter or provide it to Bar Counsel Ms. Venezia gave it only to defense counsel Dustin Christner." This is incorrect as Mrs. Venezia provided the State Bar with a copy of the February 4, 2011, letter on February 22, 2011. This occurred approximately nine months before Respondent put it in his Motion for Separate Trial.

i. "On September 30, 2010, Ms. Venezia called the MCSO alleging Mr. Venezia beat her. During the hearing on the following day [sic] Ms. Venezia requested an order of protection. Based on eleven year old, Ann Marie's testimony the court denied her Request for Order of Protection." This is information learned during the joint representation.

124. If this matter were to proceed to hearing Respondent Fitzhugh would testify that he believed that the material learned during the joint representation was not confidential, as it was learned during the joint representation from Mr. Venezia and was in the DR file, which had been listed as an exhibit by the defendants.

125. Mrs. Venezia never gave her written informed consent to Respondent to allow him to use any information learned during the joint representation.

126. Respondent did not withdraw the motion and Mrs. Venezia was forced to incur legal fees to obtain assistance in the preparation and filing of her November 22, 2011, response to the motion for separate trial . Defense attorney for GTE Dustin Christner ("Mr. Christner") also opposed the Motion for Separate Trials. The Court denied the Motion for Separate Trials on January 12, 2012.

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 1.5(a), 1.6(a), 1.8(b), 1.16(d), 3.3(a), 4.1, 8.4(a) and (d).

Count One, file no. 11-1877

1. ER 1.5 (a) Respondent Fitzhugh's fee agreement requiring a 25% fee upon termination regardless of how much work he did the on the case constituted an agreement for an unreasonable fee.
2. ER 1.6 Respondent Fitzhugh revealed confidential information relating to the representation of a client without the client's informed consent.
3. ER 1.8 (b) Respondent Fitzhugh used information relating to the representation of the Madrigals to their disadvantage without obtaining the client's informed consent.
4. ER 1.16 Respondent Fitzhugh failed to take steps to the extent reasonably practicable to protect the client's interest upon withdrawal.
5. ER 3.3 Respondent Fitzhugh made the following false statements, misrepresentations or omissions in relation to the proceedings:
    a. Respondent Fitzhugh in the assignment of claim made a false statement that Mr. Carranza would recover the entire amount of the attorney's fees when he was aware that ultimately, he would be paid those funds.
    b. Respondent Fitzhugh failed to inform the Court of the side agreement with Mr. Madrigal.

6. ER 4.1 Respondent Fitzhugh made false statements of material fact or failed to disclose material facts to others in the course of representing a client when disclosure was necessary:

   a. Respondent Fitzhugh failed to disclose the side agreement with Mr. Madrigal

   b. Respondent Fitzhugh failed to notify CMG of the ISI liens.

   c. Respondent Fitzhugh failed to notify CMG that he requested that the court substitute him as the real party at interest.

7. ER 8.4 (a) Respondent Fitzhugh violated or attempted to violate the Rules of Professional Conduct, by knowingly assisting or inducing another to do so, or do so through the acts of another.

   a. The Order to Show Cause drafted by Respondent Walcott and reviewed and approved by Mr. Fitzhugh omitted material information about the divorce decree and probate action.

   b. Respondent Fitzhugh knew of and approved the side agreement Respondent Walcott had negotiated with Mr. Madrigal to give back to Mr. Madrigal $60,000.00 of the $300,000.00 settlement as incentive to settle.

8. ER 8.4(d) Respondent Fitzhugh engaged in conduct prejudicial to the administration of justice.

Count Two, file no. 11-2635

9. ER 1.6, Mrs. Venezia never gave Respondent informed consent to use any information relating his representation of her.

10. 3.3(c), Respondent's Motion for Separate Trial contained false information and/or did not fully explain the factual allegations presented.

11. 8.4(d), Respondent Fitzhugh engaged in conduct prejudicial to the administration of justice.

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss the following rule violations, specifically: **Count One, file no. 11-1877,** ERs 1.7(a)(2), 3.3[7], 3.4, 5.4(c) and 8.4(c), Ariz.R.Sup.Ct. **Count Two, file no. 11-2635,** ERs 1.9(c) and 8.4(c), Ariz.R.Sup.Ct..

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent Fitzhugh 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: Six month suspension and six month probation, subject to early termination. Terms of probation shall be as follows:

Respondent Fitzhugh shall complete 6 hours of CLE focusing on client confidences and conflicts. One program will be "The Ten Deadly Sins of Conflict." Respondent Fitzhugh shall contact the State Bar of Arizona publications at 602-340-

[7] Dismissal 1. In his Notice of Withdrawal, Respondent Fitzhugh falsely stated that Mr. Gilcrease would be lead counsel for the Madrigals when he knew that Gilcrease had not even signed a Notice to Appearance in the Superior court .
Dismissal 2. Respondent Fitzhugh provided conflicting information regarding the amount of hours he spent on the Madrigal case. In an affidavit dated July 7, 2010, Respondent Fitzhugh stated he conservatively expended 2,500 to 3,500 hours on the case. In a Response drafted by Mr. Fitzhugh dated September 8, 2011, he stated he spent 1,500 to 2,000 hours.

7318 to either obtain and listen to the CD or obtain and view the DVD entitled "The Ten Deadly Sins of Conflict." Respondent Fitzhugh may alternatively go to the State Bar website (www.myazbar.org) and complete the self-study online version. Respondent Fitzhugh shall pick an additional program that deals with client confidences. Respondent Fitzhugh shall provide Bar Counsel with evidence of completion by providing copies of handwritten notes from both programs. Respondent Fitzhugh shall be responsible for the cost of the CLE programs. Once Respondent Fitzhugh has provided the proof of completion of the 6 hours of CLE, the State Bar will file a notice of completion of probation.

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

Pursuant to Rule 72 Ariz.R.Sup.Ct., Respondent Fitzhugh shall immediately comply with the requirements relating to notification of clients and others.

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 6.22* is the appropriate *Standard* given the facts and circumstances of this matter. *Standard 6.22* provides that suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with legal proceedings.

Respondent's conduct fits within this *Standard* because Respondent's conduct ultimately led to further court proceedings that otherwise would have not been necessary.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent acted knowingly and 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 the profession and the legal system.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22:

(a). Prior discipline history- Respondent received a 30 day suspension for similar misconduct in file no. 08-0477 (ERs 1.5 (e), 1.6, 1.7, 1.15 (a), 1.15 (b), 5.3 (c) and 8.4(d), and Rules 43 (a) and 43 (d), and Rules 44 (a) and 44 (b), Ariz. R. Sup. Ct [8]
(b). Dishonest or selfish motive
(c). Pattern of misconduct
(d). Multiple offenses
(i). Substantial experience in the practice of law

There are no mitigating factors.

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties

[8] During the underlying matter (Patel) upon which this discipline was based, Respondent felt unable to fully testify due to the ongoing litigation. That matter is currently on appeal and upon resolution, Respondent intends to pursue a new hearing in this matter.

conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of a six month suspension, not to begin before February 28, 2013, followed by two years of probation 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 14th day of January, 2013.

Edward D Fitzhugh
Respondent

DATED this 11 day of January, 2013.

Stephen P Little
Counsel for Respondent

Approved as to form and content

for...

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 11th day of January 2013.

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

Stephen P. Little
Steve Little and Associates
8776 E. Shea Blvd., Suite 106-352Scottsdale, AZ 85260Email:
steve@stevelittlelaw.com
Respondent's Counsel

Copy of the foregoing emailed
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: Ariana Quiroz
SRM:aq

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Edward D Fitzhugh, Bar No. 007138, Respondent

File No(s). 11-1877 and 11-2635

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 to contact witness	$ 4.71
09/12/11	Travel and mileage to contact witness	$ 4.71
09/14/11	Travel and mileage to serve subpoena	$ 18.87
09/15/11	Travel and mileage to serve subpoena	$ 18.87
10/27/11	Transcript of Fitzhugh	$ 769.15
11/17/11	Deposition of Albert Carranza	$ 50.00
11/29/11	Travel and mileage to attempt service	$ 22.53
12/02/11	Travel and mileage to serve subpoena	$ 22.20
12/05/11	Mileage and parking to retrieve CD	$ 9.32
01/04/12	Process service of subpoena	$ 60.00
01/20/12	Mileage and parking to retrieve CD	$ 9.43
01/26/12	Deposition of Albert Carranza, appearance fee	$ 150.00
01/26/12	Deposition of Albert Carranza, transcript	$ 160.95
05/29/12	Mileage and parking to retrieve CD	$ 9.32
10/09/12	Travel and mileage to pick up CD	$ 6.66
12/18/12	Travel and mileage to serve subpoena	$ 15.54

Total for staff investigator charges	$ 1,332.26
TOTAL COSTS AND EXPENSES INCURRED	***$2,532.26***

Sandra E Montoya

Sandra E. Montoya
Lawyer Regulation Records Manager

1-7-13

Date