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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**NATHAN JOHN HOGLE,
Bar No. 029940,**

Respondent.

PDJ 2021 -9043

State Bar File No. **20-0362**

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, and Respondent Nathan John Hogle who is represented in this matter by counsel, James J. Belanger, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on April 14, 2021, but no formal complaint has

been filed. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainants by letter of April 28, 2021, notifying them of the opportunity to file a written objection to this agreement within five (5) business days. No objections has been filed.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.1, 1.2, 1.3, 1.4, 3.1, and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **Reprimand with two years' probation**, the terms of which are set forth below. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding within 30 days from the date of this order. If costs are not paid within the 30 days interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the

FACTS

GENERAL ALLEGATIONS

1. Respondent was first licensed to practice law in Arizona on January 15, 2013.

2. On May 31, 2017, by order of the Attorney Discipline Probable Cause Committee, Respondent received an admonition and was placed on two years' probation with LOMAP in State Bar file no. 16-2218. Respondent successfully completed LOMAP on June 25, 2019, to address violations of 1.2, 1.3, and 1.4, ERs common to this discipline case. The parties agree that the majority of Respondent's conduct detailed below occurred prior to Respondent's completion of LOMAP.

COUNT ONE (File no. 20-0362/ Trachtenberg/Fuller)

3. Respondent represented Complainant Jay Fuller in Maricopa County Superior Court case no. CV2017-093639. Fuller retained Respondent in the summer of 2015.

Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

4. Fuller, an employee of the Swift Company, was involved in a traffic accident on June 22, 2015, that resulted in the death of the at-fault motorist.

American Liberty provided workers' compensation coverage to the Swift Company.

5. Fuller had until June 22, 2016 (one year) to bring a claim before the claim, by law, was assigned to American Liberty. (A.R.S. §23-1023(B)).

Respondent failed to bring the claim within one year or advise Fuller of the significance of the one-year time period.

6. On May 31, 2017, American Liberty's counsel emailed Respondent's assistant, Cynthia Martinez:

I am the attorney for the insurer that provided workers' compensation benefits to your client, Jay Fuller, for the injuries he sustained in a June 22, 2015, motor vehicle accident with Michael Norman Riggs. We spoke on the phone a little over a month ago about the personal injury case your firm is handling for Mr. Fuller against Mr. Riggs.

Please provide me (or have the attorney handling this case provide me) with an update on the status of negotiations with Foremost Insurance Company (the auto insurer for Mr. Riggs). Mr. Fuller's personal injury claim against Mr. Riggs is, at this point, statutorily assigned to the workers' compensation carrier. *See* A.R.S. § 23-1023(B). The workers' compensation carrier is willing to discuss a reassignment of the claim back to Mr. Fuller,

but we need assurances that a settlement will be reached or an action timely filed before the two-year statute of limitations runs on the personal injury claim. Otherwise, to protect its subrogation rights, the compensation carrier may be forced to institute an action against the estate of Mr. Riggs before the statute of limitations runs.

7. Neither Respondent nor staff responded to the email.

8. On June 12, 2017, American Liberty's counsel emailed and mailed a letter to Respondent and copied Cynthia Martinez requesting a response no later than Wednesday, June 14, 2017. Neither Respondent nor a staff member responded.

9. On June 16, 2017, Respondent's firm filed a civil complaint on Fuller's behalf. Respondent's name appears on the pleading. The pleading was signed by Dana Hogle, Respondent's brother and the owner of the firm.

10. Nobody with Respondent's firm informed Fuller that the lawsuit had been filed.

11. On July 3, 2017, American Liberty's counsel wrote to the deceased defendant's insurer and carbon copied Nathan Hogle and Cynthia Martinez as follows:

I recognize that my prior letter to you discussed my client's rights in terms of a workers' compensation lien.

At the time, my client was considering reassigning Fuller's personal injury claim back to Fuller for settlement or prosecution. *See* A.R.S. § 23-1023(B)(4) (expressly authorizing the compensation carrier to reassign the claim to the workers' compensation recipient). But to date, no reassignment has taken place.

It is my understanding that you may currently be in negotiations with Fuller's attorney, Nathan Hogle, for settlement of Fuller's personal injury claim. Those negotiations should cease. American Liberty Insurance Company is who you should be negotiating with ...

12. Also, on July 3, 2017, American Liberty's counsel wrote Respondent a substantially similar letter pointing out that Respondent lacked standing to bring the suit as indicated in his prior June 12, 2017 letter and that Hogle should voluntarily dismiss the case.

13. No attorney or staff member of the firm responded to American Liberty or communicated with Fuller concerning American Liberty's concerns.

14. On July 26, 2017, American Liberty's counsel wrote to Nathan Hogle again and copied Martinez requesting a response. Nobody from the firm responded.

15. On August 3, 2017, American Liberty's counsel emailed Respondent, two other lawyers with the Hogle firm, and Cynthia Martinez and stated in pertinent part:

Dear lawyers of the Hogle Firm:

This is my third written request to your firm demanding your client, Jay Fuller, voluntarily dismiss without prejudice the lawsuit he filed against the Estate of Michael Riggs and others at Maricopa County Superior Court Case No. CV2017-093639.

16. No attorney or staff member from the Hogle firm responded to the letter or discussed American Liberty's concerns with Fuller.

17. On August 7, 2017, opposing counsel moved to dismiss the complaint noting that the matter had been assigned to American Liberty.

18. On August 23, 2017, the court issued a Notice of Intent to Dismiss for Lack of Service.

19. On September 5, 2017, the court dismissed the matter without prejudice.

20. Respondent did not inform Fuller of the motion to dismiss, the letters from American Liberty, or the court's dismissal of the case.

21. Respondent's position regarding the above failures to respond and take action is that he believed other members of the firm to be handling Fuller's case.

22. On September 7, 2017, the decedent's wife was appointed special administrator of his estate after American Liberty's counsel petitioned for the appointment.

23. On February 27, 2018, the decedent's estate served an offer of judgment upon American Liberty of \$100,000. On March 16, 2018, American Liberty served an acceptance of the offer of judgment upon the special administrator of the estate. On April 3, 2018, Judge Gass entered a judgment of \$100,000 against the estate in Maricopa County case no. CV2017-007913.

24. On May 14, 2019, the Hogle Firm sent a letter under Respondent's signature to Fuller that stated in pertinent part: "pursuant to the terms of our original agreement with you, we have decided to terminate our representation." The letter further stated: "as of the conversation you had with me over a year ago, this letter is to acknowledge that our firm will no longer be representing you with regards to any potential claims." The letter also provided: "a suit was filed on June

16, 2017 to protect the Statute of Limitations, but was dismissed on September 6, 2017.”

25. Respondent did not prepare or send the letter and has no recollection of having seen it.” The signature was not a wet signature, but rather was electronically generated by staff.

26. The letter was sent certified to Fuller but was returned unclaimed.

27. Fuller never received any communication from the Hogle Firm regarding termination until November 22, 2019 when he went to pick up a copy of his file.

28. On December 19, 2019, Fuller brought a legal malpractice action against Respondent and Dana Hogle in CV2019015631, through his attorney, Geoffrey Trachtenberg.

29. On January 7, 2021, the parties filed a stipulation to dismiss the malpractice action with prejudice after reaching a confidential settlement.

CONDITIONAL ADMISSIONS

Respondent’s admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result

of coercion or intimidation. Respondent conditionally admits that he violated Rule 42, Ariz. R. Sup. Ct., specifically 1.1, 1.2, 1.3, 1.4, 3.1, and 8.4(d).

CONDITIONAL DISMISSALS

There are no conditional dismissals.

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Reprimand with Probation for two (2) years, **the terms of probation which will consist of:**

1. LOMAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order. Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.

Respondent shall commit no further violations of the Rules of Professional Conduct.

NON-COMPLIANCE WITH PROBATION

If Respondent fails to comply with any of the foregoing probation terms and the State Bar of Arizona receives information thereof, 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 Respondent breached a term of probation and, if so, to recommend an appropriate sanction. If the State Bar alleges that Respondent failed to comply with any of the foregoing terms the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

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 determining an appropriate sanction the Court considers 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. *Standard* 3.0.

The parties agree that the following *Standard 4.4 Lack of Diligence* is the appropriate *Standard* given the facts and circumstances of this matter: *Standard 4.4 Lack of Diligence* provides that Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

The duty violated

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

The lawyer's mental state

Respondent negligently violated the Rules of Professional Conduct.

The extent of the actual or potential injury

There was actual harm to the client and the legal system.

Aggravating and mitigating circumstances

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

In aggravation:

- a) 9.22(a) prior disciplinary offenses: 30-day suspension with probation in PDJ 2019-9052 and admonition with probation in 16-2218.
- b) 9.22(c) a pattern of misconduct: Respondent on the several occasions detailed herein failed to take timely action in his representation of Fuller.
- c) 9.22(d) multiple offenses: Respondent violated the several ERs detailed herein.

In mitigation:

9.22(e): full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

9.22(k) imposition of other penalties or sanctions (substantial malpractice settlement)

Reprimand with probation is within the range of appropriate discipline upon consideration of the aggravating and mitigating factors.

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. In re *Peasley*, 208 Ariz. 27 (2004). 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 Reprimand with probation.

A proposed form of order is attached hereto as Exhibit "B".

DATED this 8th day of June, 2021

STATE BAR OF ARIZONA

/s/ Hunter F. Perlmeter

Hunter F. Perlmeter
Senior Bar Counsel

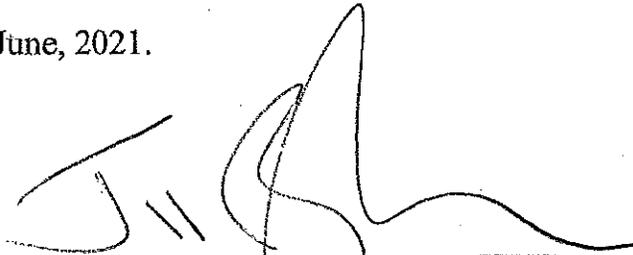
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 7 day of June, 2021.



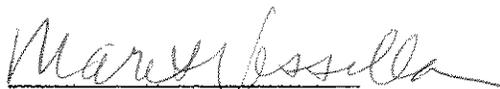
Nathan John Hogle
Respondent

DATED this 7th day of June, 2021.



James J. Belanger
J. Belanger Law PLLC
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 8th day of June, 2021.

Copy of the foregoing emailed
this 8th day of June, 2021, to:

The Honorable Margaret Downie
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 8th day of June, 2021, to:

James J. Belanger
J. Belanger Law PLLC
1006 S Roosevelt S.
Tempe, AZ 85281-5446
Email: jjb@jbelangerlaw.com Respondent's
Counsel

Copy of the foregoing hand-delivered
this 8th day of June, 2021, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

by: /s/ Karen E. Calcagno
HFP/kec

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona
Nathan John Hogle, Bar No. 029940, Respondent

File No. 20-0362

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.

Additional Costs

Total for additional costs \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED \$ 1,200.00

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**NATHAN JOHN HOGLE,
Bar No. 029940,**

PDJ

**FINAL JUDGMENT AND
ORDER**

State Bar No. 20-0362

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement.

Accordingly:

IT IS ORDERED that Respondent, Nathan John Hogle, is **Reprimanded** for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that Respondent is placed on probation for a period of two (2) years. The terms of probation are:

- a) LOMAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order.

Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.

Respondent shall commit no further violations of the Rules of Professional Conduct.

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

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

DATED this _____ day of May, 2021.

**Margaret Downie, Presiding Disciplinary
Judge**

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of June, 2021.

Copies of the foregoing mailed/mailed
this _____ day of June, 2021, to:

James J. Belanger
J. Belanger Law PLLC
1006 S Roosevelt St.
Tempe, Arizona 85281-5446
Email: jjb@jbelangerlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-
delivered this ____ day of June, 2021, to:

Hunter F Perlmeter
Senior Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this ____ day of June, 2021 to:

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

by: _____

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

NATHAN JOHN HOGLE,
Bar No. 029940

Respondent.

PDJ 2021-9043

**DECISION ACCEPTING
AGREEMENT FOR DISCIPLINE
BY CONSENT**

[State Bar No. 20-0362]

FILED JUNE 16, 2021

Pursuant to Rule 57(a), Ariz. R. Sup. Ct., an Agreement for Discipline by Consent was filed on June 8, 2021. A Probable Cause Order issued on April 14, 2021, but no formal complaint has been filed. The State Bar of Arizona is represented by Hunter F. Perlmeter. Respondent Nathan John Hogle is represented by James J. Belanger.

Contingent on approval of the proposed form of discipline, Mr. Hogle has voluntarily waived the right to an adjudicatory hearing, as well as all motions, defenses, objections, or requests that could be asserted. Pursuant to Rule 53(b)(3), notice of the consent agreement was sent to the complainant(s) by letter on April 28, 2021. No objections have been received.

The Agreement details a factual basis to support the conditional admissions and is incorporated by reference. *See* Rule 57(a)(4). Mr. Hogle admits he violated

Rule 42, ER 1.1 (competence), ER 1.2 (scope of representation), ER 1.3 (diligence), ER 1.4 (communication), ER 3.1 (meritorious claims and contentions), and ER 8.4(d) (conduct prejudicial to the administration of justice.) As a sanction, the parties agree to a reprimand and two years of probation with the State Bar's Law Office Management Assistance Program. The parties further agree Mr. Hogle will pay costs in the sum of \$1,200.00 within 30 days.

Mr. Hogle admits that in 2015, he represented a client in a civil matter. Thereafter, he failed to adequately communicate and diligently represent the client. Specifically, he failed to timely file the claim or advise his client of the significance of a statutory deadline to bring a claim before the claim was assigned to the workers' compensation carrier. Mr. Hogle did file a civil complaint to protect the statute of limitations, though the client was not informed. Thereafter, Mr. Hogle failed to respond to the workers' compensation carrier or its counsel, and the lawsuit was dismissed without prejudice after the carrier moved to dismiss. Mr. Hogle did not inform the client of the motion to dismiss, the dismissal, or the communications from the workers' compensation carrier.

Mr. Hogle conditionally admits that he negligently violated his duties to his client, the profession, and the legal system and that there was actual harm. The presumptive sanction is a reprimand under § 4.43 of the *ABA Standards for Imposing Lawyer Sanctions* ("ABA Standards").

The parties stipulate to the existence of aggravating factors 9.22(a) (prior disciplinary offenses), 9.22(c) (pattern of misconduct) and 9.22(d) (multiple offenses). The parties further stipulate to the existence of mitigating factors 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude towards proceedings), and 9.32(k) (imposition of other penalties or sanctions).

IT IS ORDERED accepting the Agreement for Discipline by Consent. A final judgment and order is signed this date.

DATED this 16th day of June 2021.

Margaret H. Downie

Margaret H. Downie
Presiding Disciplinary Judge

COPY of the foregoing e-mailed
on this 16th day of June 2021 to:

Hunter F. Perlmeter
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: LRO@staff.azbar.org

James J. Belanger
J. Belanger Law PLLC
1006 S. Roosevelt Street
Tempe, AZ 85281-5446
Email: jjb@belangerlaw.com
Respondent's Counsel

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

NATHAN JOHN HOGLE,
Bar No. 029940

Respondent.

PDJ 2021-9043

FINAL JUDGMENT AND ORDER

[State Bar No. 20-0362]

FILED JUNE 16, 2021

The Presiding Disciplinary Judge accepted the parties' Agreement for Discipline by Consent submitted pursuant to Rule 57(a), Ariz. R. Sup. Ct.

IT IS ORDERED that Respondent, **NATHAN JOHN HOGLE, Bar No. 029940**, is reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that Respondent is placed on probation for a period of two years, with the following terms and conditions:

- a) Law Office Management Assistance Program (LOMAP): Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order. Respondent shall submit to a LOMAP examination of his office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements,

which shall be incorporated herein. Respondent shall be responsible for any costs associated with LOMAP.

Respondent shall commit no further violations of the Rules of Professional Conduct.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00, within 30 days from the date of service of this order. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

DATED this 16th day of June, 2021.

Margaret H. Downie

Margaret H. Downie

Presiding Disciplinary Judge

Copies of the foregoing emailed
this 16th day of June, 2021, to:

James J. Belanger
J. Belanger Law PLLC
1006 S Roosevelt St.
Tempe, Arizona 85281-5446
Email: jjb@jbelangerlaw.com
Respondent's Counsel

Hunter F. Perlmeter
Senior Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: SHunt