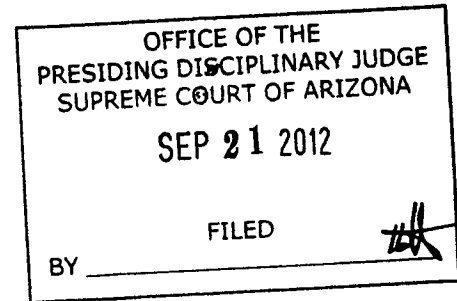


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**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

Joseph W. Charles
Bar No. 003038

Respondent.

PDJ- 2012-9055

[State Bar File Nos. 11-2291, 11-2298, 11-3089, 11-3683, 11-3905, and 12-0531¹]

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Joseph W Charles, who is represented in this matter by counsel James J. Syme, 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER(s) 1.2, 1.3, 1.4, 1.5(a) and (d)(3), 1.15(a),(c) and (d), 1.16(d), Rules

¹ File nos. 11-3089, 11-3905, and 12-0531 have not been before the Attorney Discipline Probable Cause Committee, but Respondent wants to settle these three matters along with the formal complaint.

43(b)(2)(A), (B), (C), and (D), 43(b)(5), 43(d)(3), 54(d), 72(a), (b)(1), and (f), Ariz.R.Sup.Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: six-month suspension for the date the order is entered by the Presiding Disciplinary Judge ("PDJ"). Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.² Respondent agrees to participate in fee arbitration with clients who file for fee arbitration. Respondent will be subject to a period of probation as set by the PDJ at the time of reinstatement. The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A. A proposed Final Judgment and Order is attached as Exhibit B.

FACTS

1. At all times relevant, Respondent was an Arizona lawyer, having been admitted to practice on September 23, 1972. Respondent was suspended on November 27, 2010, and continues to be on a suspended status.

COUNT ONE (File no. 11-2291/Rodriguez)

2. Calixtro Rodriguez (Mr. Rodriguez) went to Respondent on July 1, 2010, seeking to file a bankruptcy after a \$17,741.96 civil judgment was entered against him.

3. If this matter were to proceed to hearing Mr. Rodriguez would testify that Respondent told him he could make the problem go away without filing bankruptcy, so Mr. Rodriguez paid Respondent \$1,500.00 to file a motion to set aside the judgment. Respondent would testify that it was reasonable and prudent not to file bankruptcy. Mr. Rodriguez only had one major creditor and Respondent

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.

agreed to seek a resolution of the issues with that creditor before considering the filing of bankruptcy. For purposes of this agreement, the State Bar does not contest Respondent's proffered testimony.

4. During the initial meeting, Respondent reviewed the documents from the justice court case for approximately 10 to 15 minutes.

5. Respondent did not explain to Mr. Rodriguez what could happen by filing the motion or that he could be liable for opposing party's attorney's fees.

6. On July 1, 2010, Respondent filed the motion to set aside the judgment based on service issues and statute of limitations, neither of which applied.

7. On August 4, 2010, the Court denied the motion and by letter dated August 18, 2010, Respondent notified Mr. Rodriguez.

8. In September 2010, Mr. Rodriguez told Respondent that he wanted to proceed with bankruptcy. Respondent referred him to "Harry," another lawyer in Respondent's office.

9. Harry told Mr. Rodriguez that the original \$1,500.00 fee would need to be paid, which Mr. Rodriguez did by March 2011.

10. Respondent was suspended from practicing law as of November 27, 2010. If this matter were to proceed to hearing, Mr. Rodriguez would testify that he was never advised that Respondent was going to be suspended on November 27, 2010. Respondent would testify that he does not recall whether he told Mr. Rodriguez that Respondent was going to be suspended.

11. After a few months, Mr. Rodriguez did not hear from Respondent's office so he called and spoke to Respondent. He told Respondent about his

dissatisfaction with him and Respondent told him he would give him a credit deducting the fee for the motions that he previously filed. He then referred him to his non-lawyer employee, Erica Heath, and told Mr. Rodriguez he would need \$300.00 to file the bankruptcy.

12. Mr. Rodriguez then received a letter from Respondent dated June 30, 2011, informing him that Respondent had closed his file.

13. Mr. Rodriguez talked to Respondent in July 2011, and Respondent told him he would do the bankruptcy for \$1,800.00, and he would credit Mr. Rodriguez for the \$1,500.00 he had already paid. Mr. Rodriguez did not trust Respondent and declined the offer.

14. The State Bar reviewed Mr. Rodriguez's file, which included a copy of the fee agreement. The fee agreement contains contradictory terms and fails to include language required by ER 1.5(d)(3).

15. Respondent was asked to provide proof of compliance with Rule 72(a) Ariz. R. Sup. Ct. Respondent does not have a record that he informed Mr. Rodriguez of his suspension, as required by Rule 72(f).

COUNT TWO (File no. 11-2298/Trust Account)

16. On July 21, 2011, the State Bar received an insufficient funds notice on Respondent's client trust account³. On July 18, 2011, check number 2140 for \$5,000.00 and check number 2134 for \$3,500.00 attempted to pay against the account when the balance was \$0.00. The bank returned the checks and charged two \$35.00 overdraft fees, leaving the account with a negative balance of \$70.00.

³ Wells Fargo trust account number ending in 0107.

17. On July 22, 2011, the Staff Examiner sent Respondent a copy of the overdraft notice and asked for an explanation and the following trust account records:

- a. bank statements,
- b. Copies of the cancelled checks,
- c. Copies of the deposit slips,
- d. Copies of the individual client ledgers,
- e. Copies of the general ledger/check register,
- f. The name of the trust account recordkeeping program used,
- g. Copies of the monthly reconciliation.

18. On July 27, 2011, the State Bar received a second insufficient funds notice on Respondent's client trust account. On July 21, 2011, check number 2141 for \$1,057.00 attempted to pay against the account when the balance was negative \$70.00. The bank paid the check and charged a \$35.00 overdraft fee, leaving the account with a negative balance of \$1,162.00.

19. On July 27, 2011, the Staff Examiner sent Respondent a copy of the overdraft notice and asked that Respondent provide an explanation and the previously requested trust account records.

20. On August 2, 2011, the State Bar received Respondent's undated response. Respondent did not provide any of the requested documents.

21. On August 2, 2011, the Records Examiner sent Respondent a request for the documents listed in paragraph 17. On September 1, 2011, Respondent provided trust account check nos. 2134, 2141, and 2142.

22. On September 7, 2011, Respondent was again asked to provide all of the requested records. On September 9, 2011, Respondent provided trust account check no. 1013, and the July 2011, trust account bank statement.

23. On September 13, 2011, the Records Examiner asked Respondent to respond to specific questions and provide supporting documents.

24. On September 21, 2011, the State Bar received some records from Respondent, specifically copies of eight canceled checks.

25. On September 22, 2011, a subpoena duces tecum was issued to Wells Fargo Bank requesting documents from account ending in 0107.

26. Wells Fargo Bank submitted the requested documents pursuant to the subpoena duces tecum on November 3, 2011.

27. On November 10, 2011, a subpoena duces tecum was issued to Respondent for additional trust account documents. On November 10, 2011, a subpoena was also issued for Respondent's deposition.

28. On November 28, 2011, Respondent again provided some of the requested records. On November 29, 2011, the Records Examiner sent Respondent a request for additional information.

29. On December 8, 2011, Respondent informed the State Bar he had provided the State Bar with all of the trust account information he had.

30. Respondent was deposed on January 10, 2012. During the deposition, Respondent was asked to provide the State Bar with the trust account records for his Chase trust account ending in 1865.

31. On or about January 20, 2012, Respondent provided the State Bar with some of the requested records.

32. On March 9, 2012, the State Bar asked Respondent to provide answers to specific questions about any other trust accounts he maintained.

33. Respondent failed to provide any further information regarding any trust accounts.

34. In reviewing the records for the trust account ending in 0107, the State Bar found entries in the records that do not appear to be related to a legal representation; for example, there is a deposit labeled "Payable to Joseph W. Charles, Uganda Africa, Pastor Lubega."

35. In reviewing the records for the trust account ending in 0107, the State Bar found that on July 8, 2011, Respondent disbursed \$68,245.31 from the trust account without using a pre-numbered check or by electronic means.

36. Respondent was suspended from practicing law as of November 27, 2010, yet Respondent continued to transact on his Wells Fargo Bank client trust account ending 0107. Respondent failed to provide any general ledgers for the period of September 2010 through August 2011, and failed to provide various individual client ledgers.

37. If this matter were to proceed to a hearing, Respondent would testify that he submitted all trust account information in his possession to the State Bar. The Wells Fargo account, which was formerly the trust account, was in the process of being closed and after Respondent's suspension a new trust account was opened at the Chase Bank. Funds were deposited in the non-functioning Wells Fargo Account for a charitable organization. The Wells Fargo Account was effectively closed and documentation of that closure has been provided to the State Bar. For

purposes of this agreement, the State Bar does not contest Respondent's proffered testimony.

COUNT THREE (File no. 11-3683/Barnes)

38. Kenneth and Mollie Barnes (the Barneses) were being sued by M&I Bank in regard to a debt secured by a deed of trust. When the property was sold to satisfy the debt, there was a deficiency of \$167,390.27.

39. The Barneses hired Respondent in October 2009 and paid Respondent a \$5,000.00 advanced fee. During the representation, they paid Respondent an additional \$3,135.00. They made numerous complaints to Respondent and his staff about the fees charged and the lack of proper representation by Respondent.

40. Although the fee agreement lists the scope of the representation as "M & I Bank counterclaim" Respondent did not follow-up with their previous lawyers request for disclosure and discovery from M & I; therefore, they were unable to assert a counterclaim against the bank.

41. The fee agreement contained numerous references to the nonrefundable/earned upon receipt fee, but did not include language that the client may nevertheless discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee based upon the value of the representation.

42. On November 27, 2010, Respondent was suspended from the practice of law.

43. Although Respondent told the Barneses he was going to be suspended, they never signed an agreement to be represented by Respondent's associate Chris Short, as required by Rule 72(b)(1), Ariz. R. Sup. Ct.

44. Respondent never filed a notice of association during pendency of suspension as required by Rule 72(b)(1), Ariz. R. Sup. Ct.

45. On July 13, 2011, Respondent wrote to the Barneses because of "comments shared by [his] office staff with [him] as to the remarks made concerning our professional and office staff." Respondent goes on to say, "In any event, I have informed the billing staff to waive the charges currently owed to our office. I seek your forgiveness for any pain that our office or I have caused your family."

46. On June 29, 2011, the civil matter was placed on the Inactive Calendar for dismissal on August 22, 2011, if certain actions were not taken. On September 6, 2011, the court found that "no action having been taken ... dismiss[ed] without prejudice all claims in the matter..."

47. On September 15, 2011, Respondent filed an application for attorney's fees on behalf of the Barneses.

48. On October 31, 2011, the court awarded the Barneses \$10,000.00 for their attorney fees.

49. Despite the fact that the July 13, 2011, letter mentioned waiving any outstanding attorney's fees, on November 3, 2011, Respondent sent the Barneses a letter informing them that he was keeping the court-awarded attorney's fees.

50. Respondent deposited the \$10,000.00 check on November 11, 2011, but as of November 21, 2011, he had failed to notify the Barneses that he had received the funds from M&I Bank.

51. Respondent has since paid the Barneses \$8,135.00 of the \$10,000.00 award.

52. On November 29, 2011, the State Bar asked Respondent to respond to the Barnes's allegations. Respondent's December 5, 2011, letter to the State Bar was nonresponsive. He indicated that he has had "limited involvement in this matter in recent months."

53. On January 10, 2012, the State Bar deposed Respondent. During his deposition he was asked to provide a client ledger for the Barnes. The client ledger he provided shows only the \$10,000.00 deposit and disbursement. There are no entries for the other \$8,135.00 the Barnes paid. If this matter were to proceed to hearing Respondent would testify that the initial payment did not go into the trust account because the fee was already earned. For purposes of this agreement, the State Bar does not contest Respondent's proffered testimony.

COUNT FOUR (File No. 11-3905/Carson)

54. Donald and Marlene Carson (the Carsons) paid Respondent \$2,800.00 to file a chapter 13 bankruptcy case. They signed a fee agreement on February 26, 2010. Respondent's fee agreement does not contain ER 1.5(d)(3) language.

55. The Carsons filled out a bankruptcy intake packet that Respondent provided. The paperwork contained "boilerplate" information such as their names and social security numbers, but the rest of the information was blank. They signed the partially completed chapter 13 plan and returned it to Respondent's office. A few days after March 10, 2010, they received a copy of the chapter 13 plan that Respondent had filed with the bankruptcy court.

56. The Carsons found numerous mistakes when they reviewed the plan, and relayed their corrections to Respondent.

57. At the April 14, 2010, creditors meeting when asked by the trustee's representative whether everything submitted was accurate and correct, the Carsons told him no and that the needed corrections had been sent to Respondent. Respondent then assured the Carsons he would have the corrections in shortly.

58. When they met with Respondent he asked what amount they could pay monthly and they told him \$490.00.

59. On April 16, 2010, the Carsons received a letter from Respondent about the trustee meeting. The letter did not mention anything about corrections made to the plan.

60. On November 9, 2010, the Carsons were informed about Respondent's suspension and that he would be assigning their case to another attorney. On November 16, 2010, they met with attorney Mr. Harry Lenaburg at Respondent office to discuss their case.

61. After going over the case in detail about the problems they were having, Mr. Lenaburg advised them that the case was more complicated than what he could handle and they would have to seek other counsel.

62. On November 22, 2010, Respondent sent Mr. Carson a letter stating the following: "I know you have spoken to Mr. Lenaburg, but in regard to this particular issue [the second mortgage on the house], I will be working with Chris Short in our office. Therefore, if you have any questions or concerns in regard to this issue, please request to speak to Mr. Short."

63. The Carsons did not provide Respondent with written consent to associate with another lawyer in their pending bankruptcy case.

64. There was no Notice of Association During Pendency of Suspension filed with the bankruptcy court as required by Rule 72(b)(1).

65. On November 24, 2010, the Carsons received a motion from the trustee to dismiss the case because the trustee said he had not received a copy of their federal income taxes and indicated they were \$3,330.00 in default on their plan payments.

66. The Carsons say they made every \$490.00 monthly payment to the trustee, but found out that Respondent failed to submit a new plan to change the \$845.00 a month payment.

67. On December 9, 2010, they fired Respondent, asked for their file, and requested a refund. Respondent refused to refund their money, but they did get a copy of their file.

68. A printout of the bankruptcy case history on December 29, 2011 still lists Respondent as the attorney of record.

69. If this matter were to proceed to hearing, Respondent would testify that he thought he had complied with the notification provisions of Rule 72, and did not know that he was still listed as the attorney of record. The withdrawal documents had been prepared and Respondent was awaiting the signed consent of the Carsons. Although the Carsons owed Respondent monies, Respondent waived payment following his suspension. For purposes of this agreement, the State Bar does not contest Respondent's proffered testimony.

COUNT FIVE (File No. 12-0531/Ryan)

70. Thomas Ryan (Mr. Ryan) was contacted by a potential client, Christina Abner, because she was unhappy with the representation provided by Respondent

and his firm. Mr. Ryan accessed the State Bar's website and found that Respondent was suspended.

71. Mr. Ryan provided a December 14, 2011 letter addressed to Ms. Abner and signed by Respondent advising Ms. Abner to call his cell phone number or to provide written messages to Ms. Abner's husband rather than to communicate through his office.

72. A review of Respondent's client file for Ms. Abner revealed the following:

- a. December 22, 2011, letter from Respondent to Janet L. Swanson asking her to review medical records and asking her to contact him on his cell phone and review the matter with him.
- b. Post-it note on a September 28, 2011 letter, "Hold signing Stip until we get written confirmation of \$100,000 coverage Per Joe 10/5/11."
- c. Letter dated 12/13/10 from Legal Assistant Christine Saint to Ms. Abner providing Respondent's cell phone number and indicating that she "can contact Joe anytime on his cell at..."
- d. June 17, 2011 letter from opposing counsel to "Mr. Charles and Mr. Short." The mailing block identifies Respondent as "Joseph W. Charles, Esq."
- e. Copies of checks dated May 11, 2012, drawn on "Joseph W. Charles PC Trust Account," made payable to Ms. Abner and Dr. Siegel and signed by Respondent.
- f. March 22, 2012, letter from Southwest Accident & Injury Medical Center addressed to "Joseph W. Charles, Esq."

- g. Document titled "PER JOE'S DICTATION" that references the preparation of an amended complaint for "me" to review with "Chris" and "Christine" prior to filing. The complaint was filed on December 23, 2010 and the amended complaint was filed on January 10, 2011.

COUNT SIX (File No. 11-3089/State Bar)

73. The State Bar received information that Respondent's name was seen on pleadings filed with the Maricopa County Superior Court. To determine whether Respondent was practicing law after being suspended on November 27, 2010, information from Maricopa County Superior Court was obtained.

74. A State Bar staff investigator was provided with the attorney calendar for proceedings in which Respondent was scheduled to appear for the next six months and with a complete list of all cases in which Respondent was the attorney of record since he was admitted to the State Bar.

75. Chris Short, an attorney working for Respondent, filed a pleading that included the "Joe Charles, PC" caption and that underneath the caption was Chris Short's name and bar number. Commissioner Miller was assigned the case and instructed her assistant to contact Mr. Short and have him file another pleading without the Joe Charles, PC caption. The pleading Mr. Short filed was in *State v. Lagreca* CR2010-120580-001.

76. Other documents found that contained Respondent's name in the caption or where he is still listed as the attorney of record are as follows:

- a. CR2010-120580: Motion to Alter Release Conditions filed 6/21/11 by Christopher Short on Respondent' pleading header.

- b. Motion to Compel Deposition of Witness filed 6/20/11 by Christopher Short on Wykoff Law Group pleading header (same address as Respondent).
- c. Defendants 15.2 Disclosure filed 4/11/11 by Christopher Short on Respondent' pleading header.
- d. Defendants Rule 14.2 Affidavit filed 4/4/11 by Christopher Short on Respondent' pleading header.
- e. Waiver of Defendant's Appearance filed 4/4/11 by Christopher Short on Respondent' pleading header.
- f. DR1995-017235: Notice of Withdrawal of Attorney of Record for Petitioner filed 4/18/11 by Harry Lenaburg on Respondent' pleading header.
- g. Minute Entry dated 4/8/11 with Respondent listed as attorney of record.
- h. FC2008-070034: Notice of Withdrawal of Counsel for Respondent filed 5/31/11 by Christopher Short on Respondent' pleading header.
- i. FC2003-070588: Order to Withdraw as Counsel of Record for Petitioner filed 4/14/11 by Respondent.
- j. FC2010-007120: Notice of Change of Counsel Within Firm filed 5/25/11 by Christopher Short on Respondent' pleading header.
- k. Order to Compel Discovery filed 4/19/11 by Harry Lenaburg on Respondent' pleading header.
- l. Petitioner's Motion to Strike Respondent's Pleadings and for Sanctions filed 4/14/11 by Harry Lenaburg on Respondent' pleading header.

- m. Petitioner's Separate Pretrial Statement filed 4/12/11 by Harry Lenaburg on Respondent' pleading header.
- n. Motion to Compel Discovery and Request for Sanctions filed 4/6/11 by Harry Lenaburg on Respondent' pleading header.
- o. Motion to Accelerate filed 4/6/11 by Harry Lenaburg on Respondent' pleading header.
- p. FC2006-001456: Minute Entry dated 4/21/11 listing Respondent as attorney of record for Laurie Jones.
- q. CR2009-160904: Order to Withdraw as Counsel of Record for Defendant filed 5/16/11 by Respondent.
- r. Motion to Withdraw as Counsel of Record for Defendant filed 5/2/11 by Harry Lenaburg on Respondent' pleading header.
- s. Minute Entry dated 4/25/11 listing Respondent as the attorney of record.
- t. PB2004-070814: Minute Entry dated 4/29/11 indicating Respondent as one of the attorneys of record.
- u. Notice of Non-Appearance Hearing on Petition for Approval of Third Annual Accounting, Fiduciary's Fees and Costs, and Attorney's Fees and Costs filed 4/8/11 by Fiduciary Stacy Johnson. The signature page of this document indicates Respondent as the attorney of record for Estella Gabaldon.
- v. PB2010-070464: Notice of Change of Counsel for Petitioner filed 6/8/11 by Christopher Short on Respondent' pleading header.

- w. PB2003004691: Motion to Withdraw as Counsel of Record for the Ward filed 3/17/11 by Harry Lenaburg on Respondent' pleading header..
- x. PB2004-070274: Minute Entry dated 6/8/11 indicating Respondent as the attorney of record.
- y. Order terminating Guardianship and Conservatorship filed 6/8/11 by Harry Lenaburg on Respondent' pleading header.
- z. Notice of Change of Counsel Within the Firm filed 6/2/11 by Christopher Short on Respondent' pleading header.
- aa. Annual Report of Guardian filed 4/1/11 by Respondent.
- bb. FC2009-005048: Notice of Withdrawal of Counsel for Respondent filed 5/18/11 by Harry Lenaburg on Respondent' pleading header.
- cc. CV2009-010269: Notice of Death of Defendant and Motion to Dismiss Appeal from Arbitration Award filed 6/7/11 by Christopher Short on Respondent' pleading header.
- dd. Notice of Change of Counsel for Plaintiff filed 11/24/10 by Respondent.
The Notice does not comply with Rule 72(b)(1).
- ee. FC2010-071051: Order Allowing Withdrawal of Counsel for Petitioner filed 5/23/11 by Harry Lenaburg on Respondent' pleading header.
- ff. Motion to Withdraw as Counsel for Petitioner filed 5/18/11 by Harry Lenaburg on Respondent' pleading header.
- gg. Notice of Change of Counsel Within the Firm filed 12/3/10 by Harry Lenaburg on Respondent' pleading header. The Notice does not comply with Rule 72(b)(1).

hh.FC2004-004732: Notice of Withdrawal of Attorney of record for Respondent filed 6/8/11 by Christopher Short on Respondent' pleading header.

77. In August 2011, the staff investigator called Respondent's office and was told that Respondent would be in the next day to "meet with a client."

78. Later, Diana from Respondent's office called the State Bar and left a message saying that she "was calling from the law offices of Joe Charles."

79. Respondent still employees six people, four staff and two associates. His corporation pays their salaries. The money generated by the staff, whether through accounts receivables or from new business, all goes to the corporation. Respondent is the only director of the corporation.

80. If this matter were to proceed to hearing, Respondent would testify that he thought he had complied with the notification provisions of Rule 72, and did not know that he was still listed as the attorney of record.

81. If this matter were to proceed to hearing, Respondent would testify that he has not taken, and will not take, any money from the corporation that was generated from providing legal services. At this time, Respondent has been lending the corporation money to be able to meet payroll and other financial obligations. Respondent now understands that keeping Joseph W. Charles P.C. running while he is suspended gives the impression that he is still practicing law.

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., Respondent's conduct in this count violated Rule 42, ER(s) 1.2, 1.3, 1.4, 1.5(a) and (d)(3), 1.15(a),(c) and (d), 1.16(d), Rules 43(b)(2)(A), (B), (C), and (D), 43(b)(5), 43(d)(3), 54(d), 72(a), (b)(1), and (f), Ariz.R.Sup.Ct. Specifically:

COUNT ONE (File no. 11-2291/Rodriguez)

82. Respondent violated ER 1.2 (Scope of the representation) - Respondent talked Mr. Rodriguez out of the course of action Mr. Rodriguez wanted to take and in the process caused him to incur \$500.00 in opposing party's attorney's fees. This is in addition to the \$1,500.00 Respondent charged Mr. Rodriguez to represent him in the civil matter.

83. Respondent violated ER 1.3 (Diligence) - Respondent failed to diligently review Mr. Rodriguez's justice court file before filing his notice of appearance and motion to set aside.

84. Respondent violated ER 1.4 (Communication) - Respondent failed to inform Mr. Rodriguez of the consequences of trying to have the judgment set aside. There is very little correspondence in the file provided by Respondent, and there was a significant period of time when Mr. Rodriguez did not hear from Respondent or his office.

85. Respondent violated ER 1.5(a) and (d)(3) (Fees) - Respondent's fee is unreasonable based on the amount of work he did. Respondent's fee agreement also fails to contain ER 1.5(d)(3) language.

86. Respondent violated ER 1.15(c)(Safekeeping Property) - Advanced fees, regardless of whether they are labeled earned on receipt or non refundable, shall be deposited in a client trust account. Respondent makes it very clear in his

fee agreement that the fees are advanced fees. Respondent circumvents the ethical rules by labeling his fee an earned on receipt fee so he can deposit it in his operating account and use the money before it is earned.

87. Respondent violated ER 1.16(d) (Returning client property after termination of representation) – Respondent did not return Mr. Rodriguez’s original documents when he terminated the representation.

88. Respondent violated Rule 72(a) and (f) (Duties post suspension) – Respondent does not have a record proving he notified Mr. Rodriguez about his suspension and Mr. Rodriguez denies he was so notified.

COUNT TWO (File no. 11-2298/Trust Account)

89. Respondent violated ER 1.15(a)(safekeeping property) – Respondent is keeping funds in the trust account that do not belong to a client or third party in connection with a legal representation.

90. Respondent violated Rule 43(b)(2)(A) – Respondent failed to maintain complete records of the handling, maintenance, and disposition of all funds, belonging in whole or in part to a client/third person in connection with a representation.

91. Respondent violated Rule 43(b)(2)(B) – Respondent failed to maintain appropriate trust account ledgers for each client, person, or entity for which funds have been received in trust, showing containing the required information

92. Respondent violated Rule 43(b)(2)(C) – Respondent failed to maintain general ledgers and various individual client ledgers, and was therefore unable to properly perform a monthly 3-way reconciliation.

93. Respondent violated Rule 43(b)(2)(D) – Respondent failed to retain all trust account bank statements, cancelled pre-numbered checks, other evidence of disbursements, duplicate deposit slips or the equivalent, client ledgers, trust account general ledger or register, and reports to clients.

94. Respondent violated Rule 43(d)(3)(Rebuttable Presumption) – If a lawyer fails to maintain trust account records required by this rule there is a rebuttable presumption that the lawyer failed to properly safeguard client/third person's funds or property, as required by this rule and ER 1.15. Respondent failed to maintain general ledgers and various individual client ledgers that tracked the flow of money in and out of the client trust account for the periods of September 2010 through August 2011.

95. Respondent violated Rule 43(b)(5) – On July 8, 2011, Respondent disbursed \$68,245.31 without using a pre-numbered check or by electronic means.

96. Respondent violated Rule 54(d) – Respondent failed to provide information regarding his Wells Fargo trust account ending in 0107 when requested and the State Bar had to take his deposition and had to subpoena his bank to obtain trust account records Respondent should have been maintaining. Respondent then failed to respond to the State Bar's request for information regarding his Chase trust account ending in 1865.

COUNT THREE (File no. 11-3683/Barnes)

97. Respondent violated ER 1.2 (Scope of the representation) ER 1.3 (Diligence), Respondent failed to request information that was necessary for the Barnes' to file a counter claim, even though the necessity of the documents was

pointed out to him by the Barnes first attorney and was the objective of the representation as indicated in his fee agreement.

98. Respondent violated ER 1.4(Communication) – Respondent failed to adequately discuss the attorney’s fees award with the Barnes.

99. Respondent violated ER 1.5(d)(3)(Fees) –Respondent’s fee agreement does not include an appropriate disclaimer regarding the nonrefundable/earned upon receipt language he used.

100. Respondent violated ER 1.15(c) and (d)(Safekeeping Property) – Advanced fees shall be deposited in a client trust account. Respondent failed to provide any record of the \$5,000.00 the Barnes’s paid, although it was an advanced fee and should have been deposited in the trust account. Respondent failed to promptly inform the Barnes’s about the receipt of the court-awarded attorney’s fees.

101. Respondent violated Rule 54(d)(Failure to furnish information) – Respondent failed to provide information when requested and the State Bar had to take his deposition.

102. Respondent violated Rule 72(b)(1) when he failed to get the substitution of counsel in writing and failed to file the appropriate notice of association of counsel during pendency of suspension.

COUNT FOUR (File No. 11-3905/Carson)

103. ER 1.3 – Respondent failed to act with reasonable diligence in representing the Carsons.

104. ER 1.4 (a)(3) – Respondent failed to keep the Carsons reasonably informed about their case.

105. ER 1.5(d)(3) – Respondent’s fee agreement does not contain the appropriate information regarding “nonrefundable” or “earned upon receipt” language.

106. ER 5.5(a) – Respondent was practicing law after the start of his suspension when he continued to meet with Complainants and advise them on ways to continue with the firm after Respondent was suspended.

107. SCR 72(b) – Respondent violated Rule 72(b) by failing to get written consent to associate with Chris Short and by failing to file a Notice of Association During Pendency of Suspension.

COUNT FIVE (File No. 12-0531/Ryan)

108. ER 5.5(a) – Respondent was practicing law after the start of his suspension when he continued to meet with Complainants and advise them on ways to continue with the firm after Respondent was suspended.

109. SCR 72(b) – Respondent violated Rule 72(b) by failing to get written consent to associate with Chris Short and by failing to file a Notice of Association During Pendency of Suspension.

COUNT SIX (File No. 11-3089/State Bar)

110. ER 5.5(a) – Respondent was practicing law after the start of his suspension.

111. SCR 72(a) – Respondent violated Rule 72(a) by failing to notify the appropriate people and courts of his suspension and of his disqualification to act as a lawyer.

CONDITIONAL DISMISSALS

The State Bar has conditionally agrees to dismiss the following:

COUNT ONE (File No. 11-2291/Rodriguez)

The State Bar conditionally agrees to dismiss the allegations in count one that Respondent violated ER 1.1 (Competence) and Rule 31(a)(2)(B)(2).

RESTITUTION

Respondent has agreed to participate in fee arbitration with any clients involved in any of these files that file petitions for fee arbitration, therefore restitution is not an issue in these matters.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: six-month suspension for the date the order is entered by the Presiding Disciplinary Judge. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding. Respondent agrees to participate in fee arbitration with clients who file for fee arbitration. Probation will be addresses at Respondent's reinstatement hearing.

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 *Standards 4.1, 4.4, and 7.0* are the appropriate *Standards* given the facts and circumstances of this matter. *Standard 4.13* provides that Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. Respondent was negligent in handling his trust account. *Standard 4.42* provides that Suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Respondent engaged in a pattern of neglect in his handling of the following matters: Count One, Mr. Rodriguez, Count Three Mr. and Mrs. Barnes, Count Four, Mr. and Mrs. Carson and Count Five, Ms. Abner. *Standard 7.2* provides that Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. Respondent's failure to ensure that clients, opposing counsel, and the courts were aware of his suspension violated the duty he owed to each and could have caused injury to the client, the public or the legal system.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent's mental state was negligent in violating the Rules of Professional Conduct. His mental state was knowing, as knowledge is defined in the ABA *Standards*, in that Respondent was aware of the circumstances of his conduct, but he did not have a conscious objective or purpose to accomplish a particular result.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was no actual harm to the public, and there was potential harm to the clients, the public, 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 disciplinary offenses.

- Informal Reprimand, File no. 92-2219: ERs 1.3, 1.5(c), and 1.15; 09/02/1993.
- Informal Reprimand, File no. 93-2066: ERs 1.3, 1.4(a), 1.16(d), and Rules 51(h) and (i) – 09/08/1994.
- Informal Reprimand, File no. 94-0266: ER 8.1 and Rules 51(h) and (i) – 12/27/1994.
- Informal Reprimand, File no. 95-1830: ERs 1.3 and 1.4 – 10/22/1997.
- Informal Reprimand, File no. 95-1898: ERs 1.5(b) and 1.16(d) – 08/25/1997.
- Censure, SB-93-0005-D: ER 8.4(c) – 02/16/1993.
- Censure, SB-09-0029-D: ER 1.9(a) – 06/01/2009.
- Censure, SB-09-01000-D: ERs 1.3, 1.4, 3.4(c), 8.1(b), 8.4(c) and (d) and Rule 53(f) – 10/15/2009.
- Suspension 60 days effective November 27, 2010 – SB-10-0094-D, ER 8.4(d).

- Suspension 6 months and 1 day effective April 1, 2011. PDJ: 09-2452. ER 1.5(a) and (d)(3), 3.1, 8.1(a), 8.4(c), and (d). Respondent was not reinstated from his first suspension when the second suspension was entered; therefore, Respondent has been suspended continuously since November 27, 2010.

Standard 9.22(c) a pattern of misconduct. A pattern of misconduct has been found in the past under circumstances in which a respondent has a prior disciplinary record involving the same or similar wrongdoing, or when a respondent's misconduct involves multiple clients. *Matter of Levine*, 174 Ariz. 146, 171; 847 P.2d 1093, 1118 (1993).

Standard 9.22(d) multiple offenses. This matter includes six separate matters and the violation of multiple ethic rules.

Standard 9.22(i) substantial experience in the practice of law. Respondent has been an Arizona attorney since September 23, 1972, over 35 years and has had ample opportunity to understand his ethical duties, given his discipline history.

In mitigation:

Standard 9.32(b) absence of a dishonest or selfish motive. Respondent's conduct was not dishonest or selfish. There was no financial motivation related to any of his conduct.

Standard 9.32(e) cooperative attitude toward proceedings. Respondent has cooperated with the State Bar in resolving these matters.

Standard 9.32 (m) remoteness of prior offenses. The parties agree that many of Respondent's disciplinary offenses are remote, having occurred prior to 2000. Additionally, some of the conduct occurred before the most recent suspension and, if known at that time, might have been included in the prior suspension.

Discussion

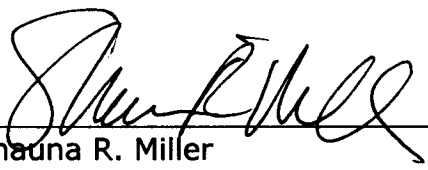
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

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 believe that the objectives of discipline will be met by the imposition of the proposed sanction of six-month suspension for the date the order is entered by the Presiding Disciplinary Judge, the costs and expenses of the disciplinary proceeding, participation in fee arbitration, and probation upon reinstatement.

DATED this 21st day of September, 2012.

STATE BAR OF ARIZONA

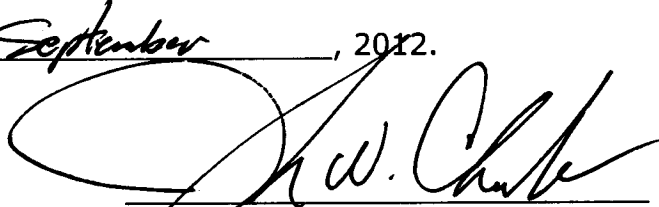


Shauna R. Miller
Senior Bar Counsel

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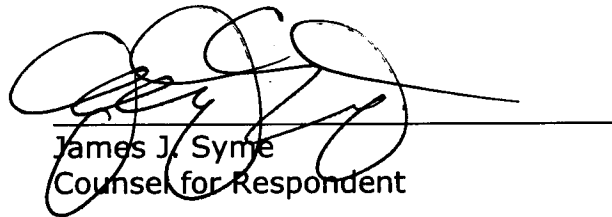
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property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

DATED this 20 day of September, 2012.



Joseph W. Charles
Respondent

DATED this 20th day of September, 2012.



James J. Syme
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 21st day of September, 2012.

Copies of the foregoing mailed/emailed
this 21st day of September, 2012, to:

James J. Syme
13210 W Van Buren Unit 102
Goodyear, AZ 85338-1109
Email: James.Syme@azbar.org.
JJSyme@Prodigy.net
Respondent's Counsel

Copy of the foregoing emailed
this 21st day of September, 2012, to:

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

Copy of the foregoing hand-delivered
this 21st day of September, 2012, to:

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

By:

Angie Perez
SRM/amp

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Suspended Member of the State Bar of Arizona,
Joseph W Charles, Bar No. 003038, Respondent

PDJ # 2012-9055

File No(s). 11-2291, 11-2298, 11-3089,
11-3683, 11-3905, 12-0531

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

\$1200.00

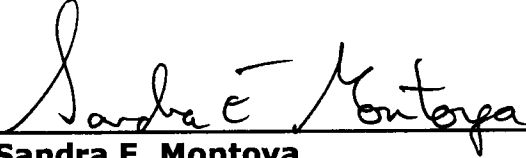
Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

09/22/11	Travel and mileage to serve subpoena	\$	3.66
11/18/11	Wells Fargo documents	\$	53.60
11/10/11	Travel and mileage, attempt to serve subpoena	\$	11.66
11/11/11	Travel and mileage, served subpoena	\$	11.66
01/10/12	Alliance Reporting, deposition of Respondent	\$	322.65
05/29/12	Computer investigation reports	\$	0.70
Total for staff investigator charges		\$	403.93

TOTAL COSTS AND EXPENSES INCURRED

\$1,603.93



Sandra E. Montoya
Lawyer Regulation Records Manager

8-13-12
Date

EXHIBIT B

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

JOSEPH W. CHARLES
Bar No. 003038

Respondent.

PDJ- 2012-9055

[State Bar File Nos. 11-2291, 11-2298, 11-3089, 11-3683, 11-3905, and 12-0531⁴]

FINAL JUDGMENT AND ORDER

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

IT IS HEREBY ORDERED that Respondent, **Joseph W. Charles**, is hereby suspended for six months, effective from the date of this order for conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that Respondent shall participate in fee arbitration with any client in file nos. 11-2291, 11-2298, 11-3089, 11-3683, 11-3905, and 12-0531, who files a fee arbitration petition within a year from the date of this order.

⁴ File nos. 11-3089, 11-3905, and 12-0531 have not been before the Attorney Discipline Probable Cause Committee, but Respondent wants to settle these three matters along with the formal complaint.

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz.R.Sup.Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,603.93.

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 _____.

DATED this ____ day of _____, 2012.

The Honorable William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this ____ day of _____, 2012.

Copies of the foregoing mailed/emailed
this ____ day of _____, 2012, to:

James J. Syme
13210 W Van Buren Unit 102
Goodyear, AZ 85338-1109
Email: James.Syme@azbar.org.
JJSyme@Prodigy.net
Respondent's Counsel

Copy of the foregoing hand-delivered/emailed
this ____ day of _____, 2012, to:

Shauna R Miller
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

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

by: _____