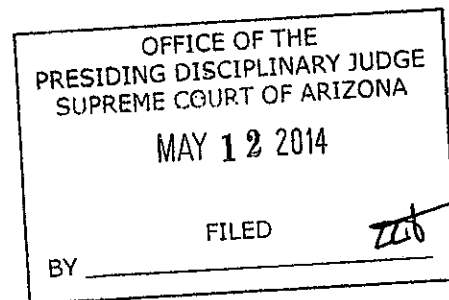


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Respondent's Counsel

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

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

**RONALD A. SAPER,
Bar No. 003288**

Respondent.

PDJ 2014-9004
[State Bar No. 12-2241]

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Ronald A. Saper, who is represented in this matter by Nancy A. Greenlee, submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A Probable Cause Order was entered on October 18, 2013, and a formal complaint was filed on January 16, 2014. 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 admissions 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 on April 15, 2014. Complainants have been

notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, Ariz.R.Sup.Ct, ER 4.3 (dealing with an unrepresented person) and ER 8.4(d) (conduct prejudicial to the administration of justice). Upon acceptance of this agreement, Respondent agrees to the following discipline: Reprimand. Respondent has refunded \$215.45 to Mr. Larson to settle the fee dispute. Respondent has started using a State Bar approved fee agreement and agrees to continue using it. Respondent has notified the debt collection agency to which he referred Mr. Larson's alleged unpaid bill that the matter has been resolved and there will be no adverse consequences to Mr. Larson's personal credit. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

GENERAL ALLEGATIONS

1. Respondent was admitted to practice in Arizona on April 28, 1973.

COUNT ONE (File no. 12-2241/Larson)

2. William Larson, a widower and father, hired Respondent to represent him in connection with a petition filed by the maternal grandfather for grandparenting time with Mr. Larson's daughter.

3. Mr. Larson retained Respondent on July 29, 2011, and paid a total of \$12,890.00 for his legal services.

¹ 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. Were this matter to proceed to a contested hearing, the State Bar would argue that Respondent's fee agreement contained terms that violate the ethical rules and that his billing statements in Mr. Larson's case did not adequately distinguish the amount of time spent on each discrete task. Respondent would contend that his fee agreement contained terms that might potentially violate the ethical rules but that there was no violation in this case. Respondent has agreed to utilize a State Bar approved fee agreement in all future representations. With regard to any issues about the time charged by Respondent on his billing statements, Respondent and Mr. Larson have resolved their fee dispute.

5. The court initially ordered sanctions to be imposed against Mr. Larson's fiancée because she did not appear for her deposition on the date set by opposing counsel. Because Respondent was unable to appear on the date set for her deposition, and Respondent believed that the deposition had been rescheduled, Respondent advised her that she did not need to appear on the originally scheduled date. Initially, Mr. Larson's fiancée was sanctioned \$750.00 in attorney's fees for failing to appear at her deposition and she was precluded from testifying at the next hearing.

6. In its April 16, 2012, ruling granting attorney's fees to opposing counsel, the Court noted that Mr. Larson had no standing to object to the request that Mr. Larson's fiancée be sanctioned for failing to appear at her deposition. The order was signed as a formal order of the court pursuant to Rule 81(D), Arizona Rules of Family Procedure.

7. On June 4, 2012, opposing counsel wrote a letter to Mr. Larson's fiancée and made a demand for payment of the \$750.00 judgment. Mr. Larson

emailed Respondent and asked if the judgment should be paid. On June 12, 2012, Respondent sent the following reply email: "do not pay." If this matter were to proceed to a contested hearing, Respondent would explain that he had previously told Mr. Larson and his fiancée that he would pay any sanction ordered by the court as a result of the missed deposition, if the sanction order became final, and that was the reason for Respondent's reply email. Mr. Larson and his fiancée would dispute this contention, but for purposes of this agreement, the State Bar will not dispute the proffered testimony.

8. On July 18, 2012, Mr. Larson fired Respondent. On July 20, 2012, Ronee Korbin Steiner was substituted as attorney of record for Mr. Larson.

9. On July 20, 2012, the court entered an order denying an award of attorneys' fees to the maternal grandfather and ordered the parties to bear their own attorneys' fees and costs.

10. On August 8, 2012, the court set "aside the prior order of the Court that [fiancée] pay \$750.00 for her failure to appear at a deposition and that [Respondent] was to be responsible for that cost."

11. Prior to the court's order referenced in paragraph 10, on August 7, 2012, Respondent filed a Motion for Clarification, noting that while on July 20, 2012, the court had ordered the parties to bear their own attorneys' fees and costs, that final order did not address the issue of whether Mr. Larson's fiancée must still pay attorneys' fees because of the missed deposition. By minute entry dated August 23, 2012, the court acknowledged receipt of the motion for clarification and affirmed its previous order that Respondent was responsible for the \$750.00 sanction.

12. On October 3, 2012, Respondent paid opposing counsel the \$750.00 sanction. If this matter were to proceed to a contested hearing, Respondent would explain that because a new attorney had substituted into Mr. Larson's case, Respondent was not endorsed on the court's minute entries. Once he was informed by opposing counsel that the court had affirmed its order that Respondent pay the \$750.00 sanction, Respondent sent the payment to opposing counsel. For purposes of this agreement, the State Bar does not dispute Respondent's proffered testimony.

13. Respondent was asked to respond to the allegation that he failed to timely respond to the petition for grandparents' right filed by Mr. Larson's mother. Respondent said that failing to respond to the petition was a "conscious decision" that was discussed with Mr. Larson. Mr. Larson denies he ever agreed that Respondent should not respond, however, for purposes of this agreement, the State Bar does not dispute Respondent's proffered testimony.

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 his conduct violated Rule 42, ER 4.3(dealing with an unrepresented person) and ER 8.4(d)(conduct prejudicial to the administration of justice), Ariz.R.Sup.Ct. Respondent agrees to the following discipline: Reprimand.² Respondent also agrees to pay the costs and expenses of

² As explained above, Respondent and Mr. Larson have resolved their fee dispute and Respondent has taken steps to ensure that there is no adverse effect on Mr. Larson's credit as a result of referring the matter to a collection agency. In addition, Respondent is using, and will continue to use, a fee agreement approved by the State Bar.

the disciplinary proceeding. The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss Rule 42, Ariz.R.Sup.Ct., ERs 1.2(scope of representation) and 1.5(fees). There is controverting testimony regarding Respondent's failure to timely respond to the petition filed by Mr. Larson's mother, therefore the State Bar agrees to dismiss the alleged violation of ER 1.2 as part of the settlement agreement. Respondent has refunded \$215.45 to Mr. Larson, but does not concede that his fee was unreasonable. In light of the resolution of the fee dispute with Mr. Larson, for purposes of this agreement, the State Bar will dismiss ER 1.5.

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: Reprimand.

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 6.33* is the appropriate *Standard* given the facts and circumstances of this matter. *Standard 6.33* provides reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding. Respondent failed to tell Mr. Larson's fiancée that she should retain her own counsel before deciding not to appear at her deposition. In addition, Respondent advised Mr. Larson's fiancée that he would pay the \$750.00 sanction and thus she need not, before he took steps to clarify that she would not be responsible for the payment of the sanction.

The parties agree that *Standard 6.23* is the appropriate *Standard* given the facts and circumstances of this matter. *Standard 6.23* provides reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. Respondent's conduct as set forth above with respect to the deposition and the court-ordered sanction was prejudicial to the administration of justice.

The duty violated

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

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent acted negligently when he failed to tell Mr. Larson's fiancée that she should retain her own counsel before deciding not to appear at her deposition. In addition, Respondent was negligent in advising Mr. Larson's fiancée to hold off paying the \$750.00 judgment before he had taken steps to clarify that she would not be responsible for the ordered sanction.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual, harm to Mr. Larson's fiancée and potential harm to the profession and the legal system.

Aggravating and mitigating circumstances

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

Standard 9.22 – In aggravation:

- (a) Prior disciplinary offenses:
 - 2002 – Censure (Reprimand) – Five Counts/ERs 1.1, 1.5, 1.16(d), 3.1, 3.3(a)(1), 4.1(a), 4.2, 4.4, 8.1(a) and 8.4(c).
 - 1988 – Informal Reprimand (Admonition) – One count/CR 5-1202, 5-0291
- (i) substantial experience in the practice of law

Standard 9.32 – In mitigation:

- (e) full and free disclosure and cooperative attitude toward disciplinary proceedings
- (g) character and reputation. Attached as Exhibit B are letters from Joel Hoffman and Laura Gillis attesting to Respondent's character and good reputation in the legal community.
- (m) remoteness of prior offenses.

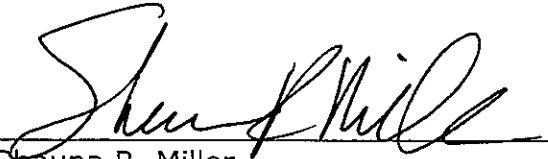
DISCUSSION

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. Respondent has admitted his misconduct, has paid Mr. Larson the disputed amount of fees, and has agreed to use a State Bar approved fee agreement in future representations. 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 Reprimand and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit C

DATED this 12th day of May, 2014


Shauna R. Miller
Senior Bar Counsel

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

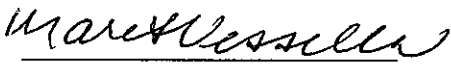
DATED this _____ day of May, 2014.

Ronald A. Saper
Respondent

DATED this _____ day of May, 2014.

Nancy A. Greenlee
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

DATED this _____ day of May, 2014

Shauna R. Miller
Senior Bar Counsel

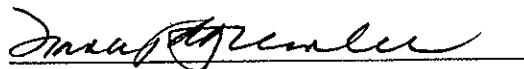
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 12 day of May, 2014.



Ronald A. Saper
Respondent

DATED this 12th day of May, 2014.



Nancy A. Greenlee
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 12th day of May, 2014.

Copies of the foregoing mailed/emailed
this 12th day of May, 2014, to:

Nancy A. Greenlee
Attorney and Counselor at Law
821 E. Fern Dr. North
Phoenix, AZ 85014-3248
nancy@nancygreenlee.com
Respondent's Counsel

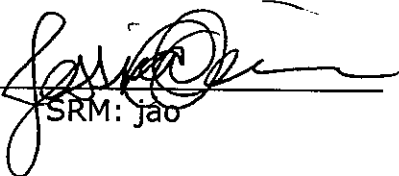
Copy of the foregoing emailed
this 12th day of May, 2014, to:

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 12th day of May, 2014, to:

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

by:


SRM: jao

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

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

RONALD A. SAPER,
Bar No. 003288

Respondent.

PDJ 2014-9004

[State Bar No. 12-2241]

FINAL JUDGMENT AND ORDER

FILED MAY 19, 2014

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on May 12, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Ronald A. Saper**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,200.00. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's

Office in connection with these disciplinary proceedings.

DATED this 19th day of May, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 19th day of May, 2014, to:

Nancy A. Greenlee,
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Respondent's Counsel

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by: MSmith