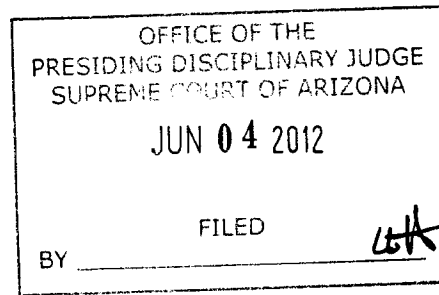


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Respondent's Counsel

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

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

**Jay K. Powell
Bar No. 021576**

Respondent.

PDJ-2012- 9053

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

[No. 11-0622, 11-1483, 11-2042,
11-2589, 11-3253]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Jay K. Powell, who is represented in this matter by counsel, Karen Clark, 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, 8.1(b), 8.4(d), 1.16, 3.2, 3.4 Rule 54(d). Upon

acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Sixty (60) day suspension, followed by two (2) years probation and participation in Law Office Management Assistance Program (LOMAP) and Member Assistance Program (MAP).

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."

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on March 18, 2003.

COUNT ONE (State Bar File No. 11-0622)

2. On February 22, 2009, Complainant retained Respondent to represent her and her husband in a collection claim.

3. Respondent claims to have performed certain investigative services related to the collectability of Complainant's former tenants. However, because Respondent represented Complainant on a flat fee basis, he did not keep track of his time and therefore did not have detailed records of the work he did for Complainant. Should this matter go to hearing, Respondent would testify that this work was in fact completed.

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. Between February 2009 and April 2011, Complainants repeatedly called Respondent's office, e-mailed Respondent and left post-it notes on Respondent's door to no avail.

5. Should this matter go to hearing, Respondent would testify that he had communication with Complainant and/or her husband during this time period, and that he offered a full refund of the \$850.00 fee they paid to him; but that they did not respond to this offer.

6. Should this matter go to hearing, Respondent would also testify that his office policy was to refrain from filing a complaint until garnish-able assets were located; that he hired a skip-tracer to look for such assets; but that he was unable to obtain the results of the search.

7. On April 6, 2011, the State Bar mailed an initial screening letter to Respondent with a copy of the charges.

8. The State Bar alleges that on April 11, 2011, Respondent called Complainant for the first time since February 22, 2009. Should this matter go to hearing, Respondent would testify that he spoke with Complainant prior to this date, and met with and spoke to her husband in person in March 2010.

9. On April 28, 2011, Complainant requested a complete copy of their file from Respondent. To date, Complainant has not received a copy of the file.

10. On May 10, 2011, the State Bar mailed a second screening letter to Respondent.

11. On May 26, 2011, Respondent provided a written response to the State Bar indicating that he did perform certain services but is unable to provide any documentation or evidence of these services. Respondent also indicated that he is amenable to refunding the fees paid by Complainant.

12. Respondent (who is from Tucson) voluntarily drove to Phoenix to be interviewed by Bar Counsel and answer any questions regarding this matter. At the interview, Respondent indicated that he was still willing to refund the fees paid by Complainant.

13. On November 9, 2011, the State Bar mailed Respondent another letter requesting that a written response be provided to the State Bar and provided notice that failure to cooperate with a disciplinary investigation is a ground for discipline pursuant to Rule 54(d) of the Ariz.R.Sup.Ct.

14. On February 23, 2012 Respondent provided a full refund to Complainant of the fees she had paid.

15. On or before March 2, 2012, Respondent retained Adams & Clark and provided additional information through counsel.

COUNT TWO (State Bar File No. 11-1483)

16. In August 2010, Complainant retained Respondent to represent him in a bankruptcy proceeding.

17. On November 9, 2010, Complainant completed the necessary credit counseling program.

18. As Complainant was involved in Maricopa County Superior Court actions involving various real estate issues including but not limited to *M&I Marshall v. Fressadi*, CV2010-013401, Complainant indicated that his primary concern was that a petition for bankruptcy protection be filed as soon as possible. Complainant provided Respondent with a copy of the pleadings in the various cases.

19. Complainant claims that Respondent's failure to timely file a petition for bankruptcy caused adverse rulings including, but not limited to: 1) the November 16, 2010 dismissal of Complainant's action with prejudice in CV2009-050924, 2) the January 10, 2011 striking of Complainant's complaint in CV2006-14822 and 3) the January 7, 2011 granting of M&I's Motion for Summary Judgment against Complainant for the principal amount of Two Hundred Twenty Six Thousand Six Hundred Fifty Dollars and 42/100 (\$226,650.42) in CV2010-013401.

20. Should this matter go to hearing, Respondent would testify that the central piece of property at issue in this case was real estate Complainant owned in Cave Creek, Arizona. The bank had a lien on this property in the amount of \$180,000.00; its value was estimated at \$120,000.00. A bank foreclosure action had been pending for two years at the time Respondent was retained. Complainant contends that if Respondent had filed his bankruptcy sooner, the foreclosure would never have reached a judgment. However, Respondent asserts that this contention is not legally sound, and that: if Respondent had filed the bankruptcy earlier, the creditor would simply have filed to motion to lift the automatic stay earlier; the court would have granted this motion, and; the bank would have moved forward

with the foreclosure regardless. Respondent would present the testimony of the attorney representing the bank in support of his position in this regard.

21. On January 17, 2011, Respondent filed a bankruptcy petition on behalf of Complainant.

22. On February 10, 2011, M&I filed a Motion to Lift Stay in the bankruptcy court.

23. On March 10, 2011, the bankruptcy court scheduled an evidentiary hearing for April 18, 2011 and required that all documents and witnesses be disclosed at least two weeks prior to the hearing.

24. In or around March or April 2011, Complainant discussed his case with a former FDIC regulator and former Citibank employee and felt it beneficial to have this individual serve as an expert in the case.

25. On April 7, 2011, Respondent and Complainant met in order to prepare for the April 18th evidentiary hearing.

26. If this matter were to proceed to hearing, Complainant would testify that despite his instructions to file a motion to continue the evidentiary hearing and disclose a certain individual as an expert, Respondent failed to do so. Respondent would testify that the requested continuance was due to Complainant's feeling that Respondent and Complainant were not prepared to proceed. Respondent would further testify that the certain individual referred to by Complainant previously informed Complainant that he would not be willing to appear as an expert in the case.

27. If this matter were to proceed to hearing, Complainant would testify that despite Complainant's instructions that Respondent immediately file a reorganizational plan, Respondent failed to do so. Respondent would testify that it was actually his suggestion that they file a plan of reorganization prior to the hearing.

28. If this matter were to proceed to hearing, Complainant would testify that despite Complainant's instructions that Respondent immediately send M&I Bank a letter and check curing the deficient monthly payments, Respondent failed to do so. Respondent would testify that Complainant did not provide his office with the funds necessary to cure the significantly deficient monthly payments.

29. If this matter were to proceed to hearing, Complainant would testify that despite Complainant's instructions that Respondent send a copy of all monthly financials and documents filed with the Court, Respondent failed to do so. Respondent denies this allegation.

30. If this matter were to proceed to hearing, the Complainant would testify that Respondent claimed that monthly reports were filed with the Court and was later informed by Ms. Lorraine Korklan, a bankruptcy analyst with the Trustee's Office, that no monthly reports appeared on the Court docket. Respondent denies this allegation.

31. On April 11, 2011, Respondent filed a Motion to Withdraw citing a breakdown in the attorney-client relationship.

32. After receiving an adverse evidentiary ruling, Complainant claims that he was forced to personally file the monthly financial reports on April 29, 2011 as Respondent had withdrawn from representation in the case. Respondent asserts that the adverse evidentiary ruling had nothing to do with the monthly financial reports.

33. On June 14, 2011, July 14, 2011 and August 9, 2011, the State Bar mailed Respondent various letters with copies of the charges and supplemental information and provided deadlines for Respondent's response.

34. On September 19, 2011, Respondent provided the State Bar with an unsigned letter along with a copy of his Motion to Withdraw and an incomplete copy of M&I's Motion for Summary Judgment.

35. On September 22, 2011, the State Bar mailed Respondent a letter reiterating the original request for a signed original and one (1) copy of his response.

36. Respondent voluntarily drove from Tucson to Phoenix to be interviewed by Bar Counsel and answer any questions regarding these charges.

37. On November 9, 2011, the State Bar mailed Respondent another letter requesting a signed original and one (1) copy of his response.

38. On or before March 2, 2012, Respondent retained Adams & Clark and provided additional information through counsel.

COUNT THREE (State Bar File No. 11-2042)

39. On October 17, 2008, Complainant was one of three Plaintiffs in a Pima County Superior Court civil case captioned Nichols et.al. v. Gramalex, et.al., C200777465.

40. Respondent represented Defendants in the lawsuit and prevailed against Plaintiffs.

41. On September 1, 2010, almost two (2) years later, Respondent submitted a proposed form of judgment to the Court.

42. As part of his submission, Respondent prepared, executed and filed a document entitled "Statement in Compliance with A.R.S. § 33-967" attesting that the judgment debtor(s) received a summons by personal service or by mail at the stated address.

43. In that document, Respondent incorrectly identified the "judgment debtor" as Defendants and "judgment creditor" as Plaintiffs. Respondent also included his address as the address for "judgment creditor"/Plaintiffs.

44. The mailing certification on the final judgment indicates that Respondent mailed a "CONFORMED COPY" of the judgment on August 12, 2010 (almost one month prior to the Court's endorsement of the judgment).

45. On September 1, 2010, the Court signed the judgment and it was filed with the Clerk of Court on September 8, 2010.

46. On April 15, 2011, Respondent recorded the judgment with the Pima County Recorder's Office.

47. On June 1, 2011, Complainant first learned of the existence of the recorded judgment during their purchase of a parcel of real estate.

48. Complainant and her attorney then attempted to contact Respondent in order to settle or satisfy the judgment. These attempts include:

- a. a June 1, 2011 phone call from Complainant's attorney;
- b. a June 24, 2011 letter from Complainant's attorney;
- c. four phone messages left by Complainant (June 27, June 28, June 29, and July 6, 2011).

Should this matter go to hearing, Respondent would testify that he did not receive any of these phone messages from Complainant.

49. Respondent received an email from Complainant on July 11, 2011. Respondent contacted Complainant on July 11, 2011, and was informed that Complainant was attempting to satisfy the judgment in order to sell a parcel of real estate. On July 11, 2011 Respondent sent a payoff letter to the title agency.

50. On July 20, 2011, August 18, 2011 and September 22, 2011, the State Bar mailed Respondent letters with a copy of the charges and supplemental information. Each of the letters contained deadlines to provide the State Bar with a response to the allegations.

51. On November 3, 2011, Respondent hand-delivered a written response to the State Bar admitting some factual allegations and attaching certain documents indicating that he did eventually settle the case and record the satisfaction of judgment.

52. Respondent was interviewed by Bar Counsel and he reiterated his admission of some of the factual allegations.

53. On November 9, 2011, the State Bar mailed Respondent another letter requesting that a written response be provided to the State Bar and providing notice that failure to cooperate with a disciplinary investigation is a ground for discipline pursuant to Rule 54(d) of the Ariz.R.Sup.Ct.

54. On or before March 2, 2012, Respondent retained Adams & Clark and provided additional information through counsel.

COUNT FOUR (State Bar File No. 11-2589)

55. On or about November 18, 2010, Complainant retained Respondent to represent her in a bankruptcy proceeding.

56. On or about December 15, 2010, Complainant met with Respondent and provided an electronic signature form allowing Respondent to electronically file the petition for bankruptcy upon Complainant's completion of the required credit counseling course.

57. On or about December 23, 2010, Complainant unsuccessfully attempted to contact Respondent.

58. On or about December 30, 2010, Complainant completed the credit counseling course and obtained a certificate of completion, and again unsuccessfully attempted to contact Respondent.

59. On January 6, 2011, Wells Fargo threatened to take Complainant's vehicle due to her failure to pay the last two payments.

60. Complainant claimed that Respondent advised her that she could fall behind two payments in anticipation of the bankruptcy and provided the bank with Respondent's name and phone number.

61. On or about January 8, 2011, after several unsuccessful attempts to contact Respondent, Complainant paid the bank a "double payment" in order to keep her vehicle.

62. On or about January 13, 2011, Complainant again unsuccessfully attempted to contact Respondent.

63. On or about January 19, 2011, Complainant texted Respondent and requested a meeting.

64. On or about January 20, 2011, Complainant met with Respondent and was asked to sign another electronic signature form.

65. While Complainant alleges that during this meeting Respondent informed Complainant that her petition would be filed by the end of that week, if the matter proceeded to hearing, Respondent would testify that he told

Complainant that he did not provide any guarantees or assurances regarding the exact date or time that the petition would be filed.

66. On or about February 11, 2011, Complainant texted Respondent but did not receive a response.

67. On or about March 1, 2011, Complainant filed a complaint against Respondent with the Attorney General's Office.

68. On or about March 2, 2011, Complainant texted Respondent and received a response claiming that Respondent's phone was broken and all contact information lost. If this matter proceeded to hearing, Respondent would testify that the comments regarding the phone and contact information was not in response to her complaint as the parties previously spoke about finalizing the paperwork about one week prior.

69. On March 8, 2011, Respondent indicated that the petition was ready for filing.

70. On March 16, 2011, Respondent provided Complainant with her Bankruptcy Court docket number.

71. On or about March 22, 2011, Complainant informed Respondent that she received a packet from Bankruptcy Court regarding several deficiencies in the filing and their intent to dismiss the case in the event of noncompliance.

72. On April 8, 2011, Respondent failed to attend a previously scheduled meeting with Complainant.

73. On April 11, 2011, Complainant and Respondent met in his office and discussed the impending dismissal as well as the documents needed to avoid dismissal.

74. On April 14, 2011, Respondent contacted Complainant and informed her that her case was going to be dismissed. If this matter proceeded to hearing, Respondent would testify that he informed Complainant about problems that he experienced with his bankruptcy software resulting in a partial upload of the client file. Respondent would further testify that he did maintain a complete copy of the file on his office computer.

75. On April 28, 2011, Complainant informed Respondent that she received a letter of dismissal from the Bankruptcy Court. Respondent claimed that he would file a motion to reinstate the case shortly.

76. On May 25, 2011, June 2, 2011, June 28, 2011, July 6, 2011 and August 4, 2011, Complainant unsuccessfully attempted to contact Respondent.

77. On August 19, 2011 (after Complainant contacted the State Bar), Respondent met with Complainant and claimed that he would re-file the petition at his own expense and finalize the bankruptcy at no additional cost.

78. On August 22, 2011, Respondent requested that Complainant execute a third electronic signature form which she did on August 24th.

79. On September 14, 2011 and October 10, 2011, the State Bar mailed Respondent initial screening letters at his address of record with a copy of the

charges, and requested a written response. Each of the letters contained deadlines to provide the State Bar with a written response to the allegations.

80. On November 3, 2011, Bar Counsel interviewed Respondent regarding the allegations and reiterated the State Bar's request for a written response to the allegations.

81. On November 9, 2011, the State Bar mailed Respondent another letter requesting that a written response be provided to the State Bar and providing notice that failure to cooperate with a disciplinary investigation is a ground for discipline pursuant to Rule 54(d) of the Ariz.R.Sup.Ct.

COUNT FIVE (State Bar File No. 11-3253)

82. On or about January 7, 2011, Complainants retained Respondent to represent them in collecting a judgment against an evicted tenant. Complainants were referred to Respondent by a "shared" legal assistant who was employed both by the lawyer representing them in the eviction case involving the tenant, as well as Respondent.

83. After unsuccessfully attempting to contact Respondent over the course of the next six (6) months, Complainants retained the services of the attorney who had referred them to Respondent, and who was also representing them in the eviction case.

84. Despite Complainants' request, Respondent failed to provide them with a copy of their file.

85. On September 14, 2011, Respondent called Complainants and informed them that he would send the client file to the new attorney and refund their initial retainer.

86. On October 10, 2011, the State Bar mailed Respondent an initial screening letter to his address of record with a copy of the charges, and requesting a written response. Each of the letters contained deadlines to provide the State Bar with a written response to the allegations.

87. On November 3, 2011, Bar Counsel interviewed Respondent regarding the allegations and reiterated the State Bar's request for a written response to the allegations.

88. During the interview, Respondent explained that his former legal assistant apparently took the client's file after her termination and provided it to Complainants' attorney, for whom she also worked.

89. On November 9, 2011, the State Bar mailed Respondent another letter requesting that a written response be provided to the State Bar and providing notice that failure to cooperate with a disciplinary investigation is a ground for discipline pursuant to Rule 54(d) of the Ariz.R.Sup.Ct.

90. On November 29, 2011, Respondent submitted a written response admitting the factual allegations and attaching a refund check which was then cashed by Complainant.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 1.4, 8.1(b), 8.4(d), 1.16, 3.2, 3.4 Rule 54(d).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss allegations of violations of ER 1.5 as Respondent either earned the collected fees or voluntarily refunded to the involved client(s) the unearned fees.

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 sanction is appropriate:

Sixty (60) day suspension, followed by two (2) years probation and participation in Law Office Management Assistance Program (LOMAP) and Member Assistance Program (MAP).

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*, 4.42 and 7.2 apply in this matter, given the facts and circumstances involved. *Standards* 4.42 and 7.2 provide that suspension is generally appropriate when: 1) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client [4.42], 2) a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public or the legal system [7.2].

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent knowingly failed to abide by the client's decisions, failed to act with reasonable diligence, failed to promptly communicate with clients, failed to return client's property after the termination of the representation and failed to timely respond to the State Bar in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual and potential harm to the clients involved and to 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(c) a pattern of misconduct [This agreement resolves five counts of misconduct, involving similar charges];

Standard 9.22 (d) multiple offenses [The conduct involved in the five counts involve Respondent's representation in five separate cases];

Standard 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency [While Respondent ultimately complied with State Bar requests in some of the pending cases, Respondent originally failed to complied with all of the State Bar requests].

In mitigation:

Standard 9.32 (a) absence of a prior disciplinary record;

Standard 9.32 (c) personal or emotional problems²;

Standard 9.32(d) timely good faith effort to make restitution or rectify consequence of misconduct [Rectified bankruptcy dismissal/continues representation (11-2589) and refunded entire fee (11-0622) & (11-3253)];

Standard 9.32(g) character or reputation [Clients are willing to testify on his behalf].

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This

² See also Protective Order filed March 16, 2012.

agreement was based on the following: The violations are deficiencies in law office management and were the result, among other things, of Respondent's inability to continue employing his office staff as well as the personal and emotional problems experienced by Respondent during the events at issue here.

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 sixty (60) day suspension, followed by two (2) years probation and participation in Law Office Management Assistance Program (LOMAP) and Member Assistance Program (MAP), and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 7th day of June, 2012.

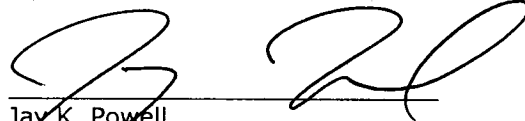
STATE BAR OF ARIZONA



Craig D Henley
Staff Bar Counsel

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


DATED this 29th day of May, 2012.


Jay K. Powell
Respondent

DATED this 30th day of May, 2012.


Karen Clark
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 4th day of June, 2012.

Copies of the foregoing mailed/emailed
this 4th day of June, 2012, to:

Karen Clark, Bar No. 012665
Adams & Clark, PC
520 East Portland Street
Phoenix, Arizona 85004-1843
Telephone: 602-258-3542
Email: karen@adamsclark.com

Respondent's Counsel

Copy of the foregoing emailed
this 4th day of June, 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 4th day of June, 2012, to:

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

By: A. Stephens
CDH:dds

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within sixty (60) days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ER 1.2, 1.3, 1.4, 8.1(b), 8.4(d), 1.16, 3.2, 3.4 Rule 54(d). The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude two (2) years from that date. Respondent shall be responsible for any costs associated with LOMAP.

MAP

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at 602-340-7332, within sixty (60) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment. The director of MAP shall develop "Terms and Conditions of Probation" if he determines that the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will begin to run at the time of the entry of the final judgment and order and will conclude two (2) years from that date. Respondent shall be responsible for any costs associated with MAP.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar

Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent 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.

EXHIBIT "A"

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Jay K Powell, Bar No. 021576, Respondent

File No(s). 11-0622, 11-1483, 11-2042, 11-2589, 11-3253

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings

\$1,200.00

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

Staff Investigator/Miscellaneous Charges

12/07/11	Copy costs for Respondent's response	\$	231.40
	Total for staff investigator charges	\$	231.40

TOTAL COSTS AND EXPENSES INCURRED **\$1,431.40**



Sandra E. Montoya
Lawyer Regulation Records Manager

6-4-12

Date

EXHIBIT "B"

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

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

**Jay K. Powell
Bar No. 021576**

Respondent.

PDJ-2012-

FINAL JUDGMENT AND ORDER
[No. 11-0622, 11-1483, 11-2042,
11-2589, 11-3253]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on May 1, 2012, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Jay K. Powell**, is hereby suspended for a period of sixty (60) day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from this Order.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation for a period of two (2) years.

IT IS FURTHER ORDERED that, during the probation period of two (2) years, Respondent shall also complete the following:

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within sixty (60) days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his

office's procedures, including, but not limited to, compliance with ER 1.2, 1.3, 1.4, 8.1(b), 8.4(d), 1.16, 3.2, 3.4 Rule 54(d). The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude two (2) years from that date. Respondent shall be responsible for any costs associated with LOMAP.

MAP

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at 602-340-7332, within sixty (60) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment. The director of MAP shall develop "Terms and Conditions of Probation" if he determines that the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will begin to run at the time of the entry of the final judgment and order and will conclude two (2) years from that date. Respondent shall be responsible for any costs associated with MAP.

NON-COMPLIANCE LANGUAGE

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

there is an allegation that Respondent 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.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

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 \$ _____.

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:

Karen Clark, Bar No. 012665
Adams & Clark, PC
520 East Portland Street
Phoenix, Arizona 85004-1843
Telephone: 602-258-3542
Email: karen@adamsclark.com
Respondent's Counsel

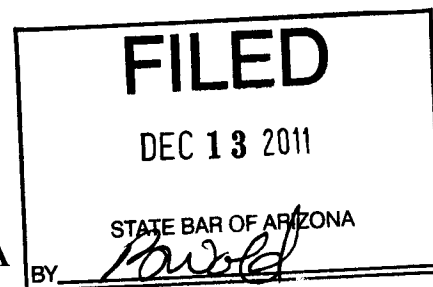
Copy of the foregoing hand-delivered/emailed
this _____ day of _____, 2012, to:

Craig D Henley
Staff 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: _____

BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA



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

JAY K. POWELL
Bar No. 021576

Respondent

Nos. 11-0622, 11-1483 and 11-2042

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona (“Committee”) reviewed this matter on December 9, 2011, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar’s Report of Investigation and Recommendation, and Complainant’s Objection, in File No. 11-1483.

By a vote of 8 to 0,¹ the Committee finds there is probable cause exists to file a complaint against Respondent in File Nos. 11-0622, 11-1483 and 11-2042.

IT IS THEREFORE ORDERED pursuant to Rule 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing State Bar Counsel to prepare and file a complaint against Respondent with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 12th day of December, 2011.

Michael D. Ryan
Justice Michael D. Ryan (retired)
Chair, Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee member Daisy Flores did not participate in this matter.

Original filed this 13 day
of December, 2011, with:

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288

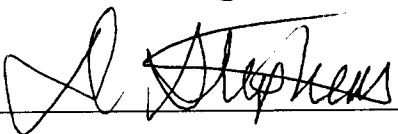
Copy mailed this 21st day
of December, 2011, to:

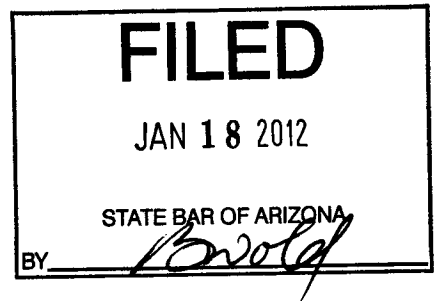
Mr. Jay K. Powell
The Powell Law Firm PLLC
Post Office Box 91744
Tucson, Arizona 85752-1744
Respondent

Copies emailed this 21st day
of December, 2011, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
ProbableCauseComm@courts.az.gov

by: 



**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

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

**JAY K. POWELL
Bar No. 021576**

Respondent

Nos. 11-2589 and 11-3253

PROBABLE CAUSE ORDER

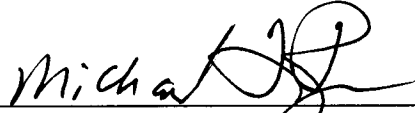
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on January 13, 2012, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1,¹ the Committee finds probable cause exists to file a complaint against Respondent in File Nos. 11-2589 and 11-3253.

IT IS THEREFORE ORDERED pursuant to Rule 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 17th day of January, 2012.



Justice Michael D. Ryan (retired)
Chair, Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee member Richard Segal did not participate in this matter.

Original filed this 18th day
of January, 2012, with:

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288

Copy mailed this 20th day
of January, 2012, to:

Mr. Jay K. Powell
The Powell Law Firm PLLC
Post Office Box 91744
Tucson, Arizona 85752-1744
Respondent

Copy emailed this 20th day
of January, 2012, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
ProbableCauseComm@courts.az.gov

by: 