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Respondent

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MICHAEL V. BLACK,  
Bar No. 007671,**

Respondent.

**PDJ 2021-9037**

State Bar File No. **20-1372**

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

The State Bar of Arizona, and Respondent Michael V. Black who has chosen not to seek the assistance of counsel, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on April 14, 2021, a formal complaint was filed, and Respondent answered

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

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the Complainant(s) by phone on April 16, 2021 and email on August 23, 2021. Complainant(s) 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. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.5, ER 1.15, ER 1.16, ER 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **Reprimand with Probation**, terms of which are set in Sanctions below. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order. If costs are not paid within the 30 days interest will begin to

accrue at the legal rate.<sup>1</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

## FACTS

### GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on May 14, 1983.

#### COUNT ONE (File no. 20-1372/ Rogers)

2. In June 2012, the Reverend Rhonda Rogers' son was charged by indictment with Aggravated Assault, a class 3 dangerous felony.

3. Respondent represented Ms. Rogers' son and Ms. Rogers paid Respondent the initial retainer fee of \$15,000 for the pretrial work with his standard fee agreement language:

“The Attorney’s fee for handling this matter at the trial level is a retainer fee in the amount of \$15,000. Client understands that the fee is paid solely for the retention of Attorney’s services, is earned upon receipt, and is non-refundable. Even though the non-refundable fee is earned upon receipt, Client is entitled to

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<sup>1</sup> 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.

terminate Attorney's services and may be entitled to a refund of all or part of the fee based upon the value of representation."

4. Respondent's fee agreement contained additional standard language from his agreements providing for a separate, daily fee for in-trial representation. That language did not designate those funds as earned upon receipt or non-refundable:

"Should the case proceed to trial, it is anticipated that the trial will commence six (6) to eight (8) months from the date of the signing of this agreement and will last approximately two (2) to three (3) trial days. Client agrees to pay Attorney \$3,500 for each day in trial and further agrees to pay the anticipated trial fee one week before the actual trial date. Attorney will refund to Client any unused portion of the trial fee."

5. Respondent interviewed witnesses and prepared for trial.

6. Ms. Rogers paid Respondent an additional \$10,500 for anticipated trial work as the case appeared to be headed to a jury trial. That \$10,500 was not earned upon receipt and Respondent failed to deposit those funds into a trust account.

7. The State conveyed, and the client on September 25, 2013 accepted, a plea agreement to disorderly conduct, an undesignated class 6 felony offense with a stipulation to supervised probation.

8. Respondent submitted more than forty pages of letters from people involved in the client's life requesting no jail time. The court did not order any jail time.

9. Pursuant to the terms of the fee agreement, Respondent was to refund the \$10,500.

10. Ms. Rogers contacted Respondent from 2014 through 2018 for the refund and that Respondent paid her only \$500 once, which she deposited on July 6, 2018.

11. After Ms. Rogers contacted the State Bar in July 2020, which in turn contacted Respondent on July 27, 2020, Respondent began making monthly \$500 payments to Ms. Rogers for reimbursement.

### **CONDITIONAL ADMISSIONS**

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits that he violated Rule 42, Ariz. R. Supr. Ct., specifically ER 1.5, ER 1.15, ER 1.16, ER 8.4(d).

## CONDITIONAL DISMISSALS

There are no conditional dismissals.

## RESTITUTION

Within ninety (90) days of the entry of the final judgment and order, Respondent agrees to pay Restitution in the amount of \$15,116.00 which constitutes the principal amount owed to Reverend Rhonda Rogers plus statutory prejudgment interest at a rate of 10% per annum, A.R.S. § 44-1201(A), (F), on the principal amount adjusted for payments made. That \$15,116.00 is subject to the statutory interest rate per annum of 4.25% from the date of the entry of the judgment and order. A.R.S. § 44-1201(B).

## SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Reprimand with Probation for one (1) year, **the terms of probation which will consist of:**

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

consultation. Respondent shall complete any follow up deemed necessary by LOMAP. Respondent will be responsible for any costs associated with LOMAP.

2. RESTITUTION: Respondent shall pay the \$15,116.00 in restitution within 90 days of the date of service of this Order subject to statutory interest.
3. Respondent shall commit no further violations of the Rules of Professional Conduct.

#### **NON-COMPLIANCE WITH PROBATION**

If Respondent fails to comply with any of the foregoing probation terms and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether Respondent breached a term of probation and, if so, to recommend an appropriate sanction. If the State Bar alleges that Respondent failed to comply with any of the foregoing terms the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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

## LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter.

In determining an appropriate sanction, the Court considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Standard* 3.0.

The parties agree that the following *Standard 4.1 Failure to Preserve the Client's Property* is the appropriate *Standard* given the facts and circumstances of this matter: *Standard 4.12* provides that "Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client." Respondent kept \$10,500 in prepaid fees that were not earned and subject to refund and failed to reimburse the payor.



**The duty violated**

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

**The lawyer's mental state**

Respondent knowingly violated the Rules of Professional Conduct.

**The extent of the actual or potential injury**

There was actual harm to the client and the profession.

**Aggravating and mitigating circumstances**

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

**In aggravation:**

- a) 9.22(a) prior disciplinary offenses. In File 16-3605 Respondent received an admonition for violation of ERs 3.4(c), 8.4(d), and Rule 54(c);
- b) 9.22(j) indifference to making restitution. Respondent owed Ms. Rogers a refund of \$10,500 for over four years. Respondent made a single \$500 payment until Ms. Rogers contacted the State Bar about Respondent's conduct.

**In mitigation:**

- a) 9.32(c) personal or emotional problems. Respondent at the time went through a contentious divorce and family court case.
- b) 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Respondent fully cooperated in answering questions, acknowledging conduct, and discussing resolution with the State Bar;
- c) 9.32(g) character or reputation. Respondent has a reputation in the community as a very good criminal defense attorney;
- d) 9.32(l) remorse; Respondent acknowledged from first contact with the State Bar his acts, their wrongfulness, and the harm.

**Discussion**

The presumptive sanction should be mitigated to a Reprimand with Probation.

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.

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## CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *In re Peasley*, 208 Ariz. 27, 38 ¶ 48 (2004). Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand with Probation and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this 23rd day of August 2021

### STATE BAR OF ARIZONA



David E. Wood  
Staff Bar Counsel

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

DATED this 23rd day of August, 2021.



Michael V. Black  
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 23<sup>rd</sup> day of August, 2021.

The Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

Copy of the foregoing emailed  
this 23<sup>rd</sup> day of August, 2021, to:

Michael V. Black  
3219 E. Camelback Rd., Unit 446  
Phoenix, AZ 85018-2346  
Email: [mike@michaelvblack.com](mailto:mike@michaelvblack.com)  
Respondent

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



**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona  
Michael V. Black, Bar No. 007671, Respondent

File No. 20-1372

### Administrative Expenses

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

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

### *General Administrative Expenses for above-numbered proceedings*

**\$1,200.00**

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

### Additional Costs

Total for additional costs \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED \$ 1,200.00

**EXHIBIT B**



**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MICHAEL V. BLACK,  
Bar No. 007671,**

**PDJ 2021-9037**

**FINAL JUDGMENT AND  
ORDER**

State Bar No. 20-1372

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

Accordingly:

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

**IT IS FURTHER ORDERED** that Respondent is placed on probation for a period of one (1) year. The terms of probation are:

- a) LOMAP (one-time consult): Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of

service of this Order. Respondent shall submit to a LOMAP one-time consultation. Respondent shall complete any follow up deemed necessary by LOMAP. Respondent will be responsible for any costs associated with LOMAP.

- b) Respondent shall pay restitution in the amount of \$15,116.00 to the Reverend Rhonda Rogers within 90 days of the service of this Order. That \$15,116.00 is subject to the statutory interest rate per annum of 4.25%. A.R.S. § 44-1201(B).
- c) Respondent shall commit no further violations of the Rules of Professional Conduct.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00, within 30 days from the date of service of this Order.

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

**DATED** this \_\_\_\_\_ day of August, 2021.

\_\_\_\_\_  
**Margaret H. Downie, Presiding Disciplinary  
Judge**

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this \_\_\_\_\_ day of August, 2021.

Copies of the foregoing mailed/mailed  
this \_\_\_\_\_ day of August, 2021, to:

Michael V. Black  
3219 E. Camelback Rd., Unit 446  
Phoenix, Arizona 85018-2346  
Email: [mike@michaelvblack.com](mailto:mike@michaelvblack.com)  
Respondent

Copies of the foregoing emailed  
this \_\_\_\_\_ day of August, 2021, to:

David E. Wood  
Staff Bar Counsel  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

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Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: \_\_\_\_\_

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MICHAEL V. BLACK,**  
**Bar No. 007671**

Respondent.

**PDJ 2021-9037**

**DECISION ACCEPTING  
AGREEMENT FOR DISCIPLINE  
BY CONSENT**

[State Bar No. 20-1372]

**FILED August 31, 2021**

On August 23, 2021, the parties filed an Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct. The State Bar is represented by Bar Counsel David E. Wood, and Mr. Black is representing himself . A probable cause order issued on April 14, 2021, and the formal complaint was filed on May 12, 2021.

Contingent on approval of the proposed form of discipline, Mr. Black has voluntarily waived the right to an adjudicatory hearing, as well as all motions, defenses, objections, or requests that could be asserted. Pursuant to Rule 53(b)(3), notice of the consent agreement was given to complainant first by phone on April 16, 2021 and then by email on August 23, 2021. No objection has been received.

The Agreement details a factual basis to support the conditional admissions and is incorporated by reference. *See* Rule 57(a)(4). Mr. Black admits that he violated Rule 42, ERs 1.5 (fees), 1.15 (safekeeping client property), 1.16 (declining or

terminating representation), and 8.4(d) (conduct prejudicial to the administration of justice). As a sanction, the parties agree to a reprimand, one year of probation (LOMAP consultation), restitution to the client in the sum of \$15,116.00 within 90 days), plus the payment of costs to the State Bar in the sum of \$1,200.00 within 30 days from the date of service of the final judgment and order.

In 2012, Mr. Black represented a client in a criminal matter. He accepted a \$15,000 retainer. His fee agreement provided for additional fees for trial days, which were not designated as earned upon receipt or non-refundable. He received an additional \$10,500 for the anticipated trial, which was not placed in his trust account. Thereafter, his client entered into a plea agreement. Mr. Black did not refund the \$10,500 paid for trial for more than four years, except for a one-time payment of \$500.00.

Based on the conditional admissions, the presumptive sanction is a suspension under § 4.12 (Failure to Preserve Client Property) of the ABA Standards. The parties stipulate to the existence of aggravating factors 9.22(a) (prior disciplinary offenses) and 9.22(j) (indifference to making restitution). They further stipulate to the existence of mitigating factors 9.32(c) (personal or emotional problems), 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude towards proceedings), 9.32(g) (character or reputation), and 9.32(l) (remorse). The parties agree that based on consideration of the aggravating and mitigating factors, a

reduction in the presumptive sanction of suspension to reprimand plus probation is appropriate.

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

**DATED** this 31<sup>st</sup> day of August 2021.

*Margaret H. Downie*  
\_\_\_\_\_  
**Margaret H. Downie**  
**Presiding Disciplinary Judge**

COPY of the foregoing e-mailed  
this 31<sup>st</sup> day of August 2021 to:

David Wood  
Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6288  
Email: LRO@staff.azbar.org

Michael V. Black  
3219 E. Camelback Road, Unit 446  
Phoenix, AZ 85018-2346  
Email: mike@michaelvblack.com  
Respondent

by: MSmitht

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MICHAEL V. BLACK,**  
**Bar No. 007671**

Respondent.

**PDJ 2021-9037**

**FINAL JUDGMENT AND ORDER**

State Bar No. 20-1372

**FILED August 31, 2021**

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

Accordingly:

**IT IS ORDERED** that Respondent, **MICHAEL V. BLACK, Bar No. 007671**, is reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

**IT IS FURTHER ORDERED** that Respondent is placed on probation for a period of one (1) year. The terms of probation are as follows:

a) Law Office Management Assistance Program (LOMAP) (one-time consult):

Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258 within 10 days from the date of service of this order. Respondent shall submit to a LOMAP one-time consultation. Respondent shall complete any follow up deemed necessary by LOMAP. Respondent shall be responsible for any costs associated with LOMAP.



- b) Respondent shall pay restitution in the sum of \$15,116.00 to the Reverend Rhonda Rogers within 90 days of the service of this order. The sum of \$15,116.00 is subject to the statutory interest rate per annum of 4.25%. A.R.S. § 44-1201(B).
- c) Respondent shall commit no further violations of the Rules of Professional Conduct.

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

**DATED** this 31<sup>st</sup> day of August 2021.

*Margaret H. Downie*  
\_\_\_\_\_  
**Margaret H. Downie**  
**Presiding Disciplinary Judge**

Copies of the foregoing emailed  
this 31<sup>st</sup> day of August 2021, to:

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3219 E. Camelback Rd., Unit 446  
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by: MSmith