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Respondent's Counsel

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
MAY 10 2013
FILED
BY

BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **MARK B. PYPER, Bar No. 011051,** Respondent.	**PDJ-2013-** 9042 [State Bar File Nos. 11-3454 and 12-0613] **AGREEMENT FOR DISCIPLINE BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Mark B. Pyper, who is represented in this matter by counsel, Nancy A. Greenlee, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.

Probable cause orders have been entered by the Attorney Discipline Probable Cause Committee (Exhibit A), but no formal complaint has been filed. Respondent voluntarily waives the right to have a hearing before the Presiding Disciplinary Judge (PDJ), 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.3, 1.4, 1.5, 1.6, 1.16, 3.1, and 8.4 (d), Ariz.R.Sup.Ct.

Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand with two years Probation with MAP and LOMAP terms. 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 as Exhibit B.

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 January 6, 1987.

COUNT ONE (File No. 11-3454/Feltus)

2. In 2007, Larry Wright ("Mr. Wright") inherited a significant sum of money. He left his law practice to concentrate on real estate investments and other endeavors. At some time thereafter, Mr. Wright developed a substance abuse problem. In March 2008, Mr. Wright's own lack of follow-through resulted in a judgment being entered against his Gainey Ranch property for failure to pay homeowners association monthly fees, and separate litigation was initiated against

[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.

him in California. Mr. Wright hired Respondent to determine the unpaid balance of the Gainey Ranch judgment and represent his interests in the California litigation.

3. The retention letter, dated March 26, 2008, states in part: "Client has a number of matters including litigation that the Firm will handle. Some of the litigation is based in Arizona, California and Texas. The Firm will associate with local counsel in each state where representation is required, in order to effectuate the representation of the Client. . . . The Firm agrees to represent the Client with regard to its present legal matters in exchange for Client's payment of the Firm's standard hourly rate of $375.00 per hour."

4. If this matter were to proceed to hearing, it is expected that Mr. Wright would testify that Respondent was aware of his addiction issues at the time he was engaged. Respondent would dispute that testimony. Respondent never met Mr. Wright at any time. All of their contact was by telephone or fax. Respondent would testify that toward the end of his representation of Mr. Wright, Mr. Wright had stopped communicating with Respondent. Respondent would further testify that others told him that Mr. Wright had a drug and alcohol problem, but Respondent had no first-hand knowledge of this. One of the persons with whom Respondent corresponded regarding Mr. Wright's problems was Mr. Wright's California attorney, Harrison Long. In emails dated September 2008, Respondent indicated the following regarding Mr. Wright's drug and alcohol use:

i. that he was "facing criminal felony charges in Florida for aggravated DUI,"
ii. "he has similar charges pending in Georgia,"
iii. that Mr. Wright is "on meth,"
iv. that "he never communicates. ? And when he does, he is high on drugs.?"

5. If this matter were to proceed to hearing, Respondent would testify that he learned in 2008, during his representation of Mr. Wright, that Mr. Wright had allowed two default judgments to be entered against him in Arizona and was told that one of the matters was a result of attorney error. Respondent would testify that it was not until 2010, well after the representation had ended that Respondent learned about Mr. Wright's other default judgments in California.

6. During the late summer of 2008, Mr. Wright objected to Respondent's invoices. As a result, Respondent moved to withdraw. Respondent represented Mr. Wright from March 26, 2008, until September 5, 2008.

7. During the representation, Respondent worked on only one matter, *Swain v. Wright,* SC094740, Los Angeles Superior Court, for which he billed Mr. Wright $117,236.10. If this matter were to proceed to hearing, Respondent would testify that he was never paid.

8. On October 29, 2008, Respondent filed suit against Mr. Wright seeking to recover legal fees that Respondent would testify were owed to his firm. In addition to asserting a claim for breach of contract, Respondent also asserted in the complaint that his firm was entitled to treble damages under A.R.S. § 23-355, which applies to employee wage claims.

9. The engagement letter did not state that in undertaking the representation Respondent was entering into an employee relationship with Mr. Wright. If this matter were to proceed to a hearing, Respondent would testify that after Respondent was retained, Mr. Wright fired Michael Grey, his general counsel for Wright Investments. Respondent would testify that Mr. Wright offered him the same position with pay at the rate of $20,000 per month. Respondent would also

testify that it was unclear under which arrangement he was operating. Because of the general counsel offer and the amount of time that Respondent had spent on Mr. Wright's matter, Respondent incorrectly believed the facts were sufficient to include a claim under A.R.S. § 23-355. Respondent also brought a claim for "Slander Per Se," asserting that Mr. Wright had slandered his reputation. He asked for $250,000.00 in compensatory damages on this claim and $500,000.00 in punitive damages.

10. If this matter were to proceed to hearing, it is expected that Mr. Wright would testify that he failed to respond to the complaint because he never received notice of it.

11. If the matter were to proceed to hearing, Respondent would testify that he followed Rule 4.2(c), Ariz.R.Civ.P., and served Mr. Wright by certified mail. Respondent received a certified mail return receipt allegedly signed by Mr. Wright which was filed with the Maricopa County Superior Court pursuant to Rule 4, Ariz.R.Civ.P. If the matter were to proceed to a hearing, Respondent would present evidence that two independent forensic handwriting examiners concluded that there was the highest probability that Mr. Wright signed the certified mail return receipt, and Respondent would further present the testimony of Mr. Wright's office manager that she was present when Mr. Wright signed the certified mail receipt card in California.

12. Respondent filed an Application and Affidavit Regarding Entry of Default with the court. On February 9, 2009, the court held a hearing on Respondent's request for default. At that hearing, the court questioned Respondent as to the basis for the claim for treble damages. Respondent told the court that he

believed that he was hired by Mr. Wright as part of his firm and so he was an employee within the meaning and application of the statute. However, Respondent told the State Bar that he had been offered the general counsel position for $10,000.00 per month and that was the basis for the treble damages claim. He did not share this information with the court during the default hearing.

13. If this matter were to proceed to hearing, it is expected that Mr. Wright would testify that Respondent's firm was not engaged "as part of [Mr. Wright's firm]." Moreover, it is clear under A.R.S. § 23-355 that even this type of independent contractor relationship would not support treble damage. When the court questioned Respondent during the default hearing about the treble damages, Respondent recognizes that he should have explained to the court that he was withdrawing his claim for treble damages. In the form of judgment that Respondent provided to the court for signature, treble damages were not included. The only amount awarded was the amount for Respondent's unpaid invoices for legal services rendered.

14. Respondent also told the court that his firm's claim for "Slander Per Se" and his firm's request for punitive damages were based on phone messages Mr. Wright left and that Mr. Wright "[b]ad-mouth[ed] [him] to [his] colleagues, [his] office, [and] to [his] staff..." In his response to the State Bar, Respondent stated that he "based [the] slander claim against [Mr. Wright] on several voice messages that he left on [Respondent's] office and home phones." If this matter were to proceed to a hearing, Respondent would produce testimony/affidavits from office workers, as well as family members, who heard the voice messages left on the office and home telephones.

15. The court awarded Respondent the requested $250,000 for compensatory damages on the "Slander Per Se" claim and another $500,000 in punitive damages. Although the judgment specifically awarded Respondent $89,437.50 "on Counts One [Breach of Contract] and Two [Treble Damages Under A.R.S. Section 23-355] ...", Respondent would testify that the $89,437.50 was the amount of Respondent's unpaid legal services invoices. Thus, there were no actual treble damages awarded.

16. Judgment on these claims was entered on February 9, 2009, for $614,741.92[2], but Mr. Wright would testify that he did not become aware of the judgment until spring 2010.

16. Mr. Wright hired Phoenix attorney, George Lyons, to seek to have the default judgment set aside. On February 22, 2011, Mr. Lyons filed a Motion to Set Aside the Default. Respondent, through counsel, filed a Response in Opposition to the Motion ("Response") on March 28, 2011. If this matter were to proceed to a hearing, Respondent and the counsel that he retained would testify that they disclosed information that they believed was necessary to impeach Mr. Wright's credibility as Mr. Wright was claiming in his motion to set aside judgment that he had not been served and had not signed the certified mail return receipt. However, for purposes of this agreement, Respondent acknowledges that the following information arguably exceeded what was reasonably necessary to impeach Mr. Wright's credibility:

a. Mr. Wright became a movie actor,
b. Mr. Wright bought several expensive cars and a large boat,

[2] $89,437.50 breach of contract damages, $250,000.00 slander per se, $500,000.00 punitive damages, and $304.42 costs.

c. Mr. Wright was in a single-vehicle, drunk driving accident in Miami Florida that rendered the victim a paraplegic,

d. Mr. Wright's insurance company paid a multi-million dollar settlement,

e. Mr. Wright refused to execute documents necessary to effectuate the option purchase of the "Swain property,"

f. Mr. Wright wrote two checks to Respondent that bounced.

17. On July 1, 2011, the parties settled the matter by Mr. Wright agreeing to pay the amount of Respondent's unpaid invoices for legal services only and they stipulated to dismiss the lawsuit. On July 19, 2011, the court entered an order of dismissal with prejudice.

COUNT TWO (File No. 12-0613/Carroll)

18. Kimberly Carroll ("Ms. Carroll") hired Respondent to represent her when she was sued by Perfection Paving for non-payment of services.

19. If this matter were to proceed to a hearing, Ms. Carroll would testify that because she had referred other clients to Respondent before and due to her financial situation, Respondent "generously handled this for [her] for $500." Respondent would testify that he agreed to handle Ms. Carroll's case at a reduced hourly rate of $150.00 and that he sent her a letter dated October 30, 2008, which set forth that hourly rate. The letter also explained that he had paid the Answer fee and spent additional time responding to a motion to dismiss, however, if Ms. Carroll sent him a check for $500.00, he would "call it even as of the date of this letter." After October 30, 2008, Respondent sent Ms. Carroll invoices for further work done on her case.

20. If this matter were to proceed to hearing, it is expected that Ms. Carroll would testify that Respondent asked her if she wanted to countersue for $20,000.00, which Ms. Carroll thought was a tactic used to get plaintiffs to drop their suit. Ms. Carroll would further testify that Respondent never explained to her

it would cost more money or that it would be transferred from the Justice Court to the Superior Court. Ms. Carroll would testify that Respondent also failed to explain she could be liable for opposing parties' legal fees.

21. If this matter were to proceed to a hearing, Ms. Carroll would testify that within a few months, Respondent called Ms. Carroll and told her that Perfection Paving had dropped their suit. Further, Ms. Carroll would testify that she remembers asking if it was really over, and Respondent assured her it was done. Respondent would dispute this testimony.

22. In October or November 2009, Respondent called Ms. Carroll and told her he needed a check for $5,000.00. If this matter were to proceed to hearing, it is expected that Ms. Carroll would testify that she was shocked and while she would claim that she does not remember the whole conversation, her recollection is that Respondent basically said it was to defend her in the Superior Court and that she was being sued for $20,000.00. Ms. Carroll would further testify that she asked Respondent who was suing her and Respondent told her the name of a company she had never heard of before. Ms. Carroll reminded Respondent that her case was in Justice Court and that Respondent had suggested countersuing Perfection Paving for $20,000.00 but they dropped the lawsuit and everything was over. He told her he would call her back, but never did. Ms. Carroll still believed her case was over. Respondent would dispute this testimony.

23. In December 2009, Respondent sent Ms. Carroll a letter in which he told her that he was planning to withdraw from her case because she had not made any payments. Despite that letter, Respondent did not file a motion to withdraw at that time.

24. In June 2010, Ms. Carroll received a letter from Respondent indicating that she was not helping defend her case, that she hadn't been paying him, and he was going to withdraw.

25. If this matter were to proceed to a hearing, Respondent would testify that he sent Ms. Carroll letters to her residence requesting payment, information regarding a concrete contractor who could testify on Ms. Carroll's behalf, and requests for dates for a settlement conference. Respondent would testify that he received no response from Ms. Carroll. In May 2010, Perfection Paving filed a motion for summary judgment, a copy of which Respondent sent to Ms. Carroll with a request that she contact him. Respondent would further testify that in June 2010, he spoke to Ms. Carroll and they agreed that Respondent would withdraw because Ms. Carroll could not afford to defend the case, and that no response to the motion for summary judgment would be filed. Ms. Carol would deny Respondent's proffered testimony.

26. If this matter were to proceed to hearing, it is expected that Ms. Carroll would testify that Respondent was allowed to withdraw on August 12, 2010, and shortly thereafter Ms. Carroll received a judgment from Britt Law Group dated August 23, 2010. Ms. Carroll would further testify that she did not have any knowledge or notification of a hearing in Justice Court or the Superior Court. Respondent would testify that following his withdrawal, all further communication from the courts regarding her matter was sent directly to Ms. Carroll.

27. Reviewing the minute entries in the file indicates at least two times when Respondent failed to appear for a court date, and one occasion when the court indicated that he had failed to comply with the court's minute entry order.

The pleadings indicate attempts by plaintiffs to have the counterclaim dismissed, to dismiss parties that were inappropriately named, a motion for summary judgment, and request for attorney's fees. Respondent responded to some, but not all, of the motions. Specifically he failed to respond to the motion for summary judgment, and withdrew while the motion for attorney's fees was pending. Respondent would testify that these latter two actions were with Ms. Carroll's consent; Ms. Carroll would testify to the contrary.

28. On June 21, 2010, the court entered judgment against Ms. Carroll, noting in the minute entry that she failed to respond to the motion for summary judgment. Following Respondent's withdrawal, the court sent notices of the entry of judgment to Ms. Carroll who did not take any steps to address the situation until two years later when garnishment proceedings were commenced by the judgment creditor.

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.

Count One, File no. 11-3454

Respondent conditionally admits that his conduct violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.5, 1.6, and 3.1.

Respondent claimed that Mr. Wright had offered him a position as general counsel. Respondent violated ER 1.5(b) by failing to memorialize in writing that he had been retained as general counsel and the rate of pay for that position.

Consequently, there was no writing that provided notice of, or the basis for Respondent seeking treble damages for nonpayment of wages.

Respondent violated ER 1.6(d)(4) by revealing information not reasonably necessary to establish a claim or defense in his Response in Opposition to the Motion to Set Aside Judgment filed by Mr. Wright.

Respondent violated ER 3.1 when he sought treble damages for unpaid wages under A.R.S. Section 23-355 in the civil complaint that he filed against Mr. Wright. Respondent acknowledged during the default hearing that characterizing his relationship with Mr. Wright as that of an employee/employer was a "twist" and that there was nothing in the fee agreement to substantiate that relationship. However, Respondent did rectify the matter by not including a claim for treble damages in the form of judgment signed by the court.

Count Two, File no. 12-0613,

Respondent conditionally admits that his conduct violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4, 1.16 and 8.4(d).

Respondent violated ER 1.3. Respondent failed to act diligently in representing Ms. Carroll.

Respondent violated ER 1.4. Respondent failed to advise Ms. Carroll that the counterclaim had been filed and would cost her more money, that it left her open for attorney's fees from the plaintiffs/counter defendants, that the matter had been moved to Superior Court, that he failed to appear for several court hearings, and that he was withdrawing while an application for attorney's fees was pending.

Respondent violated ER 1.16(d). Respondent failed to protect Ms. Carroll's interest when he withdrew from the representation while an application for attorney's fees was pending.

Respondent violated ER 8.4(d). By failing to either withdraw from the case or actively pursue the litigation of the matter, Respondent's conduct was prejudicial to the administration of justice.

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: Reprimand with two years Probation with MAP and LOMAP terms.

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 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 ERs 1.3, 1.4, 1.5, 1.6, and 1.16. LOMAP personnel 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 years from that date. Respondent shall be responsible for any costs associated with LOMAP.

Respondent shall contact the State Bar's Member Assistance Program (MAP), at 602-340-7334 or 800-681-3057, within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment. Terms and Conditions of Probation shall be developed if it is determined 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 years from that date. Respondent shall be responsible for any costs associated with MAP.

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.

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. Since the *Standards* do not account for multiple charges of misconduct, the ultimate sanction imposed should be consistent with the most serious sanction. Other violations should be considered in aggravation. *ABA Standards for Imposing Lawyer Sanctions*, II. Theoretical Framework, at 7.

The parties agree that *Standards* 4.2, 4.4 and 6.2 are the appropriate *Standard* given the facts and circumstances of this matter.

4.22[3]

Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

4.43[4]

Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

6.23[5]

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.

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[3] ER 1.6.
[4] ERs 1.3 and 1.4
[5] ER 3.1

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's mental state was at times knowing and at times negligent and that his conduct was 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 harm to Ms. Carroll, and potential harm to Mr. Wright and the legal system.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22

(b) dishonest or selfish motive; Respondent's request for treble damages was motivated by his own self interest, when he was only entitled to collect the attorney fees he claimed Mr. Wright owed to him.

(d) multiple offenses. In this instance, Respondent's misconduct involved two separate clients.

(i) substantial experience in the practice of law. Respondent has been an Arizona attorney for 25 years

In addition, the violation of ERs 1.5, 1.16 and 8.4(d), should be considered in aggravation

In mitigation:

Mitigating factors include:

Standard 9.32

(a) absence of a prior disciplinary record;

(c) personal or emotional problems; Attached under seal is a copy of a letter from Dr. Ford detailing Respondent's personal problems. (Exhibit C)

(d) timely good faith effort to rectify consequences of misconduct; Respondent purchased the two judgments entered against Ms. Carroll, and then had the judgment vacated and the case dismissed with prejudice. Respondent also paid Ms. Carroll an additional amount representing damages suffered by her through collection efforts by the judgment creditor.

(g) character or reputation. Attached are letters from other Arizona attorneys attesting to Respondent's character and reputation in the legal community, and (Exhibit D)

(l) remorse. Respondent sent Ms. Carroll a letter apologizing for the way that he handled her case and explaining what steps he had taken to remedy any harm to her.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the mitigating factors weigh in favor of a reprimand and not a short-term suspension. A reprimand 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 two years of probation and the imposition of costs and expenses. A proposed form order is attached hereto as "Exhibit E."

DATED this 10th day of May, 2013.

STATE BAR OF ARIZONA

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 ____________________, 2013.

Mark B. Pyper
Respondent

DATED this ______ day of ____________________, 2013.

Nancy A. Greenlee
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

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 two years of probation and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit ~~"B."~~ E. SM

DATED this ______ day of ____________________, 2013.

STATE BAR OF ARIZONA

____
Shauna R. Miller
Senior Bar Counsel

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

DATED this 9th day of May, 2013.

____
Mark B. Pyper
Respondent

DATED this 7th day of May, 2013.

____
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
this 10th day of May, 2013.

Copies of the foregoing mailed/emailed
this 10th day of May, 2013, to:

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

Copy of the foregoing emailed
this 10th day of May, 2013, 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 10th day of May, 2013, to:

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

By: Ariana Quiroz
SRM:aq

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAY 20 2013

FILED

BY ____________

BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **MARK B. PYPER,** **Bar No. 011051,** Respondent.	**PDJ-2013-9042** [State Bar Nos. 11-3454, 12-0613] **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 May 10, 2013, pursuant to Rule 57(a), Ariz.R.Sup.Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Mark B. Pyper**, is hereby 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 shall be on Probation for a period of two years, effective thirty (30) days from the date of this Order, with the following terms:

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 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 1.3, 1.4, 1.5, 1.6, and 1.16. LOMAP personnel 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 [term of probation] 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 602-340-7334 or 800-681-3057, within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment. The State Bar shall develop "Terms and Conditions of Probation" if 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 years from that date. Respondent shall be responsible for any costs associated with MAP.

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 pay the costs and expenses of the State Bar of Arizona in the amount of $ 1,200.00.

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 -0-.

DATED this 20th day of May, 2013.

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 20th day of May, 2013.

Copies of the foregoing mailed/emailed
this 20th day of May, 2013, to:

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

Copy of the foregoing hand-delivered/emailed
this 20th day of May, 2013, 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: