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BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A CURRENT MEMBER OF THE STATE BAR OF ARIZONA, **Jerry D. Krumwiede, Bar No. 025577,** Respondent.	**PDJ-2013-9084** **AGREEMENT FOR DISCIPLINE BY CONSENT** State Bar No. 11-2422, 11-3399, 12-0730, 12-0162, 12-1792, 12-2094, 12-2364, 12-2505, 13-2332

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Jerry D Krumwiede, who is represented in this matter by counsel, Ralph W. Adams, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A Probable Cause Order was entered on May 14, 2013 and a formal Complaint was filed in this matter on September 13, 2013. 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.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant(s) by email (Counts 2, 3, 4 and 6) and telephone (Counts 1 and 5) on December 31, 2013[1]. 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, Ariz.R.Sup.Ct., ER(s) 1.1, 1.2, 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 3.3, 3.4, 4.1, 4.4, 8.4(c), 8.4(d), Rule 41(g), Rule 54(c) and Rule 54(i). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: One (1) Year Suspension. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.[2] 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 October 19, 2007.

COUNT ONE (State Bar File No. 11-2422)

2. At all times pertinent to Count One, Complainant was an employee of the Wesbrooks Law Firm.

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[1] The State Bar is the Complainant in Count 7.

[2] Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

3. On or about February 24, 2010, Respondent was hired as an associate attorney of the Wesbrooks Law Firm and was a managing supervisor of Complainant.

4. During his employment with the Wesbrooks Law Firm, the employment relationship soured to the point that both the Wesbrooks and Respondent took actions to terminate Respondent's employment. Respondent engaged in a number of actions which the Wesbrooks believed warranted termination including, but not limited to, showing Complainant a sexually charged text message from a previously terminated employee of the Wesbrooks Law Firm (Patty), taking a photograph of Complainant on her knees.

5. Respondent would testify at hearing that he submitted his written resignation on August 9, 2010. Respondent would testify at a hearing in this matter that he placed his resignation letter in the file holder attached to the exterior side of Mark Wesbrooks' office door as Wesbrooks was not available to speak to for the entire days of August 9th & 10th. Respondent informed Complainant that Friday, August 13, 2010 would be his last day.

6. The Wesbrooks would testify at a hearing in this matter that they did not receive Respondent's letter of resignation.

7. On August 10, 2010, Respondent was order to leave the premises without any firm property or client files. Also on August 10, 2010, Mrs. Wesbrooks send Complainant (alone) to Respondent's residence at 8:30 p.m. to inform Respondent that Mia Wesbrooks had terminated Respondent.

8. Complainant and Mrs. Wesbrooks recorded a conversation with Respondent wherein Mrs. Wesbrooks stated that Respondent was terminated for allegations of inappropriate behavior.

9. During their conversation, Respondent was confronted about showing Complainant a text message from a former employee which contained sexual content. The text purportedly stated "Th FBI s here ned to stop masubat."

10. In response to the confrontation, Respondent stated that "Patty sent me some weird e-mail or text message that I received. It's the only communication I ever had with her and actually there was no communication. She sent it to me and I don't (sic) respond."

11. The allegations against Respondent became the basis for Complainant's and the Wesbrooks' request for an order of protection in the Peoria Municipal Court case *Aragon v. Krumwiede*, HR2010-000201.

12. On November 29, 2010 an evidentiary hearing took place in Peoria Municipal Court case *Aragon v. Krumwiede*, HR2010-000201.

13. During the evidentiary hearing, Respondent provided testimony which contradicted Complainant's account of events as well as the previously recorded statements including, but not limited to, Respondent's following answers to questions posed by Wesbrooks:

> Q. "Assuming you have retained other text messages since you've retained this message in August, you have the other text messages as well where – which would document your communications though text message with Ms. Batista; true?

A. I have several. I don't know if I have all because they were numerous.

* * *

Q. You never brought those text messages to the attention of any supervisor of yours at The Wesbrooks Law Firm; true?

A. No, that's not correct. I brought them to your attention in your office, that I was continually –

Q. Did you print them out and – did you have them printed?

A. I told you and showed you on my cell phone.

Q. When did you do that?

A. Throughout the course of my employment.

* * *

Q. Okay. So did you e-mail me about personnel issues in the firm that -- regarding – or text messages from Patty at any time prior to your termination?

A. No. I showed you personally in your office prior to August 9th. August 9th and August 10th you were not available.

* * *

Q. What day did you supposedly show me text messages on your cell phone?

A. May, June, July."

12. During the evidentiary hearing, Respondent also testified that his cell phone number was 602/625-5443. When asked if he maintained any other cell

phone numbers since February of 2010, Respondent testified "[i]t's been my phone number for the last ten years."

13. Complainant testified that on August 10th, Respondent appeared at work and "walked beside me and he said read this text message...And then I read it again and I told him, that's nasty, why did you – you know, who sent you that? And he said Patricia sent it to me. We call her Patty. And I told him, well why do you still have that? I said, that's nasty. And he laughed."

14. Complainant also testified that Respondent was terminated later that day on August 10th and at no time prior tendered his resignation.

15. While Respondent originally testified and stated again in his response to the State Bar investigation that he resigned from the law firm on August 9, 2010, Respondent testified during the evidentiary hearing "[t]hat's because on August 9th and 10th, you (the owner) locked yourself in your office and were totally unavailable to me. Therefore, I couldn't even contact you to face to face tell you that I – to give my resignation and that my final day of work was going to be that Friday of that week."

16. After hearing the Westbrooks' tape of the August 10th taped phone conversation at Respondent's residence at 8:30 p.m., Respondent testified in the following exchange:

> Q. "On that tape, Mrs. Wesbrooks – when you began communicating with her, she – you were terminated. She terminated your employment; correct?
>
> A. That's what she said, yes.

Q. You did not in any way, shape or form inform that you were resigning or leaving or that you had told the office manager earlier that day that you were resigning, did you?

A. I guess in my mind, feeling violated by having business conducted in my front door, I thought in my mind that since I'd already given my notice, what's the difference being terminated or resigning. This was going to be my last week no matter what.

Q. Did you wish to change your testimony where you affirmatively said that you resigned?

A. I thought I did, but I – after listening to the tape, I guess I just thought that I said that."

17. Respondent also engaged in the following exchange:

Q. "You selected certain text messages to bring with him. Now, the text message that's in evidence is Exhibit 1. Let me ask you about this Petitioners' 1. First date is August 7 at 6:43 p.m. and it has her statement about the FBI masturbating; correct? Did you cut and paste that from one e-mail into this e-mail to your counsel?

A. No.

Q. Okay. So you're saying it's a forward. You forwarded the entire e-mail?

A. I printed it out and then transposed it on --

Q. Wait a minute. If you printed out an old e-mail, it would not say, "That's it, Chuck. Thanks, Jerry." It wouldn't say that.

A. Well, I guess maybe I did cut and paste but –

Q. You cut and paste.

A. -- I printed out the text message then placed it on there."

18. Following the November 29, 2010, hearing, Judge Rick Tosto dismissed the petitions for an order of protection noting on the record, however, that "[a]t the same time, I found Mr. Krumwiede's credibility nonexistent. I don't believe a word out of his mouth. That's just being blunt."

COUNT TWO (File no. 11-3399/Reynolds-Rodriguez)

26. On June 23, 2011, Respondent began representing Complainant in an employment dispute involving the K12 Virtual Schools, L.L.C. and/or the Phoenix Union High School District.

27. On or about May 4, 2012, Respondent filed the Maricopa County Superior Court lawsuit *Reynolds-Rodriguez v. K12, Inc.*, CV2012-052575.

28. On or about May 21, 2012, the process server prepared an activity report indicating that they attempted service but that the Statutory Agent informed the process server that K12, Inc. was not his client. The activity report indicates that Respondent was advised and indicated that he would amend the paperwork. After extensive subsequent research into the identity of Complainant's former employer conducted by Respondent and his staff the name of Complainant's employer was determined to be K12 Virtual Schools, L.L.C.

31. On or about June 19, 2012, the amended complaint was served upon the statutory agent for K12 Virtual Schools, L.L.C.

32. On or about July 10, 2012, opposing counsel filed a Notice of Removal to federal court.

34. Between July 18, 2012, and August 10, 2012, the federal court issued several orders including, but not limited to, an order that opposing counsel supplement his client's Notice of Removal.

35. On or about August 2, 2012, a fee dispute surfaced and Respondent indicated that he was suspending all work on Complainant's case and would withdraw unless she paid the outstanding balance or signed a promissory note.

36. On or about August 7, 2012, Respondent's assistant requested that Complainant provide Respondent with a list of witnesses and certain documents necessary for an initial disclosure statement.

37. On August 8, 2012, Complainant requested that Respondent file a motion to continue so that she could determine whether or not to pursue her case.

38. On or about August 17, 2012, the litigants filed a Joint Case Management Plan as ordered by the Court on July 18, 2012.

39. On or about August 17, 2012, a string of e-mails between Respondent and Complainant document the continued deterioration of the attorney-client relationship.

40. On August 18, 2012, Respondent e-mailed Complainant requesting that Complainant provide the office with the previously requested information as Respondent, after questioning his staff, was assured that the requested information from Complainant had not been received by his office.

41. Complainant responded that she had already provided the information to Respondent's assistant and was concerned about the communication between Respondent and his assistant. Complainant further requested that Respondent amend certain pleadings to include the list of witnesses previously provided to Respondent's assistant.

42. On or about August 19, 2012, Respondent filed an expedited motion to withdraw.

43. On or about August 31, 2012, Complainant filed a response to the motion requesting that Respondent be removed from the case.

44. On or about September 5, 2012, the Court granted Respondent's motion to withdraw. As a result of Complainant's August 31, 2012 response to Respondent's motion to withdraw, Judge Teilborg warned Complainant on September 5, 2012 that, "Any misuse of the ECF system will result in immediate discontinuation of this privilege and disabling of the password assigned to Plaintiff."

COUNT THREE (File no. 12-0162/McCarthy)

45. On or about March 31, 2011, Respondent had a free initial consultation with Complainant regarding an employment dispute involving the Maricopa County Community College District (hereinafter referred to as "MCCCD").

46. On or about May 4, 2011, the EEOC upheld MCCCD's decision to terminate Complainant.

47. On or about July 6, 2011, after Complainant had represented herself in a two-day internal appeal hearing held two-months earlier with the MCCCD Appeals Board, Complainant met with Respondent for a follow up consultation and retained Respondent to represent her in a lawsuit against MCCCD.

48. On August 9, 2011, Respondent filed a verified complaint on behalf of Complainant.

49. On August 31, 2011, Defendants filed a Motion to Dismiss alleging that Complainant failed to comply with A.R.S. § 12-821.01 [commonly referred to as the Notice of Claim Statute].

50. Respondent admits that he did not file a Notice of Claim prior to August 31, 2011 as he did not know that it was required. Respondent would testify at a hearing in this matter that he understood Complainant had filed a claim during her *Pro Se* representation..

51. Respondent also admits that on September 30, 2011 he filed a Motion for Leave to File an Amended Complaint and filed an Amended Complaint to serve as his response. He did not file a pleading with the word "response" in the caption to the Defendants' Motion to Dismiss as the motion included matters outside of the pleadings and he interpreted the language of A.R.S. § 12(b)(6) and Rule 56(c) as permission to respond on or before October 5, 2011. Respondent would testify at a hearing in this matter that he filed a Motion for Leave to File an Amended Complaint with an Amended Complaint and thought that such a filing served to respond to the Defendant's Motion to Dismiss.

52. On September 27, 2011, Defendant filed a Motion for Summary Disposition of their Motion to Dismiss pursuant to Rule 7.1(b).

53. On September 30, 2011, Respondent filed a Motion for Leave to file an Amended Complaint with an Amended Complaint. Respondent would testify at a hearing in this matter that he filed the Motion for Leave and an Amended Complaint and believed that this filing served to respond to the Defendant's Motion to Dismiss.

54. While Respondent claims in response to the State Bar's inquiry that "I filed an Amended Complaint and Response to Defendants' Motion to Dismiss with the

court. A Notice of Claim for McCarthy's wrongful termination was also filed with the court on September 30, 2011 and served upon the Defendants on October 3, 2011", the court record does not reflect that Respondent filed a response to the motion to dismiss, a response to the motion for summary disposition or a Notice of Claim.

55. On October 3, 2011, the Court granted the Motion to Dismiss deeming the failure to respond as consent to the granting of the motion pursuant to Rule 7.1(b).

56. On October 10, 2011, Respondent filed a Motion to Reconsider.

57. On November 14, 2011, the Court denied Respondent's Motion to Reconsider but did allow Respondent to request reconsideration a second time if an adequate reason for the failure to respond was provide to the Court.

58. On November 16, 2011, the Court denied Respondent's Motion to Amend the Complaint.

59. On November 22, 2011, Respondent filed a pleading entitled "Motion for Reconsideration a Second Time".

60. On January 17, 2012, the Court denied Respondent's Motion for Reconsideration a Second Time as "Plaintiff has again failed to explain her failure to timely respond to the Motion to Dismiss in question...and Plaintiff has failed to explain how she might have thought her September 30, 2011 Motion for Leave to File Amended Complaint was an appropriate response to the Motion to Dismiss." The Court further permitted Respondent to file one additional motion for reconsideration within five (5) days of the filing date of the minute entry.

61. On January 26, 2012, Respondent filed a motion to extend the time to submit another motion for reconsideration.

62. On March 7, 2012, the Court denied Respondent's motion to extend the time.

63. On March 9, 2012, Respondent contemporaneously filed a pleading entitled "Motion for Reconsideration a Third Time" and another requesting an extension of the time to submit another motion for reconsideration.

64. On March 18, 2012, Complainant identified to Respondent a list of documents that were previously requested by Complainant but not provided. Complainant terminated the representation.

65. On March 28, 2012, Respondent filed a Motion to Withdraw that did not comply with the requirements of the *Arizona Rules of Civil Procedure* as it omitted contact information for the client.

66. On March 29, 2012, Respondent filed a second Motion to Withdraw that did include contact information for the client.

67.On April 30, 2012, the Court denied Respondent's "Motion for Reconsideration a Third Time" as being untimely. However, on May 3, 2012, Judge Hugh Hegyi, in reconsidering Respondent's January 26, 2012 motion to extend time ordered as follows: " The Court having reviewed and considered Plaintiff's Motion to Extend Time to Submit a Motion for Reconsideration, and good cause showing, IT IS ORDERED granting Plaintiff's motion, and extending the time to file her motion for reconsideration".

68. On May 7, 2012, the Court vacated the April 30th minute entry and provided Defendants thirty (30) days to respond to Respondent's "Motion for Reconsideration a Third Time".

69. On May 29, 2012, Respondent re-filed his second Motion to Withdraw.

70. On June 9, 2012, the Court permitted Respondent's request to withdraw as attorney of record.

71. On July 2, 2012, the Court issued a minute entry which referenced a May 7th letter from the client objecting to Respondent's withdrawal. The Court admonished the client regarding ex-parte communication, ordered that the letter was not to be filed and reassigned the case.

72. On July 30, 2012, the Court issued a minute entry granting the motion to extend but stating the following: "Although Plaintiff's former counsel has completely failed to explain his failure to respond to the underlying August 31, 2012 Motion to Dismiss by Defendants (the "Motion to Dismiss"), from his repeated references to health difficulties, it appears he has been unable to competently represent Plaintiff in this matter as a result of those problems. The Court is reluctant to sanction Plaintiff for what appears to be the failure of her now withdrawn attorney."

COUNT FOUR (File no. 12-1792/Chittleborough)

73. On or about June 15, 2011, Complainant had an initial consultation with Respondent regarding allegations of wrongfully termination. Respondent would testify at a hearing in this matter that Complainant informed Respondent that he was terminated from his position as a guard at a prison located on the Gila River Indian Community in violation of his Family Medical Leave Act rights. Complainant did not know if the prison was run by a private company or the Indian community. Respondent asked Complainant to find out who ran the prison, and to provide copies of all personnel documents given to him including FMLA documents and disciplinary documents, and to provide a copy of the employee handbook given to him at hiring. Respondent informed Complainant that he was not currently certified to practice law on the Indian Community.

74. During the consultation, Respondent indicated that the proposed representation would be billed on an hourly basis.

75. Following the initial consultation, Complainant indicated that he would need some time to decide whether to retain Respondent or another attorney that would take the case on a contingency basis.

76. On or about July 26, 2011, Complainant e-mailed Respondent's paralegal and indicated that he intended on retaining Respondent as soon as he obtained the Thirty Five Hundred Dollar ($3500.00) retainer.

77. On or about September 14, 2011, Complainant paid Respondent's firm a retainer in the amount of Three Thousand Dollars ($3000.00) to initiate a lawsuit regarding his alleged wrongful termination as a corrections officer at the a prison located on the Gila River Indian Community (hereinafter referred to as "GRIC").

78. Respondent reminded Complainant that he was not certified to practice law in the GRIC.

79. On September 30, 2011, Respondent purportedly contacted Complainant and requested that the documents be provided no later than October 6, 2011.

80. On October 6, 2011, Respondent purportedly contacted Complainant and again requested production of the documents.

81. On October 13, 2011, Respondent purportedly contacted Complainant and informed him that he would have to withdraw from the case if Complainant did not provide the requested documents.

82. Complainant claims that he requested the documents from his employer, but only obtained certain limited documents which were immediately forwarded to Respondent upon receipt.

83. On October 19, 2011, Respondent received the application for certification from the GRIC.

84. On October 20, 2011, Respondent filed a complaint with the Federal District Court in order to meet the statute of limitations.

85. On November 11, 2011, Respondent filed the GRIC certification application and contemporaneously filed a change of venue in federal court.

86. On November 28, 2011, Respondent purportedly contacted Complainant and again advised Complainant that his case would require the requested documents to support his claims of wrongful termination.

87. Respondent propounded a request for documents upon the opposing party requesting the production of documents in support of Complainant's claims.

88. In or around December 2011, Respondent received a response along with approximately seven hundred and fifty pages of the requested documents. The production did not include a complete copy of the GRIC Employee Handbook, however.

89. On March 7, 2012, Respondent met with Complainant and purportedly explained that his office intended to voluntarily dismiss the federal court case.

90. Respondent also purportedly explained that, based upon his review of Complainant's disciplinary history and Complainant's failure to comply with the employer's internal appeal process, any future pursuit of the case would be futile.

91. While Complainant did apparently explain that his failure to comply with the employer's internal appeal process was problematic, Complainant claims that Respondent indicated that he would continue with the representation.

92. Complainant further claims that he requested a couple of days to decide how he wanted to proceed.

93. Complainant denies this allegation and claims that Respondent dismissed the complaint without his knowledge or consent.

94. On or about June 29, 2012, Complainant received a reimbursement of Six Hundred Thirty Five Dollars and 25/100 ($635.25) from Complainant's three thousand dollar retainer.

95. Respondent claims to have performed approximately Five Thousand Four Hundred Eighty Eight Dollars ($5488.00) for consultations with the client, document reviews, preparation of pleadings and other related legal services and fees.

96. On October 17, 2012, Respondent wrote the State Bar a letter declining Complainant's request that the fee dispute be resolved through the State Bar of Arizona's arbitration stating, in part, "[t]his is nothing more than the State Bar joining in on an ambush of one (sic) its members that supports its existence...Not once in my prior career did I encounter such cannibalistic individuals as I have during my five years in this so-called legal profession."

97. This sentiment was reiterated in his February 18, 2013, response to the State Bar wherein Respondent states, in part, "[t]he State Bar for the State of Arizona ("Bar") continually panders to the lunacy of the general public compromising the safety and wellbeing of its members and their staffs...It appears to this dues paying member that the Bar knowingly compromises the safety and wellbeing of its members at the hands of such gun toting lunatics as Arthur Harmon. How many Mark Hummels do we have to lose before the Bar takes action to protect its members?"

98. Respondent further claims that Complainant insisted on taking actions that Respondent considered repugnant which Respondent had a fundamental disagreement, that Complainant lied throughout the representation and that "[t]he only mistake made in Chittleborough's case was that I did not withdraw my representation."

COUNT FIVE (File no. 12-2094/Groves)

99. On or about April 3, 2012, Complainant signed a representation agreement for Respondent to represent her in a worker's compensation claim for a June 14, 2011, injury in the case of *Groves v. LP Braden Partners*, ICA Claim No. 20111-730007 (hereinafter referred to as "Lawsuit"). The Arizona Industrial Board suspended Complainant's benefits on February 9, 2012 for her failure to attend scheduled physical therapy sessions.

100. The representation agreement was a hybrid agreement and contained terms for both a reduced hourly fee and a contingency fee of twenty five percent (25%) from any recovery in the case. Complainant paid an advanced deposit of seven hundred and eighty dollars.

101. On April 4, 2012, Respondent represented Complainant in her previously scheduled deposition by opposing counsel, Steven C. Lester (hereinafter referred to as "Lester").

102. Complainant alleges that Respondent failed to return a number of her phone calls during the representation.

103. On April 25, 2012, Respondent represented Complainant at a hearing before the Administrative Judge in the lawsuit.

104. In or around late July 2012, Respondent contacted Complainant and informed her that he received a disability check on her behalf for approximately Thirteen Hundred Dollars ($1300.00).

105. Respondent claimed a right to twenty five percent (25%) of the disability check.

106. On or about July 26, 2012, Complainant informed Respondent not to cash the check as she disputed his demand for twenty five percent (25%).

107. Another dispute arose as Complainant claims that Respondent informed her that she did not have to attend an independent medical examination because the subject examination was located too far away.

108. On or about August 16, 2012, Complainant terminated Respondent's representation and retained alternate counsel.

109. Respondent returned the check to the carrier and provided Complainant with a copy of her file.

110. On or about September 10, 2012, Complainant noticed a letter dated April 24, 2012 from Lester to the Administrative Judge that was copied with a post-it note on it stating "DO noT include in mailing".

111. In the April 24, 2012 letter, Lester indicates that he was withdrawing his subpoena request for a certain witness anticipated to provide testimony at the hearing as "[t]he applicant has filed no documents with the Industrial Commission and has not requested any subpoenas."

112. On April 25, 2012, Respondent prepared a one-sentence letter with an enclosed document to the Administrative Judge which related solely to Complainant's failure to attend a certain October 2011 physical therapy session.

113. While Respondent claims that he placed the post-it note on Lester's April 24th letter so that Lester's letter would not be included as an attachment with Respondent's April 25th letter to the Administrative Law Judge, Respondent's assistant at the time, who is the Complainant is Count Six below, claims that she specifically recalled a discussion between she and Respondent regarding the document wherein Respondent did not want the letter sent to Complainant.

COUNT SIX (File no. 12-2364/Gressett)

114. On or about February 1, 2010, Complainant's employment was involuntarily terminated from the Central Arizona Project (hereinafter referred to as "CAP").

115. On or about August 12, 2011, Complainant met with Respondent regarding representation in a wrongful termination claim pertaining to CAP's violation of the Family Medical Leave Act.

116. On or about August 22, 2011, Complainant retained Respondent to represent her regarding a "Wrongful Termination in Violation of The Family Medical Leave Act" and paid Respondent Three Thousand Six Hundred Dollars ($3600.00). During this meeting, Complainant explained that she did not want to take any action until the U.S. Dept. of Labor, Wage and Hour Division (hereinafter referred to as "Agency") made a determination on her pending claim against CAP.

117. The fee agreement was a hybrid fee agreement and called for the hourly payment of costs and expenses and fees for legal services at a rate of One Hundred Fifty Dollars per hour ($150/hr) to be paid out of the retainer (which was to be replenished at the request of Attorney) as well as a twenty percent (20%) payment

of any and all total recovery which would entitle the law firm to a first lien against the gross proceeds. Respondent claims that his typical hourly fee is Two Hundred Sixty Dollars per hour ($260.00/hr).

118. Between August and December, Complainant requested that Respondent's office investigate the details of Complainant's attempts to obtain new employment as Complainant felt that she was being "black-balled" by CAP. Respondent did not investigate the client's allegations. Respondent would testify at a hearing in this matter that he was not required to do so as that request was not within the fee agreement.

119. Complainant claims that she repeatedly called Respondent's office for a status report as the statute of limitations continued to approach but did not receive responses from Respondent.

120. On or about December 19, 2011, Complainant met with Respondent to review the initial draft of the complaint. Respondent would testify at a hearing in this matter that he also asked Complainant to provide "specific detailed information needed to compose a proper complaint."

121. On or about December 20, 2011, Complainant provided Respondent with a letter from the Agency indicating that the Agency would not take any further action on her claim. Complainant also provided Respondent with two faxes containing a copy of certain requested documents along with a list of the alleged damages.

122. On or about January 20, 2012, Complainant met with Respondent to finalize the complaint.

123. On January 25, 2012, Complainant signed a verification.

124. On January 26, 2012, Respondent filed a complaint in U.S. District Court lawsuit *Amie M. Gressett v. Central Arizona Water Conservation District As The Operating Agency For The Central Arizona Project*, 2:12-CV-00185-PHX-JAT.

125. During February 2012, Respondent and Complainant began discussing Complainant's possible employment with the firm.

126. On March 5, 2012, Complainant began employment with Respondent's law firm. Initially, Complainant was a voluntary intern for two half days per week.

127. Between March and June 23, 2012, Complainant began receiving weekly cash payments of $300.00. Complainant alleges that Respondent failed to make certain weekly payments during this time frame.

128. Respondent alleges that Complainant made inappropriate sexual comments to him in or around May and June 2012. Respondent claims that he immediately informed Complainant that he was not interested in an intimate relationship as she was an employee and client.

129. On June 25, 2012, Complainant was formally placed on the firm's payroll. Complainant claims that she increased the number of hours worked and Respondent documented these extra hours as "Comp Time".

130. Pursuant to a 2012 1099 IRS Form, Complainant was paid Four Thousand Eight Hundred Dollars ($4800.00) and Two Thousand Four Hundred Ninety Four Dollars and Eighty Cents ($2,494.80) pursuant to 2012 W-2 Wage and Tax Statement for employment.

131. When asked about the outstanding pay issues and lack of diligent work on her case, Complainant alleges that Respondent routinely responded with comments

such as "go find a new attorney and a new job" and "you are an employee that happens to be a client".

132. As the relationship continued to deteriorate, Respondent indicated that he no longer wanted to employ Complainant. Respondent would testify at trial that he informed Complainant on July 27, 2012 that she would need to find another attorney by August 17, 2012 as he would be withdrawing on that date and that August 17, 2012 would be her last day of employment.

133. On or about August 16, 2012, Complainant informed Respondent that she wanted him to withdraw from the lawsuit.

134. On August 17, 2012, Respondent told Complainant that this was her last day of employment.

135. Complainant alleges that Respondent agreed to credit her outstanding work hours toward any interest that his firm may have in the contingency representation. Complainant also alleges that Respondent agreed to provide Complainant with a complete accounting of all legal services and credits along with an agreement releasing any future rights or lien on the case.

136. Complainant alleges that Respondent sporadically paid her before being placed on the firm's payroll and failed to pay Complainant or credit her client account for all of the hours actually worked.

137. That same day, August 17, 2012, Complainant signed a consent to withdrawal from the federal lawsuit which was filed the same day.

138. As Complainant was preparing to leave, Complainant asked Respondent for the accounting and agreement. In response, Respondent purportedly informed

her that he spoke to James Blair, her new attorney, and it was agreed that Complainant did not need the agreement.

139. Complainant called Blair--with Respondent present--who stated that Complainant does need the full accounting and agreement/release before he could begin representation.

140. While Respondent claims that he "hastily utilized an agreement template that (he has) used in previous employment severance agreements", placed a footer on the document of "Employee\Client\Gressett\K-LAW and Jerry D. Krumwiede\August 17, 2012" and stated that he "did not receive a response to the August 17, 2012 proposed agreement", Respondent's billing records indicate that the he performed several services on August 17th but "[c]omposed Confidential Settlement Agreement between Gressett and K-LAW per request of client (Gressett)" for one hour on August 19th.

141. The terms of the original proposed agreement contained, among other things, the following provisions:

a. That Complainant voluntarily terminated her employment with the law firm;
b. That the law firm withdrew from the federal case and provided Complainant with a complete copy of her file;
c. That Complainant would not seek unemployment compensation benefits, wage arrears or future compensation and waives all rights to institute any grievance, action, claim, complaint or lawsuit against the law firm arising out of matters concerning any aspect of Complainant's employment, legal representation or severance;
d. That the law firm would not assert a lien or claim on any recovery in the federal lawsuit;
e. The law firm would pay Complainant Six Hundred Ninety Four Dollars and 80/100 ($694.80) for work-related compensation which included 6.32 unused PTO hours.

142. The proposed agreement also contains a later provision that the agreement does not release any claim that is prohibited from being released by law or EEOC claims except that Complainant agrees not to accept any monetary damages of any kind resulting from an EEOC charge, complaint or lawsuit.

143. On August 19, 2012, Respondent e-mailed the proposed agreement to Blair again indicating that he was willing to waive any and all liens or quantum meruit claims to any recovery in the federal lawsuit. Respondent further states that he will cease all direct communication with Complainant after receiving the signed agreement as she "will be your client very shortly".

144. On or about August 21, 2012, the Court granted Respondent's motion to withdraw from the federal lawsuit.

145. On August 23, 2012, Respondent mailed Complainant, her final paycheck for the pay period of August 5, 2012 through August 18, 2012 for a net amount of Six Hundred Eleven Dollars and four cents ($611.04) after Federal and State withholdings.

146. On or about September 4, 2012, Respondent provided Blair with a copy of Complainant's final bill with the law firm.

147. On or about September 17, 2012, "[a]fter having sufficient time to give proper thought to drafting an appropriate Representation Settlement Agreement...without the duress that (Respondent) experienced on August 17, 2012", Respondent prepared a separate proposed agreement that advised Complainant to seek and attain independent legal advice prior to signing.

148. The terms of the agreement include, but were not limited to, the following:

a. That the law firm withdrew from the federal case with Complainant's consent;
b. That Complainant received a complete copy of her file;
c. That the law firm would voluntarily reduce a claim of legal fees of One Thousand Seven Hundred Eighty Seven Dollars 75/100 ($1787.75);
d. That the law firm would not assert any lien or claim on any recovery in the federal lawsuit.

149. On September 20, 2012, Complainant declined the proposed offer and complained of a number of matters including, but not limited to, Respondent's failure to include her comp time on her last paycheck and refusal to provide her payment or credits for the outstanding comp time purportedly performed.

COUNT SEVEN (File no. 12-2505/State Bar of Arizona)

150. On or about July 5, 2011, Respondent initiated the Maricopa County Superior Court case of *In the Matter of Jerry Krumwiede and Margaret Cook*, FN2011-002565 against his then-wife, Margaret Cook (hereinafter referred to as "Cook") by filing a Petition for Legal Separation. Respondent contemporaneously requested a Preliminary Injunction prohibiting the parties from transferring property without the other spouse's written consent.

151. On or about July 28, 2011, Arizona attorney Joel Milburn (hereinafter referred to as "Milburn") filed a Response and Counter-Petition for Dissolution of Marriage on behalf of Cook requesting, among other things, that the Court convert the Petition for Legal Separation into a Petition for Dissolution.

152. On or about August 19, 2011, Milburn contemporaneously filed a verified Petition for temporary orders and an order to show cause requesting, among other things:

a. Cook's sufficient access to the marital home of fifteen (15) years to pack and move her personal property;

b. Respondent's immediate cooperation to facilitate the transfer of Cook's AT&T mobile phone into Cook's name;

c. An appointed business appraiser to value Respondent's law firm with the cooperation of Respondent and his employees.

Access to Personal Property

153. In the request, Cook claimed that she was forced to leave the marital home (Respondent's sole and separate property) for her safety after Respondent violently assaulted her on July 3, 2011. Cook further claimed that an August 4, 2011 written request for access to the home was rejected by Respondent in writing on the same day.

154. On or about July 3, 2011, Respondent was arrested by the Maricopa County Sheriff's Office for allegations of DV Assault in violation of A.R.S. 13-1203(A)(1). While the State initiated the criminal case of *State of AZ v. Krumwiede*, JC2011-134174, the State dismissed the case due to the alleged victim's failure to appear on or about November 16, 2011. The Maricopa County Prosecutor's Office reopened the case at Cook's request and a Trial was conducted on May 23, 2012 (with Cook present) where Respondent was found Not Guilty of Cook's claim of DV Assault.

155. In his August 4th rejection letter, Respondent stated that Cook "made serious unfounded allegations...the consequences of which she clearly foresaw." Respondent would testify at a hearing in this matter that he did not author the August 4 letter.

156. Cook understood that the parties scheduled a moving date of August 13, 2011. Respondent would testify at a hearing that he had proposed two separate dates consisting of August 13, 2011 at 12:00 p.m. or August 17, 2011 at 1:00 pm.

but that Cook failed to confirm a date. Respondent then informed Cook on August 12, 2011, that a conflict had arisen for the August 13, 2011 date.

157. Respondent would testify at trial that, as a result of Cook's attorney not confirming a transfer of goods date, on August 15, 2011, Respondent's office mailed Milburn a letter, composed by Respondent's paralegal and not reviewed by Respondent, stating that unspecified personal property of Cook's would be available for transfer until August 19, 2011 but would be donated to a worthy cause if not transferred on August 19th.

158. Milburn replied in a letter explaining that Respondent's disposal of any property would be a violation of the previously granted Preliminary Injunction prohibiting the parties from transferring property without the other spouse's written consent.

Transfer of Cell Phone 602/740-0214

159. While Respondent was the sole account holder of certain cell phone numbers, including number 602/740-0214, Cook claimed to have exclusively used and paid for her cell phone.

160. On or about July 27, 2011, Cook requested through counsel that Respondent provide counsel with Respondent's AT&T personal PIN number in order to transfer the cell phone into Cook's name.

161. On August 25, 2011, Respondent filed a pleading entitled "Motion for Order of Contempt and Request for Sanctions and Request for Hearing" wherein Respondent alleged that Cook violated the Preliminary Injunction by falsifying certain financial information by excluding certain rental income, unilaterally

cancelled certain insurance coverage, withdrawal of money from a 401K account and other violations.

162. In her response, Cook denied all of the allegations and provided additional information regarding the allegations specifically that she did not falsify the financial information as she did not receive any rental income, did not unilaterally cancel the insurance as she merely complied with a notification requirement of SRP and successfully obtained an immediate reinstatement of the insurance coverage without a lapse in coverage and did not withdraw any money from her 401K account. At a hearing in this matter, Respondent would produce evidence that his insurance was cancelled and that Cook's 401K statement reveals the withdrawal transaction.

163. On or about September 9, 2011, the Court ordered that the parties appear for a Temporary Orders Hearings on September 27, 2011.

164. On or about September 13, 2011, Respondent took Cook's deposition attempting to question her regarding circumstances surrounding the alleged domestic violence incident which was then pending in court in violation of the Arizona Constitution and A.R.S. § 13-4433.

165. On or about September 23, 2011, Respondent filed a pleading entitled "Response to Respondents (sic) Order to Appear re: Temporary Orders and Petitioner's Request for Temporary Orders and Petitioner's Permanent Resolution Statement" alleging, among other things, that Cook cannot have access to the home as a result of her allegations against Respondent since Respondent and Cook are prohibited from having any contact with one another in accordance with the Criminal Court Orders and Arizona Constitution and A.R.S. § 13-4433 and that the

AT&T account contains two cell phone numbers both of which are solely owned and used by Respondent.

166. Respondent further claims that one cell phone is for personal use, the second for business use.

167. On or about September 27, 2011, the Court held a Resolution Management Conference and denied Respondent's motion for order of contempt and request for sanctions. The remainder of the issues including, but not limited to, the award of cell phone number 602/740-0214 were deferred to trial.

168. Following the testimony of both parties, the Court issued a number of rulings including, but not limited to, reaffirmation of the preliminary injunctions prohibition of the transfer of any disputed property.

169. The Court also identified certain disputed property including, but not limited to, a certain autographed Ted Williams baseball.

170. Finally, the Court scheduled a trial for March 1, 2012.

171. On October 3, 2011, having only received certain tax documentation from Cook for the years 2010 and before, Respondent's subpoena included a request for 2011 documents from Cook's employer regarding, among other things, her work locations, timesheet and billable hour logs to verify her actual income.

172. On October 7, 2011, Milburn filed an objection to the subpoena duces tecum alleging that:

a. Given the allegations of domestic violence, "(Respondent's) requests for information regarding where and when (Cook) is working are unnecessary and troubling...(and) are made only to harass (Cook)";

b. Respondent took Cook's deposition and attempted to question her regarding circumstances surrounding the alleged domestic violence incident which was then pending in court in violation of the Arizona Constitution and A.R.S. § 13-4433.

173. Among other things, Respondent requested "(e)mployee transponder access card records for (Cook), used to access all doors and gates and all entrance points to all Salt River Project facilities, including all records of entry and exit for the period of time July 1, 2005 to present."

174. On October 7, 2011, Respondent filed a Motion for Order to Compel requesting that "this Court order the settlement of the mobile telephone number (602)740-0214 with AT&T."

175. In the motion, Respondent claimed that he was "not opposed to allowing (Cook) to have my mobile number of 602/740-0214", but would need certain information and the payment of a Three Hundred Five Dollar transfer fee ($305.00) to be paid by Cook to AT&T.

176. In her October 25, 2011 response, Cook claimed that the cell phone number of 602/740-0214 had always been solely her cell phone number.

177. In his October 27, 2011 reply, Respondent again made repeated claims and references to his sole ownership and use of the mobile number of "602/740-0214".

178. On November 17, 2011, the Court denied Respondent's motion for order to compel and encouraged the parties to reach an agreement on "this tangential issue in the dissolution of the parties' marriage".

133. After numerous attempts to transfer one of Respondent's phone numbers (602-740-0214) to Cook and her continued refusal to pay AT&T's transfer fees, Respondent informed Milburn that he would be turning the disputed number back to AT&T and Cook can get that number from AT&T.

179. On November 30, 2011, Respondent relinquished the phone number 602-740-0214 to AT&T at no cost to Cook or Respondent.

180. On December 7, 2011, Respondent filed a Motion for Order Granting Sanctions Against Legal Counsel for (Cook) alleging that Milburn interrupted the deposition on more than ninety separate occasions, sixty four of which for relevance.

181. Respondent also claimed that as a direct result of Milburn's actions, Respondent has "sustained substantial economic losses and damages" and "caused significant revenue loss in excess of fifty thousand dollars ($50,000.00)."

182. On December 20, 2011, Milburn filed a Motion to Compel and For Sanctions against Respondent alleging that Respondent failed to provide complete answers to certain Uniform Interrogatories and failed to provide a response to certain Request for Production of Documents and Things originally propounded upon Respondent on July 27, 2011.

183. On December 23, 2011, Respondent contemporaneously filed pleadings entitled "Reply In Support of Motion for Order Granting Sanctions Against Legal Counsel for (Cook)" and "Response to Counsel for (Cook's) Motion to Compel and for Sanctions and Counter Motion for Additional Sanctions Be Awarded to (Respondent)" requesting, among other things, removal of Milburn as attorney of record, One Hundred Thousand Dollars ($100,000.00) for damages purportedly incurred, attorney's fees and costs along with unspecified "additional sums" and punitive sanctions.

184. On or about January 13, 2012, Respondent transferred his 401k funds from a high risk account to a stable account as Cook had done previously in August 2011.

185. On or about January 19, 2012, Arizona attorney Zalena M. Kersting (hereinafter referred to as "Kersting") filed a notice of appearance for Respondent and the attorneys filed a stipulation agreeing that all outstanding motions shall abate until trial but that discovery would be exchanged one week following an ADR hearing.

186. On or about January 26, 2012, Kersting filed a pleading entitled "Notice of Disclosure" which contained certain limited responses to the discovery request.

187. On or about March 26, 2012, Milburn filed a Motion to Compel reiterating that Respondent failed to provide complete answers to discovery requests originally propounded upon Respondent on July 27, 2011 and failed to provide any response to certain First and Second Sets of Non-Uniform Interrogatories.

188. On or about April 12, 2012, Kersting filed a response to the motion admitting that "(Respondent) has not yet produced all of the requested information" but claiming that as a new solo attorney he is doing his best to comply.

189. By minute entry dated May 1, 2012, the Court admonished Respondent for his repeated failure to respond to outstanding discovery requests and ordered compliance with all of the family law disclosure rules within three (3) days. The Court further issued a "clear and unequivocal warning to (Respondent)"

should he failed to comply with the Court order. The Court also awarded Cook "100% of her attorneys' fees and expenses" incurred as a result of Respondent's failures.

190. On or about June 12, 2012, the trial took place and the Court took the matter under advisement.

191. On August 13, 2012, the Court issued a detailed Decree of Dissolution of Marriage by minute entry finding, among other things, that:

a. Community funds were used to pay the mortgage on the marital home thereby entitling Cook to a one half interest in an equitable lien on the property totaling Twenty One Thousand Six Hundred Dollars;

b. Community funds were used to pay the mortgage on the Cook's rental home thereby entitling Respondent to one half interest in an equitable lien on the property totaling Nine Thousand Eleven Dollars;

c. Respondent acted unreasonably by filing separate tax returns and therefore owes Cook one-half of the refunded amounts totaling Four Thousand Three Hundred Sixty Seven Dollars;

d. After considering the financial resources and reasonableness of the positions taken by the parties throughout the lawsuit, Respondent is liable for $30,743.28 of Cook's attorneys' fees and costs in accordance with A.R.S. § 25-324.

192. The Court specifically found that Respondent was "extraordinarily unreasonable during the litigation" and listed "some of the unreasonable conduct of (Respondent)" including, but not limited to:

a. "(Respondent) took numerous positions that completely lacked support in the law."

b. "(Respondent) failed to respond to discovery as required by the Arizona Rules of Family Law Procedure."

c. "(Respondent) engaged in inappropriate questioning during (Cook's) deposition, designed simply to harass (Cook)."

d. "(Respondent) filed unnecessary motions which lacked a factual or legal basis."

e. "(Respondent) refused to agree that (Cook) could take a loan against her portion of her 401K during the pendency of the litigation, while (Respondent) withdrew money from his retirement account without consent from or notice to (Cook)."

f. "(Respondent) dropped his spousal maintenance claim at the time of trial without providing notice to (Cook)."

g. "(Respondent) testified under oath that phone number 602-740-0214 was his business phone and thus, he refused to allow (Cook) to use the phone number. (Cook) alleged that the phone number was her personal number and had been since the late 1990s...The evidence revealed that the phone number was (Cook's) personal number. The records further revealed that (Respondent) routinely call (Cook) prior to and during the parties' marriage; therefore, the Court concludes that (Respondent) knew the number was (Cook's) personal cell phone number. Consequently, the Court finds that (Respondent) provided false testimony to the Court while under oath. At trial, (Respondent) attempted to allege that his dyslexia caused him to confuse his business phone number with the personal phone number of (Cook) that he literally called thousands of times during their marriage. The Court found (Respondent's) testimony lacked credibility."

193. During a January 3, 2011, evidentiary hearing in the Peoria Municipal Court case of *Aragon v. Krumwiede*, HR2010-000201, Respondent testified that he has maintained the same cell phone number (602/625-5443) for the last ten years.

194. After further briefing regarding a correction to one paragraph in the original decree regarding property division, on September 24, 2012, the Court corrected the decree over objection by Respondent.

195. On or about October 8, 2012, after supplemental briefing by Respondent, the Court denied all of Respondent's requested relief and affirmed the previously filed corrective order.

196. On or about October 11, 2012, after additional briefing by the parties regarding the division of certain sports memorabilia, the Court scheduled an evidentiary hearing to occur on November 13, 2012.

197. On or about October 26, 2012, Milburn filed a motion for Respondent to appear and show cause why he should not be held in contempt for failing to comply with the Court orders alleging, among other things, that Respondent failed to provide, altered by disassembly and/or "lost" various pieces of property awarded to Cook that Respondent previously testified were in his possession.

198. On or about October 30, 2012, Respondent filed a complaint with the Arizona Commission on Judicial Conduct against the assigned judge, Pamela Gates, alleging, among other things, that Judge Gates made numerous "false statements purposefully" and repeatedly quoted opposing counsel's accusatory statements giving "[t]he perception by a reasonable person is one of Gates having Defense counsel write her judgment for her."

199. On November 13, 2012, the Court appointed a Special Master to resolve the allegations and property division.

200. On or about December 3, 2012, the parties filed a stipulated post decree agreement regarding all of the final property disputes and other claims. The stipulation also required the parties to equally share the fees and costs of the Special Master. The stipulation also required that Cook would be responsible for all of her attorney fees including the $30,743.28 ordered by the court in its August 13, 2012 Minute Entry.

201. By minute entry and order dated December 18, 2012, the Court accepted the stipulation and entered it as a matter of record in the case.

202. On or about December 27, 2012, the Special Master filed a Notice of Non-Payment indicating that, while Cook paid her share of the fees and costs of the Special Master, Respondent failed to pay any amount of his share.

203. By minute entry dated January 18, 2013, the Court scheduled a status conference on January 28, 2013.

204. Following the January 28, 2013 status conference, the Court entered judgment against Respondent for Respondent's share of the fees and costs of the Special Master.

CONDITIONAL ADMISSIONS

If the matter were to proceed to trial, Respondent would acknowledge the ethical violations but would present evidence that he did not commit the violations knowingly. However, Respondent's admissions are being tendered in exchange for the sanction form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz.R.Sup.Ct., ER(s) 1.1, 1.2, 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 3.3, 3.4, 4.1, 4.4, 8.4(c), 8.4(d), Rule 41(g), Rule 54(c) and Rule 54(i).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss none.

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: One (1) Year Suspension with probation, the terms and length to be determined upon reinstatement.

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 the following *Standards* are the appropriate *Standards* for the ethical violations listed below given the facts and circumstances of each count:

Rule 42, Ariz.R.Sup.Ct.:

ER 1.1: *Standard* 4.52 – Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

ER 1.2(a): *Standard* 4.42 - Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client.

ER 1.3: *Standard* 4.42 - Suspension is generally appropriate when: (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

ER 1.4: *Standard* 4.42 - Suspension is generally appropriate when: (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

ER 1.5: *Standard* 4.62 – Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

ER 1.16: *Standard* 7.2 – Suspension is generally appropriate when 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.

ER 3.1: *Standard* 6.22 - Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or party or interference or potential interference with a legal proceeding.

ER 3.2: *Standard* 6.22 - Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or party or interference or potential interference with a legal proceeding.

ER 3.3: *Standard* 6.12 – Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

ER 3.4: *Standard* 6.22 - Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or party or interference or potential interference with a legal proceeding.

ER 4.1: *Standard* 6.12– Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

ER 4.4: *Standard* 6.22 - Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or party or interference or potential interference with a legal proceeding.

ER 8.4(c): *Standard* 4.62 – Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

ER 8.4(d): *Standard* 6.12 – Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Rule 41(g), Ariz.R.Sup.Ct.: *Standard* 7.2 – Suspension is generally appropriate when 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.

Rule 54(c), Ariz.R.Sup.Ct.: *Standard* 6.22 - Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or party or interference or potential interference with a legal proceeding.

Rule 54(i), Ariz.R.Sup.Ct.: *Standard* 7.2 – Suspension is generally appropriate when 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.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties conditionally agree that Respondent has violated the following ethical rules:

Count 1:

Rule 41(g) by failing to act professionally in the employment environment.

Rule 42, Ariz. R. Sup. Ct.:

1. ER 3.3 – Respondent knowingly made false statements of fact or law to a tribunal by, among other things, testifying falsely regarding the circumstances surrounding his termination;

2. ER 8.4(c) – Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentation by, among other things, testifying falsely regarding the circumstances surrounding his termination;

3. ER 8.4(d) – Respondent engaged in conduct that is prejudicial to the administration of justice by, among other things, testifying falsely regarding the circumstances surrounding his termination.

Count 2:

Rule 42, Ariz. R. Sup. Ct.:

1. ER 1.4 – Respondent failed to properly communicate with the client regarding a number of issues including, but not limited to, the purposes and differences between the Joint Case Management Plan and the Initial Disclosure Statement;

2. ER 8.4(d) – Respondent engaged in conduct that is prejudicial to the administration of justice by, among other things, filing a complaint with the incorrect name of the opposing party and failed to timely file a complaint and other pleadings on client's behalf.

Count 3:

Rule 42, Ariz. R. Sup. Ct.:

1. ER 1.1 – Respondent failed to provide competent representation to a client by, among other things, failing to comply with the statutory requirements of serving the Defendants with a Notice of Claim and failing to timely file responses to Defendant's pleadings;

2. ER 1.2 – Respondent knowingly failed to abide by a client's decision regarding the objectives of the representation by, among other things, failing to file the Complainant, a motion to continue or other pleadings necessary to pursue and protect client's claim;

3. ER 1.3 – Respondent failed to act with reasonable diligence by, among other things, timely file the Complaint and other pleadings;

4. ER 1.4 – Respondent failed to reasonably consult and communicate with his client throughout the representation;

5. ER 1.16 – Respondent failed to take steps to the extent reasonably practicable to protect a client's interests;

6. ER 3.1 – Respondent brought a proceeding and asserted issues without a good faith basis in law and fact for doing so that is not frivolous;

7. ER 3.2 – Respondent knowingly failed to make reasonable efforts to expedite litigation consistent with the interests of the client;

8. ER 8.4(d) – Respondent engaged in professional misconduct by engaging in conduct that was prejudicial to the administration of justice by, among other things, timely file the Complaint and other pleadings.

Count 4:

Rule 42, Ariz. R. Sup. Ct.:

1. ER 1.1 – Respondent failed to provide competent representation to a client by, among other things, filing a lawsuit in the wrong jurisdiction and claiming that a motion to change venue would allow GRIC court to exercise jurisdiction while Respondent was not authorized to practice law in the GRIC court system;

2. ER 1.2 – Respondent knowingly failed to abide by a client's decision regarding the objectives of the representation by, among other things, dismissing the federal lawsuit without client authority;

3. ER 1.3 – Respondent failed to act with reasonable diligence during the representation by, among other things, filing a lawsuit in the wrong jurisdiction and claiming that a motion to change venue would allow GRIC court to exercise jurisdiction while Respondent was not authorized to practice law in the GRIC court system;

4. ER 1.4 – Respondent failed to reasonably consult with his client throughout the representation;

5. ER 1.16 – Respondent failed to take steps to the extent reasonably practicable to protect a client's interests;

6. ER 8.4(d) – Respondent engaged in professional misconduct by engaging in conduct that was prejudicial to the administration of justice by, among other things, filing a lawsuit in the wrong jurisdiction and claiming that a motion to change venue would allow GRIC court to exercise jurisdiction while Respondent was not authorized to practice law in the GRIC court system.

Count 5:

Rule 42, Ariz. R. Sup. Ct.:

1. ER 1.2 – Respondent knowingly failed to abide by the client's decisions and requests regarding the objectives of the representation by, among other things, failing to take actions in the case to protect Complainant's rights;

2. ER 1.3 – Respondent failed to diligently represent client and promptly take actions on behalf client during the representation;

3. ER 1.4 – Respondent failed to promptly explain matters and inform the client of decisions and circumstances requiring client's informed consent, failed to keep the client reasonably informed about the status of the matter and failed to comply with reasonable requests for information;

4. ER 1.16(d) – Respondent failed to take the steps reasonably practicable to protect the client's rights, including but not limited to, failing to provide client with the information and documents regarding her case and Respondent's failure to properly represent her in her case;

5. ER 8.4(c) – Respondent knowingly engaged in misconduct involving dishonesty, fraud, deceit or misrepresentations by intentionally refusing to provide his client a copy of a letter proving his failure to take efforts in the client's case.

Count 6:

Rule 42, Ariz. R. Sup. Ct.:

1. ER 1.2 – Respondent knowingly failed to abide by the client's decisions and requests regarding the objectives of the representation by, among other things, failing to investigate Complainant's allegations that the opposing party may have used efforts to prevent Complainant's future employment;

2. ER 1.3 – Respondent failed to diligently represent client and promptly take actions on behalf client during the representation;

3. ER 1.4 – Respondent failed to promptly explain matters and inform the client of decisions and circumstances requiring client's informed consent, failed to keep the client reasonably informed about the status of the matter and failed to comply with reasonable requests for information;

4. ER 1.8/8.4(a) – Respondent attempted to make an agreement prospectively limiting lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement and attempted to settle such allegations, claims or potential claims with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith;

5. ER 1.16(d) – Respondent failed to take the steps reasonably practicable to protect the client's rights, including but not limited to, failing to provide client with the information and documents necessary to allow her to obtain subsequent counsel;

6. ER 3.2 – Respondent knowingly failed to make reasonable efforts to expedite litigation consistent with the interests of the client;

7. ER 8.4(d) – Respondent engaged in conduct that is prejudicial to the administration of justice;

8. Rule 41(g) – Respondent engaged in unprofessional conduct in dealing with his client by repeatedly berating his client and threatening terminate client's employment with the law firm.

Count 7:

Rule 42, Ariz. R. Sup. Ct.:

1. ER 3.1 – Respondent knowingly brought and defended proceedings and asserted issues therein that was frivolous as they were not supported by a good faith basis in fact or law;

2. ER 3.2 – Respondent knowingly failed to make reasonable efforts to expedite litigation consistent with the interests of the client;

3. ER 3.3 – Respondent knowingly made false statements of fact or law to a tribunal and failed to correct the false statements such that Respondent was assessed attorney's fees and costs;

4. ER 3.4 – Respondent obstructed opposing party's access to evidence or unlawfully altered, destroyed or concealed a document or other material having potential evidentiary value which resulted in, among other things, an award of attorney's fees against Respondent associated with the opposing party's Motion to Compel granted May 2, 2012;

5. ER 4.1 – Respondent knowingly made false statements of material fact or law to a third person;

6. ER 4.4 – Respondent used means that had no substantial purpose other than to embarrass, delay or burden the opposing party including, but not limited to, engaging in inappropriate questioning during the opposing party's deposition;

7. ER 8.4(c) – Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or other misrepresentation;

8. ER 8.4(d) – Respondent engaged in conduct that is prejudicial to the administration of justice;

9. Rule 41(g) – Respondent maintained an action, proceeding or defense which was not legal or just and engaged in unprofessional conduct and advanced facts prejudicial to the honor or reputation of a party which was not required by the justice of the cause;

10. Rule 54(c) – Respondent violated the rules and orders of the Court regarding his payment of the Special Master.

11. Rule 54(i)/Rule 31(a)(2) – Respondent engaged in unprofessional conduct as defined in Rule 31 by substantially or repeatedly violating the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona.

Respondent further admits that the above listed misconduct 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 and potential harm to his client, the profession, the legal system and the public.

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) Pattern of Misconduct. [Respondent has seven (7) formal cases and two (2) additional cases (regarding same issue) in screening.]

Standard 9.22(d) Multiple Cases. [Respondent has seven (7) formal cases and two (2) additional similar cases in screening – all of which are addressed in this Consent Agreement.]

Standard 9.22(g) Refusal to Acknowledge Wrongful Nature of Conduct [While Respondent's attitude has changed since retaining Ralph Adams, Respondent's initial responses shifted blame to the clients.]

In mitigation:

Standard 9.32(a) Absence of prior disciplinary record.

Standard 9.32(c) Personal or emotional problems (Statement attached hereto under seal).

Standard 9.32(f) Inexperience in the Practice of Law [Respondent was admitted in October 2007 and did not begin actual practice until 2010].

Standard 9.32(g) Character and Reputation: Letters attached.

Standard 9.32(k) Imposition of other penalties or sanctions. [Count 7 only.]

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 agreement was based on the following:

During the State Bar investigation, Respondent terminated his law practice and relocated to another state. While these factors were important in determining the appropriateness of the agreed upon sanction, they were not dispositive. Respondent's inexperience in the practice of law as well as the timing and similarity of the misconduct also weighed heavily in determining the appropriate sanction.

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 One (1) Year Suspension and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 3rd day of February, 2014.

STATE BAR OF ARIZONA

Craig D. Henley
Senior 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 _____ day of February, 2014.

Jerry D. Krumwiede
Respondent

DATED this _____ day of February, 2014.

Ralph W. Adams
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

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 One (1) Year Suspension and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this _____ day of February, 2014.

STATE BAR OF ARIZONA

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Craig D. Henley
Senior 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 3 day of February, 2014.

_____
Jerry D. Krumwiede
Respondent

DATED this 3rd day of February, 2014.

_____
Ralph W. Adams
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 3rd day of February, 2014.

Copies of the foregoing mailed/emailed
this 3rd day of February, 2014, to:

Ralph W. Adams
Adams & Clark PC
520 East Portland Street
Phoenix, Arizona 85004-1843
Email: ralph@adamsclark.com
Respondent's Counsel

Copy of the foregoing emailed
this 3rd day of February, 2014, to:

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

Copy of the foregoing hand-delivered
this 3rd day of February, 2014, to:

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

By: Rodney T. Brue
CDH/ ftb

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

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JERRY D. KRUMWIEDE,** **Bar No. 025577** Respondent.	**PDJ-2013-9084** **FINAL JUDGMENT AND ORDER** [State Bar Nos. 11-2422, 11-3399, 12-0730, 12-0162, 12-1792, 12-2094, 12-2364, 12-2505, 13-2332] **FILED MARCH 3, 2014**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on February 3, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Jerry D. Krumwiede**, is hereby suspended for one (1) year for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation, the terms and period to be determined at the time of reinstatement.

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.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the terms imposed by the Presiding Disciplinary Judge, 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 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, 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 $2,247.73. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's

Office in connection with these disciplinary proceedings.

DATED this 3rd day of March, 2014.

William J. O'Neil

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 3rd day of March, 2014.

Copies of the foregoing mailed/emailed
this 3rd day of March, 2014, to:

Ralph W. Adams
Adams & Clark PC
520 E Portland St
El Mirage, AZ 85004-1843
Email: ralph@adamsclark.com
Respondent's Counsel

Craig D. Henley
Senior Bar Counsel
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by: MSmith