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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**MARK DOSS WESBROOKS,
Bar No. 018690,**

Respondent.

PDJ 2020-9097

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

(State Bar File Nos. 19-2602 and 20-2347)

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

probable cause order in State Bar No. 19-2602 was entered on August 31, 2020. A formal complaint was filed on October 16, 2020. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections, or requests which have been made or raised, or could be asserted thereafter, if the conditional admissions and proposed form of discipline is approved.

This Agreement and stipulations made herein are for purposes of resolving the disciplinary action brought by the State Bar of Arizona against Respondent, and only as stipulations and admissions made in resolution of such matter. In this regard, a civil case is pending in the Superior Court for Maricopa County, Arizona, between Complainants, Cedric and Norma Kirchner (the “Kirchners”) and Respondent, in which there are disputed facts being litigated. Negotiated stipulations and agreements made herein relate only to the PDJ matter herein, and do not operate as any admission of fact regarding disputed matters in such civil case, which should be adjudicated between the parties based on evidence in such civil proceedings. In this regard, statements made herein are the product of settlement negotiations and should be afforded the protected privilege of Ariz. R. Civ. Evid. 408 with respect to civil proceedings involving parties other than the State Bar of Arizona and Respondent.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainants, Cedric and Norma Kirchner by email on May 28, 2021. Complainants have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.5(c) (solely with respect to engaging in services in furtherance of a legal malpractice action without a signed fee agreement), and 1.15, and Rule 43, Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **Reprimand with Probation** terms of which are set forth in Sanctions below. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order. If costs are not paid within the 30 days interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

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.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on December 16, 1997.

COUNT ONE (File no. 19-2602/ Kirchner)

2. Norma and Cedric Kirchner originally retained Danny Adelman to handle a personal injury premise liability action against a nail salon for injuries sustained by Norma when she slipped and fell in the salon on January 22, 2016.

3. Adelman filed suit in July of 2016, against the commercial tenant, Diva Nails, LLC (“Diva”), but elected not to sue the commercial landlord or tile installer of the subject premises. The case against Diva was proceeding in superior court, while Norma continued to have various treatments and procedures.

4. On February 23, 2017, the Kirchners filed a Chapter 13 Bankruptcy Case No. 2:17-bk-01620, in which Respondent served as Kirchners’ counsel. The Bankruptcy Court entered an Order that the personal injury claim was property of the bankruptcy estate, and appointed Adelman & German, PLC, as special counsel to the Chapter 13 Trustee. The bankruptcy court order required that no settlement occur without bankruptcy court approval, and that net proceeds would be for the

benefit of the bankruptcy estate (creditors). Over the next approximately one year, Respondent served as bankruptcy counsel for the Kirchners. The Kirchners were familiar with Respondent's extensive personal injury practice and trial experience.

5. In late 2017, Adelman informed the Kirchners he was leaving private practice and told them that they would need to retain successor counsel. At that time, the court had scheduled a 7-day jury trial to commence on October 8, 2018.

6. On March 29, 2018, the Kirchners advised that they had signed a "transfer letter" transferring their file from Adelman to Attorney Michael Herzog. Herzog would not agree to file a Notice of Appearance in the civil case, but agreed to undertake negotiations in an attempt to settle the case. Herzog communicated that he would not be available to serve as counsel for the October 8, 2018 jury trial. After transitioning their file to Attorney Herzog, the Kirchners were informed that \$125,000.00 was the highest amount that Diva's insurance carrier would agree for settlement of the case. Although the Kirchners thought that settlement amount was too low, they agreed to the settlement, authorizing Herzog to communicate an acceptance. Thereafter, Herzog communicated to the Kirchners that he was not comfortable completing the settlement given the likelihood of Kirchner's ongoing

matters with creditors that might require the filing of additional bankruptcy proceedings.

7. Upon Attorney Herzog's withdrawal from representation, the Kirchners sought to retain Respondent to take over the case in a manner which would include the filing of a Notice of Appearance and announcement that Respondent would be available for the scheduled jury trial. In March of 2018, the Kirchners met with Respondent, and gave him the file they obtained from Adelman/Herzog. On April 10, 2018, the Kirchners signed the Fee Agreement for Respondent to take over the personal injury case.

8. Respondent entered an appearance in the personal injury case and advised opposing counsel and the court that he would be ready for the October 2018 jury trial. Respondent undertook to provide amended disclosures including details regarding economic damages that had not been analyzed and disclosed through prior attorney's disclosure statements. Respondent filed a Rule 68 Offer of Judgment to settle the case for \$249,999.00, which was delivered on April 12, 2018. Within days, Respondent received Diva's Rule 68 Offer of Judgment to settle both Norma's and Cedric's claim for a total of \$125,000.00

9. On May 9, 2018, in a phone call between counsel, Diva's counsel informed that, in light of new developments in the case since Respondent took over, State Farm was agreeable to an acceptance of Respondent's \$250,000.00 Offer of Judgment.

10. On May 9, 2018, Diva also filed an Acceptance of the April 12, 2018 Offer of Judgment. Diva delivered a settlement check and release, which the Kirchner's approved and signed. On May 25, 2018, the Kirchners endorsed the check.

11. On June 7, 2018, Respondent provided the Kirchners a Settlement Distribution Sheet showing that Respondent was retaining \$89,999.41 of net proceeds pending resolution of liens. Within the first 14 days of deposit of the gross settlement check to Respondent's IOLTA Trust Account, Respondent delivered two checks to the Kirchners: one on June 7, 2018 for \$5,000.00, and another on June 15, 2018 for \$61,636.35, along with a Settlement Disbursement Sheet setting forth calculations of attorney fees of \$99,999.60, and that costs, disbursements, and net proceeds would be held in the Trust Account.

12. In September of 2018, the Kirchners pleaded with Respondent to give them the balance of all net moneys held. Respondent responded by informing of the

status of the Medicare lien and Medicare's set-aside requirements. The Kirchners were provided an updated Schedule of Settlement Disbursement reflecting payment of the negotiated Medicare lien and which included a third disbursement check, holding back only amounts to cover costs and prior attorneys' disputed cost lien. Through additional written correspondence, Respondent outlined matters related to the court allowing the commercial landlord to be joined to the suit, and that if the court dismissed the landlord / premise-owner out of the case finding claims to be time-barred, that this would serve as the basis for a legal malpractice case against prior attorneys and their firm. The letter also informed them that if the court denied the then-joined commercial landlord's efforts to be dismissed from the case, that such a successful mitigation would nullify any potential legal malpractice claim.

13. Although presented with a draft fee agreement to pursue a legal malpractice case, proposing a representation on a contingent fee basis with a required cost deposit, the Kirchners did not sign and return the proposed fee agreement.

14. On March 26, 2019, Respondent disbursed to the Kirchners all remaining funds held, thereafter holding back only the disputed cost lien amount of \$10,070.76 asserted by former attorneys. (This amount was later distributed in

accordance with the Kirchners' agreement made with their former attorneys without Respondent's involvement.)

15. On April 29, 2019, the Superior Court entered judgment in favor of the commercial landlord / premise owner on the affirmative defense of statute of limitation, which first caused the prospective legal malpractice claims to become ripe.

16. Despite the Kirchners not having signed the legal malpractice fee agreement, on May 2, 2019, Respondent took action on the Kirchners' behalf regarding the malpractice case by sending a notice of claim letter to Kirchner's prior attorneys.

17. As the Kirchners did not return the proposed signed fee agreement for the legal malpractice case, Respondent communicated, by letter, his decision not to move forward with any legal malpractice action, advising the Kirchners of important deadlines regarding their legal malpractice claim.

18. The Kirchners first contacted the State Bar in December of 2019, and continued to assert that they were still owed money and had not received an accounting from Respondent. Intake Bar Counsel asked Respondent to provide an accounting for the Kirchners' matter. On December 11, 2019, Respondent said that

he was “generating a draft” of services for the Kirchners’ case for the Bar, but he did not provide it.

19. Because Respondent failed to further respond, on February 19, 2020, a screening investigation commenced. Respondent’s March 30, 2020 response failed to include an accounting.

20. On June 2, 2020, and again on June 16 and 18, Bar Counsel asked for an accounting and copies of the cancelled checks to the Kirchners to confirm what he had provided to them. Respondent promised that he would, but he did not, provide the information until after the State Bar recommended that the Attorney Discipline Probable Cause Committee issue an order of probable cause, and had subpoenas issued to both Respondent and Wells Fargo, for his trust account records.

21. A Trust Account Examiner reviewed Respondent’s trust account records, and identified various issues regarding Respondent’s handling of the Kirchners’ settlement proceeds, including but not limited to the fact that Respondent still retained \$10,070.76 that the Kirchners’ prior counsel, Danny Adelman, claimed was the subject of his lien for reimbursement of costs.

22. Respondent retained these disputed funds until January of 2021, when Adelman, through his attorneys, and the Kirchners agreed that Mr. Adelman would

receive \$5,000 as reimbursement for costs, and the Kirchners would receive the balance.

COUNT TWO (File no. 20-2347/Trust Account)

23. The Trust Account Examiner identified additional issues with Respondent's trust account beyond those associated with the Kirchners. The issues include the failure to maintain adequate and accurate trust account records, utilizing unorthodox internal accounting methods, bypassing the trust account by utilizing the operating account, commingling, maintaining an inappropriate level of administrative funds, and failure to properly train and supervise staff regarding the trust account, which, in some instances unrelated to the Kirchners, resulted in temporary misappropriation of funds.

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. For purposes of these proceedings, Respondent conditionally admits that he violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.5(c) (solely with respect to engaging in services in furtherance of a legal

malpractice action without a signed fee agreement), and 1.15(a) and (b)(1), and Rule 43(a), (b), (d) and (f), Ariz. R. Sup. Ct.

CONDITIONAL DISMISSALS

The State Bar has agreed to dismiss allegations regarding violations of ERs 1.2, 1.3, 1.4, and 1.5(a) and (b).

RESTITUTION

The parties agree that State Bar fee arbitration is the appropriate means of addressing the fee dispute with the Kirchners.

SANCTION

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

1. TAEPP: Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEPP). Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to schedule attendance at the next available class. Respondent will be responsible for the cost of attending the program.

2. FEE ARBITRATION: Respondent shall initiate fee arbitration within 10 days of the anticipated order approving this consent agreement. Respondent shall contact the Fee Arbitration Coordinator at (602) 340-7379 within 10 days from the date of service of this Order to obtain the forms necessary to participate in Fee Arbitration. Respondent shall file the necessary forms no later than 30 days from the date of receipt of the forms. Respondent shall have 30 days of the date of letter from the Fee Arbitration Coordinator to comply with the award entered in the Fee Arbitration proceeding.
3. Respondent shall commit no further violations of the Rules of Professional Conduct. If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

NON-COMPLIANCE WITH PROBATION

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

to recommend an appropriate sanction. If the State Bar alleges that Respondent failed to comply with any of the foregoing terms the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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

LEGAL GROUNDS IN SUPPORT OF SANCTION

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

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

The parties agree that the following *Standard 4.1* is the appropriate *Standard* given the facts and circumstances of this matter: *Standard 4.13* provides that a

Reprimand is generally appropriate when a lawyer is negligent in handling client property and causes injury or potential injury. Here, Respondent retained a portion of client settlement funds as a cost deposit, in anticipation of a legal malpractice case without the required signed fee agreement with the clients. As a consequence, Respondent retained these funds held for costs for six months before finally disbursing these funds to the clients. Respondent also held prior counsel's disputed cost lien amount of \$10,070.76 for over two years, until prior counsel and the clients settled the issue.

In addition, overall, Respondent failed to properly supervise management of his trust account, including keeping adequate records, and failing to supervise deposit transactions which, in some instances, resulted in temporary misappropriation of funds, and temporary commingling.

The duty violated

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

The extent of the actual or potential injury

There was actual harm to the clients, and potential harm to the profession, the legal system, and the public.

Aggravating and mitigating circumstances

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

In aggravation:

- a) 9.22(d) multiple offenses: Respondent violated multiple ethical rules in connection with his handling of the Kirchners' settlement funds, and his overall mismanagement of his trust account.
- b) 9.22(h) vulnerability of victim: The Kirchners are elderly and had the need to receive their funds in an expedited manner.
- c) 9.22(i) substantial experience in the practice of law. Respondent was admitted to practice in 1997.

In mitigation:

- a) 9.32(a) absence of a prior disciplinary record;
- b) 9.32(b) absence of dishonest or selfish motive; and
- c) 9.32(l) remorse. Mr. Wesbrooks takes great care and pride in ensuring that his clients are satisfied with the outcomes of their cases. He strives to make sure they understand why their case resulted in a particular outcome, and that the clients feel as if Mr. Wesbrooks was fighting his hardest for them. He is greatly saddened and apologetic that the Kirchners were unhappy with the result and

their representation. Mr. Wesbrooks also recognizes trust account management and supervision problems that led to deviations from the exact requirements of Rule 43. Mr. Wesbrooks regrets these shortfalls and will undertake steps to assure precise compliance in the future.

Discussion

The presumptive sanction should be a **Reprimand with Probation**.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

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

DATED this 28th day of May 2021

STATE BAR OF ARIZONA

/s/Kelly J. Flood

Kelly J. Flood
Staff Bar Counsel

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

DATED this _____ day of May, 2021.

Mark D. Wesbrooks
Respondent

DATED this _____ day of May, 2021.

Nancy A. Greenlee
Counsel for Respondent

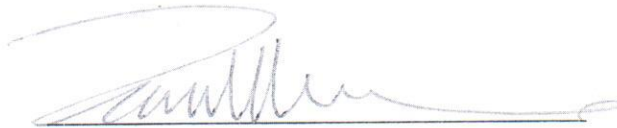
DATED this _____ day of May 2021

STATE BAR OF ARIZONA

Kelly J. Flood
Staff Bar Counsel

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

DATED this 28th day of May, 2021.



Mark D. Wesbrooks
Respondent

DATED this 28th day of May, 2021.



Nancy A. Greenlee
Counsel for Respondent

Approved as to form and content

/s/Maret Vessella
Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 28th day of May, 2021.

Copy of the foregoing mailed/mailed
this 28th day of May, 2021, to:

Nancy A. Greenlee
821 E. Fern Drive North
Phoenix, AZ 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: /s/Jackie Brokaw
KJF/jlb

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona
Mark Doss Wesbrooks, Bar No. 018690, Respondent

File No. 19-2602

Administrative Expenses

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

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

General Administrative Expenses
for above-numbered proceedings **\$1,200.00**

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

Additional Costs

08/11/20	Wells Fargo-Evidence Retrieval	\$ 87.50
03/26/21	Alliance-Deposition of Mark Doss Wesbrooks	\$ 175.00

Total for additional costs \$ 262.50

TOTAL COSTS AND EXPENSES INCURRED \$ 1,462.50

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**MARK DOSS WESBROOKS,
Bar No. 018690,**

PDJ 2020-9097

**FINAL JUDGMENT AND
ORDER**

State Bar No. 19-2602 and 20-2347

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

Accordingly:

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

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

- a) TAEPP: Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEPP). Respondent shall contact the State Bar

Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to schedule attendance at the next available class. Respondent will be responsible for the cost of attending the program.

- b) FEE ARBITRATION: Respondent shall initiate fee arbitration within 10 days of issue of this order. Respondent shall contact the Fee Arbitration Coordinator at (602) 340-7379 within 10 days from the date of service of this Order to obtain the forms necessary to participate in Fee Arbitration. Respondent shall file the necessary forms no later than 30 days from the date of receipt of the forms. Respondent shall have 30 days of the date of letter from the Fee Arbitration Coordinator to comply with the award entered in the Fee Arbitration proceeding.
- c) Respondent shall commit no further violations of the Rules of Professional Conduct. If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,462.50, within 30 days from the date of service of this Order.

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

DATED this _____ day of May, 2021.

Margaret H. Downie, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk of the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona this _____ day of May, 2021.

Copies of the foregoing mailed/emailed this _____ day of May, 2021, to:

Nancy A. Greenlee
821 E. Fern Drive North
Phoenix, Arizona 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

Kelly J. Flood
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Email: LRO@staff.azbar.org
Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: _____

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

MARK DOSS WESBROOKS,
Bar No. 018690

Respondent.

PDJ 2020-9097

**DECISION RECOMMENDING
MODIFICATION OF
AGREEMENT FOR DISCIPLINE
BY CONSENT**

[State Bar Nos. 19-2602, 20-2347]

FILED JUNE 14, 2021

Pursuant to Rule 57(a), Ariz. R. Sup. Ct., an Agreement for Discipline by Consent (“Agreement”) was filed on May 28, 2021. The State Bar of Arizona is represented by Kelly J. Flood. Respondent Mark Doss Wesbrooks is represented by Nancy A. Greenlee.

Contingent on approval of the proposed form of discipline, Mr. Wesbrooks has voluntarily waived his right to an adjudicatory hearing, as well as all motions, defenses, objections, or requests that could be asserted. The agreed-upon discipline consists of a reprimand, probation with specified terms, and payment of costs in the sum of \$1462.50. As required by Rule 53(b)(3), notice of the Agreement was sent to complainants Norma and Cedric Kirchner, who have submitted an objection through counsel.

The Agreement details a factual basis in support of Mr. Wesbrooks' conditional admissions and is incorporated by reference. *See* Rule 57(a)(4). Mr. Wesbrooks admits violating Rule 42, ER 1.5(c) (fees), ER 1.15 (safekeeping property), and Rule 43 (trust accounts). For reasons discussed *infra*, the Presiding Disciplinary Judge (PDJ) recommends additional trust account monitoring as a term of probation.

Mr. Wesbrooks represented the Kirchners in a personal injury case previously handled by two different attorneys. Soon after the Kirchners retained him, the case settled for \$250,000 as to one defendant. Mr. Wesbrooks initially retained a portion of the settlement funds for costs in a potential legal malpractice case, even though he had no signed fee agreement for that matter. He also took actions on the Kirchners' behalf regarding the malpractice claim without a signed fee agreement. Mr. Wesbrooks retained funds from the Kirchner matter for an extended period of time in his trust account.

File No. 20-2347 relates to problems with Mr. Wesbrooks' trust account. According to the Agreement, the irregularities "include the failure to maintain adequate and accurate trust account records, utilizing unorthodox internal accounting methods, bypassing the trust account by utilizing the operating account, commingling, maintaining an inappropriate level of administrative funds, and failing to properly train and supervise staff regarding the trust account, which, in

some instances unrelated to the Kirchners, resulted in temporary misappropriation of funds.”

Regarding the Kirchners’ complaint, the parties agree that Mr. Wesbrooks negligently violated his duty to clients and the profession, causing actual harm to the clients and potential harm to the profession, the legal system, and the public. The presumptive sanction is reprimand under *ABA Standards 4.13, Failure to Preserve the Client’s Property*. The parties stipulate to the existence of aggravating factors 9.22(d) (multiple offenses), 9.22(h) (vulnerability of victim), and 9.22(i) (substantial experience in the practice of law). The parties further stipulate to the existence of mitigating factors 9.32(a) (absence of a prior disciplinary record), 9.32(b) (absence of dishonest or selfish motive), and 9.32(l) (remorse).

In their objection to the Agreement, the Kirchners contend the agreed-upon sanction is insufficient and that a period of suspension is warranted. Significantly, though, the Agreement requires Mr. Wesbrooks to participate in fee arbitration with the Kirchners and to comply with any award entered in their favor in those proceedings. Other issues and damage claims are more properly addressed in the ongoing civil litigation. Moreover, the negotiated Agreement is consistent with the ABA Standards.

Although the PDJ finds the Agreement appropriate as to the Kirchners’ complaint, the trust account violations are troubling – particularly given the parties’

stipulation that irregularities “resulted in temporary misappropriation of funds.” The agreed-upon terms of probation require Mr. Wesbrooks to attend a half-day Trust Account Ethics Enhancement Program, but they do not call for any additional oversight or monitoring of his trust account. In order to ensure that necessary changes have been made for the protection of Mr. Wesbrooks’ clients, the PDJ recommends modifying the Agreement to require State Bar monitoring of his trust account for at least six months.

The parties shall have ten business days to submit an amended Final Judgment and Order, as well as a document signed by counsel and Mr. Wesbrooks accepting the recommended modification and describing -- in sufficient detail to comply with Rule 60(a)(5)(B) -- additional terms of probation requiring trust account monitoring by the State Bar for at least six months. If no such document is filed, the Agreement shall be deemed rejected, the conditional admissions withdrawn, and the matter will be set for hearing. *See* Rule 57(a)(4).

Margaret H. Downie

Margaret H. Downie
Presiding Disciplinary Judge

COPY of the foregoing e-mailed
this 14th day of June 2021 to:

Kelly J. Flood
Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: LRO@staff.azbar.org

Nancy A. Greenlee
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Email: nancy@nancygreenlee.com
Respondents' Counsel

by: SHunt

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**MARK DOSS WESBROOKS
Bar No. 018690**

Respondent.

PDJ 2020-9097

**STIPULATION REGARDING
MODIFICATION TO CONSENT
AGREEMENT**

State Bar No. 19-2602

The parties hereby submit their stipulation by which they agree to the Presiding Disciplinary's Judge's suggested modification of the consent agreement filed in this case.

The parties have agreed to an additional term of probation for one year for Mr. Wesbrooks to participate in the State Bar's Law Office Management Program (LOMAP) Trust Account Records Review.

This term requires Mr. Wesbrooks to contact the State Bar Compliance Monitor at 602-340-7258, within ten (10) days from the date of service of the

Order. Mr. Wesbrooks shall sign terms and conditions of participation, which shall be incorporated herein. The terms and conditions will include submission of specified trust account records on a quarterly basis. Mr. Wesbrooks shall be required to undergo a quarterly review of his trust account records and shall timely complete any follow up deemed necessary as a result of those reviews. Mr. Wesbrooks will be responsible for any costs associated with LOMAP.

A proposed amended Final Judgement and Order that includes this additional term of probation is attached hereto as Exhibit "A".

DATED this 28th day of June 2021

STATE BAR OF ARIZONA

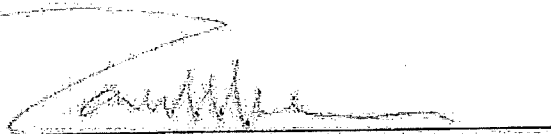
/s/Kelly J. Flood

Kelly J. Flood

Staff Bar Counsel

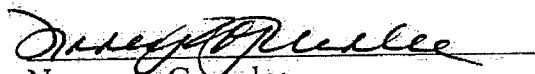
This agreement, with conditional admissions set forth in the original consent filed, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 28th day of June, 2021.



Mark D. Wesbrooks
Respondent

DATED this 28th day of June, 2021.



Nancy A. Greenlee
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

EXHIBIT "A"

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**MARK DOSS WESBROOKS
Bar No. 018690**

Respondent.

PDJ 2020-9097

**FINAL JUDGMENT AND
ORDER**

(AMENDED)

State Bar No. 19-2602

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

Accordingly:

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

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

- a) TAEPP: Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEPP). Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to schedule attendance at the next available class. Respondent will be responsible for the cost of attending the program.
- b) LOMAP (Trust Account Records Review): Respondent shall contact the State Bar Compliance Monitor at 602-340-7258, within ten (10) days from the date of service of this Order. Respondent shall sign terms and conditions of participation, which shall be incorporated herein. The terms and conditions will include submission of specified trust account records on a quarterly basis. Respondent shall be required to undergo a quarterly review of his trust account records and shall timely complete any follow up deemed necessary as a result of those reviews. Respondent will be responsible for any costs associated with LOMAP.
- c) FEE ARBITRATION: Respondent shall initiate fee arbitration within 10 days of issue of this order. Respondent shall contact the Fee Arbitration Coordinator at (602) 340-7379 within 10 days from the date of service of this Order to obtain the forms necessary to participate in Fee Arbitration.

Respondent shall file the necessary forms no later than 30 days from the date of receipt of the forms. Respondent shall participate in any scheduled fee arbitration and, if an award is entered against him, shall have 30 days of the date of the letter from the Fee Arbitration Coordinator to comply.

- d) Respondent shall commit no further violations of the Rules of Professional Conduct. If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,462.50, within 30 days from the date of service of this Order.

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

DATED this _____ day of June, 2021.

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

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of June, 2021.

Copies of the foregoing mailed/mailed
this _____ day of June, 2021, to:

Nancy A. Greenlee
821 E. Fern Drive North
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Email: nancy@nancygreenlee.com
Respondent's Counsel

Kelly J. Flood
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by: _____

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

MARK DOSS WESBROOKS,
Bar No. 018690

Respondent.

PDJ 2020-9097

FINAL JUDGMENT AND ORDER

State Bar Nos. 19-2602 and 20-2347

FILED JUNE 29, 2021

After an order issued requesting modification, the Presiding Disciplinary Judge accepted the parties' amended agreement for discipline by consent submitted pursuant to Rule 57(a), Ariz. R. Sup. Ct.

IT IS THEREFORE ORDERED Respondent, **MARK DOSS WESBROOKS, Bar No. 018690**, is reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

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

- a) Trust Account Ethics Enhancement Program (TAEEP): Respondent shall attend a half-day TAEEP. Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of

- this Order, to schedule attendance at the next available class. Respondent shall be responsible for the cost of attending the program.
- b) LOMAP (trust account records review): Respondent shall contact the State Bar Compliance Monitor at 602-340-7258, within 10 days from the date of service of this order. Respondent shall sign terms and conditions of participation, which shall be incorporated herein. The terms and conditions will include submission of specified trust account records on a quarterly basis. Respondent shall be required to undergo a quarterly review of his trust accounts records and shall timely complete any follow-up deemed necessary as a result of those reviews. Respondent shall be responsible for any costs associated with LOMAP.
- c) FEE ARBITRATION: Respondent shall initiate fee arbitration within 10 days of issue of this order. Respondent shall contact the Fee Arbitration Coordinator at (602) 340-7379 within 10 days from the date of this Order to obtain the forms necessary to participate in Fee Arbitration. Respondent shall file the necessary forms no later than 30 days from the date of receipt of the forms. Respondent shall have 30 days of the date of letter from the Fee Arbitration Coordinator to comply with the award entered in the Fee Arbitration proceeding.

d) Respondent shall commit no further violations of the Rules of Professional Conduct. If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,462.50, within 30 days from the date of this order. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

DATED this 29th day of June, 2021.

Margaret H. Downie

Margaret H. Downie
Presiding Disciplinary Judge

Copies of the foregoing mailed/mailed
this 29th day of June, 2021, to:

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