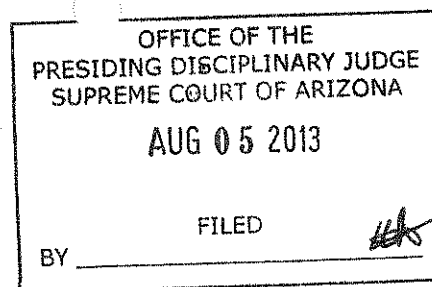


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Respondent

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

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

**Rosval A Patterson,
Bar No. 018872,**

Respondent.

PDJ-2013-9049

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

[State Bar No. 12-3340]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Rosval A Patterson, who has chosen not to seek the assistance of counsel, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER(s) 1.2(a), 1.3, 1.4(a), 1.5, 1.16, 3.2, 8.4(d). Upon acceptance of this

agreement, Respondent agrees to accept imposition of the following discipline: Suspension of Six Months and One Day, consecutive to the suspension in discipline case of In the Matter of Rosval A. Patterson, PDJ-2011-9084 along with any terms and period of probation imposed by the Court, if reinstated.

Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on May 16, 1998.

2. On or about August 27, 2012, after a two day hearing in the attorney discipline case of In the Matter of Rosval A. Patterson, PDJ-2011-9084, the Hearing Panel found Respondent violated Rule 42, ERs 1.2(a), 1.2(d), 1.3, 1.4(a), 1.5(a), 1.5(b), 1.5(c), 1.16, 3.2, 8.4(c).

3. Respondent was suspended for one (1) year and placed him on two years of probation, if reinstated. Respondent was also ordered to pay restitution of Two Hundred Thirty Dollars and 40/100 (\$230.40) for travel costs and Eighty Five Thousand Four Hundred Sixty Three Dollars and 42/100 (\$85,463.42).

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.

COUNT ONE (State Bar File No. 12-3340)

4. In or around 2009, Complainant was employed by Metropolitan Property and Casualty Insurance Company (hereinafter referred to as "Metropolitan").

5. During his employment with Metropolitan, Complainant took a short term disability leave and was subsequently terminated.

6. In or around August 2009, Complainant retained Respondent for legal services related to the disability dispute.

7. On or about October 9, 2009, Respondent mailed a demand letter for wages on Complainant's behalf but failed to provide any documents supporting his demand.

8. Metropolitan rejected Respondent's demand and advised Respondent that Complainant was not entitled to the type of wage claim being pursued, but requested supporting documentation supporting Complainant's demand.

9. Despite Metropolitan's request for supporting documentation, Respondent failed to provide any documentation supporting the demand

10. No legal services were performed regarding the wage claim for approximately eighteen (18) months.

11. On or about August 11, 2011, Respondent filed the Maricopa County Superior Court lawsuit of *Coleman v. Metlife*, CV2011-014769 listing the entity "MetLife" as the only named defendant.

12. On or about November 12, 2011, the Court issued a minute entry documenting its notice of intent to dismiss the lawsuit for lack of service.

13. On or about December 13, 2011, an affidavit of service was filed indicating that Kiwi Process Server Eric Henningsen received the pertinent documents from Respondent on December 8, 2011.

14. The affidavit of service also indicates that the pertinent documents were served upon CT Corporation System the same day.

15. On or about December 19, 2011, Metropolitan's attorney mailed Respondent a letter which identified several flaws in the lawsuit including, but not limited to, Respondent's failure to file the complaint within the statute of limitations governing statutory claims.

16. On or about January 9, 2012, after stipulating with Respondent to an extension to file responsive pleadings, Metropolitan's attorney filed a notice of removal to federal court.

17. For the first time in the lawsuit, Metropolitan's notice of removal identified the proper name of the Defendant.

18. Shortly after filing the notice of removal, Metropolitan's attorney filed a two page motion for judgment on the pleadings in federal court.

19. Respondent failed to inform Complainant about the motion.

20. On or about January 17, 2012, Respondent's assistant e-mailed Complainant with a copy of an invoice for legal services purportedly provided during the month of December 2011.

21. Complainant immediately challenged the accuracy of the invoice and expressed a number of concerns about Respondent's purported legal services.

22. Complainant also requested that Respondent settle the case without the incursion of attorney's fees or costs.

23. Complainant paid Respondent approximately Five Thousand Five Hundred Fifty Two Dollar and 50/100 (\$5552.50) over the course of the representation.

24. Respondent failed to respond to Metropolitan's motion for judgment on the pleadings or withdraw from the representation and took no further action in the case.

25. On or about January 24, 2012, Respondent provided Complainant with a copy of his client file which included approximately three years of invoices containing a unilateral increase in billable rates without a writing evidencing the increase.

26. The January 24th submission was the first time that Complainant received a complete copy of the purported invoices from Respondent.

27. The Court granted the unopposed motion and dismissed the case on January 30, 2012.

28. On or about March 15, 2012, Complainant filed a professional negligence lawsuit against Respondent alleging, among other things, that Respondent failed to diligently file the lawsuit within the statute of limitations, failed to diligently pursue and defend the lawsuit, failed to name the correct defendant and ceased working on the case without filing a motion to withdraw or filing documents protecting Complainant's interests.

29. On or about October 30, 2012, the Court granted a motion for summary judgment in part finding that "[t]here is some evidence that (Respondent) committed legal malpractice...but as a matter of law, (co-Defendant)

cannot be liable for legal malpractice committed by Defendant Patterson before January 1, 2012 (Respondent's hire date at the new firm)."

30. On February 15, 2013, the parties filed a stipulation to dismiss the lawsuit with prejudice which was accepted by the Court on February 19, 2013. The decision to dismiss was based upon Complainant's determination that Respondent did not have insurance coverage or assets which justified the legal expenses necessary to continue the lawsuit.

CONDITIONAL ADMISSIONS

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

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2(a), 1.3, 1.4, 1.5, 1.16, 3.2, 8.4(d).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss none of the allegations.

RESTITUTION

The parties stipulate to Order of Restitution against Respondent and in favor of Complainant in the amount of Three Thousand Three Hundred Four Dollars and 20/100 (\$3,304.20) as Respondent's representation and lawsuit against Metropolitan was flawed in several respects including, but not limited to, Respondent's failure to file the complaint within the statute of limitations governing statutory claims.

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: Suspension of Six Months and One Day, consecutive to the suspension in discipline case of In the Matter of Rosval A. Patterson, PDJ-2011-9084 along with any terms and period of probation imposed by the Court, if reinstated.

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* given the facts and circumstances of this matter:

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;

or b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

- a) Respondent violated Rule 42, ER 1.2(a) by failing to abide by Complainant's decisions concerning the objectives of representation and by failing to consult with client as to the means by which they are pursued. Respondent also failed to abide by Complainant's decision to settle the lawsuit.
- b) Respondent violated Rule 42 Ariz. R. Sup. Ct., ER 1.3 by failing to act with reasonable diligence.
- c) Respondent violated Rule 42 Ariz. R. Sup. Ct., ER 1.4 (a) by failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required; failing to reasonably consult with the client about the means by which the client's objectives are to be accomplished; failing to keep the client reasonably informed about the status of the case and failing to promptly comply with reasonable requests for information.
- d) Respondent violated Rule 42 Ariz. R. Sup. Ct., ER 3.2 by failing to make reasonable efforts to expedite litigation consistent with the interests of the client.

Standard 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

- a) Respondent violated Rule 42, ER 1.5 by unilaterally changing the basis or rate of the fee or expenses without communicating the change in writing.
- b) Respondent violated Rule 42 Ariz. R. Sup. Ct., ER 1.16 after termination of representation, by failing to take steps to the extent reasonably practicable to protect a client's interest and surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned.

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 agree that Respondent knowingly failed to perform legal services for his client in accordance with his client's informed decisions and failed to fulfill his ethical obligations in billing his client and protecting the client's interest when withdrawing from the representation. The parties further

agree that Respondent's conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual harm to Respondent's 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:

- 9.22(a) prior disciplinary offenses;
- 9.22(b) dishonest or selfish motive;
- 9.22(c) a pattern of misconduct;
- 9.22(i) substantial experience in the practice of law;

In mitigation:

- 9.32(e) full and free disclosure to disciplinary board or cooperative attitude towards proceedings

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:

As Respondent was suspended for one year for similar misconduct and the current behavior is not as egregious than the misconduct in the prior discipline case of In the Matter of Rosval A. Patterson, PDJ-2011-9084, the parties submit that the

appropriate sanction in this case is proportional and consistent with prior disciplinary case law.

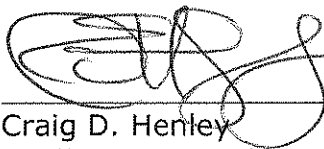
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

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 Suspension for Six Months and One Day, consecutive to the suspension in discipline case of In the Matter of Rosval A. Patterson, PDJ-2011-9084 along with any terms and period of probation imposed by the Court, if reinstated, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this _____ day of August, 2013.

STATE BAR OF ARIZONA



Craig D. Henley
Staff Bar Counsel

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

DATED this _____ day of August, 2013.



Rosval A. Patterson
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 5th day of August, 2013.

Copies of the foregoing mailed/emailed
this 5th day of August, 2013, to:

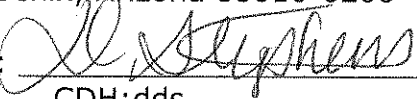
Rosval A. Patterson
777 East Thomas Road, Suite 210
Phoenix, Arizona 85014-5478
Email: rpatterson@uratty.com
Respondent

Copy of the foregoing emailed
this 5th day of August, 2013, to:

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

Copy of the foregoing hand-delivered
this 5th day of August, 2013, to:

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

By: 
CDH:dds

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

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

**Rosval A. Patterson
Bar No. 018872**

Respondent.

PDJ-2013-9049

**AMENDED FINAL JUDGMENT
AND ORDER**

[State Bar No. 12-3340]

FILED: 8/20/2013

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on August, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Rosval A. Patterson**, is hereby suspended for six months and one day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective August 27, 2012 (the final day of suspension in PDJ-2011-9084).

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation for a period of two years concurrent with the probation term in PDJ-2011-9084.

IT IS FURTHER ORDERED that,

TEN DEADLY SINS LANGUAGE

Respondent shall contact State Bar of Arizona publications at 602-340-7318 to either obtain and listen to the CD or obtain and view the DVD entitled "The Ten

Deadly Sins of Conflict” within ninety (90) days of reinstatement. Respondent may alternatively go to the State Bar website (www.myazbar.org) and complete the self-study online version. Respondent shall provide Bar Counsel with evidence of completion by providing copies of handwritten notes. Respondent shall be responsible for the cost of the CD, DVD or online self-study.

LOMAP

Respondent shall contact the director of the State Bar’s Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of reinstatement. Respondent shall submit to a LOMAP examination of his office’s procedures, including, but not limited to, compliance with ERs 1.2(a), 1.3, 1.4, 1.5, 1.16, 3.2, 8.4(d). The director of LOMAP shall develop “Terms and Conditions of Probation”, and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude two years from that date. Respondent shall be responsible for any costs associated with LOMAP.

TAEPP

Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEPP). Respondent must contact the TAEPP Program Coordinator, State Bar of Arizona, at (602) 340-7278, within 20 days from the date of the final judgment and order. Respondent shall be responsible for the cost of attending the program.

NON-COMPLIANCE LANGUAGE

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

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

IT IS FURTHER ORDERED that Respondent pay Complainant Darnell Coleman restitution in the amount of Three Thousand Three Hundred Four Dollars and 20/100 (\$3,304.20) within thirty (30) days.

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

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of zero

DATED this 20th day of August, 2013.

William J. O'Neil
The Honorable William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 20th day of August, 2013.

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

Rosval A. Patterson
777 E Thomas Rd Ste 210
Phoenix, AZ 85014-5478
Email: rpatterson@uratty.com
Respondent

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

Craig D. Henley
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Email: lro@staff.azbar.org

Lawyer Regulation Records Manager
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Phoenix, Arizona 85016-6266

By: /s/Laura L. Hopkins