

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

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

**OSBALDO M. BARRAGAN,  
Bar No. 011154**

Respondent.

**PDJ 2014-9076**

**FINAL JUDGMENT AND ORDER**

[State Bar No. 14-0363]

**FILED JANUARY 9, 2015**

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The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Amended Agreement for Discipline by Consent filed on January 6, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** Respondent, **Osbaldo M. Barragan**, is hereby suspended for six (6) months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this Order.

**IT IS FURTHER ORDERED** Respondent shall abide by the terms of his settlement agreement with Complainant. [Agreement, Exhibit B.]

**IT IS FURTHER ORDERED** upon reinstatement, Respondent shall be placed on probation with the State Bar's Law Office Management Assistance Program (LOMAP) for a period of one (1) year.

**IT IS FURTHER ORDERED** Respondent shall contact the director of LOMAP at 602-340-7332, within thirty (30) days of the date of the reinstatement. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, client relations. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will begin to run at the reinstatement order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** 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** 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** Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00, within thirty (30) days from the date of this Order. 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 9<sup>TH</sup> day of January, 2015.

*William J. O'Neil*

---

**William J. O'Neil, Presiding Disciplinary Judge**

Copies of the foregoing mailed/emailed  
this 9<sup>TH</sup> day of January, 2015.

Donald Wilson, Jr.  
Broening, Oberg, Woods, & Wilson, PC  
PO Box 20527  
1122 East Jefferson  
Phoenix, AZ 85036-0527  
Email: [dwj@bowwlaw.com](mailto:dwj@bowwlaw.com)  
Respondent's Counsel

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

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

by: JAlbright

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

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

**OSBALDO M. BARRAGAN,**  
**Bar No. 011154**

Respondent.

**No. PDJ-2014-9076**

**REPORT ACCEPTING AMENDED  
AGREEMENT FOR DISCIPLINE BY  
CONSENT**

[State Bar No. 14-0363]

**FILED JANUARY 9, 2015**

Procedural History:

A Probable Cause Order was filed on August 25, 2014 and the formal complaint was filed on August 29, 2014. An Agreement for Discipline by Consent (Agreement) was filed on October 20, 2014, and submitted under Rule 57(a)(3), Ariz. R. Sup. Ct.

The PDJ requested modification of that agreement on October 24, 2014, and otherwise rejected the agreement. The parties rejected those modifications on October 28, 2014. The Presiding Disciplinary Judge (PDJ) thereafter, held a final case management conference on January 5, 2015. The parties reported resolution of the issue regarding the proposed modifications their intent to file an amended agreement for discipline by consent. On January 6, 2015, an Amended Agreement for Discipline by Consent was filed, which includes a settlement agreement between Mr. Barragan and the client. [Agreement, Exhibit B.]

A factual summary of the bar charge is as follows:

A client hired Mr. Barragan in 2011 to handle a personal injury matter. Mr. Barragan filed the lawsuit in December 2011, but thereafter, failed to serve the defendant. The court sent a notice of intent to dismiss the matter and Mr. Barragan execute service on April 5, 2012. Mr. Barragan then failed to advise his client of deposition cancellations, resulting in his client wasting trips to the office of opposing counsel. He further failed to respond to opposing counsel's discovery requests and to file a disclosure statement. On May 9, 2012, the court ordered Mr. Barragan to file a Motion to Set and Certificate of Readiness before August 31, 2012 or the matter would be dismissed. Mr. Barragan failed to comply with the court's order and the matter was dismissed in November 2012. When the client learned of the dismissal, Mr. Barragan advised the client he would have the case reinstated or would pay what would have been recovered in the lawsuit. When the client inquired about the status of the matter, Mr. Barragan avoided his client and then failed to respond to the State Bar's investigation in this matter. Mr. Barragan conditionally admits this conduct violated ERs 1.1, 1.3, 1.4, 3.2, 3.4(c) and (d), and Rule 54(c) and Rule 54(d).

Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate". Under Rule 53(b)(3), Ariz. R. Sup. Ct., bar counsel must serve notice of this agreement to complainant(s), informing of the opportunity for any complainants to file a written objection to the agreement with the State Bar within five (5) business days of that notice. Notice was provided to the complainant by letter on September 23, 2014. No objection has been received. Accordingly:

**IT IS ORDERED** incorporating by this reference the Amended Agreement for Discipline by Consent and any supporting documents by this reference. The agreed upon sanctions are: a six month suspension, one year of probation (LOMAP) upon reinstatement, a term requiring that Mr. Barragan abide by the terms of the settlement agreement with his client, and costs.

**IT IS ORDERED** the Amended Agreement for Discipline by Consent is accepted. A proposed final judgment and order was submitted simultaneously with the Agreement and is modified per stipulation by the parties to reflect the suspension is effective 30 days from the date of the order. Costs as submitted are approved in the amount of \$1,200.00, and are to be paid within 30 days of the date of the Final Judgment and Order.

DATED this 9<sup>th</sup> day of January, 2015.

*William J. O'Neil*

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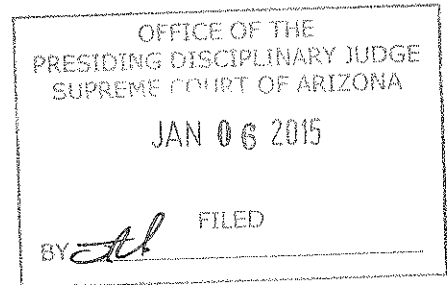
**William J. O'Neil, Presiding Disciplinary Judge**

COPY of the foregoing e-mailed/mailed  
this 9<sup>th</sup> day of January, 2015, to:

Hunter F. Perlmeter  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6266  
Email: lro@staff.azbar.org

Donald Wilson, Jr.  
Broening, Oberg, Woods & Wilson  
P.O. Box 20527  
Phoenix, AZ 85036  
Email: dwj@ bowwlaw.com  
Counsel for Respondent

by: JAlbright



Hunter F. Perlmeter, Bar No. 024755  
Staff Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602)340-7278  
Email: LRO@staff.azbar.org

Donald Wilson, Jr., Bar No. 005205  
Broening, Oberg, Woods, & Wilson, PC  
PO Box 20527  
1122 East Jefferson  
Phoenix, AZ 85036-0527  
Telephone 602-271-7717  
Email: dwj@bowwlaw.com  
Respondent's Counsel

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

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

**OSBALDO M. BARRAGAN,  
Bar No. 011154,**

Respondent.

**PDJ 2014-9076**

**AMENDED AGREEMENT FOR  
DISCIPLINE BY CONSENT**

State Bar No. 14-0363

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Osbaldo M. Barragan, through counsel, 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 August 25, 2014 and a formal complaint was filed on August 29, 2014. 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., Complainant has been notified of the opportunity to file a written objection to the agreement with the State Bar and has declined to do so.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.1, 1.3, 1.4, 3.2, 3.4(c) and (d), and Rule 54(c) and (d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Suspension of six months and one year Probation to LOMAP. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.<sup>1</sup> 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 January 6, 1987.

2. Complainant, Rachel Ochoa, hired Respondent to file a lawsuit (CV2011-021383) against her landlord as a result of an injury that she suffered on his property. Respondent filed suit on December 5, 2011.

3. On March 14, 2012, the court issued a Notice of Intent to Dismiss because Respondent had not served the landlord. In response, Respondent served the landlord on April 5, 2012.

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<sup>1</sup> Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.



4. While the matter was pending, Respondent failed to advise Ochoa of deposition cancellations on two occasions resulting in wasted trips to opposing counsel's office.

5. Respondent also failed to provide opposing counsel with a disclosure statement and failed to respond to discovery requests.

6. On May 9, 2012, Court Administration issued a 150 day Order requiring Respondent to file a Motion to Set and Certificate of Readiness before August 31, 2012. The order indicated that the matter would be dismissed if such action was not taken by October 30, 2012.

7. When Respondent failed to comply with the order, the court dismissed the matter in November of 2012.

8. When Ochoa learned of the dismissal, Respondent told her that he would take steps to have the case reinstated and that if the matter was not reinstated he would pay what he estimated Ochoa would have received had the lawsuit been handled properly. When Ochoa did not hear back from Respondent, she attempted to contact Respondent and he failed to respond to her until after she filed the subject bar charge. Respondent's position is that the need to care for his ill mother, who eventually died in June of 2013, and his need to care for his father, impacted his ability to promptly respond to Ochoa.

9. On December 12, 2014, Respondent contacted Ochoa, through counsel, and entered into a Settlement Agreement (attached as Exhibit B) under which Respondent will pay \$6,500 to Ochoa. To date, Respondent has paid Ochoa \$3,000. The Settlement Agreement indicates that the parties (Respondent and Ochoa) "believe that this Settlement Agreement constitutes a fair settlement." The Settlement

Agreement also indicates that each party either reviewed the Settlement Agreement with independent counsel or had the opportunity to do so.

10. During the State Bar's investigation, Respondent failed to timely respond to the Bar's screening letter.

### **Rule Violations**

1. ER 1.1 requires a lawyer to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. By failing to take action in his client's case for months at a time and failing to comply with court deadlines, which lead to the dismissal of the case, Respondent failed to provide competent representation.

2. ER 1.3 requires a lawyer to diligently represent his client. Respondent consistently failed to diligently litigate his client's case leading to the dismissal of the case.

3. ER 1.4 requires a lawyer to reasonably communicate with his client. Respondent did not keep his client reasonably informed of the status of her case and did not inform her of deposition cancellations.

4. ER 3.2 requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client. Respondent's failure to expedite litigation resulted in the dismissal of his client's case.

5. ER 3.4(c) prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal. Respondent failed to comply with the court's 150 day order and failed to comply with disclosure and discovery requirements.

6. ER 8.4(d) prohibits a lawyer from engaging in conduct prejudicial to the administration of justice. As a result of Respondent's misconduct his client's lawsuit was dismissed.

7. Rule 54(c) prohibits a lawyer from knowingly violating a court order. Respondent failed to comply with the court's 150 day order and failed to comply with discovery requirements.

8. Rule 54(d) requires a lawyer to furnish information and respond promptly to an inquiry from bar counsel. Respondent failed to promptly respond to the Bar's investigation.

### **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 1.1, 1.3, 1.4, 3.2, 3.4(c) and 8.4(d) and Rules 54(c) and (d).

### **CONDITIONAL DISMISSALS**

ER 8.4(c) is being dismissed on account of information provided by Respondent concerning the need to care for his ill mother, who died in June of 2013, and the resulting need to serve as a caretaker for his father, both of which came about

between the date that Ochoa's lawsuit was dismissed and the date of the underlying bar charge. In light of these events there does not appear to be clear and convincing evidence that Respondent acted dishonestly in failing to timely compensate Ochoa for his negligent representation. It is also noted that by recently entering into a payment plan with Ochoa, under which he has recently paid her \$3,000, Respondent has shown an intent to rectify his negligent conduct.

### **RESTITUTION**

Respondent will abide by the terms of the settlement agreement entered into with Ochoa (Exhibit B) requiring payment of \$6,500 to her for his negligent handling of her case.

### **COSTS**

Respondent will pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,200, within thirty (30) days from the date of service of the Presiding Disciplinary Judge's Order.

### **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 6 months and 1 year probation.

### **PROBATION**

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within thirty (30) days of the date of the reinstatement. Respondent shall submit to a LOMAP examination of his office's

procedures, including, but not limited to, client relations. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will begin to run at the reinstatement order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

### **NON-COMPLIANCE**

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

### **LEGAL GROUNDS IN SUPPORT OF SANCTION**

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35,

90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The parties agree that *Standard* 4.42 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.42 provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury to a client.

**The duty violated**

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

**The lawyer's mental state**

For purposes of this agreement the parties agree that Respondent knowingly, failed to diligently litigate Complainant's case and that his conduct was in violation of the Rules of Professional Conduct.

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

For purposes of this agreement, the parties agree that there was actual harm to the client, as her lawsuit was dismissed.

**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.

**AGGRAVATION/MITIGATION**

Aggravating factors include:

**Standard 9.22(a):** prior disciplinary offenses.

*Respondent received a Censure (02-0039-D) for violation of ERs 1.2, 1.3, 3.4(c), 8.1(b) and 8.4(d). Respondent also violated Rule 51(e), (h), (i) and (k).*

**Standard 9.22(d):** multiple offenses

**Standard 9.22(e):** bad faith obstruction of the discipline process.

**Standard 9.22(i):** substantial experience in the practice of law.

Mitigating factors include:

**Standard 9.32(m):** remoteness of prior offense.

### **Discussion**

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. 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 a suspension of six months, one year probation to LOMAP and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "C."

**DATED** this 6<sup>th</sup> day of January, 2015.

State Bar of Arizona



Hunter F. Perlmeter  
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 5 day of January, 2015.

Broening, Oberg, Woods, & Wilson, PC



Donald Wilson, Jr.  
Respondent's Counsel

DATED this 5<sup>th</sup> day of January, 2015.



Osbaldo M. Barragan  
Respondent

Approved as to form and content



Maret Vessella  
Chief Bar Counsel



Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 10th day of January, 2015.

Copies of the foregoing mailed/emailed  
this 10th day of January, 2015, to:

Donald Wilson, Jr.  
Broening, Oberg, Woods, & Wilson, PC  
PO Box 20527  
1122 East Jefferson  
Phoenix, AZ 85036-0527  
Email: [dwj@bowlaw.com](mailto:dwj@bowlaw.com)  
Respondent's Counsel

Copy of the foregoing emailed  
this 10th day of January, 2015, to:

William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
Email: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

Copy of the foregoing hand-delivered  
this 10th day of January, 2015, to:

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

by:   
HFP/jao

**EXHIBIT "A"**

**Statement of Costs and Expenses**

In the Matter of a Current Member of the State Bar of Arizona,  
Osbaldo M Barragan, Bar No. 011154, Respondent

File No. 14-0363

**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.

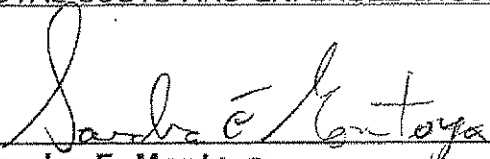
Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative 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.

**Staff Investigator/Miscellaneous Charges**

Total for staff investigator charges	\$ 0.00
<b>TOTAL COSTS AND EXPENSES INCURRED</b>	<b>\$ 1,200.00</b>

  
\_\_\_\_\_  
**Sandra E. Montoya**  
**Lawyer Regulation Records Manager**

9-23-14  
\_\_\_\_\_  
**Date**

**EXHIBIT "B"**

# SETTLEMENT AGREEMENT

THIS AGREEMENT is made by and between RACHEL OCHOA ("RACHEL") and OSBALDO BARRAGAN ("OSBALDO"):

## WITNESSETH:

**WHEREAS**, the parties agree to settling any claim or potential claim between them stemming from the attorney-client relationship in civil case, number CV2011-021383, filed and dismissed in the Superior Court of Arizona, Maricopa County;

**WHEREAS**, RACHEL is and has been advised of the desirability of seeking and has been given a reasonable opportunity to seek the advice of independent legal counsel in connection with her allegations;

**WHEREAS**, it is the intent of the parties to make a complete and final settlement of all their claims;

**WHEREAS**, it is the intent of the parties to confirm their settlement;


**WHEREAS**, each of the parties declares that he or she is fully and completely informed as to the rights of each of the parties, and each party has given mature and careful thought and consideration to this Agreement, and this Agreement is made voluntarily by each of them, free from undue influence, coercion, duress or fraud of any nature whatsoever, and each of the parties fully and completely understands all of the terms and provisions of this Agreement;

**WHEREAS**, each party has reviewed this Settlement Agreement with independent counsel of his or her own choosing or has had an opportunity to do so; and,

**WHEREAS**, the parties believe that this Settlement Agreement constitutes a fair settlement.

**NOW, THEREFORE**, in consideration of the above premises and the mutual promises contained in this Agreement and for the purpose of settling all malpractice allegations, claims, or potential claims, the parties hereto agree as follows:

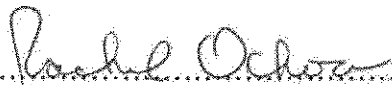
- 1. Amount:** OSBALDO agrees to pay to the order of RACHEL OCHOA \$6,500.00, payable in the sum of \$1,000.00 per month until paid in full on or before June 30, 2015.
- 2. Recording:** The parties agree that this document shall not be recorded with any County or State Recorder's Office now or in the future, unless payor fails to pay the full amount by June 30, 2015.
- 3. Addresses:** Each party shall keep the other advised of his or her residence address, mailing address, and home telephone number until the full amount is paid.
- 4. Mutual Releases:** Each party is fully released and completely absolved from any and all obligations and liabilities to the other, except as otherwise provided in this Agreement.

\_\_\_\_\_ 

5. **Tax Consequences:** The parties recognize that there may be tax consequences as a result of the transactions contained in this Agreement. The parties acknowledge that each has had the opportunity to seek advice from a tax advisor concerning these tax consequences prior to entering into this Agreement.
6. **Construction:** Each of the parties assumes joint responsibility for the form and composition of each and all of the provisions of this Agreement and further agrees this instrument shall be interpreted as if each party had participated fully and equally in the preparation thereof.
7. **Interpretation:** This Agreement shall be interpreted fairly and simply and not strictly for or against either party.
8. **Severability:** If any provision of this Agreement is held illegal, unenforceable, void, voidable or impermissible, each of the remaining terms hereto shall remain in full force and effect.
9. **Choice of Law:** This Agreement shall be construed and interpreted exclusively under and in accordance with the laws of the State of Arizona.
10. **Exclusive of Third Parties:** No provision of this Agreement is made for the benefit of any person other than the parties who have executed this Agreement. Only the parties to this Agreement have the right to enforce this Agreement.
11. **Future Attorney's Fees:** Notwithstanding any contrary provision of this Agreement, in the event either party commences a proceeding to enforce this Agreement, the successful party shall be entitled to an award of reasonable attorney's fees and costs from the other.
12. **Completeness of Agreement:** Any and all other agreements heretofore made between the parties, whether written or oral, shall be null and void upon the execution of this Agreement. No warranties or representations, written or oral, have been made to either party to induce the execution of this Agreement, and this Agreement contains the parties' entire agreement.
13. **Effective Date:** This Agreement becomes effective upon the signature date of the last party to sign below.

IN WITNESS WHEREOF, the parties have hereunto signed their names.

Dated: 12/12/14

  
 RACHEL OCHOA

Dated: \_\_\_\_\_

OSBALDO BARRAGAN

5. **Tax Consequences:** The parties recognize that there may be tax consequences as a result of the transactions contained in this Agreement. The parties acknowledge that each has had the opportunity to seek advice from a tax advisor concerning these tax consequences prior to entering into this Agreement.
6. **Construction:** Each of the parties assumes joint responsibility for the form and composition of each and all of the provisions of this Agreement and further agrees this instrument shall be interpreted as if each party had participated fully and equally in the preparation thereof.
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13. **Effective Date:** This Agreement becomes effective upon the signature date of the last party to sign below.

IN WITNESS WHEREOF, the parties have hereunto signed their names.

Dated: \_\_\_\_\_

.....  
RACHEL OCHOA

Dated: 12/15/14

  
.....  
OSBALDO BARRAGAN

**EXHIBIT "C"**



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,**

**Osbaldo M. Barragan,  
Bar No. 011154,**

Respondent.

**PDJ 2014-9076**

**FINAL JUDGMENT AND ORDER**

[State Bar No. 14-0363]

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

**IT IS HEREBY ORDERED** that Respondent, **Osbaldo M. Barragan**, is hereby suspended for six months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately.

**IT IS FURTHER ORDERED** that as restitution Respondent shall abide by the terms of his settlement agreement with Complainant attached to the Consent Agreement as Exhibit B.

**IT IS FURTHER ORDERED** that, upon reinstatement, Respondent shall be placed on probation for a period of one year.

**IT IS FURTHER ORDERED** that, Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within thirty (30) days of the date of the reinstatement. Respondent shall submit to

a LOMAP examination of his office's procedures, including, but not limited to, client relations. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will begin to run at the reinstatement order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

**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**

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, 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, within thirty (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 thirty (30) days from the date of service of this Order.

**DATED** this \_\_\_\_\_ day of January, 2015.

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**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 \_\_\_\_\_ day of January, 2015.

Copies of the foregoing mailed/mailed  
this \_\_\_\_\_ day of January, 2015.

Donald Wilson, Jr.  
Broening, Oberg, Woods, & Wilson, PC  
PO Box 20527  
1122 East Jefferson  
Phoenix, AZ 85036-0527  
Email: [dwj@bowwlaw.com](mailto:dwj@bowwlaw.com)  
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_\_ day of January, 2015, to:

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

Copy of the foregoing hand-delivered  
this \_\_\_\_ day of January, 2015 to:

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

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