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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**DAVE ERLICHMAN,
Bar No. 013822,**

Respondent.

PDJ 2021- 9059

State Bar File No. **20-1804, 20-1821,
20-1985, & 20-2096**

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, and Respondent Dave Erlichman who is represented in this matter by counsel, Geoffrey M. T. Sturr and Joshua Bendor, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a)(3)(B), Ariz. R. Sup. Ct. No Probable Cause Order has been entered in this matter. 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 admission and proposed form of discipline is approved.

Because the State Bar is the complainant in these matters, notice is not required under Rule 53(b)(3), Ariz. R. Sup. Ct.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER 8.2(a) and Rule 41(c) and (g)¹. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **Reprimand with Probation** terms of which are set 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.² The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

¹ This agreement refers to the version of Rule 41 in effect at the time of the conduct at issue.

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

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on October 26, 1991.

COUNT ONE (File no. 20-1804/ State Bar)

2. Judge Michael Herrod presided over *State v. Murray*. On August 6, 2020, he issued a minute entry regarding various motions filed by Respondent. Judge Herrod denied Respondent's motions and observed:

Defendant's pleadings, and identical pleadings filed by the same counsel in other cases in the Maricopa County Superior Court, are the most derogatory, caustic and disrespectful pleadings this Judge has seen in over 9 years on the bench. This set of pleadings comes following a series of filings by defense counsel in multiple cases that, in turn, have become more demeaning and more derogatory. Defense counsel has crossed a line from alleging improper jury selection procedures in Maricopa County to alleging that the Presiding Judge of Maricopa County, the Jury Commissioner of Maricopa County, the Superior Court Judges of Maricopa County, the Maricopa County Attorney's Office and the Arizona Supreme Court are all motivated by racial prejudice, white supremacy and animus towards African Americans and Hispanics.

Defense counsel declares that the criminal justice system is lawless and racist, he demands discovery, including depositions of the Presiding Judge of Maricopa County and the Jury Commissioner, that have been denied previously by multiple judges on this Court. Further, his claims concerning the jury process in Maricopa County have been dismissed in a consolidated

proceeding by a Superior Court Judge, who happens to be the presiding criminal judge of Maricopa County.

Because of the tone of the pleadings, and the unfounded allegations concerning multiple members of the judiciary, including the Arizona Supreme Court, this minute entry is being forwarded to the State Bar of Arizona for disciplinary purposes.

3. Respondent's Motion to Dismiss Indictment/Motion for Bond

Eligibility/Modify Conditions of Release began with the following quote:

"But always—do not forget this Winston—always there will be the intoxication of power, constantly increasing and constantly growing subtler. Always at every moment, there will be the thrill of victory, the sensation of trampling an enemy who is helpless. If you want a picture of the future imagine a boot stomping on a human face—forever."

George Orwell 1984

4. Respondent asserted that his African American client was a victim of pervasive and systemic racism, and cited a recently released ACLU report.

Respondent wrote further:

Given the court's own complicity in enforcing the racist policies of the County Attorney's Office for decades, Defendant hereby further demands that the Court (prior to ruling on his motion) order all necessary and material discovery as previously requested by Defendant, to prove the quite material and specific acts and policy decisions which have resulted in the establishment of a lawless and racist criminal justice system, which routinely still produces all white or nearly all white petit juries and grand juries. The court's refusal to acknowledge any of its policy decision mistakes, with respect to its "white privilege" jury selection system, has become a deadly virus of white-superiority growing within the womb of the court, needing to now be flushed out clean by Black and Hispanic defendants with laser beams of light and truth.

5. Respondent referred multiple times to “Presiding Judges,” writing, e.g.:

3. Operating in secret, the Presiding Judges (whom have been appointed by law and order extremists such as the present Governor), have dominated the Supreme Court for decades, and have executed a deliberate strategy of secretly eliminating the 6th Amendment fair cross section requirement from the law, while simultaneously excluding poor people and Non-English speakers and Hispanics from the jury selection system to perpetuate “white privilege” and all white juries throughout the state.

6. Respondent also repeatedly referred generally to “The Superior Court,” and made broad and general statements about Maricopa County Superior Court, its jury selection system, the Supreme Court “overlords,” and court administration.

7. With respect to relief for Respondent’s client, Respondent wrote:

Defendant moves the court pursuant to Rule 7.4 (c) Ariz. R. Crim. P., for an accelerated hearing to modify the conditions of his release. At the conclusion of that hearing, Defendant asserts that the court should immediately act to restore its legitimacy and reputation as an impartial tribunal for black and Hispanic defendants, by modifying Defendant's conditions of release and release him to the supervision of pretrial services with electronic monitoring.

Alternatively, and/or at a minimum, the court's should drastically reduce Defendant's cash bond giving him a chance to prove his innocence by assisting his attorney in preparing for trial. Defendant, being innocent of the charges, poses little practical risk of flight, having been subjected to the County Sheriff's extreme indifference and knowing disregard of the risks of his being exposed in the 4th Avenue Jail to infection, serious illness and death from Covid 19. The requested remedy of pretrial release for Defendant, constitutes an emergency not only for the safety and health concerns posed to him by Covid 19, but as a reasonable and appropriate sanction [emphasis by boldface added] against the policies of the County Attorney's Office. By sanctioning the County Attorney's Office, the court will be sending a loud and

unmistakable message to the public, and to its fellow county criminal justice stakeholders, that the systemically racist and oppressive policies and practices of the County Attorney's Office will no longer be tolerated by the Superior Court, which itself has been an active, and quite willing enforcer of said policies for decades.

8. On August 6, 2020, Judge Herrod denied Respondent's motion and referred this matter to the Bar. On August 17, 2020, Respondent filed a Motion for Change of Judge for Cause, citing Judge Herrod's August 6, 2020 ruling as evidence of his prejudice against him. This Motion was denied.

9. Judge Jay Adleman presided over *State v. Moore*. On August 12, 2020, he issued a ruling on similar motions filed by Respondent. After analyzing and denying Respondent's motions, Judge Adleman wrote:

REFERRAL TO STATE BAR

Attorneys have a fundamental duty to advocate for their clients. In doing so, they may criticize prior rulings and urge changes in the law. *See, e.g.*, ER 3.1, Arizona Rules of Professional Conduct. But attorneys have another fundamental duty to "maintain the respect due to courts of justice and judicial officers." Rule 41(c), Rules of the Arizona Supreme Court.

Counsel's rhetoric goes far beyond anything properly associated with reasoned (or even passionate) legal argument. His motion and reply briefs include – but are not limited to – the following examples:

- A claim that the Presiding Criminal Judge's ruling in the *Martinez* litigation is somehow akin to the language used by radio propagandists in Nazi Germany (*see* Defendant's motion at page 10);
- Assertions that the Arizona Supreme Court is controlled by a secret "cabal" (*see* Defendant's motion at pp. 4, 5, 9);
- Contentions that the courts are "complicit" in enforcing racist policies (*see* Defendant's motion at page 2);

- Claims that the Arizona Supreme Court and the presiding judges are “deliberately” conspiring to violate fundamental constitutional rights (*see* Defendant’s motion at pp. 3-5); and
- Repeated assertions that the Maricopa County Superior Court and its judges are “illegitimate” (*see* Defendant’s motion at pp. 2, 12).

10. Judge Adleman also noted that Respondent’s motion and reply were in violation of the page limitations set forth in Rule 1.9(c), Ariz. R. Crim. P.

11. Respondent’s motion was virtually identical to the motion filed in the case over which Judge Herrod presided. He began with the Orwell quote, stated that his African American client was a victim of pervasive and systemic racism, cited a recently released ACLU report, and made the same accusations and arguments set forth above.

12. On August 17, 2020, after Judge Adleman denied Respondent’s motion, Respondent filed a Motion for Change of Judge, claiming that Judge Adelman’s ruling showed that he was prejudiced against Respondent. This motion was denied.

13. Judge Howard Sukenic presided over *State v. Hussein*. On August 31, 2020, Judge Sukenic denied similar motions filed by Respondent, and commented:

Comments by Defense Counsel

Although defense counsel is passionate in the defense of his client, that passion has spilled over to impropriety. The Court finds the following comments made, among others, to be unsupportable and therefore entirely improper:

1. The Court is illegitimate (Defense Motion page 2 and Defense Reply page 4)
2. The Court is complicit in enforcing the racial policies of the County Attorney's Office for decades (Defense Motion page 2)
3. The Court's "white privilege" jury selection system (Defense Motion page 2)
4. The Judicial Branch of Arizona is a law and order cabal (Defense Motion Page 4)
5. The Superior Court lacks legitimacy (Defense Motion page 5)

The Court has endorsed the State Bar of Arizona to review these comments and to determine whether any intervention is appropriate.

14. Respondent's motion in this case was virtually identical to those discussed above, commencing with the Orwell quote, citing the ACLU report, and making the same accusations and arguments. This motion differed only in that his client was described as Arab-American.

15. Judge Monica Garfinkle presided over *State v. Lowe*. On September 16, 2020, Judge Garfinkle ruled on similar motions filed by Respondent. After analyzing and denying Respondent's motions, Judge Garfinkle observed:

REFERRAL TO STATE BAR OF ARIZONA

The court is deeply troubled by counsel's accusations and the way he is trying to make his point. While it is appropriate for a party to challenge the process used for selecting jurors or other official actions, or to disagree with the court's decisions, it is not appropriate to make groundless challenges to the court's legitimacy, (Defendant's Motion at page 4), accuse it of complicity in enforcing racist policies, (Defendant's Motion at page 2), refer to an administrative order of the Arizona Supreme Court as a "despicable act of judicial tyranny" (Defendant's Reply at page 4), or compare statements made by the Presiding Judge to Nazi propaganda. (Defendant's Motion at page 10.)

As noted above, this is not the only pleading counsel has filed and this is not the only case in which he has made such allegations, but the language is escalating. After reviewing the Arizona Rules of Professional Conduct, considering the inflammatory tone and unfounded allegations against several members of the judiciary, including the Arizona Supreme Court, this minute entry is being forwarded to the State Bar of Arizona to take any action it deems appropriate.

16. Judge Garfinkle made additional observations about Respondent's motion, including:

The legal and factual bases for defendant's current motion are not clear. Defendant now frames his argument as a violation of his constitutional rights and a denial of due process because he wasn't permitted to depose the Presiding Judge and certain jury officials. Curiously, he filed this motion to dismiss before the court had ruled on that request. He has not sought review of that decision or of Judge Starr's ruling in CR2017-150971-001. Instead, he now demands the court order all discovery as previously requested to prove the "acts and policy decisions which have resulted in the establishment of a lawless and racist criminal justice system." See Defendant's Motion at page 2, line 18-19.

17. Respondent's motion in this case was virtually identical to those discussed above, including the Orwell quote, the ACLU report, and the accusations and arguments. This motion was filed on behalf of an African American client.

18. Bar Counsel reviewed another matter in which Respondent is defense counsel. On February 23, 2021 Judge Arthur Anderson issued an order in *State v. Clark*, ruling on a motion filed Respondent. The substance of this motion was different from those discussed above, and was particular to Respondent's client in the case. Respondent argued that his client had experienced an adverse cardiac event when tased by police, and therefore any physical actions he took after being tased were involuntary.

19. Judge Anderson analyzed and denied Respondent's motion, and then set an Order to Show Cause hearing, noting:

Order to Show Cause

Counsel writes:

By ordering Defendant's release, the Court will demonstrate to Defendant, and to his family, and community that the Superior Court is not run by the prosecutor and the police, but it is a court of justice.

(Reply at 5)

Counsel's statement implying that, unless the Court rules in Defendant's favor, the Superior Court is demonstrating that it "is run by the prosecutor and the police"; strikes at the Court's independence, dignity, and authority.

Such a comment is grounds for contempt under Rule 35.1, Arizona Rules of Criminal Procedure.

20. Respondent, through counsel, filed a response to the OSC and, with counsel, appeared at the OSC hearing on April 13, 2021. At the hearing, counsel

addressed the Court and Mr. Erlichman apologized. Judge Anderson accepted the apology and dismissed the OSC.

21. Respondent acknowledges having filed the motions addressed by the judges as part of his zealous advocacy for criminal defense clients, and asserts that his statements were not directed at individual judges, but were accurate observations about an unjust system and therefore protected.

22. Respondent says that in 2018 while he was employed with the Public Defender's Office, he prepared and filed a motion for discovery regarding "representativeness and inclusive of the master jury list." He then obtained funding to hire an expert to study the county's master jury list. The expert concluded that Hispanics and blacks were significantly underrepresented in Maricopa County jury pools.

23. Respondent claims that he was terminated from the Public Defender's Office for "pursuing the jury challenge in an adversarial manner against the County." He then opened his own office, and was determined to continue to raise the issue. He filed a motion to partially consolidate some clients' proceedings for purposes of raising the jury challenge, but his efforts were denied.

24. Respondent asserts that the death of George Floyd in May of 2020 heightened his concerns about racial injustice. Then, in July of 2020, the ACLU issued a report regarding racial disparities in the Maricopa County criminal justice system. Shortly thereafter, Respondent began filing the motions that resulted in the referrals here.

25. Respondent's behavior violated Rule 42, Ariz. R. Sup. Ct., ER 8.2(a), Rule 41(c), and Rule 41(g).

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. Respondent conditionally admits that he violated Rule 42, Ariz. R. Sup. Ct., specifically ER 8.2(a), Rule 41(c), and Rule 41(g).

CONDITIONAL DISMISSALS

The State Bar will conditionally dismiss allegations regarding violations of ER 3.1 and 8.4(d).

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

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

1. CLE: In addition to annual MCLE requirements, Respondent shall complete six hours of Continuing Legal Education ("CLE") program(s) regarding professionalism within 90 days from the date of service of this Order. (Appropriate courses would include: "Zealous Advocate or Raging Bull," and the State Bar's Professionalism Course.) Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes and certificate of completion. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.
2. Respondent shall commit no further violations of the Rules of Professional Conduct.

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 7.0 violations of other duties owed as a professional* is the appropriate *Standard* given the facts and circumstances of this matter: *Standard 7.2* provides that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Respondent filed virtually identical motions in multiple cases that contained disrespectful statements about the judiciary and the judicial system, and alleged judicial bias.

The duty violated

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

The lawyer's mental state

Respondent knowingly drafted the motions that violated the duties at issue.

The extent of the actual or potential injury

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

Aggravating and mitigating circumstances

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

In aggravation:

- a) 9.22(a) prior disciplinary offenses. Respondent was disbarred retroactively to May 8, 1999 for violations of Rule 41(c), 54(c), and Rule 42, ERs 1.2, 1.3, 1.4, 1.5, 1.7, 1.8, 1.15, 3.1, 3.5, 8.1(a), and 8.4(b), (c), and (d). He was reinstated effective March 15, 2016. (PDJ2017-9012).
- b) 9.22(d) multiple offenses. Respondent violated multiple ethical rules and Supreme Court Rules.

c) 9.22(i) substantial experience in the practice of law. Respondent was admitted to practice in 1991.

In mitigation:

a) 9.32(b) absence of a dishonest or selfish motive. Respondent filed the motions to help his clients, not to benefit himself.

b) 9.32(c) personal or emotional problems. At the time he filed the motions, Respondent was deeply affected by the death of George Floyd and the surrounding events, as well as the death of his father.

c) 9.32(d) timely good faith effort to rectify consequences of misconduct. Respondent sent written apologies to the four judicial officers who referred the matter to the Bar.

d) 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Respondent fully cooperated with the Bar in this matter, including by submitting a detailed response to the charge and agreeing to enter into this agreement.

e) 9.32(l) remorse. Respondent feels remorse about the language he used in the motions.

f) 9.32(m) remoteness of prior offenses. Respondent's previous discipline was for conduct he committed in the 1990s.

Discussion

The parties conditionally agree that upon application of the aggravating and mitigating factors a mitigated sanction of Reprimand with Probation is appropriate.

This agreement also reflects the following: Respondent was advocating passionately on behalf of his clients on an issue of social justice that has both local and national significance. Respondent did not intend to disrespect any individual judges or to criticize them in their judicial capacity. Rather, he criticized the administrative operation of the jury system. Respondent also maintains, based on case law from the Ninth Circuit and elsewhere, that his filings and statements made therein are protected opinion speech, although he still feels sincere remorse for his choice of language.

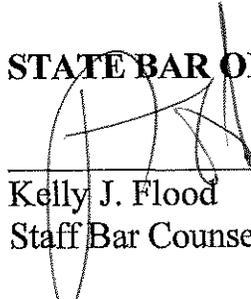
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

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 7th day of July 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.

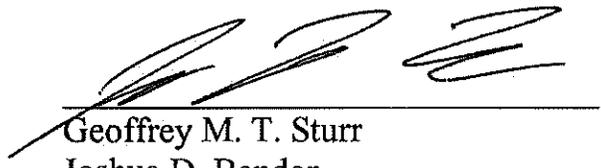
DATED this 14th day of July, 2021.



Dave Erlichman
Respondent

DATED this 14th day of July, 2021.

Osborn Maledon PA



Geoffrey M. T. Sturr
Joshua D. Bendor
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 14th day of July, 2021.

Copy of the foregoing emailed
this 14th day of July, 2021, to:

The Honorable Margaret H. Downie
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing emailed
this 14th day of July, 2021, to:

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Respondent's Counsel

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Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

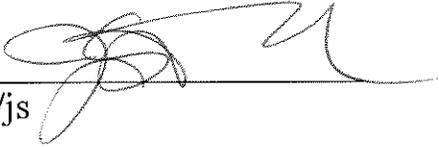
by: 
KJF/js

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona
Dave Erlichman, Bar No. 013822, Respondent

File No(s). 20-1804, 20-1821, 20-1985, 20-2096

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

Total for additional costs \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED \$ 1,200.00

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**DAVE ERLICHMAN,
Bar No. 013822,**

PDJ

**FINAL JUDGMENT AND
ORDER**

State Bar No. 20-1804

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, **Dave Erlichman**, 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) CLE: In addition to annual MCLE requirements, Respondent shall complete six additional hours of Continuing Legal Education ("CLE")

program(s) regarding professionalism within 90 days from the date of service of this Order. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes and certificate of completion. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

Respondent shall commit no further violations of the Rules of Professional Conduct.

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 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 July, 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 July, 2021.

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

Geoffrey M. T. Sturr
Joshua D. Bendor
Osborn Maledon PA
2929 N Central Ave Ste 2100
Phoenix, AZ 85012-2765
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Respondent's Counsel

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Copy of the foregoing hand-delivered
this ____ day of July, 2021 to:

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

by: _____

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

DAVE ERLICHMAN,
Bar No. 013822

Respondent.

PDJ 2021-9059

**DECISION ACCEPTING
AGREEMENT FOR DISCIPLINE
BY CONSENT**

[State Bar Nos. 20-1804, 20-1821, 20-
1985, 20-2096]

FILED AUGUST 20, 2021

Pursuant to Rule 57(a), Ariz. R. Sup. Ct., a direct Agreement for Discipline by Consent was filed on July 14, 2021. No probable cause order has issued, and no formal complaint has been filed. The State Bar of Arizona is represented by Kelly J. Flood. Respondent Dave Erlichman is represented by Geoffrey M.T. Sturr and Joshua D. Bendor.

Contingent on approval of the proposed form of discipline, Mr. Erlichman has voluntarily waived the right to an adjudicatory hearing, as well as all motions, defenses, objections, or requests that could be asserted. The State Bar is the complainant in this matter; therefore, notice pursuant to Rule 53(b)(3) is not necessary.

The Agreement details a factual basis to support the conditional admissions and is incorporated by reference. *See* Rule 57(a)(4). Mr. Erlichman admits that he

violated Rule 41(c) (respect due courts of justice and judicial officers) and (g) (unprofessional conduct) and Rule 42, ER 8.2(a) (false statement or one made with reckless disregard of truth or falsity concerning qualifications or integrity of a judge, adjudicatory officer or public legal officer). As a sanction, the parties agree to a reprimand and one year of probation (6 hours of continuing legal education in the area of professionalism), plus the payment of costs in the sum of \$1,200.00 within 30 days of the date of service of the final judgment and order.

Mr. Erlichman conditionally admits that in several criminal cases, he filed motions that included unprofessional, disrespectful, and unnecessary language attacking the judiciary and the judicial system, thereby violating his duty to the profession, the legal system and the public. His conduct unnecessarily consumed judicial resources and caused harm or potential harm to the administration of justice and the public perception of the judiciary.¹

The presumptive sanction is a suspension under § 7.2 of the *ABA Standards for Imposing Lawyer Sanctions* (“ABA Standards”). The parties stipulate to the existence of aggravating factors 9.22(a) (prior disciplinary offense), 9.22(d) (multiple offenses)

¹ Paragraph 21 of the Agreement references Mr. Erlichman’s “zealous advocacy for criminal defense clients.” However, the Supreme Court of Arizona intentionally rejected language included in the ABA Model Rules of Professional Conduct stating that lawyers have an obligation to “zealously” protect and pursue their clients’ legitimate interests.

and 9.22(i) (substantial experience in the practice of law). The parties further stipulate to the existence of mitigating factors 9.32(b) (absence of selfish or dishonest motive), 9.32(c) (personal or emotional problems), 9.32(d) (timely good faith effort to rectify consequences of misconduct), 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude towards proceedings), 9.32(l) (remorse), and 9.32(m) (remoteness of prior offenses).

But for Mr. Erlichman's remorse and written apologies to the judicial officers at issue, the Presiding Disciplinary Judge would deem suspension the appropriate sanction. On balance, however, the parties' agreed-upon sanction appears reasonable.

IT IS ORDERED accepting the Agreement for Discipline by Consent. A final judgment and order is signed this date.

DATED this 20th day of August 2021.

Margaret H. Downie

Margaret H. Downie
Presiding Disciplinary Judge

COPY of the foregoing e-mailed
on this 20th day of August 2021 to:

Kelly J. Flood
Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
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Geoffrey M.T. Sturr
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Respondent's Counsel

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

DAVE ERLICHMAN,
Bar No. 013822

Respondent.

PDJ 2021-9059

**FINAL JUDGMENT
AND ORDER**

[State Bar Nos. 20-1804, 20-1821, 20-
1821, 20-1985, 20-2096]

FILED AUGUST 20, 2021

The Presiding Disciplinary Judge accepted the parties' Agreement for Discipline by Consent submitted pursuant to Rule 57(a), Ariz. R. Sup. Ct.

IT IS ORDERED that Respondent, **DAVE ERLICHMAN, Bar No. 013822**, is reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct and related rules of the Arizona Supreme Court, as outlined in the consent documents.

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

a) Continuing Legal Education (CLE): Respondent shall complete six additional hours of continuing legal education program(s) regarding professionalism within 90 days from the date of service of this order. Respondent

shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes and certificate of completion. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent shall be responsible for the cost of CLE.

b) Respondent shall commit no further ethical violations.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,200.00, within 30 days from the date of service of this order. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Clerk in these proceedings.

DATED this 20th day of August, 2021.

Margaret H. Downie

Margaret H. Downie
Presiding Disciplinary Judge

Copies of the foregoing emailed
this 20th day of August, 2021 to:

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