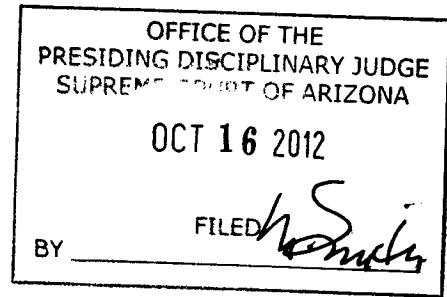


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Counsel for Respondent



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

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

**James N. Hankey
Bar No. 016526**

Respondent.

PDJ-2012-9064

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

[State Bar Nos. 11-2357 and
12-0576]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent James N Hankey, who is represented in this matter by counsel, Steve Little, 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) 5.5, and 8.4(b). Upon acceptance of this agreement, Respondent

agrees to accept imposition of the following discipline: Suspension for six months; Respondent to submit a fitness to practice evaluation by a provider of Respondent's choice with his motion for reinstatement; and two years probation upon reinstatement with MAP participation. In order for Respondent to finish pending matters, proof of which Respondent has provided to the State Bar, the State Bar and Respondent stipulate and agree to a prospective start date for respondent's suspension of sixty (60) days from the entry of final judgment and order. 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

1. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona, having been first admitted to practice in Arizona on October 21, 1995.
2. On June 20, 2011, the State Bar of Arizona (SBA) sent Respondent a Notice of Summary Suspension for failure to pay bar dues. The notice was sent by certified mail to P.O. Box 40511, Phoenix, Arizona 85067-0511, Respondent's address of record.
3. Respondent's address of record was out of date and did not reflect Respondent's actual, current address. Accordingly, the notice was returned unclaimed and unable to forward.

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.

4. On June 20, 2011, Respondent appeared in the Maricopa County Superior Court on behalf of the defendant in *State v. Sandoval* (CR 2007-174241; CR 2011-005526; CR 2011-107695; and CR 2011-005825) (the Sandoval cases).

5. On July 18, 2011, Respondent paid his bar dues and associated late fee and was reinstated to active status.

6. On July 22, 2011, Respondent appeared and the Court, having learned of Respondent's administrative suspension asked Respondent why he had appeared at the June 20, 2011, hearing. Respondent stated that he had only become aware of the suspension on July 9, 2011, when another attorney told him about it. Respondent told the Court that he contacted the SBA the next day and that the suspension was caused by Respondent's inability to pay his bar dues. Respondent told the Court that the suspension had been lifted on July 18, 2011. He also admitted to the Court that his SBA contact information had been incorrect, which was why he did not receive the notice of the suspension.

7. The Court ordered Respondent to produce a written explanation; he did so and the explanation was provided to the SBA, along with the bar charge. In the written explanation, Respondent stated that he was unable to speak with Carolyn Delooper at the SBA until July 12th or 13th. Respondent updated his contact information at that time.

8. By letter dated July 22, 2011, the Honorable Susanna Pineda advised the SBA that that Respondent had appeared in Court on behalf of the defendant in the *Sandoval* cases on June 20, 2011, during the period of Respondent's suspension.

9. By screening letter dated August 2, 2011, Bar Counsel asked Respondent to provide a written response to the allegations set forth in Judge Pineda's July 22, 2011 letter.

10. Respondent explained that he had been using the mailing address of fellow attorney Cliff Girard and that he would pick up his mail there once every week or so. Respondent said that he believed that he had updated his address with the SBA, and that he was trying to find records reflecting same. Based upon that discussion, Bar Counsel recommended that Respondent speak with the SBA's Member Assistance Program (MAP).

11. On September 9, 2011, Bar Counsel received a telephone call from Respondent who asked for additional time within which to respond to the screening letter. Respondent stated that he had been in a bad bicycle accident and that he was in the process of setting up an appointment with MAP.

12. On September 16, 2011, Bar Counsel spoke with Respondent who advised that he was working on a response to the screening letter and that he had spent the past week at the Veteran's Administration (VA) Hospital trying to get services.

13. On September 20, 2011, Bar Counsel met with Respondent and MAP Consultant Hal Nevitt at which time Respondent verbally admitted that he had failed to update his mailing address with the SBA and that, therefore, it was his fault that he had not received the Notice of Summary Suspension. Respondent advised Bar Counsel that he was voluntarily working with MAP and that he was going to be receiving assistance from the VA.

14. By letter dated October 7, 2011, the SBA received another charge alleging that Respondent had appeared at the June 20, 2011 hearing in the *Sandoval* cases while he had been administratively suspended.

15. On November 14, 2011, Bar Counsel sent Respondent a screening letter advising him of the additional charge that he had appeared at a comprehensive pretrial conference on July 6, 2011, in *State v. Moraga* (CR 2011-115976) during the time of his administrative suspension, and requesting that Respondent provide a written response, if any, within ten (10) days.

16. On July 29, 2011, and in response to Bar Counsel's inquiry, Ms. Delooper advised that the SBA had mailed Respondent's 2011 dues statement in November 2010, and sent two reminders in March and April 2011. The statement and reminders were returned to the SBA "return to sender; unable to forward." They were all mailed to P.O. Box 40511, Phoenix, 85067-0511. Ms. Delooper also tried to reach Respondent by email on May 27, 2011, at bell&florence@yahoo.com, Respondent's email of record, but the email was returned as undeliverable.

17. On December 9, 2011, Respondent provided Bar Counsel with a certificate from the Department of Veterans Affairs, Phoenix VA Healthcare System stating that Respondent had completed Track 1, 16 hour, Education Awareness Substance Abuse Program on November 12, 2011.

18. At the same time, Respondent also provided Bar Counsel with a copy of an email dated July 9, 2011, from Attorney Cliff Girard to Respondent advising him that Attorney Girard had received information on that date that Respondent had been suspended for non-payment of bar dues.

19. On January 18, 2012, Bar Counsel spoke with Respondent who admitted that prior to going through the VA substance-abuse program, he had been using methamphetamines (meth) for two (2) years.

20. According to Respondent, the last time that he used meth was in mid-May 2011 and although he was not attending any twelve-step programs, he was participating in both group and individual counseling with Dr. David Rowlette with the VA.

21. Finally, Respondent reported that in addition to the two (2) Superior court cases that he appeared in during his administrative suspension, Respondent believes that he attended two (2) Pre-Trial Disposition Conference days in the Phoenix City Court and that he likely appeared in ten (10) to fifteen (15) misdemeanor cases on each day.

22. By memorandum dated November 8, 2011, SBA Investigator Kevin McBay reported that Respondent did not appear or file papers in any other cases in the Maricopa County Superior Court during his suspension other than those already identified.

23. Respondent has provided drug test results to the State Bar evidencing that Respondent was tested for drug usage on September 15, 2011, September 16, 2011, September 22, 2011, October 12, 2011, December 13, 2011, and August 22, 2012. All tests showed Respondent to be clean of amphetamines.

24. Respondent continues to see Dr. Rowlette for individual counseling.

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 5.5, 8.4(b).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss the allegation that Respondent violated E.R. 8.1(a). Upon further investigation, it appears that the evidence would not support a finding by clear and convincing evidence that Respondent knowingly made a false statement of material fact in connection with a disciplinary matter.

The State Bar also conditionally agrees to dismiss State Bar file 12-0576. File 12-0576 is currently in screening, arises out of some of the same circumstances presented here regarding Respondent's failure to keep his address of record up to date, and has not yet had any finding of probable cause.

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Suspension for six months; Respondent to submit a fitness to practice evaluation by a provider of Respondent's choice with the motion for reinstatement; and probation for two years upon reinstatement with MAP participation.

In order for Respondent to finish pending matters, a list of which Respondent has provided to the State Bar, the State Bar and Respondent stipulate and agree to a prospective start date for respondent's suspension of sixty (60) days from the entry of final judgment and order.

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at 602-340-7332, within thirty (30) days of the date of reinstatement. Respondent shall submit to a MAP assessment. The director of MAP shall develop "Terms and Conditions of Probation" if he determines that the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will begin to run at the time of reinstatement and will conclude two years from that date. Respondent shall be responsible for any costs associated with MAP.

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.

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* 5.12 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 5.12 provides that absent aggravating or mitigating circumstances, suspension is generally appropriate when a lawyer knowingly engages in criminal conduct not covered under 5.11 (the possession or use of controlled substances) and that seriously adversely reflects on the lawyer's fitness to practice. Respondent's use of methamphetamines constitutes criminal conduct.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent intentionally used methamphetamines, but negligently engaged in the unauthorized

practice of law during the period of his summary suspension for nonpayment of dues 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 potential harm to client, profession, 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:

- Illegal conduct, including that involving the use of controlled substances

In mitigation:

- Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- Absence of prior disciplinary record;
- Chemical dependency; and
- Remorse

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: Respondent's conduct does not appear to have harmed any clients and by the time that Respondent disclosed his use of methamphetamines, it appears that he was no longer using methamphetamines and he was actively seeking services to ensure his continued abstinence from same.

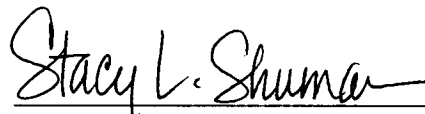
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

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 with a prospective start date of 60 days from entry of final judgment and order; two years probation with MAP participation upon reinstatement and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 15th day of October, 2012.

STATE BAR OF ARIZONA



Stacy L. Shuman
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 _____, 2012.

James N. Hankey
Respondent

DATED this _____ day of _____, 2012.

Counsel for Respondent

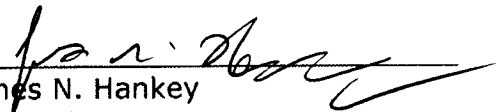
Approved as to form and content

Maret Vessella


Maret Vessella
Chief 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 16 day of October, 2012.


James N. Hankey
Respondent

DATED this 16 day of October, 2012.


Counsel for Respondent

Approved as to form and content


Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 16th day of October, 2012.

Copies of the foregoing mailed/emailed
this 16th day of October, 2012, to:

Steve Little, Bar No. 023336
Steve Little and Associates
722 E. Obsorn Road, Ste. 300
Phoenix, Arizona 85014
Email: steve@stevelittlelaw.com
Counsel for Respondent

Copy of the foregoing emailed
this 16th day of October, 2012, 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 16th day of October, 2012, to:

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

By: *Marianne C. Heller*
SLS:dch

EXHIBIT "A"

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
James N Hankey, Bar No. 016526, Respondent

File No(s). 11-2357, 12-0576

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***

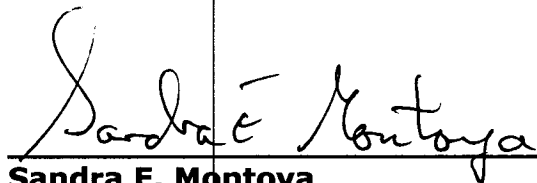
\$1,200.00

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

TOTAL COSTS AND EXPENSES INCURRED **\$1,200.00**



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

10-16-12
Date

EXHIBIT "B"

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

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

**James N. Hankey
Bar No. 016526**

Respondent.

PDJ-2012-9064

FINAL JUDGMENT AND ORDER
[State Bar No. 11-2357, 12-0576]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on October 16, 2012, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **James N. Hankey**, 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 sixty (60) days from this Order or _____.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation for a period of two years.

IT IS FURTHER ORDERED, Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at 602-340-7332, within thirty (30) days of reinstatement. Respondent shall submit to a MAP assessment. The director of MAP shall develop "Terms and Conditions of Probation" if he determines that the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will begin to run at the time of

reinstatement and will conclude two years from that date. Respondent shall be responsible for any costs associated with MAP.

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 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 \$ _____.

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

_____.

DATED this _____ day of _____, 2012.

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 _____ day of _____, 2012.

Copies of the foregoing mailed/emailed
this _____ day of _____, 2012, to:

Steve Little, Bar No. 023336
Steve Little and Associates
722 E. Obsorn Road, Ste. 300
Phoenix, Arizona 85014
Email: steve@stevellittlelaw.com

Copy of the foregoing hand-delivered/emailed
this _____ day of _____, 2012, to:

Stacy L. Shuman
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

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

By: _____