

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**JAY K. POWELL,
Bar No. 021576**

Respondent.

PDJ 2015-9026

FINAL JUDGMENT AND ORDER

[State Bar No. 13-3402 and 14-0128]

FILED APRIL 13, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on March 31, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Jay K. Powell**, is hereby suspended for one hundred twenty (120) days as a result of his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED upon reinstatement, Respondent shall be placed on probation for a period of eighteen (18) months.

IT IS FURTHER ORDERED as a term of 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 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 is effective the date of the reinstatement order and will conclude eighteen (18) months from that date. Respondent shall be responsible for any costs associated with LOMAP.

As part of Respondent’s participation in LOMAP, Respondent must also:

- a. Obtain a Practice Monitor subject to Bar Counsel's approval; and
- b. Complete no less than nine (9) hours of Continuing Legal Education in addition to his annual requirement [i.e.- Foundations of Defending Consumer Collection Cases and Related Issues, Foundations of Employment Law, Avoiding Ethical Pitfalls, Practicing with Porcupines, Candor, Courtesy & Confidences: Common Courtroom Conundrums] or similar approved CLE classes addressing diligence, communication, facilitating the administration of justice and/or issues related to efficient/ethical law office management.

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.

NON-COMPLIANCE LANGUAGE

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

shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED 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 \$1,215.50, within 30 days from the date of service 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 13th day of April, 2015.

William J. O'Neil

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

Copies of the foregoing mailed/emailed
this 13th day of April, 2015.

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by: JAlbright

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**JAY K. POWELL,
Bar No. 021576**

Respondent.

PDJ-2015-9026

**DECISION ACCEPTING
CONSENT FOR DISCIPLINE**

[State Bar File No. 13-3402, 14-0128]

FILED APRIL 13, 2015

On October 20, 2014, A Probable Cause Order was issued but no formal complaint has been filed. An Agreement for Discipline by Consent (Agreement) was filed on March 31, 2015, pursuant to Supreme Court Rule 57(a).

Supreme Court Rule 57(a) authorizes the filing of consent agreements with the presiding disciplinary judge ("PDJ") after the authorization by the Attorney Discipline Probable Cause Committee to file a complaint. Rule 57(a)(3)(B), specifically provides:

If the agreement is reached before the authorization to file a formal complaint and the agreed upon sanction includes a reprimand or suspension, or if the agreement is reached after the authorization to file a formal complaint, the agreement shall be filed with the disciplinary clerk to be presented to the presiding disciplinary judge for review. The presiding disciplinary judge, in his or her discretion or upon request, may hold a hearing to establish a factual basis for the agreement and may accept, reject, or recommend the agreement be modified.

Supreme Court Rule 57 also requires that conditional admissions be tendered solely "...in exchange for the stated form of discipline..." The right to an adjudicatory

hearing is waived only if the "...conditional admissions and proposed form of discipline is approved..." If the agreement is not accepted, the conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Rule 57(a)(4)(C), Ariz. R. Sup. Ct.

In this matter, notice of this agreement was provided to the complainant by email on February 23, 2015, pursuant to Supreme Court Rule 53(b)(3). Complainant was also notified of the opportunity to file any written objection to the Agreement with Independent Bar Counsel within five days of bar counsel's notice. No objection has been filed.

File No. 13-3402

In Count One, Mr. Powell was retained to handle a chapter 13 bankruptcy matter. He thereafter, failed to expedite the bankruptcy matter, failed to represent the client diligently by failing to file an objection to the creditor's motion to lift the bankruptcy stay. Mr. Powell failed to adequately document the agreements made by the creditor or to inform the Court of agreements made by the creditor and failed to adequately communicate with his client. Mr. Powell further failed to file, pursuant to Rule 60, Fed. R. Civ. P., a motion for relief from judgment or order on behalf of his client.

File No. 14-0128

In Count Two, Mr. Powell was retained in civil matter *Dosty v. Farmers Insurance, et. al.*, C20122216. He thereafter, failed to expedite the litigation and to diligently represent his client by failing to file an amended complaint when ordered by the court to do so. Mr. Powell further failed to appear at a court hearing, failed to

comply with discovery requests, denied a party access to evidence, and violated court orders.

Mr. Powell conditionally admits to violating Supreme Court Rule 42, specifically, ER 1.3 (diligence), ER 1.4 (communication), 3.2 (expediting litigation) and ER 8.4(d) (engage in conduct prejudicial to the administration of justice).

Pursuant to Rule 57(a)(4), the PDJ “shall accept, reject or recommend modification of the proposed agreement. The decision shall incorporate all or portions of the agreement, as appropriate.” The rule requires the PDJ to independently weigh the conditional admissions and determine whether the sanction under those conditional admissions is appropriate.

In considering an appropriate sanction, the PDJ is guided by the American Bar Association *Standards for Imposing Lawyer Sanctions (Standards)*. The parties stipulated that the presumptive sanction in this matter is suspension. The PDJ determined the agreed upon sanction (120 day suspension, 18 months of probation upon reinstatement and the imposition of costs and expenses) will fulfill the purposes of discipline and protect the public.

The PDJ notes that the Agreement erroneously states that Mr. Powell’s mental state was negligent instead of knowing, as supported by the conditional admissions and the *Standards* applied.

Aggravating and Mitigating Factors: 9.22(a) prior disciplinary offenses,¹ 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, and 9.22(i)(substantial experience).

¹ A 60 day suspension and two years of probation was imposed in PDJ 2012-9053 for violating ERs 1.2, 1.3, 1.4, 1.16, 3.2, 3.4, 8.1(b), 8.4(d) and Rule 54(d). The misconduct in the instant matter occurred prior to Mr. Powell’s 2012 suspension.

Mitigating factors: 9.32(b) absence of dishonest or selfish motive, 9.32(e) full and free disclosure to disciplinary Board or cooperative attitude, 9.32(k) imposition of other penalties or sanctions, and 9.32(l) remorse. Mr. Powell satisfied the judgment imposed in File No. 14-0128 and demonstrated remorse for his misconduct.

The parties have also agreed that mitigation factor 9.32(g) character or reputation is present; however the record is devoid of any evidence of this factor. The PDJ finds the absence of this factor does not affect the overall outcome of the Agreement.

The PDJ having found the parties have appropriately applied the *Standards* in arriving at the agreed upon sanction, accordingly:

IT IS ORDERED incorporating by this reference the Agreement and any supporting documents by this reference. Respondent agrees to pay costs associated with the disciplinary proceedings in the amount of \$1,215.50.

IT IS FURTHER ORDERED the Agreement is accepted. A proposed final judgment and order was submitted simultaneously with the Agreement. Costs as submitted are approved for \$1,215.50. The proposed final judgment and order having been reviewed are approved. Now therefore, the final judgment and order is signed this date.

DATED this 13th day of April 2015.

William J. O'Neil

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

Copies of the foregoing mailed/emailed
this 13th day of April 2015.

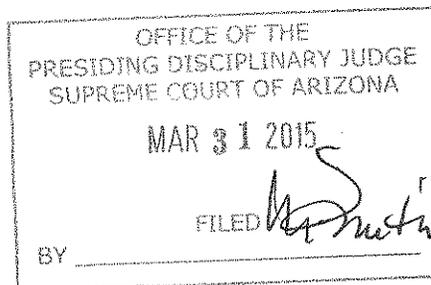
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**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**JAY K. POWELL,
Bar No. 021576**

Respondent.

PDJ 2015-9026

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

**State Bar File Nos. 13-3402, 14-
0128**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Jay K Powell, who is represented in this matter by counsel, Karen Clark, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.

A probable cause order was entered on October 20, 2014, but no formal complaint has been filed 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.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainants by e-mail on February 23, 2015. Complainants have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice.

Respondent conditionally admits that his conduct, as set forth below, violated:

SB Number 13-3402:

Rule 42, Ariz. R. Sup. Ct., ERs:

1. 1.3 – Respondent failed to act diligently in representing Complainants by, among other things, failing to file an objection to Wells Fargo's motion to lift the bankruptcy stay as well as failing to timely or adequately document the agreements by the bank or inform the Court of the agreements by the bank.
2. 1.4 – Respondent failed to reasonably inform Complainants of the events and circumstances occurring in the case or the possible repercussions of his failures including, but not limited to, his failure to timely file an objection to Wells Fargo's motion to lift the bankruptcy stay.
3. 3.2 - Respondent failed to expedite Complainant's bankruptcy case by, among other things, failing to file an objection to Wells Fargo's motion to lift the bankruptcy stay as well as failing to timely or adequately document the agreements by the bank or inform the Court of the agreements by the bank.
4. 8.4(d) - Respondent engaged in conduct which was prejudicial to the administration of justice by, among other things, failing to file an objection to Wells Fargo's motion to lift the bankruptcy stay as well as failing to timely or adequately document the agreements by the bank or inform the Court of the agreements by the bank and failing to file a motion to set aside which complied with the legal standards contained in a Rule 60, Fed. R. Civ. P.

SB Number 14-0128:

Rule 42, Ariz. R. Sup. Ct., ERs:

1. ER 1.3 – Respondent failed to act diligently throughout the representation and failed to file necessary pleadings in a timely fashion.
2. ER 3.2 – Respondent failed to expedite litigation throughout the representation.

3. ER 3.4 – Respondent unfairly denied another party access to evidence and failed to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party.

4. ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of justice.

Rule 54(c) – Respondent violated several orders including, but not limited to, orders issued by the Pima County Superior Court and Court of Appeals.

Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Short-Term Suspension of One Hundred Twenty Days (120) and Eighteen Months of Probation. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.¹ The State Bar’s Statement of Costs and Expenses is attached hereto as Exhibit A.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on March, 18, 2003.
2. In June 2012, Respondent entered into an Agreement for Discipline by Consent in PDJ-2012-9053 [SB11-0622, 11-1483, 11-2042, 11-2589, 11-3253]. Pursuant to the resulting Judgment and Order, he received a Sixty Day Suspension

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.

with Two Years Probation for violating Rule 42; Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.16, 3.2, 3.4, 8.1(b), 8.4(d) and Rule 54(d).

COUNT ONE (File no. 13-3402/ Vigil)

3. On or about August 22, 2011, Respondent initiated a Chapter 13 bankruptcy proceeding on behalf of Complainant.

4. As part of the proposed payment plan, Respondent informed his clients to include One Thousand Forty Seven Dollars and 08/100 (\$1047.08) in their payment to the bankruptcy trustee. This amount represents the Complainant's monthly mortgage payment to Wells Fargo.

5. Complainant made the first payment which was disbursed by the bankruptcy trustee on or about November 1, 2011.

6. On or about October 26, 2011, Wells Fargo's attorneys (hereinafter referred to as "Law Firm") filed a Motion for Relief from the Automatic Stay order imposed by the bankruptcy court.

7. Respondent did not file an objection to Wells Fargo's motion which was ultimately granted on November 22, 2011.

8. Respondent indicates that he contacted an individual at the Law Firm on October 27, 2011 and was purportedly informed that Wells Fargo would forego foreclosure proceedings as long as the monthly payments were made. The Law Firm records indicate that Respondent did contact their firm on October 27, 2011, but that

they could not confirm the exact details of the conversation. The Law Firm did indicate that their practice would be to note any agreements in the file.

9. On or about November 24, 2011, the Complainant received notification from Wells Fargo that their claim was released from the automatic stay order.

10. Complainant immediately contacted Respondent for information regarding the status of the bankruptcy and possible ramifications.

11. Respondent claims to have attempted to contact the Law Firm regarding the release. He again told Complainant that Wells Fargo would forego foreclosure proceedings as long as Complainant paid the monthly payments. Should this matter go to hearing, the State Bar would allege that he did so without first confirming Wells Fargo's position. Respondent would testify that Wells Fargo's position was confirmed during his communication with the bank on October 27, 2011.

12. Complainant made the second payment which was disbursed by the bankruptcy trustee on or about December 1, 2011.

13. On December 5, 2011, Respondent spoke to another individual at the Law Firm who indicated that she would research the status of their file and that she or a representative at Wells Fargo would call Respondent back.

14. On or about December 27, 2011, the monthly payment was rejected by Wells Fargo and returned to the bankruptcy trustee. While Complainant continued making the monthly payments to the bankruptcy trustee, the bankruptcy trustee did not send any future payments to Wells Fargo.

15. While Respondent indicates that he continued to attempt to contact Wells Fargo and the Law Firm, the Law Firm indicates that their files reflect no such attempts until February 3, 2012.

16. While there were communications between Respondent and the Law Firm between February 7th and 22nd, no agreements were reached regarding any issues.

17. On February 24, 2012, Respondent contacted Victor Parker, a bank representative in North Carolina, and relayed the above recited information and circumstances. Victor Parker was at that time a Wells Fargo employee, and made decisions on behalf of the bank regarding Complainant's mortgage.

18. On February 27, 2012, Victor Parker sent an email to Respondent agreeing to reinstate the automatic stay.

19. On or about March 16, 2012, Respondent filed a motion to "revoke" the lift of the automatic stay and attached the February 27th e-mail from Parker, agreeing to the requested relief.

20. On or about March 20, 2012, the Bankruptcy Court denied the motion citing among other things, that the motion to "revoke" the lift of the stay order failed to comply with the legal standards contained in a Rule 60, Fed. R. Civ. P. request to set aside the stay order.

21. On April 16, 2012, a conference call occurred between Respondent, Parker and the Law Firm. Should this matter proceed to hearing, Respondent would

testify that at the end of the conference call, it was clear that the Law Firm would cease the foreclosure/trustee's sale scheduled at that time on June 12, 2012 and prepare a stipulation to reinstate the automatic stay.

22. Approximately two weeks later, Respondent attempted to contact Parker regarding the status of the stipulation.

23. On or about May 22, 2012, Parker called Respondent and again informed him that the bank would forego the June 12th trustee's sale.

24. On or about June 5, 2012, Respondent contacted the Law Firm and was informed that they were preparing the stipulation.

25. On or about June 7, 2012, the Law Firm informed Respondent that they were waiting for the bank to provide the total amount and due date necessary to cure the default and would send the stipulation upon receipt of the information.

26. A June 12, 2012 foreclosure/trustee's sale was then vacated by the bank.

27. On June 26, 2012 Respondent received the stipulation to reinstate the automatic stay, which was prepared by the bank.

28. On July 3, 2012, Respondent began serving a sixty (60) day suspension in PDJ-2012-9053 for violations of Rule 42, ERs 1.2, 1.3, 1.4, 1.16, 3.2, 3.4, 8.1(b), 8.4(d) and Rule 54(d) and associated with Arizona attorney Lisa Thompson in Complainant's case.

29. On or about July 6, 2012, the Law Firm e-mailed Thompson the proposed stipulation. On July 26th Thompson informed the Law Firm that the clients decided to allow the bankruptcy to be dismissed and that the default would be cured when the trustee returned the monthly payments previously paid by Complainants.

30. On July 12, 2012, the bankruptcy was dismissed for Complainant's failure to file confirmation of the Chapter 13 Plan of Reorganization, pursuant the agreement set forth above.

31. On or about August 8, 2012, the Law Firm provided the amount necessary to cure the default but was silent as to the status of the foreclosure/trustee's sale, which was by then scheduled for September 17, 2012.

32. On September 5, 2012, Respondent was reinstated to the practice of law.

33. On September 17, 2012, the scheduled trustee's sale occurred resulting in the sale of the home to a third party.

34. On September 18, 2012, Respondent informed Parker that Complainant was prepared to cure the default and reinstate the loan. It appears that neither Respondent nor Parker were aware that the trustee's sale had occurred on September 17th.

35. On September 20, 2012, Complainant received a notice of foreclosure and request to vacate the property. Complainant immediately contacted Respondent.

36. Respondent contacted Parker but was ultimately unable to obtain any relief for Complainant.

COUNT TWO (File no. 14-0128/Peltz)

34. On or about April 5, 2012, Respondent filed a Complaint in a Pima County Superior Court case captioned *Dosty v. Farmers Insurance, et.al.*, C20122216². While the Complaint describes a number of purported events and circumstances, it does not provide a description of the alleged causes of action³.

35. On or about August 23, 2012, Farmers Insurance filed a Motion to Dismiss alleging, in pertinent part, that Respondent failed to state a claim upon which relief may be granted.

36. On October 1, 2012, Farmers Insurance filed a request for ruling as Respondent failed to file a response to the motion to dismiss.

37. By minute entry dated October 9, 2012, the Court found the Complaint to be "inartfully drafted" and "[b]ased upon the above lack of clarity" ordered Respondent to file an amended complaint "in its entirety so that (the) allegations are clear as to what they are and who they apply to."

38. The Court further found that "[i]f the amended complaint is not filed as ordered, the Court will grant the motion to dismiss on behalf of defendant Farmers Insurance Company".

² The Complaint is actually dated March 9, 2012.

³ In a Pre-Arbitration Statement dated October 25, 2012, Respondent describes the nature of the claims as "Breach of Contract, Fraud, and Misrepresentation".

39. On or about October 17, 2012, Respondent and Farmers Insurance filed a stipulation to dismiss Farmers Insurance as a party, due to the fact that Defendant Kenneth Silverman was an independent insurance agent.

40. On or about October 18, 2012, the Court dismissed Farmers from the lawsuit "pursuant to the stipulation."

41. On or before October 29, 2012, the co-defendant's attorney in the lawsuit, Neil Durrant, filed a motion to dismiss based upon Respondent's failure to comply with A.R.S. § 12-2602.

42. On or about October 29, 2012, Respondent filed a pleading indicating compliance with the Court order which attached a purported "expert affidavit". Respondent failed to provide Durrant with a copy however.

43. On November 7, 2012, Respondent filed a response to Durrant's motion to dismiss.

44. On or before November 26, 2012, Durrant filed another motion to dismiss based upon Respondent's failure to comply with A.R.S. § 12-2602.

45. On or about March 21, 2013, Durrant filed a motion to dismiss based upon Respondent's failure to comply with A.R.S. § 12-2602.

46. By minute entry filed April 8, 2013, the Court ordered Respondent to properly serve Durrant with the previously-filed pleading and expert's affidavit no later than April 15, 2013. The Court also scheduled oral argument on May 6, 2013.

47. On May 6, 2013, Respondent failed to appear at the court-ordered hearing.

48. Respondent failed to appear at the court-ordered hearing on May 6, 2013, because he had incorrectly calendared it for the next day, May 7, 2013. Respondent appeared at the Court house with his client on May 7th, and spoke with the court's judicial assistant.

49. By minute entry dated May 6th, the Court deferred ruling on the latest motion to dismiss and again ordering Respondent to "serve the affidavit previously ordered on April 3, 2013, no later than May 24, 2013" and show cause why he should not be held in contempt of court for not serving the ordered affidavit and for failing to appear at the scheduled hearing.

50. On or about May 28, 2013, Respondent filed a notice of compliance with the Courts Order of May 6, 2013, as he had fully complied with the Court's order.

51. On May 28, 2013, the Court found that Respondent caused unreasonable delay in this matter and ordered Respondent to pay Durrant's client attorney's fees in the amount of Two Hundred Fifty Dollars (\$250.00) within thirty days. The Court found that Respondent caused unreasonable delay by failing to appear at the May 6, 2013 hearing, and awarded Durrant's client \$250.00, the equivalent of one hour of Durrant's time for appearing at the May 6th hearing .

52. On or about August 6, 2013, Durrant filed a supplemental motion to dismiss alleging, among other things, that Respondent failed to produce the purported expert for a deposition.

53. It wasn't until August 12, 2013 that Respondent was ordered to make his expert witness available for a deposition. The Court's minute entry ordering him to do so issued on August 12, 2013, six days **after** Durrant filed his "supplemental motion to dismiss".

54. In the Court's minute entry dated September 11, 2013, Durrant confirms that Respondent provided him with the expert witness' phone number and address. The Court further stated that 30 days should be sufficient for the expert to be produced either "voluntarily or through subpoena."

55. At a November 25, 2013 oral argument, the Court asked Respondent if he filed an amended complaint to which Respondent claimed that he was working on it.

56. Should this matter proceed to hearing, Respondent would testify that he was surprised that the Court - and not opposing counsel - raised this issue, as it was the first time in thirteen months that the issue was discussed (which occurred during the Court's in-chambers ruling on October 9, 2012).

a) On December 2, 2013, the Court granted the Motion to Dismiss for Failure to Comply with A.R.S. § 12-2602 with prejudice and found, in pertinent part

that Respondent had failed: To file the court-ordered amended complaint, "now more than 13 months overdue";

b) To provide a Rule 26.1 disclosure statement which "is now more than one year overdue";

c) To provide an expert preliminary opinion affidavit as required by statute until more than one year after filing (the) Complaint;

d) To make his expert available for deposition for months after she was originally disclosed and, only did make her available after being ordered to do so.

57. On or about January 10, 2014, the Court filed a judgment awarding attorneys' fees in favor of Durrant's client and solely against Respondent in the amount of Seventeen Thousand Three Hundred Twenty Nine Dollars (\$17,329.00).

58. On or about February 5, 2014, Respondent filed a notice of appeal appealing the January 10, 2014 judgment. Respondent paid approximately \$600 for the file to be transferred to the Court of Appeals.

59. On or about March 21, 2014, the Court of Appeals, Division Two ordered that Respondent pay a filing fee of Two Hundred Eighty Dollars (\$280.00) within ten days in the Court of Appeals, Division Two, case of *Dosty v. Farmers Insurance, et. al.*, 2 CA-CV 2014-0047.

60. On April 8, 2014, the Court of Appeals dismissed the appeal as Respondent failed to pay the court-ordered filing fee.

61. Should this matter proceed to hearing, Respondent would testify that he did not pay the filing fee for the appeal, once he was informed that the client had retained new counsel.

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 his conduct violated:

SB Number 13-3402:

Rule 42, Ariz. R. Sup. Ct.:

1. ER 1.3 – Respondent failed act diligently in representing Complainants by, among other things, failing to file an objection to Wells Fargo's motion to lift the bankruptcy stay as well as failing to timely or adequately document the agreements by the bank or inform the Court of the agreements by the bank.

If this matter proceeded to hearing, Respondent would show that these actions occurred prior to Respondent's June 2012 suspension in PDJ No 2012-9053.

2. ER 1.4 – Respondent failed to reasonably inform Complainants of the events and circumstances occurring in the case or the possible repercussions of his failures including, but not limited to, his failure to timely file an objection to Wells Fargo's motion to lift the bankruptcy stay.

3. ER 3.2 - Respondent failed to expedite Complainant's bankruptcy case by, among other things, failing to file an objection to Wells Fargo's motion to lift the bankruptcy stay as well as failing to timely or adequately document the agreements by the bank or inform the Court of the agreements by the bank.

4. ER 8.4(d) - Respondent engaged in conduct which was prejudicial to the administration of justice by, among other things, failing to file an objection to Wells Fargo's motion to lift the bankruptcy stay as well as failing to timely or adequately document the agreements by the bank or inform the Court of the agreements by the bank and failing to file a motion to set aside which complied with the legal standards contained in a Rule 60, Fed. R. Civ. P.

SB Number 14-0128:

Rule 42, Ariz. R. Sup. Ct., ERs:

1. ER 1.3 – Respondent failed to act diligently throughout the representation and failed to file an amended complaint in a timely fashion.

2. ER 3.2 – Respondent failed to expedite litigation throughout the representation.

3. ER 3.4 – Respondent unfairly denied another party access to evidence and failed to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party.

4. ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of justice.

Rule 54 – Respondent violated several orders including, an order to amend the complaint for clarification; an awarded judgment against Respondent entered by the Court upon dismissing the case, and; an order from the Court of Appeals to pay the filing fee of the appeal after Respondent was no longer the attorney for Respondent’s former client.

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss none.

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:

Suspension of One Hundred Twenty Days (120) and Eighteen Months of Probation.

If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association’s *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the

imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

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

The parties agree that the following *Standards* are the appropriate *Standards* given the facts and circumstances of this matter:

ER 1.3 and ER 1.4:

Standard 4.42

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.

ER 3.2, ER 3.4 and ER 8.4(d):

Standard 6.22

Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Rule 54:

Standard 7.2

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.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent negligently failed to act diligently and communicate with his client, thereby causing prejudice to the administration of justice 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 clients and the legal system.

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:

1. *Standard* 9.22(a) prior disciplinary offenses
PDJ-2012-9053 (SB11-0622, 11-1483, 11-2042, 11-2589, 11-3253):
Sixty Day Suspension with Two Years Probation for violating Rule 42,
Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.16, 3.2, 3.4, 8.1(b), 8.4(d) and
Rule 54(d);

2. *Standard 9.22(c)* pattern of misconduct;
3. *Standard 9.22(d)* multiple offenses;
4. *Standard 9.22(i)* substantial experience in the practice of law (Admitted March 18, 2003).

In mitigation:

1. *Standard 9.32(b)* absence of dishonest or selfish motive
2. *Standard 9.32(e)* full and free disclosure to disciplinary board/cooperative attitude
3. *Standard 9.32(g)* character or reputation
4. *Standard 9.32(k)* imposition of other penalties or sanctions
5. *Standard 9.32(l)* remorse.

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate.

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 has negotiated and paid the judgment rendered in SB File No. 14-0128 and has demonstrated remorse for his failures in both of these two matters.

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.

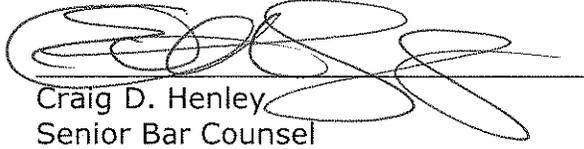
CONCLUSION

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 Short-Term Suspension of One Hundred Twenty Days (120) and Eighteen Months of Probation along with the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED ~~this~~ ~~31~~ ~~day~~ of 3/30/2015

STATE BAR OF ARIZONA


Craig D. Henley
Senior 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 3/30/2015.

Jay K. Powell
Respondent

DATED this _____ day of 3/30/2015.

Adams & Clark PC

Karen Clark
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

DATED this _____ day of 3/30/2015

STATE BAR OF ARIZONA

Craig D. Henley
Senior 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.

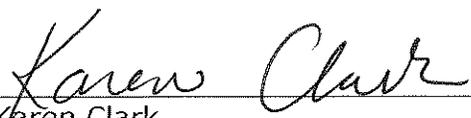
DATED this ~~____~~ day of 3/30/2015.



Jay K. Powell
Respondent

DATED this ~~____~~ day of ~~3/30~~³¹/2015.

Adams & Clark PC



Karen Clark
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

Copies of the foregoing mailed/emailed
this 31st day of March 2015 to:

Karen Clark
Adams & Clark PC
520 E Portland St
Phoenix, AZ 85004-1843
karen@adamsclark.com
Respondent's Counsel

Copy of the foregoing emailed
this 31st day of March, 2015, to:

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

Copy of the foregoing hand-delivered
this 31st day of March, 2015, to:

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

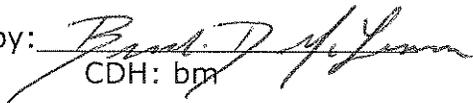
by: 
CDH: bm

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Jay K. Powell, Bar No. 021576, Respondent

File No(s). 13-3402 and 14-0128

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.

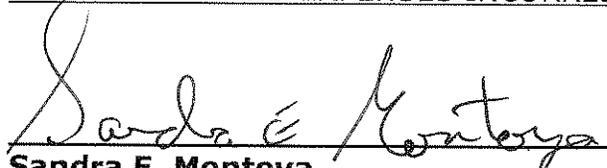
General Administrative Expenses for above-numbered proceedings

\$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

06/16/14	Computer investigation reports, PACER	\$	15.50
Total for staff investigator charges		\$	15.50
TOTAL COSTS AND EXPENSES INCURRED			\$1,215.50


Sandra E. Montoya
Lawyer Regulation Records Manager

3-31-15
Date

EXHIBIT B

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
CURRENT MEMBER OF
THE STATE BAR OF ARIZONA,**

**Jay K. Powell,
Bar No. 021576,**

Respondent.

PDJ 2015-

FINAL JUDGMENT AND ORDER

[State Bar No. 13-3402 and 14-0128]

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, **Jay K. Powell**, is hereby Short-Term Suspension for One Hundred Twenty Days as a result of 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 or _____.

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

IT IS FURTHER ORDERED that, as a term of that probation, Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of 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 eighteen months from that date. Respondent shall be responsible for any costs associated with LOMAP.

As part of Respondent's participation in LOMAP, Respondent must also:

- a. Obtain a Practice Monitor subject to Bar Counsel's approval; and
- b. Complete no less than nine (9) hours of Continuing Legal Education in addition to his annual requirement [i.e.- Foundations of Defending Consumer Collection Cases and Related Issues, Foundations of Employment Law, Avoiding Ethical Pitfalls, Practicing with Porcupines, Candor, Courtesy & Confidences: Common Courtroom Conundrums] or similar approved CLE classes addressing diligence, communication, facilitating the administration of justice and/or issues related to efficient/ethical law office management.

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 LANGUAGE

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

that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that, 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 \$ _____, 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 March, 2015

**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 March, 2015.

Copies of the foregoing mailed/emailed
this _____ day of March, 2015.

Karen Clark
Adams & Clark PC
520 E Portland St
Phoenix, AZ 85004-1843
Email: karen@adamsclark.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this _____ day of March, 2015, to:

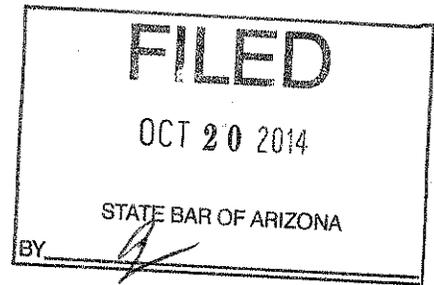
Craig D. Henley
Senior Bar Counsel - Litigation
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this _____ day of March, 2015 to:

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

by: _____

**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**



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

**JAY K. POWELL,
Bar No. 021576,**

Respondent.

No. 13-3402

PROBABLE CAUSE ORDER

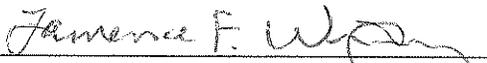
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 10, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation, and Complainants' response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 13-3402.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 20 day of October, 2014.



Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

Original filed this 20th day
of October, 2014, with:

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

Copy mailed this 22nd day
of October, 2014, to:

Karen Clark
Adams & Clark PC
520 East Portland Street
Phoenix, Arizona 85004-1843
Respondent's Counsel

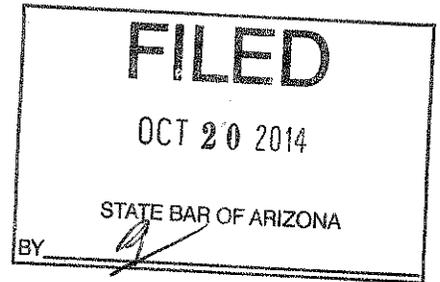
Copy emailed this 22nd day
of October, 2014, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

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

by: *Robert T. Bove*

**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**



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

**JAY K. POWELL,
Bar No. 021576,**

Respondent.

No. 14-0128

PROBABLE CAUSE ORDER

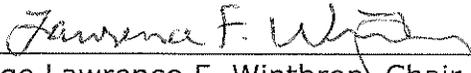
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 10, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 14-0128.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 20 day of October, 2014.



Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

Original filed this 20th day
of October, 2014, with:

Lawyer Regulation Records Manager
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Karen Clark
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Respondent's Counsel

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1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

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

by: Rodney T. Bruce