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BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DOUGLAS C. RHOADS, Bar No. 015265,** Respondent.	**PDJ-2013-9051** **AGREEMENT FOR DISCIPLINE BY CONSENT** State Bar Nos. 11-2948, 11-3677, and 12-1379

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Douglas C. Rhoads, *in proper personam* and with the assistance of counsel Kyle Andrew Kinney who appears on Respondent's behalf for the limited purpose of aiding in concluding this Agreement for Discipline by Consent, 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, ERs 1.1, 3.1, 3.2, 3.3(d), 3.4(a), 3.4(c), 3.4(e), 3.5(d), 4.4(a), 8.2(a), and 8.4(d); and Rules 41 (c) and (g), Ariz. R. Sup. Ct. The State Bar conditionally agrees to dismiss the charges that Respondent violated ERs 3.3(a), 4.1(a), and 8.4(c). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Suspension for six months and one day, restitution of unpaid judgments or other assessments connected with the underlying litigated matters in the gross sum of $39,938.22, and probation to be imposed upon reinstatement on terms to be determined at his reinstatement hearing. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.[1] The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 23, 1993.

COUNT ONE of THREE (State Bar File No. 11-2948/Bradley)

Case I. Yavapai County Superior Court V1300 CV820090494
J.P. Morgan Chase Bank v. Rhoads

[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.

2. On August 31, 2009, attorney Chris Perry appearing as counsel of record for JPMorgan Chase Bank ("JPMorgan"), sued Respondent and his wife in a forcible entry and detainer action ("FED") relating to their home in Sedona ("Sedona property").

3. Mr. Perry was unable to serve Respondent and Mrs. Rhoads personally because they rarely occupied the Sedona property (their primary residence was in Phoenix) so he obtained an order to allow substitute service.

4. After several hearings at which procedural matters were discussed, on November 13, 2009, the process server filed an Amended Certificate of Service in which she stated that she served the documents by mailing and posting "after attempting personal service."

5. However, at a hearing on November 17, 2009, Judge Bluff stated on the record that the Amended Proof of Service "has not been filed" and dismissed the case without prejudice. Judge Bluff was concerned that whatever happened thereafter in the case would be reversed on appeal, and denied Mr. Perry's subsequent motion to reinstate.

6. Judge Bluff did not dismiss the case on its merits.

7. Were this matter to proceed to a contested hearing Respondent would contend that Chris Perry merely claimed to represent JPMorgan but did not establish that he actually represented JPMorgan. The State Bar would contend that Respondent's contention is irrelevant.

Case II. Yavapai County Superior Court V1300 CV820090550
Rhoads v. Washington Mutual Bank, J.P. Morgan Chase Bank, et. al.

8. On September 21, 2009, Respondent and Mrs. Rhoads sued Washington Mutual Bank ("WAMU"), JPMorgan, and various other companies, or

individual agents or employees thereof. Respondent and Mrs. Rhoads asserted state and federal statutory and common law claims and sought money damages, declaratory relief, injunctive relief, attorney's fees, costs, and interest, all generally for events leading up to and including the July 2009 JPMorgan trustee's sale of the Sedona property.

9. Respondent filed a Notice of *Lis Pendens* regarding the Sedona property and obtained summonses for all named defendants. Respondent did not serve any defendant or take any action to secure his alleged right to title to the Sedona property.

10. On September 3, 2010, the court issued a minute entry warning that the case would be dismissed for failure to serve process. On August 30, 2011, Judge Campbell issued an order dismissing the case.

11. Were this matter to proceed to a contested hearing, Respondent would contend that the Yavapai County Superior Court case was removed to the United States District Court for the District of Arizona by the Defendants; Respondent was not licensed to practice in the United States District Court for the District of Arizona at that time; Defendants waived service by removing the case to Federal Court prior to serving the complaint; and the Yavapai County Superior Court lacked jurisdiction upon removal to Federal Court. The State Bar would contend that Respondent's contention is irrelevant.

Case III. U.S. Bankruptcy Court case no. 2:10-bk-17533-RTB, Douglas and Shannon Rhoads, debtors

12. On June 4, 2010, Respondent filed for Chapter 11 bankruptcy protection. On his "Schedule A-Real Property-Amended" (on which "real property" is defined very broadly) Respondent did not list the Sedona property.

13. Respondent did list a tenant at the Sedona property on Schedule G (executory contracts and unexpired leases); Chase Bank as the creditor of a repossession, foreclosure sale, transfer or return of the Sedona property on his Statement of Financial Affairs; and Chase Bank as a creditor holding a secured claim against the Sedona property on his amended Schedule D.

14. There were motions to lift the bankruptcy stay, and adversary proceedings, in the bankruptcy case but none involving the Sedona property. Respondent did not claim on his bankruptcy schedules that he owned the property; he acknowledged in his schedules that Chase Bank owned the property via a non-judicial foreclosure sale.

15. The bankruptcy case was dismissed several times for Respondent's failure to meet a deadline only to be reinstated by his after-the-fact compliance.

16. On June 1, 2012, Judge Baum dismissed the case with prejudice. In his dismissal order Judge Baum wrote that:

> a. Respondent was ordered to file a reorganization plan and disclosure statement by February 13, 2012, but failed to do so;
>
> b. no plan or disclosure statement was ever filed;
>
> c. Respondent used the Chapter 11 proceeding to engage in extensive litigation with his secured creditors; and finally
>
> [T]he court concludes that the case should be dismissed with prejudice barring another filing for a period of one year from the date of this order. Therefore,
>
> IT IS ORDERED DISMISSING THIS CASE WITH PREJUDICE FOR A PERIOD OF ONE YEAR FROM THE DATE OF THIS ORDER.

17. Were this matter to proceed to a contested hearing, Respondent would contend and/or testify that in his bankruptcy schedules he did not claim title to the property; he disputed Chase Bank's claim of title to the property; he did not file a

reorganization plan because he could not identify the real parties in interest; it was his bankruptcy counsel who failed to meet the deadlines, and that he did not intend to violate any court rule or order; and he could not submit a viable Chapter 11 disclosure statement and/or plan of reorganization until his Adversary Proceedings had been resolved as any plan of reorganization would be dependent on him and Mrs. Rhoads obtaining title to already foreclosed real properties so that they could use the properties to generate rental income to fund a plan of reorganization. The State Bar would contend that Respondent's contentions are irrelevant to this lawyer discipline case.

Case IV. Yavapai County Sheriff's Office ("YCSO")
Incident 11-02562

18. Lender Processing Services using J.P. Morgan Chase Bank hired Judy Kelley of Russ Lyon/Sotheby's to secure the Sedona property following the foreclosure. On August 9, 2011, Ms. Kelley appeared at the property with a locksmith and changed the locks. A neighbor saw this and called Respondent in Phoenix. Respondent called the YCSO and reported the incident as a trespass.

19. A deputy arrived at the property, took the new keys from Ms. Kelley, and gave them to the neighbor. The neighbor handed the deputy a note that she said Respondent asked her to write and give to the deputy. It said, "Don't have a Writ of Restitution", "subject to a bankruptcy", and "trustees deed upon sale is void-ruled by Judge Bluff."

20. The deputy secured the house and the scene, and then called Respondent. According to the deputy's report, Respondent "explained that he had gone to Yavapai County Superior Court and Judge Bluff ruled against the bank and the property was still his."

21. The deputy obtained relevant documents from Respondent and Ms. Kelley, and forwarded them to Deputy County Attorney Jack Fields. Mr. Fields' charging unit declined to prosecute Ms. Kelley on the ground that there was no reasonable likelihood of a conviction.

22. Were this matter to proceed to a contested hearing, Respondent would contend that Lender Processing Services, using J.P. Morgan Chase Bank's, NA's name, instructed Ms. Kelley to take the actions that she did; such actions violated the automatic bankruptcy stay and were done without a Writ of Restitution; Respondent still was in lawful, peaceful possession of the Sedona Property because there was an automatic stay in effect and no writ of restitution had been issued by any court granting possession of the Sedona property to anyone other than Respondent and Mrs. Rhoads; Respondent was told and believes that JP Morgan Chase did not pay consideration at the sale did not prosecute the action, or own the claim to his Sedona property; and Respondent sought to dismiss the claim or have it transferred to the general civil calendar, but Judge Bluff dismissed the counterclaim without prejudice. The State Bar would contend that Respondent's contentions are irrelevant to this discipline case and/or are based on inadmissible hearsay and speculation.

Case V. Yavapai County Superior Court V1300 CV201180481, *Rhoads v. Judy Kelley* (Injunction Against Harassment)

23. On August 22, 2011, Respondent filed a Petition for Injunction Against Harassment against Judy Kelley. On his written petition, Respondent identified Ms. Kelley as "Defendant Realtor who broke into my home."

24. Respondent also identified a Chapter 11 Bankruptcy case, 2:10-bk-17533 as a relevant pending action because of the automatic stay.

25. In his factual allegations, Respondent wrote that Ms. Kelley told his tenants to vacate by April 15, 2011, and paid them to breach his lease; that he told Ms. Kelley that the property was part of Bankruptcy estate and that Judge Bluff "denied" J.P. Morgan Chase Bank's forcible entry and detainer action; that Ms. Kelley and Red Rock Locks "trespassed" and "broke into" his home; that a sheriff's deputy "removed" Ms. Kelley and her agents from the property; and that he submitted a report to the Yavapai County Attorney's office for investigation of criminal damage, breaking and entering, and criminal trespass. Respondent asked for an order compelling Ms. Kelley to stay away from his Sedona home address as well as his Phoenix law office address.

26. Were this matter to proceed to a contested hearing, Respondent would contend that neither Ms. Kelley nor J.P. Morgan Chase Bank had obtained a Writ of Restitution, as a consequence of which he retained the right of possession. Accordingly, he had a good faith basis to refer to Ms. Kelley's actions as a trespass. Furthermore, from his experience Respondent has learned that when realtors change locks on foreclosed homes, they steal things and sell them on Craigslist. Hence, he had a good faith basis to describe Ms. Kelly's actions as a break-in of his home. In neither case did he intend to mislead law enforcement or the court by characterizing the situation as he did.

27. Respondent appeared in Judge Bluff's court on August 22, 2011, for the *ex parte* initial hearing. Respondent explained how loan companies and document preparation services fabricated legal-appearing documents to deceitfully claim title to innocent people's homes, and reminded Judge Bluff of the FED action in his court "that was dismissed." Respondent also claimed that his home was part

of his bankruptcy estate. Were this matter to proceed to a contested hearing, Respondent would offer evidence that he listed the Sedona property on his bankruptcy schedules as the subject of both a bank repossession and a Schedule G month-to-month lease with tenants. Although he did not list the home on his Schedule A schedule of owned real property he did properly include the home in his bankruptcy estate, and did not intend to mislead the court regarding the ownership status of the home.

28. Judge Bluff ruled that there was insufficient evidence to issue an injunction against harassment that day, and set the matter for a hearing. Judge Bluff believed that Ms. Kelley may have had a proper purpose in doing what she did.

29. The hearing occurred on September 1, 2011. Through statements or testimony, Respondent asserted at the hearing that "they (J.P. Morgan) lost their claim" to my home in this court but on later questioning elaborated that the FED case was dismissed without prejudice for lack of personal service and not on the merits.

30. Respondent also testified that he told the investigating deputy sheriff that he still had the "right of possession" and denied leading him to believe that he had won the FED action on the merits.

31. While cross-examining Ms. Kelley, Respondent established that she took checks with her to the Sedona property to compensate the to-be-evicted tenants for moving expenses. Because the sheriff's deputy appeared at the scene, Ms. Kelley never actually gave the tenants the checks, so she retained them in her

file. Ms. Kelley showed the checks to Respondent during her testimony and they ultimately found their way to the court clerk.

32. Respondent tried to establish that Ms. Kelley regularly tried to bribe tenants in other homes to leave. Were this matter to proceed to a contested hearing, Respondent would contend that he had a reasonable basis for describing Ms. Kelley's actions as bribery since by interfering with the tenancy she violated the automatic bankruptcy stay and showed no regard for the rule of law.

33. Judge Bluff ruled that Respondent's questions were irrelevant and constituted a fishing expedition for hoped-for evidence to use in a subsequent damages suit. Judge Bluff explained that what Ms. Kelley did or did not do in other cases was unrelated to what she did in this case, and her conduct toward tenants had nothing to do with alleged harassment of Respondent.

34. Despite sustaining Complainant's several objections to Respondent's several consecutive irrelevant questions, Respondent persisted until Judge Bluff firmly redirected him.

35. At the close of Respondent's case, Judge Bluff denied his petition. A basis for Judge Bluff's ruling was that he did not consider Respondent's exhibits because Respondent never moved them into evidence. Respondent moved immediately to reopen his case to offer the exhibits but Judge Bluff denied his request.

36. Judge Bluff ordered all marked exhibits returned to their owners. Respondent took Ms. Kelley's checks and put them in his case file. Respondent and Complainant grappled for Ms. Kelley's checks. Judge Bluff ordered Respondent to give the checks to Ms. Kelley. Respondent asked if he could copy the checks; Judge

Bluff said no and again ordered Respondent to return the checks to Ms. Kelley. Respondent asked his witness, who had remained in the courtroom, if he could use her cell phone to photograph the checks. Judge Bluff again ordered Respondent to return the checks to Ms. Kelley. Respondent took the checks from his file and gave them to Ms. Kelley. Judge Bluff admonished Respondent, "I don't appreciate your pulling that in my courtroom, Mr. Rhoads." Respondent replied: "She (referring to the court clerk) said they were my exhibits."

37. Were this matter to proceed to a contested hearing, Respondent would testify that he assumed the checks were actually his courtesy copies of the originals since he believed that Ms. Kelley's attorney earlier had offered the originals into evidence. The copies that he took were not marked as exhibits.

38. Complainant moved for an award of $500 in attorney's fees pursuant to A.R.S. §12-1809.N. That statute permits a court to award attorney's fees in an injunction against harassment case against any party. Although Complainant correctly cited the proper statute in his motion, he mistakenly quoted language from a different attorney's fees statute, A.R.S. 12-341.01, which allows recovery of attorney's fees in any contested action arising out of a contract. Respondent resisted the motion on the ground that although Complainant cited the correct statute he quoted the wrong language. In his reply, Complainant acknowledged the error but contended that he still was correct in substance, and asked Judge Bluff to add $200 for having to file a reply. The court awarded Complainant $500 in attorney's fees.

39. Were this matter to proceed to a hearing, Respondent would contend that the two year statute of limitations had run out on Chase Bank's claim; Ms.

Kelley paid tenants with Lender Processing Services checks to breach the lease on the Sedona property in violation of the automatic stay of which she was aware; that the "checks" Ms. Kelley showed to Respondent in court were not the actual checks but color copies of them, and that the actual checks had been given to his tenants and negotiated; Ms. Kelley did not give Respondent courtesy copies of the check copies; he had a good faith belief that the questions he asked Ms. Kelley established motive, intent and opportunity as well as course of conduct. The State Bar would contend that Respondent's contentions are nonmeritorious and irrelevant to this discipline case.

Case VI. Yavapai County Superior Court V1300 CV201280402,
J.P. Morgan Chase Bank v. Rhoads

40. On September 28, 2012, J.P. Morgan Chase Bank filed a second FED action (see Case I. above), this time through different counsel. After a series of procedural steps occurred, the bank won and obtained an eviction order.

41. On December 10, 2012, shortly before move-out day, Respondent filed for bankruptcy protection again. Respondent's bankruptcy filing was within the one-year moratorium against bankruptcy filings that Judge Baum imposed against Respondent (see Case III. above). Were this matter to proceed to a contested hearing, Respondent would contend that he believed that Judge Baum's order placing a one-year moratorium against bankruptcy filings applied only to Chapter 11 filings, whereas the December 10, 2012, filing was a Chapter 13 case.

42. Judge Baum dismissed that bankruptcy case and the FED action proceeded. The bank ultimately obtained judgment on February 13, 2013.

43. Among Respondent's court filings were a counterclaim for Abuse of Process and Racketeering, a response to the bank's Motion for Judgment on the

Pleadings that ran for 69 pages, a List of Witnesses and Exhibits that occupied 551 pages, a Notice of Filing for Bankruptcy of 226 pages, and a Motion to Dismiss of 315 pages. Respondent's filings included exhibits irrelevant to right-to-possession which is the sole issue in an FED case.

44. Were this matter to proceed to a contested hearing, Respondent would testify that he wanted to educate the court about the fraudulent practices endemic to the mortgage collection industry. There is no page limitation for lists of witnesses and exhibits. Respondent would further contend that case law permits a party to litigate title issues in an FED case if notice of a foreclosure or trustee sale is deficient due to fraud. See *Main I Ltd. Partnership v. Venture Capital Const. and Dev. Corp.*, 154 Ariz. 256, 741 P.2d 1234 (App. Div. 1 1987), cited as precedent in the Memorandum Decision of *U. S. Bank v. Grainger*, No. 1 CA-CV 11-0608 (App. Div. 1 2012). He did not intend to violate any court order or rule. Finally, Respondent would contend that the Arizona Rules of Procedure for Eviction Actions were amended in 2009 to add foreclosure cases to the types of cases (generally, landlord/tenant cases) formerly treated by those rules. The amendments are ambiguous as to what issues could be litigated; therefore, Respondent did not intentionally or knowingly violate court rules. The State Bar would contend that Respondent's assessment of the foregoing legal authorities is and was incorrect.

45. Were this matter to proceed to a contested hearing, Respondent would contend that the firm of McCarthy Holthus & Levine claimed to represent J.P. Morgan Chase Bank in the above-described second FED action but did not establish that it actually represented the bank; he had been told by JP Morgan Chase counsel from Bryan Cave that the property did not appear on the JP Morgan Chase system

and that they could not settle the claim; newly discovered evidence in his Chapter 13 bankruptcy case would show that there had been fraud on the Court; and his filings in the second FED case included exhibits he believed in good faith supported the claims for RICO and abuse of process relevant to right-to-possession which is the sole issue in an FED case except in cases of fraud or concealment. The State Bar would contend that Respondent's contentions are either incorrect, based on inadmissible hearsay, or irrelevant to a lawyer discipline case.

COUNT TWO of THREE (File no. 11-3677/Judicial Referral)

46. In February 2005 Neville James ("James") as trustee for the James Family Trust ("Trust") financed an apartment complex at 2525 S. McClintock Dr. in Tempe ("Tempe property") with a $1M loan from IMPAC. The loan was documented by a promissory note and secured by a deed of trust and assignment of rents. In August 2010 IMPAC assigned its rights under the note and deed of trust to Deutsche Bank ("Deutsche"). Deutsche later assigned its rights to KR Capital, LLC ("KR") but remained the named party in subsequent Superior Court litigation.

47. In May 2010 James allegedly defaulted on the note and by August allegedly owed about $27,500. Throughout the ensuing litigation James denied that he missed any payments or otherwise committed any material breach of contract.

Case VII. Maricopa County Superior Court Case No. CV2010-026702

48. On September 2, 2010, Deutsche, through its contractor CFC Transactions, LLC ("CFC"), sued James for an appointment of a receiver to manage and preserve the Tempe property, pursuant to the terms of the note, while it prepared for a trustee's sale and nonjudicial foreclosure. Were this matter to proceed to a contested hearing Respondent would contend that the litigation was

initiated by a collection agent using the name Deutsche without valid authority, through its purported contractor CFC.

49. Deutsche later amended the complaint to include two additional breaches of contract: a) James filed for bankruptcy protection in November 2009 (2:09-bk-29616-SSC, by attorney Raymond Miller, although it was dismissed for failure to prosecute before Deutsche filed this suit), and b) James, acting for the Trust, transferred the Tempe property in March 2010 to Pleasantview, LLC ("Pleasantview"). Both of the foregoing two events constituted breaches of the note and/or deed of trust.

50. James filed an answer, counterclaim, and third-party complaint *pro se*. The case was assigned to Judge Foster who set a hearing on the receivership matter for November 5, 2010. James obtained counsel (not Respondent) for the hearing.

51. Judge Foster determined that James breached the contract by transferring title of the Tempe property and by filing for bankruptcy protection. Judge Foster authorized appointment of a receiver.

52. On December 13, 2010, James filed for bankruptcy protection again (2:10-bk-39612-SSC, through attorney Bill King) ("2nd bankruptcy").

53. Over time, Judge Foster held conferences regarding the status of the 2nd bankruptcy case. On September 17, 2011, the 2nd bankruptcy case was dismissed. On September 9, 2011, Pleasantview filed a bankruptcy petition (2:11-bk-25833-JMM, also by attorney Bill King) ("3rd bankruptcy") in which it claimed that it owned the Tempe property, and that the automatic stay precluded a trustee's sale.

54. On September 21, 2011, attorney Guy Roll entered an appearance for James in Superior Court.

55. On September 28, 2011, Judge James Marlar in the 3rd bankruptcy case entered an order granting creditor KR's motion for relief from the automatic stay regarding the Tempe property. Judge Marlar included findings in his order that the 3rd bankruptcy petition was filed in bad faith as part of a scheme to hinder, delay or defraud creditors that included an attempt to transfer part ownership of the Tempe property, and three serial bankruptcy filings.

56. On October 6, 2011, Mr. Roll filed a Motion for Temporary Restraining Order ("TRO") without notice, to enjoin the trustee's sale scheduled for October 12. Mr. Roll hand-delivered the motion to the court but mailed it to Deutsche's lawyer. On October 7, Judge Foster denied the motion on the ground that it did not comply with Rule 65(d), Ariz. R. Civ. P.; Mr. Roll did not indicate the efforts made to give notice of the motion or reasons why notice should not be required. Judge Foster scheduled a return hearing for October 11, 2011, at 8:45 a.m.

57. On October 11, Judge Foster conducted a return hearing and ruled that the motion for TRO was fundamentally without notice. Judge Foster further determined that the court in the 3rd bankruptcy case found that James tried to fraudulently transfer the property to avoid creditors. Judge Foster denied the motion for TRO to enjoin the trustee's sale.

Case VIII. Maricopa County Superior Court Case No. CV2011-099616

58. Later on the same day that Judge Foster denied James' Motion for TRO to enjoin the October 12, 2011, trustee's sale in CV2010-026702, Mr. Roll filed a Motion for TRO against Deutsche and related entities in the Southeast Judicial

District of Maricopa County Superior Court. The only named plaintiff in the Southeast Judicial District filing was Pleasantview. In his motion, Mr. Roll disclosed the proceedings in Judge Foster's court and James' two bankruptcy petitions.

59. Mr. Roll claimed that since Pleasantview was the titled owner of the property and that James' family trust was the named plaintiff in CV2010-026702, Judge Foster's court had no personal jurisdiction over Pleasantview.

60. The case was assigned to Judge Ditsworth but there is no indication in the court file that it was called to his attention or that he acted on it. The trustee's sale proceeded on October 12, 2011; an LLC owned by Alon Shnitzer bought the property.

61. On October 28, 2011, Respondent filed a Notice of Substitution of Counsel, identified the plaintiffs as Pleasantview and James, and identified himself as attorney for the plaintiffs. Respondent also filed a complaint for damages, preliminary injunction, declaratory relief, fraud, rescission of the trustee's sale, quiet title, and accounting. Respondent's claims were characterized as the "show me the note" legal theory that already had been rejected by the Arizona Court of Appeals and federal courts in Arizona. Were this matter to proceed to a contested hearing, Respondent would contend that a case implicating the "show me the note" legal theory was pending review in the Supreme Court of Arizona and *Hogan* ruled ownership is required to foreclose.

62. On November 1, 2011, Respondent filed a petition for an Order to Show Cause ("OSC") re: preliminary injunction. Respondent asked the court to grant a TRO and later, generally, to convert the TRO into a preliminary injunction. Respondent did not seek to enjoin the trustee's sale which already had occurred.

Rather, Respondent alleged that his clients did not breach the terms of the note or deed of trust, and that Shnitzer was a strawman propped into place to flip the property and launder a dirty mortgage created out of whole cloth by the multiple defendants.

63. Respondent uncivilly asserted that there appeared to be *ex parte* communication, collusion and potential criminal conduct.

64. Respondent alleged further that after the trustee's sale Shnitzer and his agents trespassed on the Tempe property, harassed 78 year-old James, intimidated tenants and caused physical damage. Respondent asked the court to order the defendants to refrain from trespassing, initiating court action, marketing the property, and to provide monthly financial accountings.

65. Respondent disclosed nothing to Judge Ditsworth about any of the proceedings before Judge Foster. Were this matter to proceed to a contested hearing, Respondent would contend that Mr. Roll's earlier disclosure in his Motion for TRO directed to Judge Ditsworth was sufficient to alert Judge Ditsworth of the proceedings before Judge Foster, and shows that Respondent did not try to deceive either judge; however, Respondent was negligent in not filing an additional copy with Judge Ditsworth's Judicial Assistant.

66. On November 2, 2011, at 11:34 a.m., Judge Ditsworth signed an order granting Respondent's petition for TRO, and scheduled an OSC on the preliminary injunction for November 22.

67. Later on November 2, 2011, at 4:59 p.m., counsel for Shnitzer and Deutsche filed a joint expedited motion to consolidate Judge Foster's case with Judge Ditsworth's. They contended not only that there was an identity of parties,

facts, evidence, and issues but, also, that Judge Foster already had heard evidence and ruled on disputed contentions.

68. On November 3, 2011, counsel for Shnitzer and Deutsche filed a joint response to Respondent's petition for OSC re: preliminary injunction. In addition to attacking the substance of Respondent's petition, they also informed Judge Ditsworth that in the other suit Judge Foster already had declined to issue a TRO after rejecting many of the same allegations.

69. On November 3, 2011, Judges Ditsworth and Foster discussed the motion to consolidate. Judge Foster granted the motion to consolidate and presided over further proceedings. In an unsigned minute entry dated November 3, 2011, Judge Ditsworth vacated the TRO; his Judicial Assistant ("JA") emailed notice to counsel of that fact at 10:06 a.m. Judge Ditsworth signed a formal written order on November 4, 2011, in which he set aside the TRO and vacated all events previously scheduled in his court.

70. Judge Ditsworth stated in his order that he granted Respondent's Petition for OSC re: Preliminary Injunction based, in part, on Respondent's failure to mention any related case or cases. Once he learned that Judge Foster already had ruled on the same issues, and saw the motion to consolidate, Judge Ditsworth conferred with Judge Foster and decided to set aside the TRO.

71. Were this matter to proceed to a contested hearing, Respondent would contend that Shnitzer and Deutsche's motion to consolidate the two cases was granted *ex parte* without a hearing, and he had no hearing or opportunity to respond before Judge Ditsworth decided to set aside the TRO.

Case IX. Consolidated Actions CV2010-026702 and CV2011-099616

72. On November 3, 2011, after receiving Judge Ditsworth's JA's email, Mr. Shnitzer filed and served a Forcible Entry and Detainer action ("FED") against James and Pleasantview (see "**Case X. Maricopa County Superior Court case no. CV2011-056306**" below).

73. Respondent filed a "Motion to Show Cause Why Federal National Mortgage Association [("Fannie Mae") *sic*] is Not in Contempt of Court" and sought sanctions alleging that Mr. Shnitzer violated Judge Ditsworth's TRO.

74. Mr. Shnitzer opposed Respondent's motion and filed a cross motion for sanctions alleging that Respondent filed a frivolous motion.

75. On November 9, 2011, Respondent filed an emergency motion for stay pending appeal. He did not identify the event to be stayed. Respondent also filed a notice of appeal of Judge Ditsworth's November 4, 2011, order. Were this matter to proceed to a contested hearing, Respondent would contend that he did not identify the event to be stayed in his motion for stay because it was identified in the Notice of Appeal; a stay is a ministerial duty of the trial court based upon the previous orders and case filings, and he had a good faith belief that it was warranted.

76. Respondent uncivilly reported what could be criminal conduct and material misrepresentations to the Court.

77. Mr. Shnitzer and Deutsche filed a joint response contending that Respondent's request for an undefined stay was a *de facto* repeat request for a TRO that two courts already had refused to issue. They further argued that Judge Ditsworth's order was not an appealable order; hence, not even a more clearly defined stay pending an appeal was warranted. Were this matter to proceed to a contested hearing, Respondent would contend that Judge Ditsworth's order was a

signed order which would have a dispositive effect on the case and cause irreparable injury to Mr. James.

78. On November 15, 2011, Judge Foster issued the following minute entry:

> Having reviewed the record, the Request for Stay is denied for most of the reasons stated in the Defendant's Response. The Order in question was not an appealable Order. The stay sought would be a *de facto* Temporary Restraining Order against the execution of the orders of Commissioner Doody who apparently heard these issues in a Forcible Detainer action and denied them.
>
> It is further noted that the nominal Plaintiff in this case, Mr. Neville James, has been well aware of this Court's prior rulings which denied him injunctive relief on at least two occasions when he appeared as the nominal Plaintiff and Trustee of the Trust. Yet, he and his prior counsel, Mr. Roll, apparently filed yet another action seeking the same injunctive relief under the name of a different Plaintiff. Mr. Rhoads substituted in as counsel for Mr. Roll and went before Judge Ditsworth to obtain a Temporary Restraining Order based on the default of the same note and Deed of Trust and the same property that was the subject matter of this Court's prior denials. It is the understanding of this Court that neither Mr. Roll nor Mr. Rhoads advised Judge Ditsworth of this Court's prior rulings. Consequently, when Judge Ditsworth learned of this Court's prior denials of the injunctive relief, he vacated the Temporary Restraining Order.
>
> This Court strongly admonishes Plaintiffs' counsel for a lack of candor to the Court. Mr. Roll knew and Mr. Rhoads knew, or should have known, of the Court's prior rulings when Mr. Roll filed a new action in Mesa Court and Mr. Rhoads went before Judge Ditsworth and failed to advise him of the prior denials of injunctive relief. The ruse is quite clear: Name a new Plaintiff to be able to claim it is not the same matter so we have no duty to advise the new Judge. This Court finds such behavior to be lacking in candor at best and deceitful at worst.
>
> **IT IS ORDERED** denying relief.
>
> **IT IS FURTHER ORDERED** referring the circumstances of this matter to the State Bar of Arizona for investigation of possible ethical violations by counsel for the Plaintiff.

79. Judge Foster then recused from any further activity in the cases. They were re-assigned to Judge Mark Brain. Thereafter, Judge Brain denied Respondent's

motion for OSC re: Fannie Mae (*sic*) adding that there was no basis under Rule 11 for that motion because Judge Ditsworth's order does not say what Respondent claims it said (*i.e.*, Respondent's claim that "this Court expressly ordered that the TRO remained in effect until the afternoon of November 3, 2011" and that it prohibited an FED action).

80. Were this matter to proceed to a contested hearing, Respondent would contend that he took the appropriate steps to perfect an appeal as the unsigned minute entry of November 3, 2011 was not a final judgment for purposes of appeal and that Respondent was first required to seek emergency relief from the trial court prior to requesting such relief with the Court of Appeals pursuant to ARCAP 7 (C).

81. Judge Brain granted Mr. Shnitzer's motion to strike, and Mr. Shnitzer and Deutsche's motion to dismiss. In dismissing the case on January 3, 2012, Judge Brain wrote:

> Rule 8 requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The complaint is anything but. It is a long and rambling creature with no real discernible point (except, of course, that James wants relief). It also contains certain claims that appear spurious. For example:
>
> - It complains that the loan was "securitized almost from the inception" (paragraph 81), and claims that this was due to some (apparently sinister) intent that plaintiff "not know the true source of funding" (paragraph 89). In contrast, the Deed of Trust confirms, at paragraph 32, that "[t]he Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower."
>
> - It relies on a "show me the note" theory (paragraph 27) that has been rejected time and time again, most recently in *Hogan v. Washington Mutual Bank, N.A., 227 Ariz. 561, 261 P.3d 445 (App. 2011).*
>
> Suffice it to say that the Court has attempted to make sense of the complaint, but like counsel for everyone except, apparently, Mr. James, it cannot. The Complaint violates Rule 8, and for that reason

> alone must be dismissed. In addition, it goes without saying that a pleading which is incoherent fails to state a cause of action upon which relief may be granted, so the complaint must also be dismissed on this ground.
>
> Moreover, Rule 9(b) requires allegations of fraud to be stated with particularity, which generally means the time, place and substance of the misrepresentations, the identity of the person making the misrepresentation, and what was obtained. Count 2 states the legal elements of fraud (paragraph 74), but makes no effort to tie those elements to particular factual allegations. The fraud claim fails to comply with Rule 9(b), and must be dismissed.
>
> There are other issues with the complaint. For example, the statute of limitations for a consumer fraud claim (which appears to be what Count 3 attempts to plead) is one year, and it is obvious that many of the events set forth in the complaint occurred well outside that window. Likewise, there appears to be no legal basis for an accounting under the circumstances. But the Court has struggled long enough to understand this complaint, and declines to expend further effort doing so.

82. On March 21, 2012, Judge Brain ruled on "a veritable blizzard of paperwork" submitted after he granted the motion to dismiss. He denied Respondent's motion for reconsideration, motion for leave to file an amended complaint (the proposed complaint failed to meet the standards of Rules 8 and 9(b), Ariz. R. Civ. P., which was a basis to dismiss the earlier complaint), and Respondent's motion to set aside Judge Ditsworth's November 4, 2011, order (while cast as a Rule 60 motion, it was in fact a motion for reconsideration). Judge Brain also granted applications for attorney's fees and costs against James, Pleasantview, and Respondent totaling approximately $28,500.

83. Were this matter to proceed to a contested hearing, Respondent would contend that Defendants in the action have levied Mr. James' account for $22,000 and are holding excess proceeds from the purported sale of over $200,000.00.

84. On May 1, 2012, Respondent filed a Rule 60 motion to vacate judgment. In his Rule 60 motion Respondent alleged among other things that the adverse parties and their counsel acted dishonestly and fraudulently to cheat James out of his property, and that the various judges who presided over the cases unfairly let them get away with it. Respondent's motion referred to a separate motion he filed for change of judge for cause, but the docket contained no such motion.

85. On June 18, 2012, Judge Brain issued a minute entry stating: "The only colorable issue raised by the pending motion is whether counsel should be sanctioned. The motion is DENIED."

86. On August 3, 2012, attorney Ray Miller succeeded Respondent as counsel for James. On November 29, 2012, the court of appeals dismissed James' appeal for failure to file an opening brief.

Case X. Maricopa County Super. Ct. Case No. CV2011-056306 (FED Action)

87. Respondent appeared for and defended James and Pleasantview in court on November 8, 2011. Commissioner John Doody granted the FED that day.

88. On November 10 Respondent filed a notice of appeal and a motion for stay pending appeal. Respondent began his motion: "Defendant, Plaintiffs, by and through counsel undersigned, having appealed from the Court's November 8, 2011, signed Order to filed in the above captioned matter pursuant to ARS §12-2101(5)b [*sic*]."

89. Respondent contended that the FED judgment was entered without notice, valid proof of service, an opportunity to respond, an evidentiary hearing, and while a TRO was on appeal, in violation of procedural and substantive due

process. On November 14, 2011, Commissioner Doody denied Respondent's request for a stay.

90. On November 29, 2011, Respondent filed a memorandum in support of stay pending appeal. In his memorandum, among other already rejected contentions Respondent falsely claimed that the FED action was commenced while a TRO was in effect. After a hearing, Commissioner Doody again denied Respondent's request for a stay. Were this matter to proceed to a contested hearing, Respondent would testify that the FED action filed on November 3, 2011 was in violation of the TRO because the minute entry was not signed (*i.e.* final) until a day later on November 4, 2011.

91. On October 25, 2012, the Court of Appeals issued its unanimous Memorandum Decision affirming Commissioner Doody's decision. Among other things, it decided:

> a. Respondent failed to meet the essential requirements of Rule 13, Ariz. R. Civ. App. P., in his opening and reply briefs, "because there are virtually no citations to the record and many of the arguments are without legal authority. Furthermore, [Respondent] include[d] numerous extraneous references to items not in the record."
>
> b. "Appellants assert numerous other arguments as well . . . . However, Appellants cite no relevant legal authority to support these arguments nor do they cite any factual support in the record. They are merely "bald assertion[s]" and therefore we will not consider them. [Citation omitted]. Moreover, most of these alleged errors arose largely due to Mr. Rhoads' lack of candor with the trial court. Had he been candid with the court about the nature of the companion proceedings, these alleged errors would likely not have occurred. We therefore summarily reject the arguments raised by Appellants that are not supported by competent authority, and in particular, those assertions that flow from Rhoads' lack of candor with the superior court judges. *See* Ariz. Supreme Court Rule 41(c), 42 E.R. 3.3, 8.4(c) and (d) (requiring attorneys to exercise candor with the court); *see also Hmielewski v. Maricopa County*, 192 Ariz. 1, 5, ¶ 21, 960 P.2d 47, 51 (App. 1997)."

c. Respondent argued "merit of title" issues in an FED action which is forbidden since FED actions are limited to determining the right of possession. He was aware of this prohibition because he made this and other similar frivolous arguments in other appeals and was chastised or sanctioned for it. The known cases are *Deutsche Bank Nat. Trust Co. v. Hines*, 1 CA-CV 10-0140, 2010 WL 5060715 (Dec. 7, 2010, rev. den. May 24, 2011); *M&I Bank v. Izzo*, 1 CA-CV 10-0136, 2011 WL 345825 (Feb. 3, 2011); *Citibank, N.A. v. Coleman*, 2 CA-CV 2010-0113, 2011 WL 378866 (Feb. 4, 2011); *U.S. Bank Nat. Ass'n. v. Myers*, 1 CA-CV 0780, 2011 WL 6747428 (Dec. 22, 2011); and *Deutsche Bank Nat. Trust Co. v. Rhoads*, 1 CA-CV 10-0401, 2011 WL 6653469 (Dec. 20, 2011, rev. den. April 24, 2012). Respondent filed his opening brief in the James/Pleasantview case on March 7, 2012 and his reply brief on May 11, 2012, both after all of the foregoing cases were decided and, thus, with knowledge of their holdings.

92. Respondent did not file a Motion for Reconsideration or Petition for Review of the Court of Appeals decision. On January 29, 2013, Commissioner Doody entered "Judgment on Mandate" for $8,302.16 against Respondent for prosecuting a frivolous appeal.

Case XI. Confrontation on November 1, 2011

93. After the October 12, 2011, foreclosure sale Mr. Shnitzer went to the Tempe property to change the locks on some of the common areas and the rental office. James threatened Mr. Shnitzer so the latter sought and obtained an injunction against harassment on October 28, 2011, and served it on James on October 31.

94. Mr. Shnitzer alleged that James broke into the rental office and removed important business records. James also damaged a wall between a bathroom in the fitness center and the office, and directed tenants to continue to pay him rent at an alleged loss to Mr. Shnitzer of $16,000 prior to receiving a Writ of Restitution.

95. Mr. Shnitzer tried to regain access to the rental office on November 1, 2011. Respondent was there and the ensuing events were video-taped. Were this matter to proceed to a contested hearing, the State Bar would offer evidence that Respondent shoved a maintenance man trying to change a lock, told a security officer that "they" created false documents, and refused to obey the officer's command to leave. Respondent would offer evidence that he asked a maintenance man trying to change a lock to leave as the police had instructed; he had brief contact; and he told one of the four armed private security officers dressed like Sheriffs that "they" created false documents, and refused to obey the Tempe Police Officer's command to leave.

COUNT THREE (File no. 12-1379/Judicial Referral)

Case XII. FED Action RE: Paradise Valley Property

96. On February 25, 2010, an action for Forcible Entry and Detainer ("FED") was filed against Respondent in Maricopa County Superior Court. Deutsche Bank ("bank") was the named plaintiff and attorneys at Pite Duncan LLP were identified as plaintiff's counsel of record. Were this matter to proceed to a contested hearing, Respondent would contend that the action was filed by attorneys at Pite Duncan LLP, using the name of Deutsche Bank as the ostensible plaintiff, and that the true plaintiffs were collection agents. The action alleged that the bank bought Respondent's former home on E. Crystal Ln. in Paradise Valley at a non-judicial foreclosure trustee's sale and that, after giving notice, Respondent refused to vacate the home.

97. Were this matter to proceed to a contested hearing, Respondent would contend that Pite Duncan attorneys told respondent that there was "no evidence of

consideration paid at the sale," that they did not have a written fee agreement, and "that they did not know who their client was." The State Bar would contend that Respondent's contention is irrelevant to this discipline matter and based on inadmissible hearsay and speculation.

98. On March 20, 2010, Respondent filed a notice of peremptory change of judge. At the trial on April 5, 2010, Commissioner Cunanan denied Respondent's motion to dismiss and granted the bank's motion for judgment on the pleadings. Effective April 26, Commissioner Cunanan issued a Writ of Restitution and on April 27 he denied Respondent's motion for reconsideration.

99. On April 28, 2010, Respondent filed a notice of appeal. Division One of the Court of Appeals issued a Memorandum Decision on December 20, 2011, affirming the trial court. In its decision, the court revealed that Respondent's attorney contended at oral argument that the bank's trustee's deed was a forgery, but Respondent did not raise that contention at the trial court level.

100. Respondent also attacked the bank's trustee's deed on the "show me the note" theory that has been rejected by state and federal courts in Arizona and throughout the U.S. Even if the "show me the note" theory were recognized, it is not properly raised in an FED action where the only issue is right to possession—the validity of title is irrelevant and is to be determined in a quiet title action.

101. Were this matter to proceed to a contested hearing, Respondent would contend that homeowner claims are regularly summarily dismissed as "show me the Note" while the *Stauffer* decision validates the ARS 33-420 argument that fabricated recorded documents constitutes a valid claim.

102. The case was remanded to Superior Court on January 31, 2012. The remanded case was assigned to Commissioner Vatz. On February 23, 2012, Respondent filed another notice of peremptory change of judge. On February 24, Commissioner Vatz denied Respondent's notice of peremptory change of judge and set Respondent's emergency motion to quash the writ of restitution for a hearing on February 29, 2012.

103. On February 28, Respondent filed a motion for change of judge and an affidavit seeking Commissioner Vatz's recusal for cause. Respondent alleged that Commissioner Vatz could not provide a fair and impartial hearing based on his bias, prejudice, or interest. Respondent alleged further that in "a previous hearings" [*sic*] for FED actions Commissioner Vatz refused to consider evidence that plaintiffs lacked authority or standing, refused to allow into evidence purported proof that banks had "perverse incentives" to foreclose, refused to allow evidence in FED cases that fabricated documents were being recorded and presented in court, and that Commissioner Vatz had already made up his mind in other cases and was unwilling to fairly consider evidence of felony indictments and a large settlement in favor of homeowners negotiated by the attorney general.

104. Respondent's motion for change of judge for cause was referred to Civil Presiding Judge Oberbillig who denied it, stating "Disagreement with the ruling of a judicial officer is no grounds for disqualification."

105. The court conducted oral argument on March 5, 2012, on Respondent's emergency motion to quash the writ of restitution. Respondent notified the court that the Court of Appeals' remand on January 31, 2012, was erroneous because

Respondent had filed a Petition for Review by the Supreme Court that still was pending. On that basis, Commissioner Vatz granted Respondent's motion to quash.

106. At the March 5, 2012, hearing, Respondent behaved unprofessionally. For example, he asked permission to "make a record" on the motion to quash but instead sought to relitigate his motion for change of judge for cause even though Judge Oberbillig already denied it. Respondent asked Commissioner Vatz to explain why he would not recuse, raising the same arguments Judge Oberbillig already rejected. Were this matter to proceed to a contested hearing, Respondent would contend that setting a record regarding his motion for change of judge was appropriate because Judge Oberbillig is not an appellate judge and Respondent was setting a record should he decide to appeal his case on the grounds that Commissioner Vatz should have recused himself.

107. Respondent's tone was disruptive, disrespectful, and confrontational, at one point interrupting opposing counsel, standing, turning, and taking an aggressive half-step in his direction. Commissioner Vatz had to order Respondent to be seated and direct his comments and objections to the court. Were this matter to proceed to a contested hearing, Respondent would contend that owing to his physical stature, the relative positioning of furniture and the podium in the courtroom, and his simple shifting in his chair, it may have appeared that he made an aggressive move toward opposing counsel when, in fact, all he did was try to stand and address the Court.

108. Although Commissioner Vatz felt that he and Respondent's opposing counsel may have had a duty to refer Respondent to the State Bar, he chose to hear from opposing counsel and Respondent first. So, he scheduled a status

hearing for March 19, 2012. On March 19, 2012, Respondent did not appear. Court staff tried to reach him by phone but got only Respondent's voice mail. Opposing counsel confirmed that Commissioner Vatz's perceptions from March 5 were accurate, and Commissioner Vatz referred Respondent to the bar.

109. Later in the day on March 19, 2012, Respondent called the court and claimed that he did not receive the March 5 notice that scheduled the March 19 hearing. The court clerk confirmed that the March 5 minute entry was sent to Respondent electronically on March 9 and by mail on March 12. The mailed copy was not returned to the clerk as of the time that Commissioner Vatz issued his March 19 minute entry; however, both the March 5 and 19 minute entries were later returned to the clerk's office marked "undeliverable" to the intended address.

110. Were this matter to proceed to a contested hearing, Respondent would contend that he did not receive notice of the March 19, 2012 hearing, he was in Sedona at the time, the hearing was conducted *ex parte*, and the entire matter was still pending before the Supreme Court.

111. On April 24, 2012, the Arizona Supreme Court denied Respondent's Petition for Review. On May 15, 2012, the Court of Appeals remanded the matter to the Superior Court. On June 18, 2012, the bank filed a motion for sanctions against Respondent. It alleged that Respondent's behavior unnecessarily increased the bank's legal burden litigating the FED case by:

a. engaging in threatening behavior (as found by Commissioner Vatz);

b. asserting frivolous objections in bad faith (such as by claiming that opposing counsel did not really represent the bank and requesting a copy of opposing counsel's fee agreement; and by asserting the "show me the note" theory that Respondent well-knew had been debunked in Arizona, including in at least one case in which he was threatened with sanctions for failing to cite local contrary authority);

c. misstating and mischaracterizing facts (such as by claiming that the trustee's deed was a forgery, and by denying that the Court of Appeals found he waived the argument anyway), and

d. intentionally obstructing the speedy and just resolution of the case (such as by alleging that Deutsche Bank had disavowed all of its fraud; by insinuating that opposing counsel represented an "illegitimate collection agent that is getting 23 percent off the top"; by claiming that the bank engaged in document fabrication; and by suggesting that opposing counsel and his law firm were dishonest).

The claims were supported by references to the record.

112. Respondent did not respond to the motion. On July 23, 2012, Commissioner Vatz granted the bank's motion for sanctions and assessed attorney fees of $1,000.00. Were this matter to proceed to a contested hearing, Respondent would contend that he called Commissioner Vatz office and attempted to make a telephonic appearance to contest the sanctions, but that he was not allowed to do so and was negotiating in good faith with the real party in interest with the authority and responsibility to settle the claim having reached a preliminary settlement with JP Morgan Chase as servicer for the FDIC.

113. On July 26, 2012, Respondent filed an affidavit in which he accused Commissioner Vatz and all other court commissioners and judges of bias, prejudice, and undisclosed financial interests in FED cases. Respondent's affidavit is a rant and does not rationally explain what the undisclosed financial interests are. Were this matter to proceed to a contested hearing, Respondent would contend that the Court Registry Investment System administered by JP Morgan Chase and Federal Reserve monetizes Court cases, Code of Federal Regulations Collection Agency Designation includes the judiciary, and CCR Registration of the Arizona and Maricopa County Court Administration for Government Service Administration Payments could create the appearance of a conflict of interest.

114. The Court Clerk issued a new Writ of Restitution and Respondent filed another appeal. On August 31, 2012, Respondent filed a "Writ Returned, Refused for Cause, Without Dishonor and Without Recourse", in which he stated:

> Defendant, Douglas Rhoads, having become aware of extreme bias and prejudice relating to Comm. Benjamin Vatz and having received a Writ of Restitution from a fictitious plaintiff that is the result of fraud upon the Court and false recording [*sic*]. Defendant has come to an agreement with the real parties in interest to settle the claim and resolve the controversy for $2,400,000.00 (two million four hundred thousand dollars) relating to claims against 4834 East Crystal Lane, Paradise Valley, AZ 85253.

115. On September 25, 2012, the Court of Appeals returned the case to Superior Court, ruling that the appeal had been abandoned for failure to pay the filing fee.

116. Were this matter to proceed to a contested hearing, Respondent would contend that after the remand, he negotiated a settlement agreement with JP Morgan Chase, NA counsel at Bryan Cave for the subject property, but the settlement was not completed because of the interference of Lender Processing Services and Pite Duncan because they wanted their collection fees from the government.

CONDITIONAL ADMISSIONS

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

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 3.1, 3.2, 3.3(d), 3.4(a), 3.4(c), 3.4(e), 3.5(d), 4.4(a), 8.2(a), and 8.4(d); and Rules 41 (c) and (g), Ariz. R. Sup. Ct.

RESTITUTION

Respondent agrees to pay restitution in the following gross amounts:

a. $37,126.22 to 2525 S. McClintock, LLC;

b. $2,312.00 to Deutsche Bank; and

c. $500.00 to Judy Kelley.

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 and one day, restitution of unpaid judgments or other assessments connected with the underlying litigated matters in the gross sum of $39,938.22, and probation to be imposed upon reinstatement on terms to be determined at Respondent's reinstatement hearing. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.

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.

Duties violated–Respondent conditionally admits that he violated his duties to his clients (ER 1.1) and the legal system (ERs 3.1, 3.2, 3.3(d), 3.4(a), 3.4(c), 3.4(e), 3.5(d), 4.1(b), 4.4(a), 8.2(a), and 8.4(d)).

Mental State–Respondent conditionally admits that he variously acted negligently and knowingly in connection with the foregoing violations.

Actual or Potential Injury–Respondent caused actual harm and potential serious harm to his clients, opposing parties and counsel, and the courts.

The applicable *Standards* include:

ER 1.1
Standard 4.53-Reprimand is generally appropriate when a lawyer:
(a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
(b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

ERs 3.1, 3.2, 3.4, 4.4, 8.4(d)
Standard 6.22-Suspension is 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.

ERs 3.3, 4.1, 8.2, 8.4(d), Rules 41(c) and (g)
Standard 6.12-Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

The *Standards* do not account for multiple charges of misconduct. The ultimate sanction should at least be consistent with that for the most serious instance of misconduct among a number of violations. *Standards*, "II. Theoretical Framework". Thus, the presumptive sanction is suspension.

Aggravating and mitigating circumstances

The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22 - Aggravating factors include:

(c) a pattern of misconduct;

(d) multiple offenses;

(i) substantial experience in the practice of law; and

(j) indifference to making restitution.

In mitigation:

Standard 9.32 - mitigating factors include:

(a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive;

(c) personal or emotional problems (see "Discussion" below);

(e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings;

(k) imposition of other penalties or sanctions; and

(l) remorse.

Discussion

The main component of Respondent's mitigation is "personal or emotional problems." Those problems are addressed in the reports and communications between Respondent and Dr. Jamie Picus, PsyD, filed under seal but incorporated herein by this reference.

It was evident to bar counsel and to the settlement conference judge during the two settlement conference meetings, and in follow-up conversations, that there was an emotional element to Respondent's behavior. Bar counsel and the settlement judge suggested to Respondent that he consider undergoing a

psychiatric or psychological evaluation to determine if such an evaluation would produce mitigation evidence for him. Respondent met with Dr. Picus for an evaluation, and followed up with her on the telephone and by email, enabling her to express opinions about what drove Respondent's behaviors.

In summary, the sealed materials document that Respondent suffered personal and family traumas dating back to childhood that left him, first with the perception of an unjust world and, more recently, an unjust system with misplaced incentives. Over time, he became personally and emotionally over-invested in justice-related issues, and adopted his clients' struggles and sorrows as his own. Financial stresses brought on by the bursting real estate bubble exacerbated his mental state and left him frustrated, angry, overwhelmed, and disillusioned. With the benefit of hindsight, Respondent recognizes that he was negligent in offending judges in both his oral and written presentations, lost objectivity, and pushed too far-"for that I am sorry."

While the State Bar does not believe that Dr. Picus' records explain everything about Respondent's behavior, they do explain a lot. Respondent's "personal and emotional problems" are entitled to considerable weight as a mitigating factor, without which the bar would not consent to a suspension as short as six months and one day.

Respondent adds to this discussion the following: As a showing that Respondent recognizes his faults he stopped taking new homeowner cases a year ago and is attempting to remediate his conduct. Respondent has already wrapped up all of his existing cases except for two, which are pending modifications and Motions for Reconsideration with the Arizona Court of Appeals. Respondent gave

serious consideration with withdrawing his Motions for Reconsideration, however, his clients insisted the cases be maintained until the modifications are finalized at which time the cases will be dismissed. Respondent believes that in these instances where the homeowners were making modified payments when foreclosed and have been paying monthly to the clerk since, the Motions for Reconsideration are appropriate because after denying Respondent the requested relief in the underlying appeals, the Arizona Court of Appeals published the decision of *Stauffer v. US Bank*, 1 CA-CV-12-0073 issued on August 20, 2013 and Respondent believes that the same issues are applicable.

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. Between Respondent's suspension, restitution, the requirement that he demonstrate fitness and rehabilitation as part of his reinstatement, and his consent to have probationary terms attached to his reinstatement (to be determined at his reinstatement hearing), this proposed agreement suffices to meet the objects of lawyer discipline.

CONCLUSION

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. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of suspension for six months and one day, restitution of unpaid judgments or other

assessments connected with the underlying litigated matters in the gross sum of $39,938.22, probation to be imposed upon reinstatement on terms to be determined at Respondent's reinstatement hearing, and the imposition of costs and expenses of these proceedings. A proposed form of order is attached hereto as Exhibit "B."

DATED this 5th day of November, 2013.

STATE BAR OF ARIZONA

for Mr. Kinney with the letter's permission

Kyle Andrew Kinney
Limited appearance counsel
for Respondent

David L. Sandweiss
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 5th day of November, 2013.

Douglas C. Rhoads
Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

Douglas C. Rhoads
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 ____ day of _____, 2013.

Copies of the foregoing mailed/emailed
this _____ day of _____, 2013, to:

Douglas C. Rhoads
Rhoads & Associates PLC
2302 E. Delgado St.
Phoenix, AZ 85022-5838
Email: dougrhoads@cox.net
Respondent

Kyle Andrew Kinney
4110 N. Scottsdale Rd., Ste. 330
Scottsdale, AZ 85251-4423
Email: kyle@kinneylaw.net
Limited appearance counsel for Respondent

Copy of the foregoing emailed
this _____ day of _____, 2013, to:

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

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 5th day of November, 2013.

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this 5th day of November, 2013, to:

Douglas C. Rhoads
Rhoads & Associates PLC
2302 E. Delgado St.
Phoenix, AZ 85022-5838
Email: dougrhoads@cox.net
Respondent

Kyle Andrew Kinney
4110 N. Scottsdale Rd., Ste. 330
Scottsdale, AZ 85251-4423
Email: kyle@kinneylaw.net
Limited appearance counsel for Respondent

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

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

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

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

By: _____
DLS:dds

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DOUGLAS C. RHOADS,** **Bar No. 015265** Respondent.	**PDJ-2013-9051** **FINAL JUDGMENT AND ORDER** State Bar Nos. 11-2948, 11-3677, and 12-1379 **FILED NOVEMBER 6, 2013**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on November 5, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Douglas C. Rhoads**, is hereby suspended from the practice of law in Arizona for six (6) months and one (1) day, for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from this Order.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation on terms to be determined at his reinstatement hearing.

IT IS FURTHER ORDERED that Respondent shall pay restitution in the following gross amounts:

a. $37,126.22 to 2525 S. McClintock, LLC;

b. $2,312.00 to Deutsche Bank; and

c. $500.00 to Judy Kelley.

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

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

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $1,501.07. 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 6 day of November, 2013.

William J. O'Neil

The Honorable William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 6 day of November, 2013.

Copies of the foregoing mailed/emailed
this 6 day of November, 2013, to:

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Copy of the foregoing hand-delivered/emailed
this 6th day of November, 2013, to:

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by: MSmith