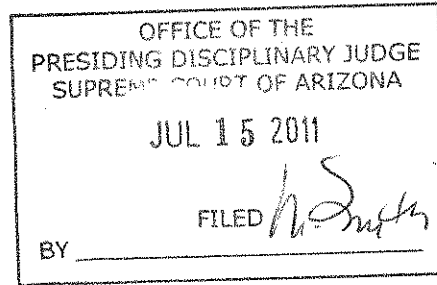


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Respondent

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

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

Stephen M. Johnson

Bar No. 015831

Respondent.

PDJ-2011- 9037

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

[No. 10-2444]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Stephen M. Johnson, who has chosen not to seek the assistance of counsel, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a)(3)(B), 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 1.2, 1.3, 1.4, 1.16(a)(1), and 8.4(d). Upon acceptance of this

agreement, Respondent agrees to accept imposition of the following discipline: Reprimand and two years probation. 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 22, 1994.

COUNT ONE

2. In November 2007, Phillip Mitchell (Mr. Mitchell) was convicted of several counts of child molestation and sexual abuse. Mr. Mitchell was represented by a Maricopa County public defender.

3. Mr. Mitchell was sentenced to life imprisonment. Mr. Mitchell appealed, but his conviction was subsequently upheld in August 2009.

4. Mr. Mitchell filed for post conviction relief pursuant to Rule 32, Ariz. R. Crim. P. on March 12, 2010.

5. Mr. Mitchell's public defender subsequently withdrew based on a conflict of interest following receipt of the trial transcripts on May 17, 2010. Respondent was subsequently appointed as counsel for Mr. Mitchell.

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.

6. By email dated May 20, 2010, Respondent was notified by the Public Defender's Office to retrieve Mr. Mitchell's file, which he did shortly thereafter.

7. The parties agree for purposes of this consent agreement that if this matter were to proceed to a formal hearing, the State Bar would present testimony that Mr. Mitchell was informed by his public defender of Respondent's appointment in June 2010, but did not hear from Respondent. Mr. Mitchell wrote to Respondent in August 2010 for an update on his case, but did not receive a response.

8. Prior to receiving Mr. Mitchell's letter in August 2010, Respondent began to prepare for a capital trial, CR2008-124043, for another client, Robert Hernandez (Mr. Hernandez). Respondent was second-chair counsel for Mr. Hernandez.

9. The trial in the Hernandez matter began in October 2010 and lasted through December 2010.

10. Respondent did not contact Mr. Mitchell between the time of Respondent's appointment in the matter and January 9, 2011.

11. If this matter were to proceed to a hearing, the parties agree that Respondent would show that all of his time was devoted to the Hernandez matter, which concluded with sentencing on December 14, 2010, and that as a result of the Hernandez preparation and subsequent holidays, Respondent did not initially contact Mr. Mitchell about his case until January 9, 2011.

12. After the initiation of an informal investigation by the State Bar into Mr. Mitchell's claims, Respondent spoke with Mr. Mitchell about his case by phone

and letter. Respondent then filed a post conviction relief motion on behalf of Mr. Mitchell on February 8, 2010 after being granted an extension of time to file the motion.

13. Respondent's motion lacked the appropriate certification that every ground for vacating, reducing, correcting or changing the judgment was contained in Respondent's request for post conviction relief.

14. The State moved to dismiss Respondent's motion without prejudice based on the lacking certification.

15. If this matter were to proceed to a formal hearing, the parties agree for purposes of this agreement that Respondent would be able to show that his motion was lacking the required certification because Mr. Mitchell wanted to interject additional issues that Respondent did not believe were appropriate to raise within the motion.

16. By minute entry dated February 14, 2011, the Court struck Respondent's motion based on the lacking certification and stated that if the Mr. Mitchell wanted to revise the petition he must do so within 45 days of the date of the minute entry.

17. Respondent did not resubmit the motion. The parties stipulate that Mr. Mitchell's post conviction relief matter remains pending and is awaiting a decision by Mr. Mitchell as to whether he wants to raise the additional disputed issues on his own or agree that the issues presented by Respondent were the only relevant issues before proceeding further.

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 Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 1.16(a)(1), and 8.4(d).

RESTITUTION

Restitution is not at issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: reprimand and two years probation with the subsequent terms of probation, including the use of a practice monitor:

LOMAP

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 final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.2, 1.3, 1.4, 1.16(a)(1), and 8.4(d). The director of LOMAP shall develop "Terms and Conditions of Probation," including, but not limited to, consultation regarding Respondent's calendaring and scheduling practices and terms for Respondent to obtain a Practice Monitor, and those terms shall be incorporated herein by reference. The probation period will commence

at the time of the entry of the judgment and order and will conclude two years from that date. Respondent shall be responsible for any costs associated with LOMAP and the Practice Monitor.

NON-COMPLIANCE

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

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

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

The parties agree that *Standard 4.43* is the appropriate *Standard* given the facts and circumstances of this matter. *Standard 4.43* provides that a "reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client." In this matter, Respondent failed to take any action on Mr. Mitchell's post conviction relief matter for a period of approximately six months. For purposes of this agreement, the parties agree Respondent acted negligently in light of his duties as second-chair counsel in the Hernandez trial. Nevertheless, Respondent's failure to act on Mr. Mitchell's behalf during this time period created actual, though not substantial, injury to Mr. Mitchell and the criminal justice system by needlessly delaying post conviction relief proceedings.

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 take any action on behalf of Mr. Mitchell for approximately six months and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual harm to the client and the legal system in the form of delayed post conviction relief proceedings.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is a reprimand. The parties conditionally agree that the following aggravating and mitigating factors should be considered and, when properly weighed, would not modify the presumptive sanction.

In aggravation:

1. *Standard 9.22(a)* – Prior Disciplinary Offenses

a. File No. 99-2005 – May 25, 2000 – Informal Reprimand

- i. Respondent refunded money to a client out of his trust account when the client had paid an earned-upon-receipt fee that had been deposited into Respondent's general account. Respondent also failed to timely respond to the State Bar's investigation. Respondent was informally reprimanded for conduct in violation of Rule 42, ERs 1.15 and 8.1, and Rules 43, 44, 51(h), and 51(i), Ariz. R. Sup. Ct. (2000).

b. File Nos. 00-1856, 002468, 00-2481, 01-0895, 01-1835, 01-1903, 01-2191, 02-0217, 02-02227, 02-0500, 02-0860, 03-0376, 03-0394, 030472 – September 11, 2003 – Suspension

- i. As court appointed counsel, Respondent failed to communicate with multiple clients, failed to follow client

directives, failed to diligently represent clients, failed to protect client property, and failed to cooperate with the State Bar's investigation. Respondent was also sanctioned by the Arizona Court of Appeals for misleading it. Respondent also failed to return an unearned portion of his retainer to a client. Respondent was suspended from the practice of law for six months and one day for violations of Rule 42, ERs 1.2, 1.3, 1.4, 1.15, 1.16, 8.1, 8.4(c), and 8.4(d), and Rules 51(h) and 51(i), Ariz. R. Sup. Ct. (2003).

c. File No. 03-0346 – May 27, 2004 – Suspension

i. Respondent provided false evidence to the State Bar in response to a screening investigation. Respondent was suspended from the practice of law for six months and one day in violation of Rule 42, ER 8.1, Ariz. R. Sup. Ct. (2004).

d. Respondent successfully completed his suspension and subsequent probationary period on July 8, 2010.

2. *Standard 9.22(c)* – Pattern of Misconduct

a. Respondent's conduct in this matter is similar in nature to his previous disciplinary history in which Respondent was suspended for six months and one day.

3. *Standard 9.22(i)* – Substantial Experience in the Practice of Law

a. Respondent has practiced law for approximately 17 years, particularly in the field of criminal law. Such experience should

have alerted Respondent that he should have withdrawn from Mr. Mitchell's matter while working on Mr. Hernandez' matter.

In mitigation:

1. *Standard 9.32(b)* – Absence of a Dishonest or Selfish Motive
 - a. Respondent's conduct in this matter was an issue of resource allocation and no evidence supports that he was engaging in any dishonest or selfish behavior at Mr. Mitchell's expense.
2. *Standard 9.32(e)* – Cooperative Attitude Toward Proceedings
 - a. Respondent fully cooperated with the State Bar's investigation in this matter, was responsive and non-combative.
3. *Standard 9.32(l)* – Remorse
 - a. Respondent freely acknowledged his mistake in not taking more prompt action in Mr. Mitchell's matter and immediately began work on Mr. Mitchell's post conviction relief efforts following the conclusion of the Hernandez trial.

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the fact that the nature of Respondent's neglect in Mr. Mitchell's matter was different from those matters in which he was suspended earlier. Specifically, Respondent's negligent conduct in this matter was caused by his responsibilities in a capital case that demanded his complete attention. Respondent further appears to have taken the lessons of his prior suspension to heart as evident by his full and honest cooperation in the State Bar's investigation

in this matter. Additionally, while there was an unquestionable delay in Mr. Mitchell's matter as a result of Respondent's neglect, that delay did not harm Mr. Mitchell's ability to seek post conviction release, which remains pending.

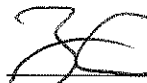
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

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 reprimand, probation, and the imposition of costs and expenses.

DATED this 14th day of July, 2011.

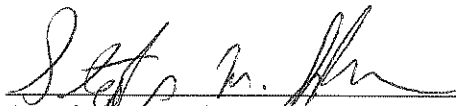
STATE BAR OF ARIZONA



Russell J Anderson
Staff Bar Counsel

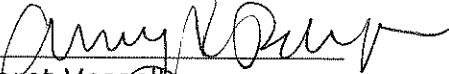
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.

DATED this 14th day of July, 2011.



Stephen M Johnson
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 15th day of July, 2011.

Copies of the foregoing mailed/emailed
this 15th day of July, 2011, to:


Stephen M. Johnson, Bar No. 015831
1212 E. Osborn Road
Phoenix, AZ 85014-0001
Telephone: 602-369-5037
Email: Idahosteve@hotmail.com

Copy of the foregoing emailed
this 15th day of July, 2011, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 W. Washington
Phoenix, AZ 85007
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 15th day of July, 2011, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288

By: 
RJA:dch

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
JUL 28 2011
FILED
BY _____

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

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

**Stephen M. Johnson,
Bar No. 015831**

Respondent.

PDJ-2011-9037

**AMENDED FINAL JUDGMENT
AND ORDER**

[No. 10-2444]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona has rendered a decision in the above-captioned matter. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Stephen M. Johnson**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, specifically Rule 4.2, ERs 1.2, 1.3, 1.16(a)(1) and 8.4(d), Ariz.R.Sup.Ct.

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

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 this amended final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.2, 1.3, 1.4, 1.16(a)(1), and 8.4(d). The director of LOMAP shall develop "Terms and Conditions of Probation," including, but not limited to, consultation regarding Respondent's calendaring and scheduling practices and terms for Respondent to obtain a Practice

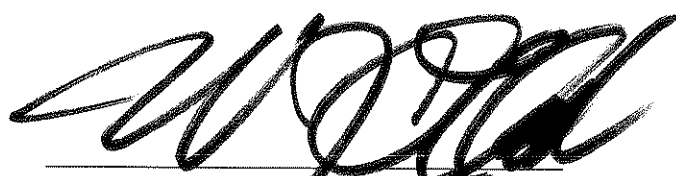
Monitor, and those terms shall be incorporated herein by reference. The probation period will commence as of this amended final judgment and order and will conclude two years from that date. Respondent shall be responsible for any costs associated with LOMAP and the Practice Monitor.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of


_____.

DATED this 28th day of July, 2011.



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 28th day of July, 2011.

Copies of the foregoing mailed
this 28th day of July, 2011, to:

Stephen M. Johnson
1212 E. Osborn Road
Phoenix, AZ 85014-0001
Respondent

Copy of the foregoing hand-delivered
this 28th day of July, 2011, to:

Russell J. Anderson
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288

Lawyer Regulation Records Manager
State Bar of Arizona
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Phoenix, Arizona 85016-6288

By: 