

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

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

**GIL SHAW,  
Bar No. 009290**

Respondent.

**PDJ 2014-9095**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 13-1026, 13-1145]

**FILED NOVEMBER 20, 2014**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on October 29, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** Respondent, **Gil Shaw**, is hereby suspended for a period of six (6) months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this Order.

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

**RESTITUTION**

**IT IS FURTHER ORDERED** Respondent shall pay restitution in case no. 13-1026 to Leon De Neui in the amount of \$392.00, within thirty (30) days from the date

of service of this Order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

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

**IT IS FURTHER ORDERED** Respondent shall pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,216.95, within ninety (90) days from the date of service of this Order

**DATED** this 20<sup>th</sup> day of November, 2014

*William J. O'Neil*

---

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

Copies of the foregoing mailed/emailed  
this 20<sup>th</sup> day of November, 2014.

Robert Van Wyck, Bar No. 007800  
7047 E. Greenway Parkway, Suite 150  
Scottsdale, Arizona 85254  
Telephone (480) 626-8483  
Email: [RVanWyck@gzlawoffice.com](mailto:RVanWyck@gzlawoffice.com)  
Respondent's Counsel

Stacy L. Shuman  
Staff Bar Counsel  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

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

by: JAlbright

Stacy L. Shuman, Bar No. 018399  
Staff Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602)340-7386  
Email: LRO@staff.azbar.org

Robert Van Wyck, Bar No. 007800  
7047 E. Greenway Parkway, Suite 150  
Scottsdale, Arizona 85254  
Telephone (480) 626-8483  
Email: [RVanWyck@gzlawoffice.com](mailto:RVanWyck@gzlawoffice.com)  
Respondent's Counsel

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

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

**GIL SHAW,  
Bar No. 009290,**

Respondent.

**PDJ 2014**

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

State Bar Nos. 13-1026, 13-1145

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Gil Shaw, who is represented by counsel, Robert Van Wyck, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. No probable cause order has been issued in the underlying cases. Respondent voluntarily waives the right to present these cases to the Attorney Discipline Probable Cause Committee or an adjudicatory hearing, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainants by letter on October 16, 2014. Complainants have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. To date, no objection has been received.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.3, 1.4(a)(3) and (4), 1.5(b), 1.15(c), 1.16(d), 5.5(a), 8.4(d) and Rule 43(a). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Six month suspension and Restitution. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.<sup>1</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

## **FACTS**

### **GENERAL ALLEGATIONS**

1. Respondent was first admitted to practice law in the state of Arizona on October 15, 1983.
2. Effective April 1, 2013, Respondent was suspended from the practice of law for 6 months and one day in PDJ 2012-9096 (SBA Case No. 11-1003).
3. As of the date of this consent, Respondent has not sought to be reinstated to practice law in the state of Arizona and remains suspended.

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<sup>1</sup> 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.

**COUNT ONE (File no. 13-1026/ De Neui)**

4. On July 17, 2012, Leon De Neui retained Respondent to file a complaint to partition certain real property. He paid a \$1,000 retainer. Mr. De Neui did not receive a written fee agreement or other writing concerning the fee and Respondent did not provide him with a receipt for the payment.

5. Respondent met with Mr. De Neui on July 17, 2012, and they discussed the partition action. Respondent "normally" would have prepared a one page fee agreement, but he does not have a copy of one for this representation. Respondent charged Mr. De Neui a \$1,000 flat fee which included the \$317 filing fee plus an estimated \$75 for costs of service. Respondent did not place the \$392 in future costss into a trust account.

6. On or about July 19, 2012, Respondent prepared and sent a letter to Mr. De Neui's partner, Mr. Ide, along with a draft complaint for partition. Respondent gave Mr. Ide until August 15, 2012, to respond to the demand letter. He did not do so.

7. The "Action in Partition" is two pages long and contains nine (9) paragraphs.

8. About six weeks later, Mr. Ide came to Respondent's office to discuss how to resolve the matter. Respondent thinks that he subsequently sent Mr. De Neui a letter and called him to advise that Mr. Ide would not agree to settle. If this matter went to hearing, Mr. De Neui would testify that Respondent did not keep him apprised of the status of the case.

9. Respondent denies receiving "clear instructions" to file the complaint until January 2013 when Mr. De Neui came to his office. If this matter went to

hearing, Respondent would testify that he told Mr. De Neui at that time that he would not be practicing law much longer and they needed to find someone else to handle the matter.

10. Respondent did not file the complaint. Nor did he prepare any of the following: a summons, a certificate of compulsory arbitration, or a Superior Court cover sheet.

11. Effective April 1, 2013, Respondent was suspended from the practice of law for six months and one day.

12. On or about April 12, 2013, Mr. De Neui terminated the representation and retrieved his client file on or about April 30, 2013. Respondent did not refund any fees or costs to Mr. De Neui.

13. Respondent had no contact with Mr. De Neui between January 2013 and April 2013 when Mr. De Neui terminated the representation.

14. Respondent violated ER 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client. Respondent prepared but never filed the complaint for partition as requested by the client.

15. Respondent violated ER 1.4(a)(3) and (4), which state that a lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Respondent did not keep the client informed about the status of the case and did not promptly comply with his reasonable requests for information.

16. Respondent violated ER 1.5(b), which states that the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a

reasonable time after commencing the representation. Respondent did not comply with the requirement of ER 1.5(b).

17. Respondent violated ER 1.15(c) [Safekeeping Property], which states that a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The client paid Respondent \$392 to be used for the filing fee and service fee. These expenses were not incurred because Respondent did not file the complaint; Respondent did not return the unearned expenses to the client; and he did not maintain them in a trust account.

18. Respondent violated ER 1.16(d) [Terminating Representation], which states that upon termination of representation, a lawyer shall take steps to the extent reasonable practicable to protect a client's interests, such as . . . refunding any advance payment of a fee that has not been earned. Upon termination of the representation, Respondent failed to return any unearned fees and unused expenses to the client. Nor did he provide the client with an accounting of time spent working on the case.

19. Respondent violated Rule 43(a) [Trust Accounts], which states that funds belonging to a client in connection with a representation shall be kept separate and apart from the lawyer's personal and business accounts. All such funds shall be deposited into one or more trust accounts that are labeled as such. The client paid Respondent \$392 to be used for the filing fee and service fee. These expenses were not incurred because Respondent did not file the complaint; Respondent did not return the unearned expenses to the client; and he did not maintain them in a trust account.



**COUNT TWO (File no. 13-1145/Judicial Referral)**

20. Effective April 1, 2013, Respondent was suspended from the practice of law for six months and one day.

21. On May 17, 2013, Respondent filed a closing statement with the Yavapai County Superior Court in P1300 PB 2012-00180. The closing statement identifies Respondent as the Attorney for the Personal Representative of the estate and as an "Attorney & Counselor at Law."

22. Respondent violated ER 5.5(a), which states that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. Rule 31(B)(1) states that it is unauthorized practice of law to engage in the practice of law when not authorized to do so pursuant to Rule 31(b) ["No person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar."] Rule 31(B)(2) states that unauthorized practice of law includes using the designations "lawyer," attorney at law," "counselor at law," . . . the use of which is reasonably likely to induce others to believe that the person is authorized to engage in the practice of law in this state." While suspended from the practice of law, Respondent filed a closing statement with the Yavapai County Superior Court in P1300 PB 2012-00180. The closing statement identifies Respondent as the Attorney for the Personal Representative of the estate and as an "Attorney & Counselor at Law."

23. Respondent violated ER 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. While suspended from the practice of law, Respondent filed a closing

statement with the Yavapai County Superior Court in P1300 PB 2012-00180. The closing statement identifies Respondent as the Attorney for the Personal Representative of the estate and as an "Attorney & Counselor at Law."

### **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 Rule 42, ERs 1.3, 1.4(a)(3) and (4), 1.5(b), 1.15(c), 1.16(d), 5.5(a), 8.4(d) and Rule 43(a).

### **CONDITIONAL DISMISSALS**

None.

### **RESTITUTION**

Respondent shall pay restitution in Case No. 13-1026 in the amount of \$392, which shall be paid within thirty (30) days of the date that the Court approves this consent agreement.

### **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: Six months suspension. No probation is being requested as Respondent will be placed on probation when he is reinstated from his current six month and one day suspension.

## 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* 4.42 is the appropriate *Standard* with respect to the facts and circumstances of Count One. *Standard* 4.42 provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury to a client. Respondent was not diligent in his representation of Mr. De Neui in Count One (Case No. 13-1026). He did not file the complaint for partition, which was the purpose of the representation.

The parties also agree that *Standard* 7.2 is the appropriate *Standard* with respect to the facts and circumstances of Count Two. *Standard* 7.2 provides that

suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. While suspended from the practice of law, Respondent filed a closing statement with the Yavapai County Superior Court in P1300 PB 2012-00180. The closing statement identifies Respondent as the Attorney for the Personal Representative of the estate and as an "Attorney & Counselor at Law."

**The duty violated**

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

**The lawyer's mental state**

For purposes of this agreement the parties agree that Respondent's actions were knowing and that his conduct, which is described in detail above, 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 actual or potential harm to the profession, legal system, and the public.

**Aggravating and mitigating circumstances**

The presumptive sanction in this matter is suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

**In aggravation:**

- Standard 9.22(a): Prior disciplinary offenses. SBA File No. 07-1069. Censure (2008). Violation of ERs. 1.2, 1.3, 1.4, 1.5, 3.2, 8.4(c), 8.4(d) and Rule 53(d); SBA File Nos. 08-1566, 08-1942, 09-0301. Suspended (six (6) months effective April 2, 2010), probation (one year), MAP, LOMAP and Restitution. Violation of ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.16, 3.2, and 8.4(d); SBA File No. 10-0532. Probation (one year effective upon Order of Reinstatement, November 19, 2010) and LOMAP. Violation of ERs 1.4, 1.5, 1.15, and 1.16; and SBA File No. 11-1003. Suspension for six months and one day. Violation of ERs 1.3, 1.4(a) (3), 1.4(a) (4), 1.5(b), 1.16(d), and 5.5(a).
- *Standard 9.22(c):* A pattern of misconduct. *See supra*. The present matter included two counts that set forth conduct by Respondent that violated multiple ERs.
- *Standard 9.22(d):* Multiple offenses. *See supra*. The present matter included two counts that set forth conduct by Respondent that violated multiple ERs.
- *Standard 9.22(i):* Substantial experience in the practice of law. Respondent was first admitted to practice law in Arizona on October 15, 1983.

**In mitigation:**

- *Standard 9.32(c)* personal or emotional problems. Respondent suffered the death of a family member from cancer during the relevant period of time.
- *Standard 9.32(e)* cooperative attitude toward proceedings
- *Standard 9.32(l)* remorse.

**Discussion**

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter.

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

### **CONCLUSION**

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of suspension for six months, restitution and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

**DATED** this 28<sup>th</sup> day of October 2014

State Bar of Arizona

Stacy L. Shuman

Stacy L. Shuman  
Staff Bar Counsel

**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement.**

**DATED** this \_\_\_\_\_ day of October, 2014.

\_\_\_\_\_  
Gil Shaw  
Respondent


**DATED** this \_\_\_\_\_ day of October, 2014.

Approved as to form and content

---

Robert Van Wyck  
Respondent's Counsel

Approved as to form and content

---

Maret Vessella  
Chief Bar Counsel

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

### CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of suspension for six months, restitution and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this \_\_\_\_\_ day of October 2014


State Bar of Arizona

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Stacy L Shuman  
Staff Bar Counsel

**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement.**

DATED this 22 day of October, 2014.



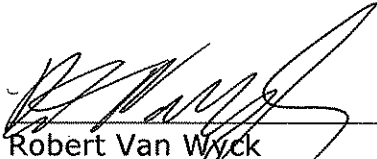
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Gil Shaw  
Respondent



**DATED** this \_\_\_\_\_ day of October, 2014.

Approved as to form and content

  
Robert Van Wyck  
Respondent's Counsel

Approved as to form and content

\_\_\_\_\_  
Maret Vessella  
Chief Bar Counsel

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 29th day of October 2014.

Copies of the foregoing mailed/emailed  
this 29th day of October 2014 to:

Robert Van Wyck, Bar No. 007800  
7047 E. Greenway Parkway, Suite 150  
Scottsdale, Arizona 85254  
Telephone (480) 626-8483  
Email: [RVanWyck@gzlawoffice.com](mailto:RVanWyck@gzlawoffice.com)  
Respondent's Counsel

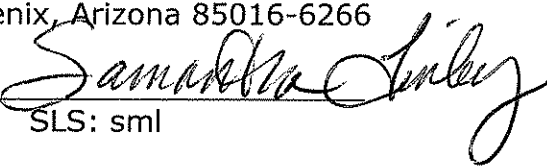
Copy of the foregoing emailed  
this 29th day of October, 2014, to:

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

Copy of the foregoing hand-delivered  
this 29th day of October, 2014, to:

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

by:

  
SLS: sml

## **EXHIBIT "A"**

## Statement of Costs and Expenses

In the Matter of a Suspended Member of the State Bar of Arizona,  
Gil Shaw, Bar No. 009290, Respondent

File No(s). 13-1026 and 13-1145

### **Administrative Expenses**

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

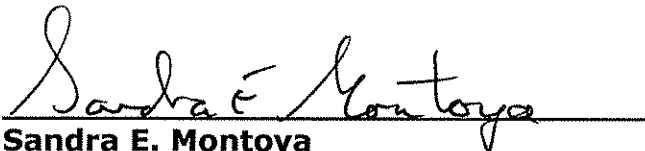
### ***General Administrative Expenses for above-numbered proceedings***

**\$1,200.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

### **Staff Investigator/Miscellaneous Charges**

06/30/14	Computer investigation reports, Accurant	\$ 16.95
Total for staff investigator charges		\$ 16.95
<b>TOTAL COSTS AND EXPENSES INCURRED</b>		<b>\$1,216.95</b>

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

10-16-14  
**Date**

## **EXHIBIT "B"**

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

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

**Gil Shaw,  
Bar No. 009290,**

Respondent.

**PDJ**

**FINAL JUDGMENT AND ORDER**

State Bar Nos. 13-1026, 13-1145

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

**IT IS HEREBY ORDERED** that Respondent, **Gil Shaw**, is hereby suspended for a period of six (6) months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this order or \_\_\_\_\_.

**IT IS FURTHER ORDERED** that, upon reinstatement, Respondent shall be placed on probation for a period of two (2) 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 thirty (30) days of the date of the reinstatement. Respondent shall submit to a LOMAP examination of his office's

procedures, including, but not limited to, client relations. The director of LOMAP shall develop "Terms and Conditions of Probation," and those terms shall be incorporated herein by reference. The probation period will begin to run at the reinstatement order and will conclude two (2) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

**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 \$ 1,216.95, within ninety (90) days from the date of service of this Order.

**IT IS FURTHER ORDERED** that Respondent pay restitution in case no. 13-1026 in the amount of \$392, within thirty (30) days from the date of service of this Order.

**IT IS FURTHER ORDERED** that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of \_\_\_\_\_, within thirty (30) days from the date of service of this Order.

#### **NONCOMPLIANCE**

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 thirty (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.

**DATED** this \_\_\_\_\_ day of October, 2014

---

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

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this \_\_\_\_\_ day of October, 2014.

Copies of the foregoing mailed/emailed  
this \_\_\_\_\_ day of October, 2014.

Robert Van Wyck, Bar No. 007800  
7047 E. Greenway Parkway, Suite 150  
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Telephone (480) 626-8483  
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Respondent's Counsel

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