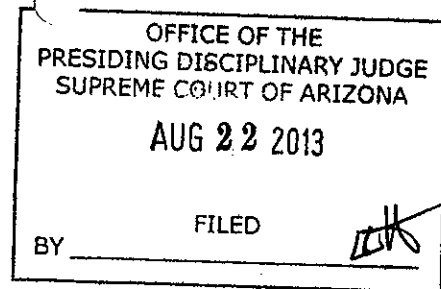


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Respondent's Counsel

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

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

**Percival R. Bradley,
Bar No. 017149,**

Respondent.

PDJ-2013-9072

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar No. 12-3242

The State Bar of Arizona ("SBA"), through undersigned Bar Counsel, and Respondent Percival R. Bradley, who is represented in this matter by counsel, Nancy A. Greenlee, 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, 1.3, 1.5(c), 3.1, and 8.4(d). Upon acceptance of this agreement,

Respondent agrees to accept imposition of the following discipline: Suspension for 60 days effective October 1, 2013. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The SBA's Statement of Costs and Expenses is attached hereto as Exhibit "A."

COUNT ONE of ONE (State Bar File No. 12-3242)

FACTS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 19, 1996.

2. On April 10, 2012, Respondent filed suit on behalf of his client, Demita Nix, against Toni & Guy Hair Salon, seeking damages for injuries she suffered when a waiting room chair in which she was sitting collapsed.

3. Respondent's file contains neither an ER 1.5(b)-compliant written communication of fees and expenses nor an ER 1.5(c)-compliant written contingency fee agreement signed by Demita. Respondent believes he entered into a written fee agreement with Demita but is unable to find it.

4. Respondent alleged in the complaint that the date of the incident was April 10, 2012, but it was clear to all concerned that he meant to say April 10, 2010.

5. Respondent's file contains an "Injury Information Form" that calls for new client intake information. There is a blank on the form for "Today's Date" that is not filled in; however, Demita's birth date is identified as January 20, 1964, and

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.

her "Present Age" is 46, meaning that she retained Respondent no later than January 19, 2011.

6. Respondent's file also contains handwritten notes on lined paper at the top of which appears "10th April". Respondent later explained in response to the screening investigation that Demita gave April 10 as the date of her injury.

7. On August 24, 2012, the defense filed a motion for summary judgment ("MSJ"). The basis for the motion was that Demita's alleged injury occurred on April 3, 2010, and that she and Respondent missed the statutory limitation period by one week. The motion was supported by the store manager's affidavit that on April 3, she accumulated post-incident information from Demita and witnesses, and prepared a report that she emailed to the store's human resources department. The email bears the date April 3, 2010.

8. Respondent filed a response to the MSJ. He did not furnish a controverting affidavit or any factual evidence that Demita's injury occurred on April 10 rather than April 3. Instead, his only "fact" about the correct date of injury was contained in his "Statement of Material Facts in Dispute": "Plaintiff disputes the authenticity and creditability [*sic*] of the email submitted by Defendants in support of their Motion for Summary Judgment." In his legal memorandum, he argued that the store manager's affidavit was unreliable, reducing the contest to her word against Demita's. Demita's "word", however, was contained only in the unverified complaint.

9. The court scheduled oral argument for December 6, 2012, but Respondent mistakenly clicked December 13 on his computer calendar which

automatically registered the same wrong date for oral argument on his mobile calendar. Hence, on December 6, he did not appear in court for oral argument.

10. On December 6, Judge Warner conducted oral argument. There is no indication on his minute entry that he asked a court employee to try to contact Respondent to determine why Respondent did not appear. Similarly, in his response to the screening investigation, Respondent did not report receiving a call from the court or opposing counsel.

11. Judge Warner granted the MSJ on the ground that the defense presented admissible evidence of the April 3 date of injury; Rule 56, Ariz. R. Civ. P., required Respondent and Demita to respond with admissible evidence if they wanted to resist the MSJ; they offered no admissible evidence to controvert it; and they failed to meet the requirements of Rule 56. He assessed costs of \$223.00 against Demita.

12. Judge Warner expressed concern over whether the plaintiff's failure to present admissible evidence resulted from Respondent's neglect or whether there simply was no admissible evidence (such as a declaration from the plaintiff herself) regarding the correct date of injury. Because Respondent did not appear, Judge Warner was unable to ask those questions.

13. While preparing for what he thought was a December 13 oral argument, Respondent recognized his mistake and contacted the court to explain. He was informed that the judge already heard argument and granted the defense MSJ. Respondent contacted Demita and explained the situation. They agreed that since the court found the defense evidence credible, it was pointless to ask the judge to reconsider, or appeal.

14. In his response to the screening investigation, Respondent explained his strategy and actions. He did not attach an affidavit from Demita because although she believed that she was injured on April 10, she could not swear to it. Therefore, he planned to argue that the store manager's email was invalid (the email in one line referred to April 2 as the incident date; the manager clarified the error in her affidavit) which would reduce the issue to the manager's word against Demita's at trial.

15. One problem with that strategy is that Respondent would have to show that the email, along with the data footprint it left behind, was concocted after the fact to create a phony date of injury. Another problem is that there were witnesses, including customers, whose appointment dates and receipts for payment likely were recorded in multiple places. Most problematic of all, however, is that Demita and Respondent inevitably were going to lose the anticipated swearing contest. If Demita was so uncertain of when she got hurt that she could not swear to it in an affidavit there was little chance, as the party with the burden of proof, that she would prevail at trial.

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, 1.3, 1.5(c), 3.1, and 8.4(d).

RESTITUTION

Respondent settled with his client any professional liability claim she might have asserted against him. Restitution is not an issue in this matter.

SANCTION

Respondent and the SBA agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Suspension for 60 days effective October 1, 2013, and payment of costs.

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 duty violated

Respondent violated his duties to his client (ERs 1.1, 1.3, and 1.5(c)) and the legal system (ERs 3.1 and 8.4(d)).

The lawyer's mental state

The parties conditionally agree that Respondent acted with a negligent mental state in the course of committing the misconduct described herein.

The extent of the actual or potential injury

The parties conditionally agree that there was actual and potential harm to Respondent's client and the legal system.

The parties agree that the following *Standards* are applicable to the facts and circumstances of this matter.

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.

ER 1.3

Standard 4.43

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.

ER 1.5(c)

Standard 4.64

Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

ERs 3.1 and 8.4(d)

Standard 6.24

Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

The *Standards* do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct.

Standards, II. Theoretical Framework. The presumptive sanction in this matter is reprimand.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(a) prior disciplinary offenses-

- March 18, 2009, 09-0081, probation in 06-1762 below (LOMAP and practice monitor) extended for an additional year, ERs 1.1, 1.3, 1.4, 1.15, 1.16(d), and 8.4(d), by allowing a statutory limitations period to expire on a marginal bodily injury case, failing to respond to client's requests for case status information, and failure to give client the file.

- February 21, 2008, 06-1762, consent for censure (currently reprimand) and probation (LOMAP and practice monitor) for one year, ERs 1.1 1.2, 1.3, 1.4, 3.2, and 8.4(d), by failing to pay adequate attention to the matter and thoroughly prepare for the representation, by allowing the statutory limitation period to lapse, by failing to pursue the legal claim within the statutory time limitation, by failing to promptly inform the client regarding a settlement offer, by failing to keep the client reasonably informed about the status of the matter and by failing to comply with reasonable requests for information.

Standard 9.22(c) a pattern of misconduct; there are repetitive violations of the same ethical violations in the prior discipline listed above and the instant matter, as well as two prior orders of diversion entered in 2005. ²

Standard 9.22(d) multiple offenses;

Standard 9.22(i) substantial experience in the practice of law (admitted 1996).

In mitigation:

² •April 26, 2005, 04-1611, Diversion (LOMAP for one year), ERs 1.3, 1.4, 3.4(c), and 8.4(d)

•April 18, 2005, 04-1289, Diversion (LOMAP for one year), ERs 3.1 and 8.4(d)

Standard 9.32(b) absence of a dishonest or selfish motive;

Standard 9.32(d) timely good faith effort to make restitution or to rectify consequences of misconduct (Respondent promptly entered into a settlement with his client regarding any potential professional liability claim);

Standard 9.32(e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings.

Discussion

Standard 8.2, Prior Discipline Orders, states:

Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

Respondent was previously reprimanded for misconduct similar to his misconduct in this case. Hence, the parties conditionally agree that a sanction greater than reprimand is warranted, and that a 60-day suspension is appropriate.

[U]nder ABA Standard 8.2, suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to the client, the public, the legal system, or the profession. In other words, a graded response from reprimand, to suspension, to disbarment is sometimes appropriate, depending on the severity of the subsequent conduct.

In re Redondo, 176 Ariz. 334 at 338, 861 P.2d 619 at 623 (1993). 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 a 60-day suspension effective October 1, 2013, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 22nd day of August, 2013.

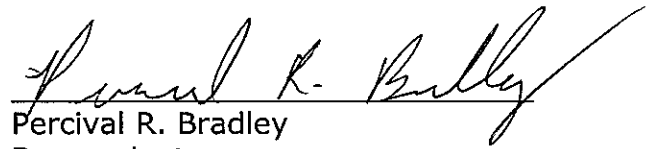
STATE BAR OF ARIZONA



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 14th day of August, 2013.



Percival R. Bradley
Respondent

DATED this 15th day of August, 2013.



Nancy A. Greenlee
Counsel for Respondent

Approved as to form and content:


Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 22nd day of August, 2013.

Copies of the foregoing mailed/emailed
this 22nd day of August, 2013, to:

Nancy A. Greenlee
821 E. Fern Dr. North
Phoenix, AZ 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

Copy of the foregoing emailed
this 22nd day of August, 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 22nd day of August, 2013, to:

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

By: 
DLS:dds

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

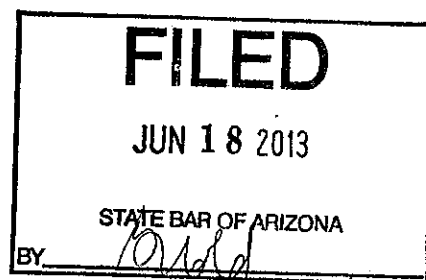
**IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,**

**PERCIVAL R. BRADLEY,
Bar No. 017149,**

Respondent.

No. 12-3242

PROBABLE CAUSE ORDER



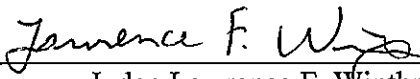
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 14, 2013, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation, and Respondent's Response.

By a vote of 7-0-2¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 12-3242.

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

Parties may not file motions for reconsideration of this Order.

DATED this 17 day of June, 2013.



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

¹ Committee members Daisy Flores and Jeffrey G. Pollitt did not participate in this matter.

Original filed this 18th day
of June, 2013, with:

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

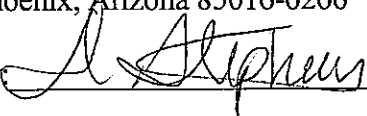
Copy mailed this 20th day
of June, 2013, to:

Percival R. Bradley
Bradley & Associates PLC
40 North Central Avenue, Suite 2250
Phoenix, Arizona 85004-4445
Respondent

Copy emailed this 20th day
of June, 2013, to:

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

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

by 

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,**

**PERCIVAL R. BRADLEY,
Bar No. 017149**

Respondent.

PDJ-2013-9072

FINAL JUDGMENT AND ORDER

[State Bar No. 12-3242]

FILED SEPTEMBER 3, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on August 22, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Percival R. Bradley**, is hereby suspended for sixty (60) days effective October 1, 2013, for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents,.

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 \$ 1,200.00. 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 3rd day of September, 2013.

/s/ 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 3rd day of September, 2013.

Copies of the foregoing mailed/emailed
this 3rd day of September, 2013, to:

Nancy A. Greenlee
821 E. Fern Dr. North
Phoenix, AZ 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

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David L. Sandweiss
Senior Bar Counsel
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Email: lro@staff.azbar.org

Sandra Montoya
Lawyer Regulation Records Manager
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Phoenix, Arizona 85016-6266

by: MSmith