

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**KATHRYNE L. WARD,**  
**Bar No. 021382**

Respondent.

**PDJ 2015-9098**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 13-2623, 13-3037, 13-3518, 14-0556, and 14-2965]

**FILED FEBRUARY 10, 2016**

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The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on January 22, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS ORDERED** Respondent, **Kathryne L. Ward**, is hereby suspended for one (1) year for her 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. A period of suspension of more than six months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona.

**IT IS FURTHER ORDERED** Ms. Ward shall forego collection of \$32,000.00 in fees allegedly owing from Mr. Gally in connection with Count Four.

**IT IS FURTHER ORDERED** Ms. Ward shall submit to a State Bar of Arizona Member Assistance Program assessment at her expense prior to petitioning for reinstatement to the practice of law.

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

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

**IT IS FURTHER ORDERED** Ms. Ward shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,243.40 plus interest at the statutory rate, within thirty (30) days from the date of this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

**DATED** this 10<sup>th</sup> day of February, 2016.

*William J. O'Neil*

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

Copies of the foregoing mailed/e-mailed  
this 10th day of February, 2016, to:

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by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**KATHRYNE L. WARD,**  
**Bar No. 021382**

Respondent.

**PDJ-2015-9098**

**DECISION ACCEPTING CONSENT  
FOR DISCIPLINE**

[State Bar Nos. 13-2623, 13-3037,  
13-3518, 14-0556, 14-2965]

**FILED FEBRUARY 10, 2016**

Probable Cause Orders issued on July 27, 2015, and the formal complaint was filed September 21, 2015. Counsel for Ms. Ward filed her Answer on October 20, 2015. An Agreement for Discipline by Consent ("Agreement") was filed by the parties on January 22, 2016, and submitted under Rule 57(a)(3), Ariz. R. Sup. Ct.<sup>1</sup> Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate."

Rule 57(a)(2) requires admissions be tendered solely "...in exchange for the stated form of discipline...." Under that rule, the right to an adjudicatory hearing is waived only if the "...conditional admission and proposed form of discipline is approved...." If the agreement is not accepted those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

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<sup>1</sup> Unless stated otherwise, all rules referenced are the Arizona Rules of the Supreme Court.

Under Rule 53(b)(3), notice of this Agreement was provided to the complainant(s) by email and letter on January 21, 2016. Complainant(s) were 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. Four objections were received. The four objections each submit the sanction is inadequate based on the intentional misconduct and harm caused by the actions of Ms. Ward. The objections also assert Ms. Ward is unfit to practice law and incapable of rehabilitation from her lack of candor to the courts and clients, dishonesty, self-dealing, and illegal activity.

The conditional admissions as written contain many disputed facts. The agreement points out that in her answer, Ms. Ward admitted 60 of the 202 factual allegations. What appears conditionally admitted is briefly summarized.

In consolidated Counts One-Three, Ms. Ward represented multiple clients related to matters involving the medical marijuana industry. Natural Earth Providers, Inc., won a lottery to become the medical marijuana dispensary license holder for the Cordes Junction Community Health Analysis Area. Clients Jennifer Sanchez, John Romero, and Hector Martinez claimed ownership to N.E.P. Holding, who claimed it owned half of Natural Earth Providers, Inc., and Timothy Theiss claimed he owned the other half of Natural Earth Providers, Inc. Thereafter, "QPAC LLC" agreed to invest monies. Ms. Ward's son, Michael Colburn was a member of QPAC, LLC, however, it is unknown who or what "QPAC, LLC" represents and it is disputed what the monies were for.

Ms. Ward conditionally admits she entered into a written fee agreement on July 2, 2013, with the above mentioned clients which included a Conflict of Interest Consent and Waiver, which she later attempted to retract to benefit herself. The fee

agreement specifically precluded Respondent from representing any of the individuals ("Represented Parties") against one another. It stated, "For the avoidance of doubt, our Firm would withdraw its representation of either Represented Party with respect to any such litigation, arbitration, or similar dispute." She also avowed her firm, if litigation occurs, would "continue to protect confidential information learned during our Firm's representation of each Represented Party and will not share this information with any other Represented Party."

In spite of that clear language, Ms. Ward took the representation of Represented Parties in litigation against other Represented Parties when disputes arose between the parties. Ms. Ward filed multiple civil suits and engaged in extensive litigation against those clients. She engaged in conflicts of interest and revealed confidential information to the disadvantage of the clients, without the clients' consent.

In Count Four, Ms. Ward's son established Compassionate Care Dispensary (CCD), Inc., to become a medical marijuana dispensary in Winslow, AZ. Ms. Ward's daughter-in-law Erica Brown, incorporated CCD and CCD applied to the Arizona Department of Health Services for a registration certificate. CCD needed to secure a location that met state requirements. John Gally owned the Winslow Water Building. CCD contacted Mr. Gally, who agreed to allow CCD to use the building for a dispensary and CCD applied for a conditional permit through its principal officers and directors, which included Ms. Ward's son, Michael Colburn and her husband, Steven Smigay. Ms. Ward represented CCD in obtaining the required permit, which Mr. Gally supported. The conditional permit was obtained on May 17, 2011. Mr. Gally then asked Ms. Ward to represent him in some lease issues regarding other properties he

owned. Ms. Ward represented Mr. Gally from July 2011-April 2014, without written communication of the scope of representation or basis for fees. Since 2007, Mr. Gally rented the Winslow Water Building to a water conditioning business. Ms. Ward thereafter, conditionally admits she engaged in conflicts of interest regarding CCD, and her client, Mr. Gally, while promoting her personal interests in promoting her son's and husband's interests in CCD. She further admits she did not provide competent representation to Mr. Gally and failed to communicate the scope of the representation and basis or rate of fee and expenses.

In Count Five, Tempe police executed a search warrant at the Medical Education Resource Center in March 2013. Ms. Ward arrived during the search and informed Tempe police she was the Medical Education Resource Center's lawyer. In September 2013, a forfeiture action was filed by the Maricopa County Attorney's Office regarding \$7,900.00 seized during the search. Ms. Ward filed a claim on behalf of her firm for \$7,185.00 as monies paid by law firm clients to be held in the IOLTA trust fund account for legal services under the clients' retainer agreements with the law firm. Ms. Ward asserted the monies were seized from the premises of the law firm and identified clients as Jane and John Does. The court issued a forfeiture order, which Ms. Ward moved to set aside based on improper service.

Ms. Ward asserted to the court that the door to her law office was marked as "Suite C" and "Law Office" and she used that office as an auxiliary location when working on client matters. Tempe police reports reflected that no identifying markings were contained on the office doors when executing the search. The court ultimately set aside the forfeiture order and ruled entitlement to the monies was to be determined in civil court. Thereafter, the State sought to identify Ms. Ward's clients

to notify them of the forfeiture action involving their monies. Ms. Ward declined to provide that information. Ms. Ward also failed to provide her trust account records to the State Bar for the period January-May, 2013, as requested and stated her clients were not able to pay a retainer at the start of representation and by the time clients paid, she had earned the fees and therefore, the trust account rules were not implicated. Ms. Ward's lack of disclosure is troubling for many reasons including an appearance of fraudulently benefiting herself through the crimes of another, as Ms. Ward's position contradicted her position in the forfeiture action. She conditionally admits she could have been clearer in her court filings and submits any misrepresentations and or inconsistencies in those filings were attributed to a serious injury she experienced on August 23, 2013, and that she has been heavily medicated for pain since that time.

On many contested facts, Ms. Ward conditionally admits her misconduct violated Rule 42, ERs 1.1 (competence), 1.5 (fees), 1.6 (confidentiality of information), 1.7 (conflict of interest; current clients), 1.8 (conflict of interest; current clients; specific rules), 1.9 (duties to former clients), 1.15 (safekeeping property), 3.1 (meritorious claims and contentions), 8.1 (bar admission and disciplinary matters), 8.4(d), and Rules 43(a) and (b) (trust account), and Rule 54(d) (failure to comply with the State Bar's request for information).

The parties stipulate to a sanction of a one (1) year suspension, restitution in the form of a waiver of \$32,000.00, allegedly owed by Mr. Gally to Ms. Ward (Count Four), a MAP assessment prior to reinstatement, and the payment of \$1,243.40.00 in costs to be paid within 30 days of the order accepting the agreement.

### **Presumptive Sanction**

The parties agree the presumptive sanction is suspension and cite *Standard 4.32, Failure to Avoid Conflicts of Interest*, as applicable to Ms. Ward's most serious knowing violations of ERs 1.7, 1.8 and 1.9. *Standard 4.32* provides:

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

*Standard 4.31* provides:

Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
- (b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
- (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

Ms. Ward conditionally admits she violated her duties to clients, the legal profession, the legal system, and the public. She conditionally admits her misconduct in Count One-Four caused actual injury to clients and the legal system. She further conditionally admits her misconduct in Counts Four and Five caused actual injury to the public, and caused actual injury to the legal system and legal professions in Count Five.

The conditional admissions support a knowing, if not intentional violation with the intent to benefit with serious or potentially serious injury and support application

of *Standard* 4.31. She has admitted a selfish motive in aggravation, which does not substitute for the intent or degree of injury and a majority of her misconduct occurred prior to her August 2013 injury claimed for mitigation. On these facts and given actual harm in this matter to clients, the public, the legal system and profession, the PDJ finds suspension is more than warranted.

### **Aggravation and Mitigation**

The agreed upon aggravating factors include: 9.22(b) (selfish motive), 9.22(c) (pattern of misconduct), 9.22(d) (multiple offenses), 9.22(g) (refusal to acknowledge wrongful nature of conduct), 9.22(h) (vulnerability of victim), and 9.22(i) (substantial experience in the practice of law). Mitigating factors include: 9.32(a) (absence of a prior disciplinary record), and 9.32 (personal or emotional problems). The mitigation factors have only partially been verified and Ms. Ward “has not produced any expert medical opinion linking her personal problems to her behaviors.” The parties’ discussion of various factors include a quotation from her disclosure statement where she states she has suffered, “grief, depression and lack of ability to reason or rationalize family and financial issues.” The Agreement contains an unsigned mitigation statement regarding this factor and this judge is not willing to find they are existent, but rather only acknowledges the parties certification by counsel that they are.

The parties agree that given whatever mitigation is present, a one (1) year suspension is appropriate. The complainants strongly disagree. Many facts in this proposed agreement are disputed and some misconduct occurred before Ms. Ward’s injury. At the same time, the complainants point to significant damages they have suffered due to the actions of Ms. Ward, for which they argue she continues to avoid

being responsible. Here, the complainants appear to misapprehend the purpose of attorney discipline. It is not the function of attorney discipline to resolve the multiple civil claims which may be existent against Ms. Ward for her unethical actions. In this proceeding, she has acknowledged violating multiple ethical rules and agreed "there were actual injuries" to them, the legal profession, the legal system and the public. She acknowledges a selfish motive, a pattern of misconduct, multiple offenses, her refusal to acknowledge the wrongful nature of her conduct, the vulnerability of the victims, and her substantial experience in the practice of law.

While multiple facts may be disputed, the fact Ms. Ward acted unethically and caused injury is not. A hearing may well result in a lengthier suspension. It is not the forum however for resolving civil damages which complainants may be entitled to. Ms. Ward has acknowledged her unethical actions and the one (1) year suspension is a reasonable agreement.

Accordingly:

**IT IS ORDERED** incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: a one (1) year suspension, the forgoing of collection of \$32,000.00 in fees allegedly owing from Mr. Gally in Count Four. Ms. Ward shall also undergo a State Bar of Arizona Member Assistance Program (MAP) assessment at her expense prior to petitioning for reinstatement to the practice of law, and shall be subject to any additional terms imposed by the Presiding Disciplinary Judge because of any reinstatement hearings held. Ms. Ward shall comply with Rule 72 Ariz. R. Sup. Ct. and pay costs of \$1,243.40, plus interest at the statutory rate in full within thirty (30) days from the date of this order.

**IT IS FURTHER ORDERED** the Agreement is accepted. A final judgment and order is signed this date. All prehearing deadlines and hearings are vacated in favor of the judgment.

**DATED** 10<sup>th</sup> day of February, 2016.

*William J. O'Neil*

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

Copies of the foregoing were mailed/e-mailed this 10<sup>th</sup> day of February, 2016 to:

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**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**KATHRYNE L. WARD,**  
**Bar No. 021382,**

Respondent.

**PDJ 2015-9098**

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

State Bar File Nos. 13-2623, 13-3037,  
13-3518, 14-0556, and 14-2965

The State Bar of Arizona through undersigned Bar Counsel, and Respondent Kathryne L. Ward who is represented by counsel Ralph W. Adams, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.<sup>1</sup> Probable cause orders were entered on July 27, 2015. The State Bar filed a formal complaint on September 21, 2015, and these matters since have been in formal proceedings. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests

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<sup>1</sup> All references herein to rules are to the Arizona Rules of the Supreme Court unless otherwise stated.

which have been made or raised, or could be asserted thereafter, if the conditional admissions and proposed form of discipline are approved.

Pursuant to Rule 53(b)(3), notice of this agreement was provided to the complainants by letter and email on January 21, 2016. Complainants were notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ERs 1.1, 1.5, 1.6, 1.7, 1.8, 1.9, 1.15, 3.1, 8.1, and 8.4(d); Rule 43(a) and (b) (trust account rules); and Rule 54(d) (failure to comply with a State Bar request for information). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Suspension for one year; restitution in the form of a waiver of \$32,000 allegedly due from Mr. Gally in Count Four; and State Bar Member Assistance Program ("MAP") assessment at Respondent's expense prior to reinstatement. A suspension of more than six months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of the order accepting this consent, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.<sup>2</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

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<sup>2</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.

## **FACTS**

### **GENERAL RECITALS**

1. Respondent was licensed to practice law in Arizona on February 12, 2002. In 1992, she was admitted to practice law in Virginia.

2. The State Bar alleged facts and conclusions against Respondent in 207 separate paragraphs, and charged that Respondent violated 14 ERs in Rule 42, and two other Supreme Court rules. In her Answer, Respondent admitted 60 of the factual allegations and denied the rest. As to some facts Respondent asserted that she was without sufficient knowledge to admit or deny the bar's allegations and, therefore, denied them, and twice she claimed that the bar's allegations were indecipherable.

3. In their disclosures, the parties have exchanged a considerable number of documents that they intended to offer into evidence at the contested hearing. Respondent counted over 1,100 pages (see Respondent's "Objection to State Bar's Motion for Telephonic Appearance and Testimony by Witnesses" filed December 22, 2015, page 2, lines 16-22). Many of those documents support the State Bar's charges while many others support Respondent's defenses.

4. Similarly, the parties have disclosed anticipated testimony from their respective witnesses that will conflict on the various factual issues. Moreover, the parties are entering into this consent without having conducted their earlier-planned depositions, in part to avoid the cost of expensive discovery. Thus, the parties have not fully explored, through formal discovery, matters of credibility that would bear on a hearing panel's determination on the various facts the State Bar alleged and that Respondent denied.

5. The Supreme Court rules do not require the parties to a consent to account for every factual allegation in the complaint. Rather, Rule 57(a)2.A. states, in relevant part: "**Discipline by consent** . . . . Each count alleged in the charge or complaint shall be addressed in the agreement . . . ."

6. Recognizing that many facts are disputed, the parties nevertheless wish to enter into this consent by addressing each count, as required by Rule 57, rather than each fact. The parties, do, however, conditionally admit the facts stated below that support the consent agreement.

**COUNT ONE (File no. 13-2623/Jennifer Sanchez and John Romero)**  
**COUNT TWO (File no. 13-3037/Hector Martinez)**  
**COUNT THREE (File no. 13-3518/Ingrid Warrick)**

7. The State Bar's complaint against Respondent in counts one through three emanated from three different sources but are comprised of the same facts and evidence. For purposes of this consent, therefore, these three counts are consolidated.

8. Natural Earth Providers, Inc. ("Natural Earth") won a lottery to become the medical marijuana dispensary license holder for the Cordes Junction Community Health Analysis Area ("CHAA"). Complainants Jennifer Sanchez (Count One), John Romero (Count One), and Hector Martinez (Count Two) claimed that they owned N.E.P. Holding, LLC ("NEP Holding"). NEP Holding claimed that it owned half of Natural Earth; Timothy Thiess claimed that he owned the other half.

9. The principals of NEP Holding and Natural Earth claimed that they met Complainant Warrick (Count Three) and believed that Warrick had expertise in the medical marijuana industry that would be helpful to them. Warrick claimed that she learned that Respondent represented clients with access to "cultivation resources" and introduced her to Sanchez, Romero, and Martinez.

10. Disagreements arose between Sanchez, Romero, and Martinez, and Natural Earth's founder Timothy Thiess amidst charges and countercharges of theft, fraud, and forgery of corporation commission documents and the dispensary certificate.

11. At a contested hearing, Respondent would contend that QPAC LLC agreed to invest \$360,000 in the business to buy out Thiess' interest and N.E.P. Holdings, LLC's purported half interest. The State Bar would contend that QPAC, LLC, agreed to invest \$360,000 in the business, \$175,000 of which was to buy Thiess' half-interest in Natural Earth but to be repaid by NEP Holdings to QPAC out of Natural Earth's revenues. Michael Colburn, Respondent's son, was a member of QPAC at the time.

12. On July 2, 2013, Respondent entered into a written and signed "Client Fee Contract" with Complainants Sanchez, Romero, and Martinez; Natural Earth and NEP Holding, by Sanchez; and QPAC through Colburn and Daryll DeSantis (another member of QPAC). In the July 2, 2013, "Client Fee Contract", Respondent was defined as "Firm" and all of the clients were defined as "Represented Parties." Respondent identified Colburn in the fee agreement as her son. The fee Contract was not effective until payment of a retainer. Respondent claims that Complainants never paid a retainer and in fact never paid any money to Respondent.

13. The contract included an "Exhibit B" amendment bearing the same date, entitled "Conflict of Interest Consent and Waiver." The amendment states:

You have each individually and collectively been apprised of the apparent and potential conflicts of interest associated with the representation of multiple parties. You have also been advised on the apparent and potential conflicts of interest that can arise from the multiple representation of an incorporated entity and its members, managers and principal officers/Directors/Owners. After being advised to seek other counsel on the conflicts of interest inherent thereto and after due consideration, you affirmatively consent to our firm representing

the Represented Parties listed herein and do affirmatively waive any and all objections to any and all conflicts of interest resulting from or created by our Firm's current and future representation of these Represented Parties.

If the relationship between one Represented Party moves into litigation, arbitration, or a similar dispute with respect to any other Represented Party, our Firm would not represent either party. For the avoidance of doubt, our Firm would withdraw its representation of either Represented Party with respect to any such litigation, arbitration, or similar dispute.

Notwithstanding your conduct or waiver, our Firm will continue to protect confidential information learned during our Firm's representation of each Represented Party and will not share this information with any other Represented Party.

14. On July 5, 2013 Respondent instructed her legal assistant to send a notice to all of the parties to the July 2, 2013 contract that she retracted Exhibit B and represented only Natural Earth Providers, Inc. On July 8, 2013, Respondent's legal assistant, Stephanie Tonn, sent an email to "Natural Earth Group" notifying them that Respondent retracted Exhibit B and that the legal representation was limited to Natural Earth Providers, Inc. Were this matter to proceed to a hearing, the State Bar would offer evidence that Complainants did not agree to Respondent's retraction and would not have agreed to retain her in the first place, either individually or as Natural Earth Providers, Inc., had they known that she later would try to unilaterally retract her "Conflict of Interest Consent and Waiver."

15. On August 22, 2013, in Maricopa County Superior Court case no. CV2013-010017, Respondent filed suit for Natural Earth, NEP Holding, and Sanchez, against Warrick and others ("010017 suit"). The complaint, that Complainant Sanchez verified as principal officer and director of Natural Earth and a member of NEP Holding, asserted claims for "Void as a Matter of Law; Rescission-Fraudulent Inducement

and/or Negligent Misrepresentation; Breach of Contract; Breach of the Implied Covenant of Good Faith and Fair Dealing; Negligent Misrepresentation; Fraud, Fraudulent Inducement, Intentional Misrepresentation; Declaratory Judgement [*sic*].”

16. The “Client Fee Contract” dated August 11, 2013, signed only by Respondent, specifically limited Respondent’s representation to the filing of the Complaint.

17. On September 30, 2013, Respondent’s son Colburn and Complainant Martinez as manager of NEP Holding, agreed to sign a Chattel Security Agreement. Complainant Martinez admits that Respondent advised him he did not need to sign this agreement. The agreement granted QPAC a security interest in all of NEP Holding’s assets as security for NEP Holding’s \$175,000 debt to QPAC. Were this matter to proceed to a hearing, the State Bar would offer evidence that at the time, NEP Holding owned half of Natural Earth. QPAC already owned the other half of Natural Earth following its buyout of Thiess. If NEP Holding defaulted on the \$175,000 repayment, QPAC was positioned to become the 100% owner of Natural Earth. Respondent would deny this allegation and offer evidence in rebuttal.

18. On October 7, 2013, Respondent filed suit for Natural Earth against NEP Holding, Sanchez, Romero, and Martinez, in Maricopa County Superior Court case no. CV2013-090968 (“090968 suit”). In the same suit Respondent included as defendants attorney Jeanna Chandler Nash and her employer, Udall Law Firm, LLP.

19. When Respondent filed the 090968 suit she was still counsel of record for NEP Holding and Sanchez in the 010017 suit. Additionally, when Respondent filed the 090968 suit NEP Holding, Sanchez, Romero, and Martinez, all were Respondent’s clients or former clients under the July 2, 2013, “Client Fee Contract.” Were this matter

to be tried, Respondent would claim that she believed that the July 5, 2013 retraction of representation as described more fully below and the failure of the complainants to pay the required fee was effective in negating the representation of Sanchez, Romero and Martinez as individuals. The State Bar would contend that Respondent's contention in this regard is unreasonable.

20. In the 090968 suit Respondent alleged claims against NEP Holding, Sanchez, Romero, and Martinez for fraudulent inducement and/or negligent misrepresentation; breach of contract; breach of the implied covenant of good faith and fair dealing; intentional misrepresentation; civil conspiracy; and for a declaratory judgment.

21. In the 090968 suit Respondent also alleged that Sanchez stole money from Natural Earth and used that money to hire attorney Jeanna Chandler Nash and her employer, Udall Law Firm, LLP, to represent Sanchez. Sanchez admitted taking, but not stealing, the money. The court ordered Sanchez to return the funds. Respondent also asserted a claim for disgorgement of attorney fees against Nash and the Udall firm. The Udall firm paid the funds taken by Sanchez.

22. Respondent represented parties to her July 2, 2013, "Client Fee Contract" representation agreement in litigation against other parties to her representation agreement despite the express terms of her "Conflict of Interest Consent and Waiver" that forbade such representation, and despite the express prohibition of such conflicting representation under ER 1.7.

23. Respondent substituted out of the 090968 suit on October 22, 2013.

24. On November 18, 2013, in the 010017 suit, Respondent filed a motion to withdraw as counsel for Sanchez and NEP Holding, but not Natural Earth, **with**

client consent, due to "irreconcilable conflicts of interest . . . among and between these Plaintiffs and because clients have retained other counsel."

25. Respondent continued to identify herself on the court filing as "Attorney for Plaintiff Natural Earth Providers, Inc." despite the "Conflict of Interest Consent and Waiver" attached to her July 2, 2013, "Client Fee Contract" by which she committed to cease representation of all clients that ended up in litigation against each other.

26. Respondent's motion to withdraw in the 010017 suit did not bear Sanchez's signature either individually or as a representative of NEP Holding. The court treated the motion as one without client consent and granted Respondent's motion to withdraw on December 10, 2013.

27. In the 090968 suit, Respondent made allegations against Sanchez, including that:

- a. Sanchez was the manager of NEP Holding;
- b. NEP Holding was insolvent but owned an interest in Natural Earth;
- c. Sanchez was unemployed and had no source of income;
- d. Sanchez and NEP Holding stole money from Natural Earth;
- e. Sanchez induced Natural Earth to breach a delivery contract;
- f. in September 2013 NEP Holding voted Sanchez out as its representative board member for Natural Earth in response to Sanchez's arbitrary and capricious acts (at a time that Respondent represented Sanchez in 010017);
- g. in October 2013 Sanchez tried to and did gain access to the Natural Earth bank accounts and stole all of the money from one of them except for \$20; and
- h. other bad acts against Sanchez including theft, embezzlement, alcoholism, failure to pay her rent, and volatile behavior in public.

28. In the 090968 suit, in para. 46-47, Respondent made the following allegations against NEP and Sanchez:

Not only are NEP and Sanchez insolvent, they are currently facing multiple law suits and claims. On or about August 8, 2013, Natural Earth filed suit on behalf of Natural Earth, NEP and Sanchez against [Warrick] and six (6) other Defendants in reliance on attestation of facts sworn to by Sanchez and NEP. Unfortunately, Natural Earth has come to learn that Sanchez and NEP have intentionally misrepresented the claims upon which the lawsuit was based and have stolen and or absconded with the assets upon which the claims were based.

Plaintiff has learned to its detriment that NEP and Sanchez have a pattern of intentionally misstating facts and a pattern of intentionally hiding and or failing to disclose signed agreements and the representations and obligations thereunder.

29. If this matter were to proceed to hearing, Respondent would produce evidence that these allegations were true to include written admissions by Sanchez, Romero, Martinez, and Warrick and court trial transcripts to include Summary Judgment and Permanent Injunctive Order. The State Bar would produce evidence that Respondent revealed information relating to the representation of a client, and/or used information relating to the representation of a client or former client to the disadvantage of the client or former client, without written informed consent.

30. In the 090968 suit, Respondent alleged that Complainant Romero was unemployed, allegedly disabled, had no source of income, and was under investigation for making false disability claims. If this matter were to proceed to hearing, by his own admissions and by witness testimony and trial transcripts Respondent would produce evidence that these allegations were true. The State Bar would produce evidence that Respondent revealed information relating to the representation of a client, and/or used information relating to the representation of a client or former

client to the disadvantage of the client or former client, without written informed consent.

31. In the 090968 suit, Respondent alleged that Complainant Martinez filed for Ch. 7 bankruptcy protection, is insolvent, and faced allegations of fraud upon his creditors for diverting proceeds from real estate transactions to his mother. If this matter were to proceed to hearing, Respondent would produce evidence that she learned these facts from Warrick on or about August 23, 2013. The State Bar would produce evidence that Respondent revealed information relating to the representation of a client, and/or used information relating to the representation of a client or former client to the disadvantage of the client or former client, without written informed consent.

32. On October 17, 2013, in Maricopa County Superior Court case no. CV2013-051029, entitled *Jeffrey S. Kaufman, Ltd. v. Natural Earth Providers, Inc.; N.E.P. Holding, LLC; Martinez; Romero; and Sanchez*, attorney Jeffrey Kaufman sued Natural Earth, NEP Holding, Martinez, Romero, and Sanchez for unpaid legal fees for services rendered earlier in 2013. Respondent defended Natural Earth.

33. On December 9, 2013, while Respondent still was counsel of record for Sanchez in the 010017 suit, she filed a Rule 12(b)(6) Motion to Dismiss Mr. Kaufman's suit for failure to state a claim.

34. In her motion she made allegations against Sanchez, Martinez, and Romero. She asserted that in the 090968 suit, Natural Earth supported the appointment of a receiver

in its efforts to protect the company from the tortious acts of its former officers and Directors Defendants Martinez, Romero and Sanchez. . . . Natural Earth continues to suffer damages at the hands of Defendants

Martinez, Romero and Sanchez that may have been avoided with the Appointment of a Receiver. See ongoing litigation in CV2013-090968.

35. Were this matter to proceed to a contested hearing Respondent would present evidence that on July 5, 2013 she retracted her July 2, 2013, "Client Fee Contract" by which she agreed to represent all of the "Represented Parties" as defined therein, and therefore had no conflict of interest and was free to sue Sanchez, Romero, Martinez, and NEP Holding. The State Bar would present evidence that if Respondent unilaterally tried to retract any part of her July 2, 2013, "Client Fee Contract" by which she agreed to represent all of the "Represented Parties" as defined therein, she did not communicate a retraction to Sanchez, Romero, Martinez, or NEP Holding; Sanchez, Romero, Martinez, or NEP Holding did not agree and would not have agreed to such a retraction; and that Respondent's unilateral retraction, even if dictated to Sanchez, Romero, Martinez, or NEP Holding, would have been void, of no effect, and did not absolve her of violations of ERs 1.6-1.9.

36. Respondent conditionally admits that she revealed information relating to the representation of a client, represented clients against other current or former clients, and used information relating to the representation of a client to the disadvantage of the client, in violation of ERs 1.6, 1.7, 1.8, and 1.9. If this matter were to proceed to hearing, Respondent would produce evidence that the source of the allegations in the Natural Earth Complaint were communications by and between Sanchez, Romero, Martinez and the principals of Natural Earth Providers and not from any attorney client privileged communications.

**COUNT FOUR (File no. 14-0556/Cullum)**

37. In April 2011, Michael Colburn (Respondent's son) created Compassionate Care Dispensary, Inc. ("CCD"). Colburn intended for CCD to be a medical marijuana dispensary in Winslow, Arizona. Respondent's daughter-in-law Erica Brown (Colburn's wife) was the incorporator of CCD. If this matter were to proceed to hearing, Respondent would produce corporate documents that Respondent was never a Director of CCD. The State Bar would offer Arizona Corporation Commission records into evidence showing that Respondent and Ms. Brown were the initial directors of CCD.

38. CCD applied to the State of Arizona Dept. of Health Services ("ADHS") for a dispensary registration certificate in the Winslow Community Health Analysis Area ("CHAA") pursuant to the Arizona Medical Marijuana Act ("AMMA"). CCD had to secure a proposed location in the designated CHAA that met ADHS requirements for a dispensary. ADHS also required an attestation of compliance with local law. Winslow required an applicant to hold a valid conditional use permit on the proposed location.

39. The John V. Gally Trust owned the Winslow Water Building ("WWB"). The WWB met ADHS requirements for a dispensary. John Gally, settlor of the trust, was in his mid-70s during the time relevant to these events and has been in the commercial real estate rental business for many years.

40. CCD approached Mr. Gally and he agreed to allow CCD to use the WWB as CCD's proposed dispensary location. In April 2011 CCD applied to Winslow for a Conditional Use Permit through its principal officers and directors Mr. Colburn and Steven Smigay. Mr. Smigay is Respondent's husband.

41. Respondent represented CCD in its effort to acquire the Conditional Use Permit. Through the process of representing CCD in its effort to acquire the Conditional Use Permit, Respondent met Mr. Gally who attended and testified at the hearings to support CCD's Conditional Use Permit application.

42. CCD obtained the Conditional Use Permit on May 17, 2011. After Respondent completed that project, Mr. Gally asked her to represent him on some lease issues regarding his other properties. Although Respondent represented Mr. Gally from July 2011-April 2014 without a written communication of the scope of representation or fees, Respondent did invoice Mr. Gally for some services after the services were provided, and she gave him a law firm rate sheet.

43. Respondent represented CCD as counsel of record in *CCD Inc. v. Arizona Department of Health Services*, Maricopa County Superior Court case no. CV2012-057041, 1 CA-CV 13-0133, from February 27, 2013-April 29, 2015.

44. Since 2007 Mr. Gally had rented the WWB to a water conditioning business. Mr. Colburn decided it would be wise to occupy the WWB while the state considered CCD's dispensary license application. In May 2011 Colburn formed Winslow Water Conditioning, LLC ("WWC"). WWC's manager is Mantegic Technologies, Inc. of Cheyenne, Wyoming, but its initial Arizona statutory agent was "Eric Brown" with the same address as Erica Brown.

45. WWC bought the water conditioning business assets and obtained a written assignment of the oral lease rights to the WWB from the former owner of the business. The document is dated May 23, 2011, and purports to grant to WWC an option to buy the property even though the seller of the water conditioning business didn't own the property.

46. On a separate page two of the May 23, 2011 document there appears a "Consent of Lessor" by which Mr. Gally, who did own the property, consented to the "Lease Assignment" and, by implication, the option contained therein. The option to buy had to be exercised by May 31, 2012, but contained no other terms.

47. In November 2011 Respondent advised Colburn's associate in the WWC business, Joe Kendall, to liquidate the business. Kendall gave the keys for the WWB to Mr. Gally, WWC defaulted on the rent, and Gally locked the premises and cut off the power. Gally tried to reach Respondent to obtain her assistance in getting WWC to pay the rent but she did not respond. Respondent had no obligation to pay rent as she was not a signator of the agreement. Gally went to Colburn's employment and left him a five-day eviction notice. In early 2012, after several months of unpaid rent, Gally entered the WWC premises and sold its business assets (equipment).

48. On April 14, 2012, William Brothers, president of Green Cross Medical, Inc. ("Green Cross"), and Mr. Gally entered into a lease for the WWB. Mr. Brothers applied for a dispensary license and wanted the WWB location to qualify. The lease term was to begin on May 1, 2012 for \$900/mo. Brothers gave Gally a check for \$900 dated May 1, 2012, and on April 23, 2012, Gally gave Brothers the keys.

49. Respondent learned that Mr. Gally leased the WWB to Brothers. This impaired, but did not eliminate, CCD's chances of obtaining a dispensary license in the Winslow CHAA. At Gally's request, Respondent and Mr. Colburn went to Winslow and met with Gally.

50. The parties disagree on the subsequent conversations Mr. Gally had with Respondent. Gally claimed that she told him he had not properly locked WWC out of the WWB; she wanted to bring the WWC rent current; the Green Cross lease was

invalid because of the post-dated check; Gally should cancel the lease with Green Cross; Gally was required to cancel the lease with Green Cross because WWC exercised its purchase option as a result of which Gally no longer owned the building; and Gally believed all of this because Respondent is an attorney. Respondent denies all of this.

51. Gally's son told Mr. Gally that Gally should not lease the property to Brothers because that could result in a loss of the property due to a lease in violation of federal law. Gally discussed this with Respondent.

52. Respondent agreed to represent Mr. Gally without a written communication of the scope of representation or fees.

53. On April 26, 2012, Respondent, with Mr. Gally's knowledge, wrote to Brothers that the Green Cross lease was canceled. She enclosed the voided Green Cross rent check with her letter to Brothers, and copied the letter to "J.A. Goldman, Attorney for Winslow Water Conditioning, LLC."

54. In her screening response to the State Bar Respondent claimed that WWC retained counsel (Jami Goldman) who informed Mr. Gally that it intended to sue for wrongful eviction and conversion. Respondent claimed that she negotiated a resolution with WWC through Goldman by which Mr. Gally reaffirmed the WWC lease and credited it with the money he gained from selling its assets.

55. Were this matter to be tried the State Bar would offer evidence that in 2012 Jami Goldman was a new attorney. She was not counsel of record for any party related to this matter. Ms. Goldman was acquainted with Respondent and obtained some case referrals from her, but never represented WWC and never negotiated with Respondent on WWC's behalf. The State Bar would argue that Respondent tried to

interpose a separate lawyer between herself and WWC, in the latter of which her son Mr. Colburn had an interest, to evade a conflict of interest claim. Respondent would produce evidence that Goldman was listed as counsel on court records and would introduce evidence that Brothers' attorney, Mr. Cunningham, billed for attorneys' fees for his communications with WWC's attorney, Jami Goldman.

56. Based on his son's concerns regarding possible loss of the property, Gally expressed concern to Respondent that he might violate federal law by renting his building to a marijuana dispensary. He talked to his son and then relayed his concern to Respondent. Respondent agreed to advocate for Gally that the Green Cross lease was void due to illegality. Were this matter to be tried the State Bar would offer evidence that arguing for Mr. Gally that the Green Cross lease was void due to illegality was precisely opposite to the position she advocated when seeking a Conditional Use Permit and dispensary license for CCD.

57. On May 8, 2012, Green Cross sued Mr. Gally for breach of contract alleging claims for damages and injunctive relief. Respondent received a copy of the Green Cross Motion for TRO and wrote a letter to Judge Hatch (copied to opposing counsel) on May 11, 2012. In her letter to Judge Hatch, Respondent claimed that Gally no longer owned the WWB. Were this matter to be tried, Respondent would offer evidence that a Warranty Deed and Deed of Trust and Assignment of Rents was properly recorded and a copy was presented to the court. The State Bar would offer evidence that Gally did not sign a Warranty Deed and Deed of Trust until May 14, 2012, and those documents were not recorded until June 28, 2012.

58. In her letter to Judge Hatch, Respondent presented the Maricopa County Superior Court decision in *Hammer v. Today's Health Care II*, CV2011-051310, in

support of her argument that a contract for the sale or distribution of marijuana is for an unlawful purpose and, therefore, void as a matter of law. She enclosed a copy of a letter she wrote to opposing counsel demanding that he withdraw his "fictitious and unfounded complaint" and threatened attorney's fees, costs and sanctions against him and his firm.

59. In her letter to Judge Hatch, Respondent asked the judge not to enter a TRO until she returned from out of the country.

60. Judge Hatch issued a TRO, without notice, enjoining Mr. Gally from preventing Green Cross' access to and possession of the WWB. Judge Hatch conducted a preliminary injunction hearing on June 12 and 14, 2012. Judge Hatch concluded that "Gally's testimony was intentionally very evasive on cross examination . . . ." The judge later ruled that WWC abandoned its lease with Gally; WWC's option to purchase was void for lack of terms; Gally was free to lease the building to Green Cross; and Gally was not free to cancel the lease just because he changed his mind. Judge Hatch issued the injunction and granted attorney's fees to Green Cross against Gally. Further consideration of the issue of attorney's fees was stayed pending the outcome of the interlocutory appeal. Respondent represented Gally on appeal and lost. Ultimately, after the remand, with new counsel who briefed the illegality issue properly, Gally was successful in getting the Green Cross suit dismissed.

61. The State Bar asserts that Gally's best defense to the injunction and breach of contract case was that the lease put the property to an illegal use and purpose under federal law and was, therefore, void. Legal support for that argument included 21 U.S.C. §856; and *Bank One v. Rouse*, 181 Ariz. 36, 887 P.2d 566 (App. 1994). If this matter were to proceed to hearing Respondent would produce evidence

that the judge in that case refused to hear argument on that issue but later did rely on this argument in her motion to dismiss to grant Gally's Motion for Summary Judgment.

62. After the court issued the injunction and within a few days before filing an appeal, Respondent filed a Motion to Dismiss in which she argued illegality. The case was stayed pending the appeal. Once the appeal was decided, on remand and with new counsel for Gally, the trial court did consider Respondent's Motion to Dismiss and granted Gally's MSJ relying on the argument of illegality.

63. Were this matter to be tried the State Bar would offer evidence that after she filed a notice of appeal Respondent told Mr. Gally that Green Cross earlier had extended an offer to settle for \$10,000. Gally was reluctant to continue with the case but Respondent urged him to proceed. Respondent would offer evidence rebutting these allegations and that Green Cross never put any offer in writing.

64. Respondent represented Mr. Gally on appeal and argued that the Green Cross lease was void due to illegality of purpose. Respondent had not raised the illegality argument in an appropriate manner at the trial court level. Respondent submitted nothing of record to the Court of Appeals in which she preserved illegality as an issue. The Court of Appeals declined to consider Respondent's illegality argument as a ground for appeal. The Court of Appeals upheld the trial court's decision that Green Cross had rights superior to any interest WWC had. If this matter were to proceed to hearing, Respondent would produce evidence that the issue on appeal was whether the trial court abused its discretion, not whether the lease was void due to illegality.

65. Respondent's brief did not comply with the Rules of Civil Appellate Procedure. She did not support her Statement of Facts with any citations to the trial record. She included in an Appendix a document that was marked but not admitted in evidence and another document that was not referenced at trial at all. In her brief Respondent alluded in a footnote to a post-injunction transaction (Mr. Gally's purported sale of the WWB) that had no support in the record.

66. After the appeal, in November 2013 Gally fired Respondent and she withdrew from the representation. The appellate court assessed attorney's fees and costs against Gally in the amount of \$12,537.50. Were this matter to be tried, Respondent would offer evidence that while she was still Gally's counsel of record, Mr. Cunningham bypassed Respondent, negotiated directly with Gally and convinced him to pay him \$25,000 in attorney's fees. Mr. Cunningham engaged in these negotiations even while the case was ongoing and even though his client was not yet the prevailing party in a breach of contract case. The State Bar would offer evidence that Gally fired Respondent in writing in November 2013, and the subsequent emails between Respondent and Mr. Cunningham reasonably led Mr. Cunningham to believe that he was authorized to deal with Gally directly.

67. On remand, on October 27, 2015, successor counsel for Gally obtained summary judgment for him; the court dismissed the Green Cross suit on the ground of illegality which was the same basis that Respondent belatedly presented to the trial court in her Motion to Dismiss.

68. Were this matter to be tried the State Bar would offer evidence that Respondent induced Gally to sign a backdated lease with CCD to create a paper trail after-the-fact purporting to give CCD lease rights superior to Green Cross. Respondent

would offer evidence to refute each of these allegations. The State Bar would offer evidence that this advice placed Gally in jeopardy of civil and criminal penalties; Respondent was not concerned about CCD having a lease with Gally until Green Cross filed suit; and, there was never a time that CCD actually occupied the WWB or paid rent to Gally. Respondent would offer evidence of cancelled checks, receipts, signed documents and other evidence of Gally's falsified statements.

69. Were this matter to be tried, the State Bar would offer evidence that five days after Judge Hatch's ruling, to prevent Green Cross from gaining access to the WWB (and, hence, a dispensary license that would defeat her son Colburn's license application through CCD), Respondent advised Gally to transfer the WWB to Western Surety Financial ("WSF"). Respondent would offer rebuttal evidence to include but not limited to, witness testimony, corporate documentation, management agreements, sworn affidavits and trial transcripts that will negate and disprove all of the foregoing allegations.

70. Were this matter to go to hearing, the State Bar would produce evidence that Mr. Colburn owned WSF; Colburn managed WSF through ACI Professional Management, Inc.; and that ACI Professional Management, Inc., was a company that at various times Colburn, Respondent, and "Eric" Brown managed. If this matter were to proceed to hearing, Respondent would produce evidence to rebut these allegations.

71. Were this matter to go to hearing, the State Bar would provide evidence that Gally deeded the WWB to WSF with no down payment; Gally signed a warranty deed to the WWB despite the *lis pendens* that Green Cross recorded over the lease litigation; and that Respondent advised Mr. Gally to deed the WWB under those circumstances. The deed bore the legend: "When recorded mail to Western Surety

Financial LLC [and] Kathryn Ward." Respondent would deny that claim. Ultimately, Gally recovered the property when WSF defaulted on its purchase payments. If this matter were to go to trial, Respondent would produce evidence rebutting these allegations and Respondent would produce evidence that Gally and his son were adamant regarding negating the lease to William Brothers for fear of losing the property.

72. Were this matter to be tried the *State Bar* would offer evidence that Respondent orchestrated the supposed sale of the WWB to WSF in order to defeat Green Cross's rights and protect her family's quest, through CCD, to obtain a medical marijuana dispensary license. Respondent would offer evidence rebutting this allegation particularly Gally and his son's direction to void the lease to William Brothers so they would not lose the property.

73. Respondent conditionally admits that she failed to provide Mr. Gally competent representation in violation of ER 1.1. Respondent conditionally admits that she did not communicate to Mr. Gally in writing the scope of the representation and the basis or rate of the fee and expenses for which he was responsible, in violation of ER 1.5(b). Respondent conditionally admits that she engaged in a conflict of interest in violation of ER 1.7 by representing and advising Gally in the Green Cross matter when his interests conflicted with the interests of her client CCD and with her personal interests in promoting her son and husband's interests in CCD. Respondent conditionally admits that in her letter to Judge Hatch she "briefed" legal issues in an inappropriate manner, revealed the terms of an otherwise inadmissible settlement offer to Judge Hatch, and asked for a continuance in a manner not authorized by applicable rules of procedure, in violation of ER 8.4(d).

74. The State Bar conditionally agrees to dismiss the charges that Respondent violated ERs 1.2 and 1.4. There are evidentiary concerns over whether Green Cross made or communicated a settlement offer during the litigation. There are further evidentiary concerns that Gally's reason for declining an offer was not based on Respondent's legal advice but, rather, because he independently decided not to be a landlord on an illegal lease and in jeopardy of losing the property altogether.

75. The State Bar conditionally agrees to dismiss the charges that Respondent violated ERs 3.3(a) and 8.4(c). There are documents to show that Respondent told Judge Hatch on May 11, 2012 that Gally sold the WWB whereas Gally did not consummate a transaction or sign deeds until May 14, 2012. However, there is evidence available that WWC, through its manager Mantegic Technologies, Inc., exercised the purchase option to buy the WWB (later ruled invalid by Judge Hatch) before May 11, 2012. As such, the evidence is not clear and convincing that Respondent deliberately tried to mislead Judge Hatch or the opposing parties and counsel in her letter to Judge Hatch dated May 11, 2012.

**COUNT FIVE (File no. 14-2965/Marshall,  
Chairperson of the Maricopa County Attorney's Office Ethics Committee)**

76. In March 2013 Tempe police executed a search warrant at the Marijuana Education Resource Center ("MERC"). The business was alleged to be an unlicensed marijuana dispensary and had marijuana on the premises. A safe in MERC's back office contained \$7,900 in cash.

77. During the search, Respondent arrived and told the police that she was MERC'S lawyer.

78. In September 2013, the Maricopa County Attorney's Office ("MCAO") filed a forfeiture action regarding the \$7,900. In the forfeiture action, on November 4, 2013, Respondent filed a claim on behalf of her law firm for \$7,185, entitled: "CLAIM OF K.L. WARD & ASSOCIATES, PLLC, TO SEIZED PROPERTY." In it, she stated that "The Firm's interest in the property listed is: Retainer monies paid by Law Firm clients to be held in trust in Law Firm's IOLTA Trust Fund Account and applied for professional/legal services to be rendered in accordance with the Client's retainer agreement with the Law Firm." Respondent claimed the money had been seized "from the premises of the Law Firm" and identified the clients as Jane and John Does.

79. The court issued a forfeiture order. Respondent moved to set aside the forfeiture order due to improper service as to the \$7,185 (the state named and served her personally at home rather than naming and serving her law firm at her statutory agent address).

80. In her motion Respondent again argued that the money was seized from her law firm. Respondent added that the door to her office at the MERC location was marked "Suite C" and "Law Office," and that she used that location as an auxiliary office when working on that client's matters. The court set aside the forfeiture order as to the \$7,900, stating that entitlement to the money would be litigated in the civil forfeiture proceedings.

81. Tempe police took many photos of the premises while executing the search warrant. Were this matter to be tried, Respondent would offer evidence that the photographs taken by the Tempe Police do not show the location marked by "Suite C" and "Law Office" in which the safe was located. The officers who composed the police reports wrote that there was nothing to identify the back room as a law office.

At a hearing in this matter, Respondent would produce testimony, photographs of the location marked by "Suite C" and "Law Office" and other evidence that supports her claims. Respondent would claim that of particular importance will be the fact that the photographs provided by the police to the State Bar do not show the correct door.

82. In the forfeiture case, the state sought discovery from Respondent of the names of the clients who allegedly paid the retainers but Respondent did not identify them. On May 11, 2014, Respondent moved to stay the case alleging that the action could lead to self-incrimination by "claimants", and in the alternative moved to withdraw the claim to the money. Respondent filed the requests for a stay or for withdrawal not as a claimant but, rather, as attorney for the unnamed claimants she represented.

83. The judge denied the motion for stay, dismissed "Claimants'" claims to the money, and issued a new forfeiture order.

84. The state asked Respondent to identify the clients so it could notify them of the forfeiture but Respondent declined to provide that information. The MCAO does not know if the clients were informed of the forfeiture of their money. If this matter were to proceed to hearing, Respondent would produce evidence that MCAO knew the clients were represented by counsel, knew counsel was noticed, and therefore knew the clients were noticed. Moreover, MCAO is fully aware that they cannot contact a client who is represented by counsel.

85. At a hearing in this matter Respondent would testify regarding her concern for the clients as the Tempe police were conducting a raid for the purpose of bringing a criminal charge. She could not expose her clients to that risk, and likewise could not disclose the identities consistent with ER 1.6.

86. In its October 6, 2014 screening letter to Respondent the State Bar asked her to produce certain trust account materials covering the period January-May, 2013, and not merely pertaining to the funds or clients implicated by the Tempe Police search warrant. Included in that letter was standard State Bar language explaining the Rule 70(g) protective order procedure. In an October 13, 2014 email and a November 17, 2014, letter Respondent responded that the clients were not able to pay a retainer at the time they engaged her to represent them. She claimed that she did the work anyway so by the time the clients paid, the fees were fully earned and the trust account rules were not implicated.

87. Respondent's response contradicted the position she asserted in her November 4, 2013, court filing in which she stated that "The Firm's interest in the property listed is: Retainer monies paid by Law Firm clients to be held in trust in Law Firm's IOLTA Trust Fund Account." Respondent acknowledges the lack of clarity in her responses and understands how she created a misunderstanding of her intent.

88. In an April 10, 2015 written follow-up, bar counsel asked Respondent to explain the contradiction. Bar counsel also asked Respondent to identify or produce: the contents of the safe in her MERC office; the owner and amount of all sums seized; copies of ledgers or accountings for the funds; copies of the clients' retainer agreements identified in her court filings; the services "to be rendered" for \$7,185, and to whom, identified in her court filings; the services provided, and to whom, by which all fees were fully earned before the payment was made, as stated in her responses to the State Bar; all people who had access to the safe in her office; all people who put money into the safe; and the trust account materials previously requested.

89. Respondent replied on April 30, 2015, that the money matter was resolved when the court entered an order finding that the money was related to illegal activity and not subject to Respondent or any other person's claim or interest. Respondent asserted that although she filed a claim on a good faith belief that the money was meant to apply to clients' accounts for services rendered, the court found for the state that the seized money emanated from illegal activity. "We accept the Court's finding in this matter as we have no personal knowledge of facts to the contrary. Specifically, the source of the funds seized by the State did not include payments from clients for services rendered. . . ."

90. Respondent explained further that her claim for "retainer monies paid by Law Firm clients to be held in trust in Law Firm's IOLTA Trust Fund Account and applied for professional/legal services to be rendered in accordance with the Client's retainer agreement with the Law Firm" was merely "a general policy statement as to how retainer monies are treated by the Firm."

91. Respondent contended that her real claim was stated elsewhere in her Notice of Claim—namely, that she acquired an interest in the money on March 12, 2013 (the day before the police executed the search warrant), and the monies were cash retainers for services previously rendered.

92. In her prayer for relief in the forfeiture litigation Respondent stated: "The firm is requesting that the Court order the return of the \$7,185.00 in United States Currency to the Law Firm to be held in trust in its IOLTA Trust Account as required and for disbursement to the Law Firm in accordance with the terms of the retainer agreements between the Law Firm and its Clients for legal/professional services rendered to Law Firm's Clients."

93. Respondent addressed the seeming contradiction that at one point she claimed \$7,185 for her law firm and at another point claimed \$7,185 for her unidentified clients. She explained that she made the claim "based on a good faith belief" that client payments on their accounts was at issue. She believed that clients put \$7,185 in an envelope marked "Legal Services" to apply to their account for services rendered.

94. Again, Respondent acknowledges that the court filings could have been more clear and understands how she created a misinterpretation. Respondent suffered a serious injury on August 23, 2013 and has been on heavy opioids for pain since that time. Such pain medications are known to cause confusion and headaches.

95. Respondent did not furnish the information that bar counsel requested on April 10, 2015, either with or without asking for a protective order. She did not identify the contents of any safe at MERC, who had access to it, who put money in it or, for that matter, if there was more than one safe. She did not identify who she believed to be the owner of the money seized. She did not provide a ledger or accounting for the money seized, or the client retainer agreements, and she did not identify the legal services and to whom she provided them. Finally, she did not provide any of the requested trust account records. If this matter were to proceed to hearing, Respondent would produce evidence that, because the safe was used as a tax drop off safe, utilized by others, she could not identify the contents or the owner or amounts of all funds and that there were no trust records because the funds were earned. Respondent acknowledges that she should have provided information regarding the identity of the clients, services rendered and retainer agreements and asked for protective order. However, Respondent would testify that bar counsel told Respondent

that the release of the client's identity was at his discretion (undersigned bar counsel doubts that he told that to Respondent). Never having faced a bar charge, Respondent was not aware of the process and did not know whether a protective order in these proceedings would serve to protect her client in these circumstances. Her utmost concern was and always has been for her client in these matters.

96. Were this matter to be tried, the State Bar would offer evidence that MERC was a family business operated by Respondent's husband Steven Smigay and son Michael Colburn; According to public records, Mr. Smigay owns MERC; Documents observed during execution of the search warrant at MERC included business paperwork in Mr. Colburn's name; The Tempe Zoning Dept. lists Colburn as the MERC contact person; Colburn bought a mini fridge and two vending machines found at MERC; Respondent and Mr. Smigay formed Horizon Environmental, Inc. in June 2010; Respondent was the incorporator, and Smigay was the director and statutory agent; They changed the company name to Horizon Dispensaries, Inc. ("HDI") in November 2010, with the stated purpose of running a medical marijuana dispensary; and, HDI ran MERC, and changed its business address and statutory agent in May 2012 in a document that Colburn signed as director. The State Bar would argue that Respondent concocted stories in the forfeiture proceedings that the seized money was either hers or her clients' as a means of recouping what were actually her family members' funds. Respondent would offer evidence at a hearing that there is and was no connection between her husband or son to MERC; Respondent's husband does not own MERC or HDI and there no public records that indicate otherwise. Mr. Smigay has never even been on the premises. This was total fabrication by the complainants. The funds taken by the City of Tempe police on March 13, 2013 were funds earned from services

provided to Respondent's clients; and, that there are no records, public or otherwise, that Mr. Smigay owns MERC or that Horizon Dispensaries, Inc. ever did business as HDI. Further, Respondent would dispute the State Bar's argument regarding any fabrication of "stories" in the forfeiture proceedings. If this case were to proceed to hearing Respondent would produce evidence that Horizon Dispensaries Inc. has never done business as HDI, or any other business, and has never held an interest in MERC; that MERC has never been a family business; has never had a delivery contract or any other contract. Horizon Dispensaries, Inc. was incorporated for only one reason and that was to apply for dispensary license. When it was not a successful lottery applicant, Horizon never did any business of any kind.

97. Respondent conditionally admits that she failed to cooperate in a State Bar investigation by failing to furnish requested records, in violation of ER 8.1(b) and Rule 54(d). By failing to produce requested trust account records, Respondent created a rebuttable presumption that she failed to properly safeguard client or third persons' funds in violation of ER 1.15 and Rule 43. By giving conflicting explanations to the court and State Bar regarding whether the seized cash belonged to her or her client and, therefore, whether the money did or did not belong in her IOLTA, Respondent violated ERs 3.1 and 8.4(d).

98. The State Bar conditionally agrees to dismiss the charges that Respondent violated ERs 3.3, 4.1, and 8.4(c). The evidence is not clear and convincing that Respondent deliberately tried to mislead the court and MCAO as to the rightful owner of the money. There is evidence that Respondent intended to protect what she thought was her client's interests in the money. When the court ruled that the money

stemmed from illegal activity and was not intended as payment of her legal fees, she abandoned her efforts in the forfeiture action.

### **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 her conduct violated Rule 42, ERs 1.1, 1.5(b), 1.6, 1.7, 1.8, 1.9, 1.15, 3.1, 8.1(b), and 8.4(d); Rules 43(a) and (b) (trust account rules); and Rule 54(d) (failure to comply with a State Bar request for information).

### **RESTITUTION**

Although this is not "restitution" in the conventional sense, Respondent agrees to forego collection of \$32,000 in fees allegedly due from Mr. Gally.

### **SANCTION**

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Suspension for one year, "restitution" of \$32,000 to Mr. Gally as described above, and a State Bar Member Assistance Program ("MAP") assessment at Respondent's expense prior to reinstatement. If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

### **LEGAL GROUNDS IN SUPPORT OF SANCTION**

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

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

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

#### **The duty violated**

As described above, Respondent violated her duties to her clients, the legal profession, the legal system, and the public.

#### **The lawyer's mental state**

For purposes of this agreement the parties agree that in Counts One-Three Respondent acted with a knowing mental state in violating ERs 1.6-1.9. In Count Four, Respondent acted with a negligent mental state in connection with her ER 1.1, 1.5(b), and 8.4(d) violations, and with a knowing mental state in connection with her ER 1.7 violation. In Count Five, Respondent acted with a negligent mental state in connection with all violations.

#### **The extent of the actual or potential injury**

For purposes of this agreement, the parties agree that there were actual injuries to Respondent's clients and the legal system in Counts One-Four, to the public in Counts Four and Five, and to the legal system and the legal profession in Count Five.

The parties agree that the following *Standards* are relevant:

**ER 1.1. Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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 1.5. Fees . . .** (b) 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, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing.

Standard 4.63

Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

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**ER 1.6. Confidentiality of Information**

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted or required by paragraphs (b), (c) or (d), or ER 3.3(a)(3).

Standard 4.22

Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

---

**ER 1.7. Conflict of Interest: Current Clients**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client gives informed consent, confirmed in writing, and:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

#### **ER 1.8. Conflict of Interest: Current Clients: Specific Rules**

\* \* \*

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

#### **ER 1.9. Duties to Former Clients**

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

\* \* \*

(c) A lawyer who has formerly represented a client in a matter shall not thereafter:

- (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
- (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

*Standard 4.32*

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

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**ER 1.15. Safekeeping Property**

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

*Standard 4.14*

Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

---

**ER 3.1. Meritorious Claims and Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law.

*Standard 6.23*

Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

---

**ER 8.1. Bar Admission and Disciplinary Matters**

[A] lawyer . . . in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) . . . knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by ER 1.6.

*Standard 7.3*

Reprimand is generally appropriate when a lawyer negligently 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.

---

**ER 8.4. Misconduct**

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice....

*Standard 6.13*

Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, 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.

---

**Rule 43. Trust Accounts**

**(a) Duty to Deposit Client Funds and Funds Belonging to Third Persons; Deposit of Funds Belonging to the Lawyer.** Funds belonging in whole or in part to a client or third person 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.

\* \* \*

**(d)3. Rebuttable Presumption.** If a lawyer fails to maintain trust account records required by this rule or ER 1.15, or fails to provide trust account records to the state bar upon request . . . there is a rebuttable presumption that the lawyer failed to properly safeguard client or third person's funds or property, as required by this rule and ER 1.15.

(a) – See ER 1.15 above

(d)3. – See ER 8.1(b) above.

**Rule 54. Grounds for Discipline**

Grounds for discipline of members and non-members include the following:

**(d) Violation of any obligation pursuant to these rules in a disciplinary or disability investigation or proceeding.** Such violations include, but are not limited to, the following:

2. Failure to furnish information. The failure to furnish information

or respond promptly to any inquiry or request from bar counsel . . . made pursuant to these rules for information relevant to pending charges, complaints or matters under investigation concerning conduct of a lawyer, or failure to assert the ground for refusing to do so constitutes grounds for discipline. Nothing in this rule shall limit the lawyer's ability to request a protective order pursuant to Rule 70(g). Upon such inquiry or request, every lawyer:

A. shall furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

\* \* \*

C. shall furnish copies of requested records, files and accounts . . . .

See ER 8.1(b) and Rule 43(d)3 above.

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:

- (b) selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;

#### **In mitigation:**

*Standard 9.32* - Mitigating factors include:

- (a) absence of a prior disciplinary record;

(c) personal or emotional problems. See attached mitigation statement.

### **Discussion**

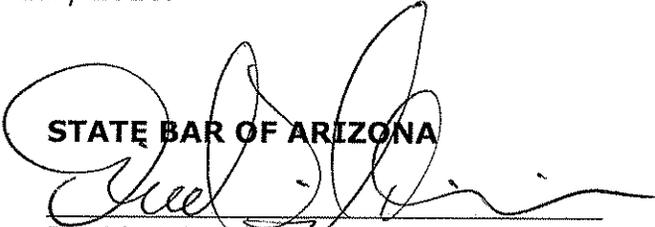
The parties conditionally agree that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction of suspension should apply and be mitigated to a one-year suspension as the principal term. In her disclosure statement, Respondent admitted that she has suffered "grief, depression and lack of ability to reason, or rationalize family and financial issues." She identified the following causes of her impaired mental and emotional state: a) financial problems in 2013-2014, and bankruptcy filings; b) non-paying clients; c) loss of clients due to a poor economy; d) the death of her adult daughter in 2003, and recent re-living of grief due to a quarrel with her ex-husband over release of her daughter's ashes; e) a heart condition diagnosed in 2009 with treatment that included Zoloft 200 mg daily ever since; f) marital problems; g) in 2013 her mother was diagnosed with Alzheimer's disease; h) in 2013 she suffered serious injuries while visiting a client in the Tempe City Jail; and i) in June 2015 she underwent only partially successful surgery for a serious lumbo-sacral spine lesion that has since left her on powerful narcotic pain medications. Many of these events intersected in time with the events in the underlying cases that eventuated in these proceedings, and would test anyone's mettle. Respondent has not produced any expert medical opinion linking her personal problems to her behaviors. The State Bar, however, has independently corroborated that Respondent's daughter Kimberly Colburn died in 2003 at age 26 in an asleep-at-the-wheel accident after studying for exams at the Vermont Law School. The State Bar confirmed that Respondent filed for bankruptcy protection in 2012, the occurrence of the Tempe City Jail incident in 2013, and the June 2015 surgery.

The parties conditionally agree that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. Respondent will not again practice law unless and until she is reinstated through a formal reinstatement application and hearing proceeding. She will have to undergo a MAP assessment as part of that process. Based on the *Standards*, the facts and circumstances of this matter, and the purposes of lawyer discipline, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanctions and should be accepted by this court.

### 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 one-year suspension, "restitution" as explained above, MAP assessment prior to reinstatement, and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

**DATED** this 22<sup>nd</sup> day of January 2016.

**STATE BAR OF ARIZONA**  
  
David L. Sandweiss  
Senior Bar Counsel

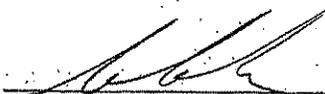
**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of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

**DATED** this \_\_\_\_\_ day of January, 2016.

\_\_\_\_\_  
Kathryne L. Ward  
Respondent

**DATED** this 21<sup>st</sup> day of January, 2016.

Adams & Clark PC

  
\_\_\_\_\_  
Ralph W. Adams  
Counsel for Respondent

Approved as to form and content

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

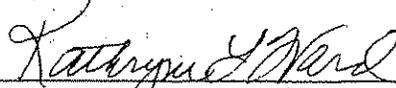
Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this \_\_\_ day of January, 2016.

Copy of the foregoing emailed  
this \_\_\_ day of January, 2016, to:

The Honorable William J. O'Neill  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

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**DATED** this \_\_\_\_\_ day of January, 2016.



Kathryne L. Ward  
Respondent

**DATED** this \_\_\_\_\_ day of January, 2016.

Adams & Clark PC

---

Ralph W. Adams  
Counsel for Respondent

Approved as to form and content

---

Maret Vessella  
Chief Bar Counsel

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**DATED** this \_\_\_\_\_ day of January, 2016.

\_\_\_\_\_  
Kathryne L. Ward  
Respondent

**DATED** this \_\_\_\_\_ day of January, 2016.

Adams & Clark PC

\_\_\_\_\_  
Ralph W. Adams  
Counsel for Respondent

Approved as to form and content



Maret Vessella  
Chief Bar Counsel

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Copy of the foregoing mailed/mailed  
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Ralph W. Adams  
Adams & Clark PC  
520 E Portland St  
Phoenix, AZ 85004-1843  
Email: ralph@adamsclark.com  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 22<sup>nd</sup> day of January, 2016, to:

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

by: Johi Deneke  
DLS: jld

## WARD MITIGATION STATEMENT

Ms. Ward experienced serious financial troubles during 2013 and 2014, resulting in a loss of over \$100,000 in the sale of a commercial property investment. She and her husband also lost 50% of the value in their home in the real estate crash.

Ms. Ward suffered a very serious injury at the hands of the Tempe police in August of 2013. While exiting a detention facility after seeing an in-custody client, Ms. Ward was struck from behind by a large security door. Ms. Ward has experienced a significant loss of income as a result of her injuries suffered from the incident, as well as, from the ongoing disabilities resulting from those injuries.

Ms. Ward's daughter tragically passed away in 2003. Her daughter was attending Vermont Law School She was in her second year of joint JD/MSEL (masters in environmental law) program and had stayed up all night studying for exams. She fell asleep at the wheel and her best friend Lauren Saab was also in the car. Neither survived.

The 10 year anniversary of her daughter's death was on Oct 7, 2013. Ms. Ward went through an entire re-living of the grief over the loss of her daughter. Her ex-husband (the father) caused issues regarding the release of her daughter's ashes. After the loss of her daughter, Ms. Ward's general practitioner, Dr. Andrew Carroll, recommended counseling and anti-depressants to deal with her extreme grief. Ms. Ward did not believe anything could help her, and so did not follow through on the doctor's recommendations. She believes that in approximately 2009, Dr. Carroll rushed her to the emergency room at Chandler Regional because he did an EKG and that showed signs of a heart attack. She spent a week in Chandler regional and was diagnosed with heart arrhythmia, PVC (premature ventricular contractions) and Bi-geminy (the occurrence of PVC every other beat). The cardiologist who treated her, Dr. Lababidi and the arrhythmia

specialist, Dr. Riggio, continue to treat her for these conditions. Dr. Lababidi diagnosed her heart condition as stemming from "broken heart syndrome" and from her untreated depression over the loss of her daughter. He put Ms. Ward on Zoloft and she has been taking Zoloft ever since. She currently takes 200mg of Zoloft a day.

Ms. Ward experienced marital problems with her current husband caused by the stress and mental strain of the grief, depression and lack of ability to reason, or rationalize family and financial issues due to heart condition, chronic pain and depression. In 2013 her mother was diagnosed with Alzheimer's disease. This caused additional financial strain and emotional stress on Ms. Ward, related to her mother's need for long term care. Ms. Ward's step father passed away in 2011 with no life insurance, leaving Ms. Ward as the sole financial provider for her mother's care.

As set forth *infra*, on August 23, 2013 Ms. Ward suffered a serious injury during the time of the events involved in this bar investigation. She suffered a lacerated spine, swelling to the brain and severe nerve damage. She has been on strong narcotic drugs ever since to treat her injuries, and up to the present date due to her surgery in June 2015. As a result of the extensive and protracted drug regimen of high levels of pain medications, Ms. Ward suffers from headaches, dizziness, confusion, insomnia and other serious side effect.

Since her injury and throughout her treatment which is ongoing, Ms. Ward has experienced and continues to experience debilitating nerve pain. She underwent extensive spinal surgery in June 2015 and is now being evaluated for spinal cord stimulator implant to manage the ongoing pain. Due to the extensive injuries she suffered from the August 2013 incident, Ms. Ward is unable to work, walk, sleep or sit for any extended period of time without pain since the incident in August 2013. Every document Ms. Ward provided to bar counsel during this time,

while she was self-represented, and even while represented by counsel, was prepared while on serious medications and while enduring extreme pain.

# **EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Kathryne L. Ward, Bar No. 021382, Respondent

File Nos. 13-2623, 13-3037, 13-3518, 14-0556, and 14-2965

### 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**

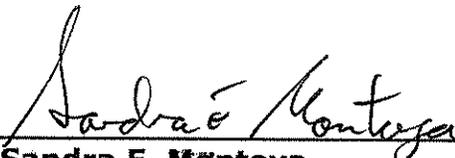
Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

### Staff Investigator/Miscellaneous Charges

05/01/14	Computer investigation reports, Accurint	\$	2.25
12/01/15	Computer investigation reports, Accurint	\$	28.20
12/15/15	Bar counsel mileage to settlement conference	\$	4.39
12/17/15	Bar counsel mileage to deposition	\$	5.66
12/24/15	Computer investigation reports, PACER	\$	2.90

Total for staff investigator/Miscellaneous charges \$ 43.40

TOTAL COSTS AND EXPENSES INCURRED \$ 1,243.40

  
\_\_\_\_\_  
Sandra E. Montoya  
Lawyer Regulation Records Manager

1-14-16  
\_\_\_\_\_  
Date

## **EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**KATHRYNE L. WARD,**  
**Bar No. 021382,**

Respondent.

**PDJ 2015-9098**

**FINAL JUDGMENT AND ORDER**

State Bar Nos. 13-2623, 13-3037, 13-3518, 14-0556, and 14-2965

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, **Kathryne L. Ward**, is hereby suspended for one year for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order or \_\_\_\_\_. A period of suspension of more than six months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona.

**IT IS FURTHER ORDERED** that Respondent must forego collection of \$32,000 in fees allegedly owing from Mr. Gally in connection with Count Four.

**IT IS FURTHER ORDERED** that Respondent must undergo a State Bar of Arizona MAP assessment at her expense prior to being reinstated to the practice of law in Arizona.

**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 \$ \_\_\_\_\_, within 30 days from the date of service of this Order.

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

**DATED** this \_\_\_\_\_ day of January, 2016.

\_\_\_\_\_  
**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 January, 2016.

Copies of the foregoing mailed/emailed  
this \_\_\_\_\_ day of January, 2016, to:

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

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_ day of January, 2016, to:

David L. Sandweiss  
Senior 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)

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by: \_\_\_\_\_