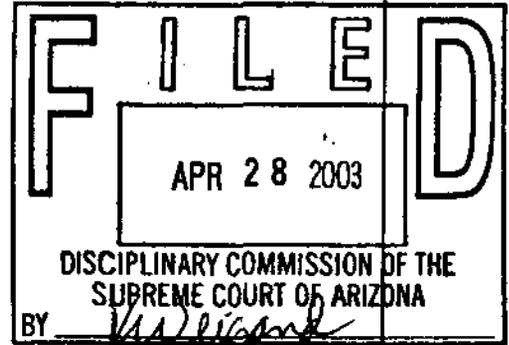


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BEFORE THE DISCIPLINARY COMMISSION

IN THE MATTER OF A MEMBER OF) Nos. 00-1856, 00-2468, 00-2481
THE STATE BAR OF ARIZONA,) 01-0895, 01-1835, 01-1903
) 01-2191, 02-0217, 02-0227
STEPHEN M. JOHNSON) 02-0500, 02-0860, 03-0376
Bar No. 015831) 03-0394, 03-0472
)
) **TENDER OF ADMISSIONS AND**
) **AGREEMENT FOR DISCIPLINE**
Respondent) **BY CONSENT**

This Agreement is entered into between the State Bar of Arizona, through undersigned counsel and Respondent, Stephen M. Johnson, represented by Stephen G. Montoya, Esq. It is submitted pursuant to Rule 56(a), Ariz.R.S.Ct., and the Guidelines for Discipline by Consent issued by the Disciplinary Commission of the Supreme Court of Arizona. Respondent agrees to the imposition of a suspension for a period of six months and one day, probation and the assessment of costs as stated herein. There were no issues of restitution raised

1 in this matter. This agreement is subject to review and acceptance by the
2 Disciplinary Commission and the Supreme Court of Arizona.¹

3
4 **FACTS**

- 5 1. At all times relevant hereto, Respondent was an attorney licensed to
6 practice law in the State of Arizona, having been admitted to practice
7 in Arizona on October 22, 1994.

8
9 **COUNT ONE (00-1856)**

- 10 2. In October 1997, Respondent was appointed to represent Brian
11 Randles in a criminal matter.
- 12 3. Throughout the representation, Mr. Randles claims that he made
13 numerous attempts to contact Respondent regarding his case. He
14 further claims that Respondent did not adequately respond to his
15 requests for information.
- 16 4. Respondent did not adequately advise Mr. Randles of the actions he
17 took on his behalf.
- 18 5. Respondent performed all services required in the course of his
19 representation.
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¹ Counts Eleven through Fourteen represent investigative files which were not part of the amended complaint filed May 3, 2002.

COUNT TWO (00-2468)

- 1
2 6. In mid-1998, Respondent was appointed to represent Ernest Ponce in a
3 criminal matter.
4
- 5 7. Following Mr. Ponce's conviction in early 1999, Respondent agreed to
6 represent Mr. Ponce through the appellate process for a flat fee of
7 \$5,000.00.
8
- 9 8. Between July 1999 and September 1999, Mr. Ponce's family paid
10 Respondent \$4,000.00. Respondent agreed to accept payment of the
11 final \$1,000.00 upon Mrs. Ponce's receipt of her tax refund in April
12 2000. Mr. Ponce's family ultimately paid the total amount of the
13 agreed upon fee.
14
- 15 9. Respondent performed the services as required by his agreement with
16 the client; however, Mr. Ponce claimed that he was not always
17 apprised of the actions being taken to further the goals of the
18 representation.
19
- 20 10. Mr. Ponce and his family made numerous attempts to contact
21 Respondent regarding the status of his appeal. Respondent did not
22 adequately respond to their requests for information concerning the
23 status of Mr. Ponce's case.
24
25

1 11. Upon Mr. Ponce's request, his family asked Respondent to provide an
2 accounting of the fees paid in the case. Respondent did not provide an
3 accounting to the client or his family.
4

5 12. In December 2000, Mr. Ponce's daughter filed a complaint with the
6 State Bar of Arizona concerning Respondent's professional conduct.
7 Respondent filed an untimely response in February 2001.
8

9 13. In August 2001, the State Bar wrote to Respondent and requested that
10 he respond to specific questions concerning the representation.
11 Respondent was asked to provide a response as well as documentation
12 within ten days of the date of the letter. Respondent did not timely
13 respond to this request.
14

15 14. Respondent's letter did not address certain specific questions asked
16 nor did Respondent provide the requested documentation.
17

18 **COUNT THREE (00-2481)**

19 15. In January 2000, Respondent was appointed to represent Gary Cole in
20 a criminal matter.
21

22 16. At the time Mr. Cole was taken into custody in relation to the criminal
23 charges, he had in his possession various personal items of some
24 value, including a coat, wristwatch, car keys, a check and cash in the
25 amount of \$150.00.

- 1 17. Respondent was with Mr. Cole when he was taken into custody. Mr.
2 Cole gave Respondent the various items and asked Respondent to
3 forward the items to his wife, April Cole.
4
- 5 18. Respondent would testify that Mr. Cole was ambivalent about what to
6 do with the property and asked Respondent to hold on to it until he
7 decided.
8
- 9 19. In November 2000, Mr. Cole asked Respondent about the return of his
10 property. Mr. Cole claimed that Respondent did not promptly respond
11 to his letter.
12
- 13 20. On December 5, 2000, Mr. Cole filed a complaint with the State Bar
14 of Arizona concerning Respondent's professional conduct.
15
- 16 21. In response to the State Bar, Respondent advised the State Bar that he
17 returned Mr. Cole's property on January 8, 2001, and sent Mr. Cole a
18 letter explaining his actions.
19
- 20 22. In August 2001, the State Bar requested that Respondent answer
21 specific questions concerning his actions in regard to returning Mr.
22 Cole's property. The State Bar requested that Respondent supply a
23 copy of his correspondence to Mr. Cole regarding the return of the
24 personal property. Respondent had ten days to respond from the date
25 of the letter. Respondent did not timely respond to this request.

1 23. In September 2001, Respondent sent a letter to the State Bar including
2 a copy of his letter to Mr. Cole.

3 24. Respondent did not adequately communicate with Mr. Cole
4 concerning the property Respondent had in his possession for one
5 year. In so doing, Respondent did not timely deliver Mr. Cole's
6 property to his wife.
7

8
9 **COUNT FOUR (01-0895)**

10 25. In November 2000, Respondent was appointed to represent Eugene
11 Glass on appeal from a civil commitment.

12 26. In April 2001, Mr. Glass filed a Motion for Frye-Hearing, *pro per*,
13 indicating that he was doing so because he had been unable to reach
14 Respondent.
15

16 27. In May 2001, Mr. Glass filed a complaint with the State Bar of
17 Arizona concerning Respondent's professional conduct.
18

19 28. By letter dated May 3, 2001, the State Bar advised Respondent of the
20 complaint filed by Mr. Glass and further advised that Respondent
21 should contact Mr. Glass to address his concerns. The letter also
22 advised that Mr. Glass was to contact the State Bar if Respondent had
23 not made contact with him within fifteen days of the date of the letter.
24
25

1 29. By letter dated May 20, 2001, Mr. Glass advised the State Bar that
2 Respondent had not contacted him.

3
4 30. Following Respondent's failure to contact Mr. Glass, the State Bar
5 opened a screening investigation whereby Respondent was asked to
6 respond to the allegations raised by Mr. Glass. Respondent did not
7 respond to the State Bar's letter requesting a response.

8
9 31. Respondent was thereafter advised that the State Bar had no receipt of
10 a response to their letter and that Respondent should respond to Mr.
11 Glass' allegations in writing within ten days from the date of the letter.
12 Respondent was advised of the ramifications of a failure to respond.
13 Respondent did not respond.
14

15 **COUNT FIVE (01-1835)**

16 32. In November 2000, Respondent was appointed to represent Joseph
17 Carrasco in a civil commitment case.

18
19 33. Mr. Carrasco claimed that throughout the course of the representation
20 he made numerous requests for information which were unanswered
21 by Respondent.

22
23 34. Mr. Carrasco claims that Respondent requested several continuances
24 of the case without consulting him or advising him of the need for
25 continuances.

1 35. Respondent would testify that he adequately communicated with Mr.
2 Carrasco during the representation and performed services in
3 furtherance of the representation. Respondent represented Mr.
4 Carrasco for nearly two years. During that time, Respondent appeared
5 at court proceedings where Mr. Carrasco was present, attended a
6 deposition of Mr. Carrasco, met with him on several occasions and
7 sent letters regarding the status of the case. Respondent also
8 represented Mr. Carrasco at trial in August 2002.
9
10

11 **COUNT SIX (01-1903)**

12 36. In mid-1998, Respondent was appointed to represent Johnny Lechuga
13 in three criminal cases.
14

15 37. The criminal cases related to drug charges against Mr. Lechuga. The
16 police seized approximately \$1,200.00 from Mr. Lechuga when he
17 was arrested.
18

19 38. In May 1999, Mr. Lechuga was acquitted of charges in two cases of
20 the three cases. At that time, Respondent advised Mr. Lechuga that he
21 might be entitled to a return of the funds seized in the arrest.
22

23 39. Mr. Lechuga did not retain Respondent to undertake efforts to
24 effectuate the return of the seized property. Respondent did however
25

1 make informal efforts to obtain the property. Respondent was
2 unsuccessful in his efforts.

3
4 40. Mr. Lechuga believed that Respondent would be making every effort
5 to obtain the property and that performance of the services necessary
6 to accomplish that goal were part of the representation.

7
8 41. On August 22, 2001, Mr. Lechuga filed a motion with the Superior
9 Court requesting the release of seized funds.

10 42. The Court issued a minute entry dated October 2, 2001, advising that
11 the Court had no jurisdiction over the matter.

12
13 43. On September 26, 2001, Mr. Lechuga wrote the State Bar of Arizona
14 requesting an address for Respondent and raising questions concerning
15 his cases. On October 4, 2001, the State Bar advised Mr. Lechuga of
16 Respondent's address.

17
18 44. At that time, the State Bar also sent Respondent a letter advising that
19 an inquiry had been received from Mr. Lechuga.

20 45. Mr. Lechuga wrote Respondent and reminded him the issue regarding
21 the seized property and the fact that it had never been returned to him.

22
23 46. Respondent advised Mr. Lechuga that he should retain a lawyer to
24 assist him in the return of his funds.
25

1 47. Respondent did not adequately communicate with Mr. Lechuga
2 concerning his limitations in obtaining a return of the seized property.
3 As a result, Mr. Lechuga believed that as part of the representation
4 Respondent was charged with securing the return of the seized
5 property.
6

7 48. On March 12, 2002, Mr. Lechuga again wrote the State Bar raising
8 allegations of professional misconduct.
9

10 49. By letter dated March 26, 2002, the State Bar of Arizona advised
11 Respondent of the allegations concerning his professional conduct.
12 Respondent was advised that he should respond to the allegations
13 within ten days of the date of the letter. Respondent did not respond.
14

15 50. By letter dated April 9, 2002, the State Bar advised Respondent that
16 no response had been received in this matter and a response was due.
17

18 51. Respondent did file a response in this matter; however, his submission
19 was untimely.
20

COUNT SEVEN (01-2191)

21 52. In September 2001, Respondent was appointed to prepare an appeal
22 from a jury verdict in a civil commitment matter involving Paul
23 Barnes.
24
25

1 53. From the commencement of the representation, Mr. Barnes claims that
2 he had attempted to contact Respondent on numerous occasions
3 regarding his case.
4

5 54. Mr. Barnes contacted Respondent by phone leaving messages
6 requesting contact. Respondent did not answer Mr. Barnes' requests.
7

8 55. During the course of representation, Respondent requested
9 continuances without advising Mr. Barnes of the need for extensions.
10 The continuances in Mr. Barnes' case unduly delayed his matter.

11 56. On November 7, 2001, Mr. Barnes wrote the State Bar requesting
12 assistance in contacting Respondent.
13

14 57. By letter dated November 16, 2001, Respondent was advised of Mr.
15 Barnes' concerns regarding communication and advised Respondent
16 that he should contact Mr. Barnes within fifteen days to address his
17 concerns. Respondent was advised that if he did not make contact
18 with the client within that time frame that the client was advised to
19 again contact the State Bar.
20

21 58. Mr. Barnes thereafter advised the State Bar that Respondent had not
22 contacted him. At that time, the State Bar opened a screening
23 investigation into the allegations raised by Mr. Barnes.
24
25

1 59. In January 2002, the State Bar advised Respondent of the allegations
2 concerning his professional conduct. Respondent submitted a timely
3 response to the matter.
4

5 **COUNT EIGHT (02-0217)**

6 60. In December 2001, Respondent was appointed to represent Ronald
7 Ruelas in a criminal matter for post conviction relief.
8

9 61. By letter dated December 7, 2001, Respondent advised Mr. Ruelas
10 that he was appointed and that his petition was due to be filed by
11 February 1, 2002. Respondent advised that he would contact Mr.
12 Ruelas in the near future to advise of the progress on the case.
13

14 62. Following the initial correspondence from Respondent, Mr. Ruelas
15 and his family claim that they made several attempts to communicate
16 with Respondent and that Respondent's voice mail message box was
17 full and the family could not leave messages.
18

19 63. Mr. Ruelas' family also claims that they wrote to Respondent without
20 a response from Respondent.
21

22 64. Respondent requested a continuance to file Mr. Ruelas' brief as he had
23 not yet obtained the transcripts. Respondent did not communicate this
24 to Mr. Ruelas or his family.
25

1 65. In January 2002, Mr. Ruelas and his family filed complaints with the
2 State Bar.

3 66. In February 2002, the State Bar of Arizona advised Respondent of the
4 allegations concerning his professional conduct. Respondent was
5 advised that he should respond within twenty days. Respondent did
6 not respond to the State Bar's letter.
7

8 67. In March 2002, Mr. Ruelas' family retained new counsel.
9

10 68. In April 2002, Respondent was advised that no response had been
11 received in this matter and that a response was due.

12 69. Respondent did file a response in this matter; however, his submission
13 was untimely.
14

15 **COUNT NINE (02-0227)**

16 70. By Order filed January 30, 2002, in the Court of Appeals, Division
17 One, State of Arizona, Respondent was held in contempt and
18 sanctioned in the case, In Re Paul B, docket number 1CA-MH 01-
19 0007 SP, Superior Court number CV98-020757.
20

21 71. On October 1, 2001, Respondent requested an extension of the due
22 date to file the opening brief on behalf of his client, Paul Barnes. In
23 his motion, Respondent wrote that he had requested the transcripts but
24 they included eight days of trial and had not yet been completed.
25

1 72. The Court granted Respondent an extension until November 19, 2001.

2 The order advised that no more extensions would be granted.

3 73. On November 19, 2001, Respondent filed a second request for
4 extension, indicating that the transcripts from the trial and the hearings
5 in the matter had not been completed.

6
7 74. The Court granted another extension until December 31, 2001. The
8 order once again advised that no more extensions would be granted.

9
10 75. On December 21, 2001, Respondent filed a third request for extension
11 stating that he had been in trial and needed an additional forty-five to
12 sixty days to complete the opening brief.

13
14 76. On December 26, 2001, the Court denied Respondent's request and
15 ordered Respondent to file the opening brief by January 21, 2002 or
16 appear on January 24, 2002, to show cause why sanctions should not
17 be imposed.

18
19 77. On January 22, 2002, Respondent filed a fourth request for extension,
20 alleging that he was still waiting for the transcripts from the trial and
21 would need another 45-60 days in which to submit the opening brief.

22
23 78. Respondent was advised to appear as ordered on January 24, 2002.

24 79. On January 24, 2002, Respondent appeared before the Court and was
25

1 placed under oath. Respondent stated that he did not yet have the
2 transcripts and that there was no excuse. Respondent advised that the
3 first time he had spoken to the court reporter Leslie Hicks, to request
4 the transcripts, was that day, January 24, 2002. Prior to that time, he
5 left three voice mail messages at Judge Schwartz's court. Respondent
6 stated that his messages were not returned and he did not do any
7 follow-up until January 24, 2002.
8

9
10 80. By order dated January 30, 2002, the Court held Respondent in civil
11 contempt for repeated violations of orders to file the opening brief and
12 for his repeated lack of candor in his requests for extensions.
13

14 81. The order further stated that Respondent could purge himself of
15 contempt by doing the following: Report himself to the State Bar for
16 violating ER 1.3 in his representation of Mr. Barnes and that
17 Respondent file the opening brief in Mr. Barnes' case on or before
18 March 20, 2002.
19

20 82. Respondent self-reported in accordance with the Court's order of
21 January 30, 2002.
22

23 83. Respondent also filed an opening brief on behalf of Mr. Barnes on
24 March 20, 2002.
25

COUNT TEN (02-0500)

1
2 84. In June 1999, Desiree Garcia and her son met with Respondent
3 regarding an altercation involving her son and another individual. At
4 the time of the meeting no criminal charges had been filed against Ms.
5 Garcia's son.
6

7 85. During the initial consultation, Ms. Garcia and Respondent discussed
8 the possibility of criminal charges being filed. Respondent advised
9 that if her son was arrested she should contact Respondent
10 immediately.
11

12 86. Respondent requested \$1,000.00 from Ms. Garcia in anticipation of
13 rendering services on behalf of Ms. Garcia's son.
14

15 87. On June 29, 1999, Ms. Garcia paid Respondent \$1,000.00.
16 Respondent sent letters to police agencies advising them that he was
17 retained and if a summons was issued, to contact his office.
18 Respondent also followed the status of the matter during the next
19 several months.
20

21 88. Ms. Garcia's son was never charged criminally for the matter she
22 discussed with Respondent.
23

24 89. In the year following the remittance of \$1,000.00, Ms. Garcia spoke
25 with Respondent on several occasions concerning other legal matters.

1 90. In mid-2001, Ms. Garcia requested that Respondent return any
2 unearned portion of the \$1,000.00 fee she had paid.

3
4 91. On March 15, 2002, Ms. Garcia filed a complaint with the State Bar.
5 The State Bar advised Respondent of the allegations concerning his
6 professional conduct. Respondent was advised that he should respond
7 within ten days of the date of the letter.

8
9 92. Respondent filed a response to this matter; however, his submission
10 was untimely.

11 93. On April 30, 2002, despite believing that he had earned the fee paid by
12 Ms. Garcia, Respondent returned the entire amount.

13
14 **COUNT ELEVEN (02-0860)**

15 94. On approximately March 20, 2002, Respondent was appointed to
16 represent Ramon Escobar-Mendez in the preparation of a petition for
17 post conviction relief.

18
19 95. By order dated June 27, 2002, Respondent was to file a petition for
20 post conviction relief on or before July 27, 2002.

21 96. Respondent did not file a petition on or before July 27, 2002 nor did
22 he request an extension of time to do so.
23
24
25

1 97. By order dated October 30, 2002, the Court dismissed Mr. Mendez'
2 post conviction relief proceeding due to Respondent's failure to file a
3 petition on or before the deadline.
4

5 98. By order dated December 11, 2002, the Court vacated its previous
6 order dismissing Mr. Mendez' proceeding. The Court did so upon the
7 assurance from Respondent that a petition would be filed.
8

9 99. On approximately December 29, 2002, Respondent filed a petition for
10 post conviction relief on behalf of Mr. Mendez.

11 100. Respondent did not adequately communicate with his client
12 concerning the delay in filing his petition for post conviction relief.
13

14 **COUNT TWELVE (03-0376)**

15 101. On approximately July 29, 2002, Respondent was appointed to
16 represent Robert Leo Fayette in the preparation of a petition for post
17 conviction relief.
18

19 102. Respondent was to file a Notice of Compliance or a petition for post
20 conviction relief within sixty days of the date of the appointment.
21

22 103. Thereafter, in or about early October 2002, Respondent filed a motion
23 to extend the deadline for filing. His motion was considered by the
24 Court and an extension of thirty days was granted.
25

1 104. In or about November 2002, Respondent again filed a motion to
2 extend the deadline for filing. His motion was considered by the
3 Court and an extension of thirty days was granted.
4

5 105. The petition was to be filed on or before December 2, 2002.

6 106. Respondent did not file a petition on or before December 2, 2002.

7 107. On January 8, 2003, the Court dismissed Mr. Fayette's proceeding due
8 to Respondent's failure to timely file a petition on his behalf.
9

10 108. Thereafter, on January 16, 2003, despite missing the deadline,
11 Respondent requested another extension to file a petition on behalf of
12 Mr. Fayette.
13

14 109. By order dated February 10, 2003, the Court vacated its earlier order
15 dismissing Mr. Fayette's proceeding.
16

17 110. Respondent was removed from the case and new counsel appointed.

18 111. Respondent did not adequately communicate with his client
19 concerning the delay in filing the petition for post conviction relief.
20

COUNT THIRTEEN (03-0394)

21 112. On or about March 14, 2002, Respondent was appointed to represent
22 Antonio Alvarado Martinez in the preparation of a petition for post
23 conviction relief.
24

25 113. Respondent was to file a petition on or before May 14, 2002.

1 114. In or about early May 2002, Respondent filed a motion for an
2 extension of time to file the petition. The Court granted Respondent's
3 motion. The petition was due on or before June 14, 2002.
4

5 115. In or about June 2002, Respondent filed a motion for an extension of
6 time to file the petition. The Court granted Respondent's motion.
7

8 116. Respondent did not file a petition on behalf of Mr. Martinez on or
9 before June 14, 2002.

10 117. By minute entry dated July 30, 2002, the Court indicated that the
11 petition was due on or before June 14, 2002 and that Respondent had
12 not filed a petition. The Court ordered that a petition be filed no later
13 than August 30, 2002. In that Respondent failed to file a petition on or
14 before that date, Respondent was to appear on September 6, 2002, to
15 show cause why he should not be held in contempt.
16

17 118. Respondent filed a petition on behalf of Mr. Martinez on August 29,
18 2002.
19

20 119. Respondent did not adequately communicate with his client
21 concerning the delay in filing the petition for post conviction relief.
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COUNT FOURTEEN (03-0472)

120. On or about October 24, 2002, Respondent was appointed to represent Hussein Abu-Shindi in preparing a petition for post conviction relief.

121. A petition was to be filed within sixty days of the appointment.

122. Respondent did not timely file a petition nor did he request an extension of time to do so.

123. Respondent did not adequately communicate with his client concerning the delay in filing a petition for post conviction relief.

COUNT FIFTEEN (Prior Sanction)

124. Respondent was previously sanctioned for a violation of the Rules of Professional Conduct. In file number 99-2005, Respondent received an Informal Reprimand by Order of May 25, 2000, for violations of Rule 42, Ariz.R.S.Ct., specifically, ER 1.15 and ER 8.1(b), and Rules 43 and 44, 51(h) and (i), Ariz.R.S.Ct.

CONDITIONAL ADMISSIONS

Count One

1. Respondent conditionally admits that his conduct, as set forth in count one above, violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.4.

Count Six

1
2 8. Respondent conditionally admits that his conduct, as set forth in count
3 six above, violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.4 and Rule
4 51(h), Ariz.R.S.Ct.
5

6 9. Count six included a violation of ER 1.3 for failure to take diligent
7 action on behalf of Mr. Lechuga. Based on further evaluation of the
8 information provided by Respondent in the discovery process,
9 Respondent's appointment to Mr. Lechuga's case was for the sole
10 purpose of representation in the criminal matters. Upon dismissal,
11 conviction, sentencing or a not guilty verdict at trial, Respondent's
12 obligation was concluded. Therefore, a charge that Respondent's
13 failure to effectuate the return of Mr. Lechuga's seized property without
14 being privately retained to do so was not a violation of ER 1.3. As such,
15 the State Bar conditionally admits that it cannot prove by clear and
16 convincing evidence that Respondent violated ER 1.3 as charged in the
17 complaint.
18
19
20

21 10. Count six included an allegation that Respondent failed to respond to
22 charges in violation of ER 8.1 and Rule 51(i), Ariz.R.S.Ct. Respondent
23 filed a response; however, his submission was untimely. Based upon
24 those facts, Respondent violated Rule 51(h), Ariz.R.S.Ct., for his failure
25

1 to promptly respond and not ER 8.1 or Rule 51(i). As such, the State
2 Bar conditionally admits that it could not prove a violation of ER 8.1 or
3 Rule 51(i), Ariz.R.S.Ct., as charged in the complaint.
4

5 11.Count six included an allegation that Respondent violated ER 8.4 for
6 misrepresenting the status of efforts concerning the seized property.
7 Mr. Lechuga asserted that Respondent had advised that he would secure
8 the return of the property. Respondent's position was that he told Mr.
9 Lechuga that he would make some informal efforts to that end. Based
10 on the information currently known to the State Bar, it appears that the
11 parties' varying perspectives were the result of Respondent's failure to
12 adequately communicate with Mr. Lechuga regarding the issue. As
13 such, the State Bar conditionally admits that it cannot prove by clear
14 and convincing evidence that Respondent made a misrepresentation to
15 Mr. Lechuga as charged in the complaint.
16
17
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19 Count Seven

20 12.Respondent conditionally admits that his conduct, as set forth in count
21 seven above, violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.2, ER
22 1.3 and ER 1.4.
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Count Eight

13. Respondent conditionally admits that his conduct, as set forth in count eight above, violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.4 and Rule 51(h), Ariz.R.S.Ct.

14. Count eight included an allegation that Respondent failed to respond to charges in violation of ER 8.1 and Rule 51(i), Ariz.R.S.Ct. Respondent filed a response; however, his submission was untimely. Based upon those facts, Respondent violated Rule 51(h), Ariz.R.S.Ct., for his failure to promptly respond and not ER 8.1 or Rule 51(i). As such, the State Bar conditionally admits that it could not prove a violation of ER 8.1 or Rule 51(i), Ariz.R.S.Ct., as charged in the complaint.

Count Nine

15. Respondent conditionally admits that his conduct, as set forth in count nine above, violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.3 and ER 8.4(c) and (d).

16. Count nine included an allegation that Respondent knowingly made false statements to the court in requesting multiple extensions of time to file Mr. Barnes' opening brief. Respondent acknowledged that he did not provide sufficient information to the Court so that a determination could be made based on a full understanding of the facts surrounding

1 the requests. Respondent also acknowledged that he should have done
2 more to ensure that the transcripts were being prepared. Respondent
3 asserts that his conduct was negligent. Based on Respondent's
4 explanations and the belief that Respondent did not intentionally
5 mislead the Court the State Bar conditionally admits that it cannot prove
6 a violation of ER 3.3 as charged in the complaint.
7

8
9 Count Ten

10 17. Respondent conditionally admits that his conduct as set forth in count
11 ten above, violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.15(b), ER
12 1.16(d) and Rule 51(h), Ariz.R.S.Ct.

13
14 18. Count ten included an allegation that Respondent charged an excessive
15 fee in violation of ER 1.5. The explanation and documentation
16 provided during discovery supported Respondent's contention that he
17 performed some service for Ms. Garcia over a period of time.
18 Respondent contended that he had earned some portion, if not all, of the
19 fee and Ms. Garcia believed that Respondent should return some portion
20 of the fee. Once it was known that Respondent performed some service
21 to Ms. Garcia the matter became more of a fee dispute rather than the
22 basis for an allegation that Respondent charged an excessive fee. Under
23 the circumstances, the State Bar conditionally admits that it cannot
24
25

1 prove by clear and convincing evidence that Respondent violated ER
2 1.5 as charged in the complaint.

3 19.Count ten included an allegation that Respondent failed to respond to
4 charges in violation of ER 8.1 and Rule 51(i), Ariz.R.S.Ct. Respondent
5 filed a response; however, his submission was untimely. Based upon
6 those facts, Respondent violated Rule 51(h), Ariz.R.S.Ct., for his failure
7 to promptly respond and not ER 8.1 or Rule 51(i). As such, the State
8 Bar conditionally admits that it could not prove a violation of ER 8.1 or
9 Rule 51(i), Ariz.R.S.Ct., as charged in the complaint.
10
11

12 Count Eleven

13
14 20.Respondent conditionally admits that his conduct as set forth in count
15 eleven above, violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.3 and
16 ER 1.4.

17 Count Twelve

18
19 21.Respondent conditionally admits that his conduct as set forth in count
20 twelve above, violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.3 and
21 ER 1.4.
22
23
24
25

1 1. Respondent shall be suspended for a period of six months and one
2 day for his conduct.

3
4 2. Respondent shall receive a two-year term of probation.

5 (a) Respondent's probation shall include participation in
6 LOMAP. On September 16, 2002, Respondent signed a
7 voluntary contract with Diane Ellis, Director of the Law
8 Office Management Program. Respondent's voluntary
9 contract is for a term of one year. Pursuant to the terms
10 of this agreement, Respondent's contract shall be
11 converted to a non-voluntary contract and the period of
12 the contract shall be extended to reflect that the term is
13 two years. Respondent shall within thirty (30) days of the
14 date of an order reinstating him to the practice of law
15 sign a non-voluntary contract for LOMAP including any
16 additional terms necessary to be consistent with the terms
17 set forth in this agreement. A failure to comply with any
18 term of the LOMAP contract will result in a notice of
19 noncompliance as a violation of a term of probation.
20 (Attached hereto as "Exhibit A" is a copy of
21 Respondent's voluntary LOMAP contract)
22
23
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1 (b) On September 16, 2002, Respondent entered into a
2 voluntary therapeutic contract for a period of one-year.
3 Pursuant to the terms of this agreement, Respondent's
4 voluntary therapeutic contract with MAP shall be
5 converted into a non-voluntary contract and the period of
6 contract shall be extended to reflect that the term is two
7 years. Respondent shall within thirty (30) days of the
8 date of an order reinstating him to the practice of law
9 sign a non-voluntary contract for MAP including any
10 additional terms necessary to be consistent with the terms
11 set forth in this agreement. A failure to comply with any
12 term of the MAP contract will result in a notice of
13 noncompliance as a violation of a term of probation.
14 (Attached hereto as "Exhibit B" is a copy of
15 Respondent's voluntary MAP contract)
16

17 (c) Respondent shall be assigned a practice monitor for the
18 period of probation. The reporting terms shall be
19 developed by the Director of LOMAP and included in a
20 Memorandum of Understanding which shall be
21 incorporated herein by this reference.
22
23
24
25

1 (d) Respondent shall also be required to participate in the
2 State Bar Trust Account Ethics Enhancement Program,
3 Respondent shall complete this requirement within six
4 months from the date of the judgment and order
5 reinstating him to the practice of law.
6

7 3. Respondent shall pay all costs and expenses incurred by the State
8 Bar in these proceedings. A Statement of Costs is attached hereto as
9 "Exhibit C".
10

11 4. Respondent shall pay all costs and expenses incurred by the Hearing
12 Officer; the Disciplinary Commission; the Supreme Court, and the
13 Disciplinary Clerk's Office in this matter.
14

15 5. This matter raised no issues of restitution.

16 6. In the event Respondent fails to comply with any of the foregoing
17 terms, and information thereof is received by the State Bar of
18 Arizona, Bar Counsel shall file a Notice of Noncompliance with the
19 imposing entity pursuant to Rule 52(a)(6)(C), Ariz.R.S.Ct. The
20 matter may be referred to a hearing officer to conduct a hearing at
21 the earliest practical date, but in no event, less than thirty (30) days
22 following receipt of said Notice. If the matter is referred to a hearing
23 officer, the hearing officer shall determine whether the terms of
24
25

1 probation have been breached and, if so, to recommend appropriate
2 action and response to such breach. If there is an allegation that
3 Respondent failed to comply with any of the foregoing terms, the
4 burden of proof shall be on the State Bar of Arizona to prove non-
5 compliance by a preponderance of the evidence.
6

7 Respondent is represented by counsel in this matter. Respondent
8 understands that he must apply for reinstatement pursuant to Rules 71 and 72,
9 Ariz.R.S.Ct. Respondent, by entering into this Agreement, waives his right to a
10 formal disciplinary hearing that he would otherwise be entitled to pursuant to
11 Rule 53(c)(6), Ariz.R.S.Ct., and the right to testify or present witnesses on his
12 behalf at a hearing. Respondent further waives all motions, defenses, objections,
13 or requests which he has made or raised, or could assert hereinafter, if the
14 conditional admissions and stated form of discipline are approved. Respondent
15 acknowledges that he has read this Agreement and has received a copy of it.
16
17
18

19 This Tender of Admissions and Agreement for Discipline by Consent will
20 be submitted to the Disciplinary Commission for approval. Respondent
21 understands that the Disciplinary Commission may order a hearing officer to
22 conduct an evidentiary hearing, if necessary. Respondent further understands that
23 the Disciplinary Commission may recommend rejection of this Agreement or
24 may propose modifications. Respondent further understands the Disciplinary
25

1 Commission must approve this Agreement and that this matter will become final
2 upon judgment and order of the Supreme Court of Arizona. If the Agreement is
3 rejected, the parties' conditional admissions are withdrawn.
4

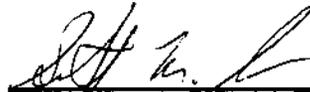
5 DATED this 20th day of April, 2003.

6 STATE BAR OF ARIZONA

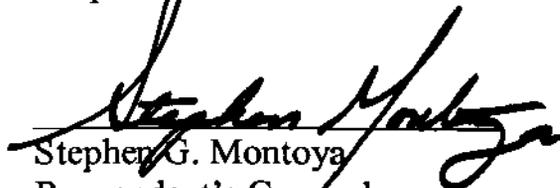
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9 Maret Vessella
10 Deputy Chief Bar Counsel

11 **This Agreement, with conditional admissions, is submitted freely and**
12 **voluntarily and not under coercion or intimidation. I am aware of the Rules of**
13 **the Supreme Court with respect to discipline and reinstatement.**

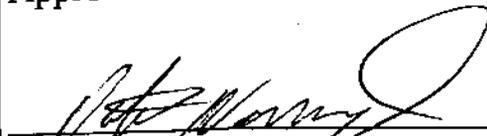
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15 Stephen M. Johnson
16 Respondent

17 

18 Stephen G. Montoya
19 Respondent's Counsel

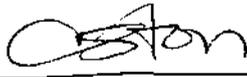
20 Approved as to form and content:

21 

22 Robert VanWyck
23 Chief Bar Counsel
24 State Bar of Arizona

1 Original filed with the Disciplinary Clerk of
2 the Supreme Court this 28 day of
April, 2003, at:

3
4 Disciplinary Clerk
5 Certification and Licensing Division
6 Supreme Court of Arizona
7 1501 West Washington Street, Suite 104
8 Phoenix, Arizona 85007-3329

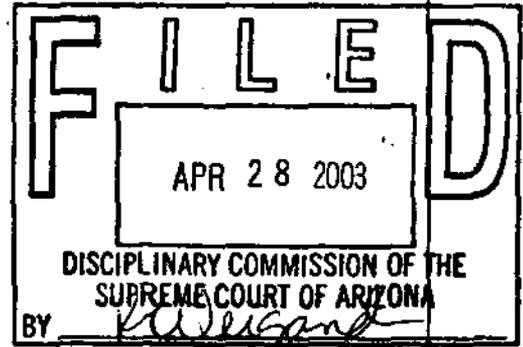
9
10 by: 
11 MV/

12 Copy of the foregoing mailed/hand-delivered* this
13 28 day of April, 2003, to:

14 Stephen G. Montoya
15 411 North Central Avenue, Suite 520
16 Phoenix, Arizona 85004
17 Respondent's Counsel

18 Dee Steadman
19 Lawyer Regulation Records Manager*
20 State Bar of Arizona
21 111 West Monroe Street, Suite 1800
22 Phoenix, Arizona 85003-1742

23
24 by: 
25 MV/



Maret Vessella, Bar No. 019350
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Phoenix, Arizona 85004
Telephone: (602) 256-6718

BEFORE THE DISCIPLINARY COMMISSION

IN THE MATTER OF A MEMBER OF)	Nos. 00-1856, 00-2468, 00-2481
THE STATE BAR OF ARIZONA,)	01-0895, 01-1835, 01-1903
)	01-2191, 02-0217, 02-0227
)	02-0500
STEPHEN M. JOHNSON)	
Bar No. 015831)	
)	JOINT MEMORANDUM IN
)	SUPPORT OF AGREEMENT
Respondent)	BY CONSENT

The State Bar of Arizona, through undersigned counsel and Respondent, Stephen M. Johnson, represented by Stephen G. Montoya, Esq., hereby submit this Joint Memorandum in Support of the Agreement for Discipline by Consent filed contemporaneously herewith.

The State Bar of Arizona and Respondent agree that Respondent shall be suspended for a period of six months and one day, serve a two-year term of probation and pay the costs incurred in this disciplinary proceeding. There was no issue of restitution raised in this matter.

1 The parties to the Agreement considered American Bar Association
2 Standards for Imposing Lawyer Sanctions (Standards), particularly Standard 4.4.
3 Respondent's misconduct primarily consists of the failure to act diligently and to
4 adequately communicate with his clients. Suspension is generally appropriate
5 when a lawyer knowingly fails to perform services for a client and causes injury
6 or potential injury to a client; or a lawyer engages in a pattern of neglect and
7 causes injury or potential injury to a client. Standard 4.42.
8
9

10 The presumptive sanction for the admitted conduct is a term of suspension.
11 Following determination of the presumptive sanction, it is appropriate to evaluate
12 factors which are enumerated under the Standards as justifying an increase or
13 decrease in the presumptive sanction.
14

15 This case presents several aggravating and mitigating factors. In
16 aggravation Respondent has a prior disciplinary sanction. Standard 9.22(a). In
17 file number 99-2005, Respondent received an Informal Reprimand on May 25,
18 2000, for violations of ER 1.15 and ER 8.1(b), Rules 43 and 44, Rule 51(h) and
19 (i), Ariz.R.S.Ct. The facts surrounding the imposition of the prior sanction
20 involved an overdraft on Respondent's trust account. In its investigation, the
21 State Bar requested an explanation as to the circumstances surrounding the
22 overdraft and supporting documentation. Respondent did not timely respond to
23 the inquiry. Once information requested by the State Bar was received the
24
25

1 underlying cause of the overdraft was determined to be isolated and inadvertent
2 and the matter was resolved with the imposition of an informal reprimand.

3 Although it is appropriate to consider Respondent's previous sanction, it
4 should not carry the same weight as more extensive disciplinary records or those
5 histories demonstrating multiple sanctions ranging in severity.
6

7 The admitted conduct in this matter also exhibits a course of action which
8 reveals a pattern of misconduct, as well as multiple violations. Standard 9.22(c)
9 and (d). The complaining parties in this case detailed similar accounts of
10 Respondent's conduct in the course of performing legal services. Respondent
11 did not set out to avoid his duties to his clients. Respondent knew what he was
12 required to do for each client; however his misconduct was a product of neglect
13 due to multiple circumstances which are detailed further in the discussion of
14 mitigating factors.
15
16

17 The sanction proposed by this Agreement also reflects that the parties
18 recognized several significant mitigating factors. First, Respondent's conduct
19 was not motivated by selfishness or dishonesty. Standard 9.32(b). To the
20 contrary, Respondent's misconduct was the product of negligence born of stress
21 and overwork.
22
23

24 Second, for several years, inclusive of the timeframes herein, Respondent
25 has suffered from personal and emotional problems. Specifically, one of

1 Respondent's elementary school age children suffered from a serious illness
2 which caused Respondent to suffer from severe anxiety and stress. Respondent
3 also suffered from stress resulting from economic difficulties arising from a
4 dissolved law practice that Respondent formed with two colleagues. These
5 economic difficulties caused Respondent to make the mistake of taking on more
6 legal work than he could reasonably manage, which is in large part the primary
7 cause for the conduct giving rise to the State Bar's Complaint in this proceeding.
8

9
10 Standard 9.32(c).

11 Third, *before* Respondent entered into this Agreement, he voluntarily
12 sought assistance from the Member Assistance Program ("MAP") and entered
13 into a voluntary therapeutic contract. Respondent also voluntarily sought
14 assistance from the Law Office Management Assistance Program ("LOMAP")
15 and also entered into a voluntary LOMAP contract. Respondent's efforts were
16 undertaken to address the underlying causes of the conduct set forth in the
17 Tender of Admissions. In addition, Respondent has significantly reduced the
18 volume of his caseload before entering into this Agreement, which also addresses
19 the underlying causes of the conduct set forth in the Tender of Admissions.
20 Under these circumstances, Respondent's efforts demonstrate that he has taken
21 significant steps to rectify the consequences of his conduct. Standard 9.32(d).
22
23
24
25

1 Once the State Bar filed its Complaint, Respondent also exhibited a
2 cooperative attitude in the formal process. Standard 9.32(e).

3
4 Counsel for the State Bar has also conferred with two practitioners and one
5 judge regarding Respondent's reputation in the legal community and has
6 concluded that Respondent enjoys a reputation for being an effective and
7 straightforward advocate in the courtroom on behalf of his clients. Standard 9.32
8 (g).

9
10 Respondent has indicated throughout these proceedings that he is
11 cognizant of the potential harm his actions could cause and recognizes that he
12 requires assistance in taking steps to improve his ability to serve his clients.
13 Respondent further demonstrated his remorse for his actions as evidenced by his
14 letter to the Disciplinary Commission attached hereto as "Exhibit A". This
15 remorse should also be considered as a mitigating factor. Standard 9.32(l).

16
17 Moreover, Respondent's agreement to the specific sanctions in this case
18 reflect his acknowledgement that his personal and professional issues impacted
19 his ability to adequately serve his clients and to regain the opportunity to
20 continue practicing law he will have to demonstrate the requisite requirements of
21 Rule 72, Ariz.R.S.Ct.
22
23
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1 was to file opening briefs as ordered by the court. Nelson not only failed to file
2 the opening briefs but failed to appear before the court upon an order to show
3 cause. In both instances, Nelson was removed from the clients' cases.
4 Additionally, Nelson failed to respond to the State Bar's inquiries in two of the
5 three counts. The Court found that Nelsons neglect coupled with his disregard of
6 the State Bar's investigation and court of appeals orders warranted suspension.
7

8
9 In mitigation Nelson had personal and emotional problems, showed
10 interim rehabilitation and was not selfish or dishonest in his actions. The Court
11 concluded that the aggravating and mitigating factors were neutral.

12
13 In *In Re Dellacona*, SB-00-0092-D (2000), the lawyer was suspended for a
14 period of nine months for her failure to adequately communicate with multiple
15 clients as well as pursue actions on their behalf in a diligent fashion. In one
16 instance, Dellacona failed to respond to the State Bar during its investigation. In
17 aggravation, the lawyer was found to have a prior disciplinary record which
18 included two informal reprimands; a pattern or misconduct; and multiple
19 offenses. The only factor in mitigation which was considered was the absence of
20 a selfish or dishonest motive.
21

22
23 There are several cases which demonstrate similar conduct which resulted
24 in sanctions ranging in the length of the suspension. Based on the above-cited
25

1 cases, it appears that the recommended sanction is within the range of
2 appropriate sanctions for the admitted conduct.

3
4 The Consent Agreement serves to instill confidence in the public and
5 maintain the integrity of the Bar. Respondent's personal issues are also being
6 addressed and monitored which should serve to improve his ability to serve his
7 clients upon reinstatement.

8
9 **CONCLUSION**

10 The objective of lawyer discipline is not to punish the lawyer, but to protect
11 the public, the profession, and the administration of justice. *In re Neville*, 147 Ariz.
12 106, 708 P.2d 1297 (1985). Recognizing that it is the prerogative of the
13 Disciplinary Commission to determine the appropriate sanction, it is nevertheless
14 the belief of the State Bar of Arizona and Respondent that the objectives of
15 discipline will be met by the imposition of the proposed sanction.

16
17 **DATED** this 28th day of April, 2003.

18
19 STATE BAR OF ARIZONA

20
21 Maret Vessella
22 Maret Vessella
23 Deputy Chief Bar Counsel
24
25

1 Dee Steadman
2 Lawyer Regulation Records Manager*
3 State Bar of Arizona
4 111 West Monroe Street, Suite 1800
5 Phoenix, AZ 85003-1742

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by: C. Stan