

**FILED**

JUL 21 2009

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA  
BY JMS

**BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA**

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3  
4 IN THE MATTER OF A MEMBER ) Nos. 07-1075, 07-1083, 07-1483,  
5 OF THE STATE BAR OF ARIZONA, ) 07-1523  
6 )  
6 **JAMES D. JENKINS,** )  
7 **Bar No. 005725** ) **DISCIPLINARY COMMISSION**  
8 ) **REPORT**  
9 )  
8 **RESPONDENT.** )  
9 )

10 This matter came before the Disciplinary Commission of the Supreme Court of  
11 Arizona on July 11, 2009, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the  
12 Hearing Officer's Report filed May 14, 2009, recommending acceptance of the Tender of  
13 Admissions and Agreement for Discipline by Consent and Joint Memorandum providing  
14 for an 18 month suspension one year of probation with specific terms and conditions to be  
15 determined at the time of reinstatement), fee arbitration, and costs.

16 Respondent objected to the State Bar's Statement of Costs and Expenses and the  
17 parties agreed that the Hearing Officer would determine, subject to appeal, the assessment  
18 of costs and expenses. The Hearing Officer overruled Respondent's objections. See  
19 Hearing Officer's Report, pp. 8-10. Respondent again objected and requested oral  
20 argument before the Disciplinary Commission on the assessment of costs and expenses  
21 *only*. Respondent, Respondent's counsel, and counsel for the State Bar were present.

22 Respondent argues that the State Bar's costs and expenses do not fit the statutory  
23 definition of costs and expenses and are already included in the general administrative  
24 expenses. Specifically, line item charges are not costs and are covered by the \$600.00  
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1 general administrative expenses. In addition, Respondent asserts that the employee line  
2 item billing entries related to the staff investigator and staff examiner/paralegal are  
3 unreasonable and not necessarily incurred.

4 Respondent further argues that the Hearing Officer erred in his application of *In re*  
5 *Shannon*, 179 Ariz. 52, 876 P.2d 548 (1994), and that *Shannon* does not allow the State  
6 Bar a double recovery. Respondent requests that the Commission limit the State Bar's  
7 costs and expenses.

8 The State Bar argues that its costs and expenses fit into the statutory definition and  
9 are reasonable and necessarily incurred. Respondent presented no evidence to the contrary  
10 and was opposed to an evidentiary hearing on costs as he did not want to incur any  
11 additional costs. The State Bar further argues that it is entitled to recover additional  
12 itemized expenses in addition to the scheduled administrative expenses. The State Bar  
13 urges the Commission to uphold the Hearing Officer's approval of costs including the  
14 additional costs of litigating the appeal.  
15

### 16 Decision

17 Having found no facts clearly erroneous, the eight members<sup>1</sup> of the Disciplinary  
18 Commission unanimously recommend accepting and incorporating the Hearing Officer's  
19 findings of fact, conclusions of law, and recommendation for an eighteen month  
20 suspension, one year of probation, with specific terms and conditions to be determined  
21 upon reinstatement, participation in fee arbitration (Count Two), and pay costs of these  
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<sup>1</sup>. Commissioner Flores did not participate in these proceedings.

disciplinary proceedings including any costs incurred by the Disciplinary Clerk's office.<sup>2</sup>

1 Respondent shall contact the Fee Arbitration Program Coordinator at (602) 340-7379  
2 within 20 days from the date of the final Judgment and Order and submit the necessary  
3 forms for participation in fee arbitration and shall timely pay any award entered.

4 The Commission further rejects Respondent's arguments and affirms the Hearing  
5 Officer's recommendation of costs.

6 RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of July, 2009.

7  
8  
9  
10 Jeffrey Messing  
11 Jeffrey Messing, Chair  
12 Disciplinary Commission

13 Original filed with the Disciplinary Clerk  
14 this 21<sup>st</sup> day of July, 2009.

15 Copy of the foregoing mailed  
16 this 22<sup>nd</sup> day of July, 2009, to:

17 Mark S. Sifferman  
18 Hearing Officer 9J  
19 *Norling, Kolsrud, Sifferman & Davis, P.L.C.*  
20 16427 North Scottsdale, Rd., Suite 210  
21 Scottsdale, AZ 85254-0001

22 Ralph W. Adams  
23 *Adams & Clarke, P.C.*  
24 520 East Portland Street, Suite 200  
25 Phoenix, AZ 85004

26  
<sup>2</sup> A copy of the Hearing Officer's Report is attached as Exhibit A. The State Bar's costs totaled \$4,132.44, and increased to \$6,532.22 based on Respondent's appeal. See updated Statement of Costs and Expenses attached as Exhibit B to the State Bar's Appendix to its Answering Brief. Because the Complaint in this matter was filed prior to the Administrative Order No. 2009-26 on February 25, 2009, costs and expenses in this matter were calculated based on the former 1999 schedule of costs.

Stephen P. Little  
Bar Counsel  
State Bar of Arizona  
4201 North 24th Street, Suite 200  
Phoenix, AZ 85016-6288

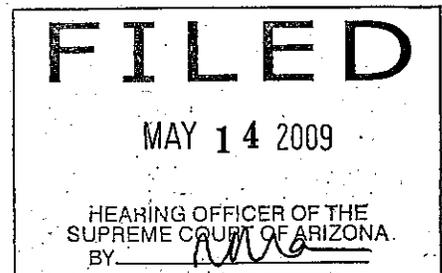
by: Eulyn Loza

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# **EXHIBIT**

**A**



**BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA**

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

**JAMES DARRELL JENKINS,**  
Bar No. 005725

Respondent.

File No. 07-1075, 07-1083,  
07-1483, 07-1523

**HEARING OFFICER'S REPORT**

(Assigned to Hearing Officer 9J  
Mark S. Sifferman)

**PROCEDURAL HISTORY**

The Complaint was filed in this matter on October 24, 2008, to which Respondent filed an Answer. An evidentiary hearing was set for February 3 and 4, 2009. The State Bar filed an unopposed motion to continue the hearing, which motion also requested the extension of certain deadlines contained in the Case Management Order. The State Bar's Motion was based upon the need to interview two expert witnesses retained by Respondent and the need to possibly obtain expert witnesses of its own. The State Bar's Motion was granted, and the hearing on the merits was rescheduled for March 11 and 12, 2009. Prior to the evidentiary hearing, the State Bar and the Respondent gave notice that a settlement was reached. A Tender of Admissions and Agreement for Discipline by Consent ("Tender") plus a Joint Memorandum in support thereof were filed April 6, 2009.

A hearing on the Tender was held April 7, 2009. At that time, Jason B. Easterday and Steve Little appeared on behalf of the State Bar of Arizona. Respondent appeared personally and through counsel Ralph Adams.

The parties agreed to submit to the Hearing Officer the issue of what costs and expenses are to be assessed in these disciplinary proceedings. The parties submitted opening memoranda on this issue on or about April 21, 2009 and responsive memoranda on or about April 28, 2009.

Based upon the whole record, including the Tender and the evidence adduced at the April 7, 2009 hearing, the following findings of fact and conclusions of law are made:

#### **FINDINGS OF FACT**

1. The facts set forth at pages 3 through 26 of the Tender (Exhibit 1 hereto) are incorporated herein by reference.
2. The Complainants in these matters were advised that a settlement was reached. *Tender*, page 4, lines 11 - 13.
3. Respondent's conduct caused actual injury to clients and the legal profession. *Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent*, ("Joint Memorandum"), page 4, lines. 23 - 25.
4. Respondent's mental state for all the violations was knowing. *Joint Memorandum*, page 4, lines 21 - 22.

#### **CONCLUSIONS OF LAW**

1. There is clear and convincing evidence that, as to Count One, Respondent violated ER 1.2, 1.3, 1.4, 1.5 and 1.8(f).
2. There is clear and convincing evidence that, as to Count Two, Respondent violated ER 1.2, 1.3, 1.5, 1.7, 1.8, 1.15, 1.16, 8.4(a) and 8.4(d).

3. There is clear and convincing evidence that, as to Count Three, Respondent violated ER 1.7, 1.8, 1.15, 1.16, 8.1 and Rules 53(d) and 53(f), Arizona Rules of the Supreme Court.

4. There is clear and convincing evidence that, as to Count Four, Respondent violated ER 1.7, 1.8, 1.15, 1.16(d) and 8.4(d).

5. The following aggravating factors are present: prior disciplinary offense, selfish motive, pattern of misconduct, multiple offenses, failure to cooperate with disciplinary proceeding, vulnerability of victims, and substantial experience in the practice of law. *Joint Memorandum*, page 6, line 15 – page 7, line 20.

5. The following mitigating factors are present: personal or emotional problems, delay in disciplinary proceedings, character and reputation, imposition of other sanctions, and remoteness of prior offense. *Joint Memorandum*, page 7, line 21 – page 8, line 12.

6. Contingent on approval of the Tender, the State Bar has agreed to dismiss the allegations in Count One that Respondent violated ER 1.16 (failure to give reasonable notice of withdrawal to client), the allegations in Count Two that Respondent violated ER 1.4 (failure to communicate) and ER 8.4(c) (knowingly engaging in conduct involving fraud to deceive or misrepresentation), and the allegation in Count Four for violation of ER 1.5 (reasonable fee agreement). The State Bar is agreeing to dismiss these allegations since its investigation has revealed that either the alleged violation did not occur or it is debatable whether the State Bar would be able to prove the allegation with clear and convincing evidence.

## DISCUSSION OF AGGRAVATING AND MITIGATING FACTORS

The support for the aggravating factors are set forth in the Joint Memorandum. The prior disciplinary offense was an informal reprimand in 1985 arising from the failure to be diligent. The weight of this aggravating factor is off-set by its remoteness in time. *Standards 9.32(m)*.

As to mitigating factors, there was evidence that Respondent was involved in two automobile accidents in July, 2007 resulting in serious injury, including what is called "post concussion syndrome." *Hearing Exhibit C*. The nature and affect of this condition was not explained nor explored in any detail, therefore, little weight is assigned to this mitigating factor. Also, the significance of any delay in disciplinary proceeding was not explained and therefore this mitigating factor is given little weight.

Respondent provided evidence from three persons attesting to his good character and public service. *Hearing Exhibits A, B and C*. This evidence supports Mitigating Factor 9.32(g).

Little weight is given to Mitigating Factor 9.32(j) as the settlement with Mr. Pollard was completed by Respondent's liability insurance carrier. Respondent did not contribute towards the settlement, although he apparently met the \$5,000 deductible on his professional liability policy. Respondent's testimony at the April 7, 2009 hearing indicated that he was not a driving force behind the settlement and somewhat resented his insurance company deciding to make a settlement in lieu of a trial. *Transcript*, page 14, lines 5 – 8; page 34, line 14 – page 35, line 8.

## RESTITUTION

Restitution is not required. *Tender*, page 4, lines 11 - 12.

## RECOMMENDATION

### CONSIDERATION OF THE ABA STANDARDS

In determining the appropriate sanction, the American Bar Association's *Standards for Imposing Lawyer Sanctions* are considered. *In re Clark*, 207 Ariz. 414, 87 P.3d 827 (2004). Those *Standards* counsel that, in determining the proper sanction, four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating and/or mitigating factors. *In re Spear*, 160 Ariz. 545, 555, 774 P.2d 1335, 1345 (1989); ABA *Standard* 3.0. Where there are multiple charges of misconduct, there should only be one sanction with the multiple instances of misconduct considered as aggravating factors. See *In re Cassali*, 173 Ariz. 372, 843 P.2d 654 (1992).

The following ABA Standards are applicable to this case: 4.1, 4.3, 4.4 and 7.0. While the Standard applicable to the most serious of Respondent's misconduct is Standard 4.3, all the noted Standards provide for suspension when the relevant mental state is knowing and where harm or potential harm is caused. *Standards* 4.12, 4.32, 4.42 and 7.2. This Hearing Officer agrees with the parties that aggravating and mitigating factors do not dislodge the presumptive sanction from the range of appropriate sanctions. *Joint Memorandum*, page 8, lines. 14 - 15.

### PROPORTIONALITY ANALYSIS

The purpose of professional discipline is twofold: (1) to protect the public, the legal profession, and the justice system, and (2) to deter others from engaging in similar misconduct. *In re Neville*, 147 Ariz. 106, 116, 708 P.2d 1297, 1307 (1985); *In re Swartz*, 141 Ariz. 266, 277, 686 P.2d 1236, 1247 (1984). Disciplinary proceedings are not to

punish the attorney. *In re Peasley*, 208 Ariz. 27, 39, 90 P.3d 764, 776 (2004); *In re Beren*, 178 Ariz. 400, 874 P.2d 320 (1994).

The discipline in each situation must be tailored to the individual facts of the case in order to achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983); *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993). To have an effective system of professional sanctions, there must be internal consistency and it is therefore appropriate to examine sanctions imposed in cases that are factually similar: *In re Shannon*, 179 Ariz. 52 (1994); *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988).

In the Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline Consent filed by the State Bar and Respondent, the following cases were provided for guidance in the proportionality analysis: *In re Redondo*, 176 Ariz. 334 (1993); *In re Linsenmeyer*, SB-96-0001-D (1996); and *In re Clark*, SB-01-0104-D (2001). *Redondo* involved an attorney who borrowed money from a client and purchased personal property from a client without giving advice to seek independent counsel. The attorney waited four years to remit more than \$4,000.00 received on the client's behalf and deposited client funds into personal or general office accounts. The attorney further failed to keep proper trust account records, failed to perform matters which were entrusted to him, and failed to communicate with clients. The attorney allowed a client's case to be dismissed for lack of prosecution. The attorney also failed to cooperate with the State Bar's investigation. The attorney was suspended for two years and placed on two years probation.

*Linsenmeyer* involved an attorney who improperly advised his client to accept money from a decedent's estate since the decedent had wanted the client to have the money, but the decedent's Will prevented that gift. The attorney failed to notify the client that accepting the money would expose her to loss of property and liability for legal fees. The attorney improperly advised the client to reject an excellent settlement offer from the State's personal representative despite the client's wish to settle and to avoid litigation. The attorney also arranged a loan to a client from his sister, a transaction from which the attorney would benefit, without advising the client to seek independent counsel. The attorney also failed to enter into a written fee agreement, failed to inform a client of his billing rate and failed to provide the client with an accounting. The attorney was suspended for one year. There were five mitigating factors: prior disciplinary offenses,

dishonest or selfish motive, refusal to acknowledge wrongful nature of conduct, vulnerability of the victim and substantial experience in the law. There were no mitigating factors.

*Clark* involved an attorney who was representing elderly clients in their sons' estate. The attorney borrowed \$58,000.00 from the clients for the purchase of a home. The attorney failed to consult with the clients regarding the conflict of interest or obtain their consent to the conflict. The clients were not advised to seek independent counsel and the terms of the loan were not in writing or fully disclosed. The attorney failed to disclose that he was not going to secure or record a deed of trust which secured the debt, that he was paying higher interest on other loans, and that he was having difficulty meeting his current financial obligations. The attorney also failed to timely respond to State Bar inquiries regarding the matter and failed to advise the State Bar of a current address. There were six aggravating factors: dishonest or selfish motive, pattern of misconduct, bad faith obstruction of the disciplinary proceeding, refusal to acknowledge wrongful nature of the conduct, substantial experience in the practice of law, and indifference to making restitution. There were two mitigating factors, namely absence of a prior disciplinary record and personal or emotion problems. In *Clark*, the attorney was suspended for three years, placed on two years probation, and ordered to pay restitution.

The proportionality review does not require exactness. The review is made to ensure that the imposed sanction is within the range of previously approved sanctions, which, in this case, it is.

#### **DETERMINATION OF COSTS AND EXPENSES**

The Tender provides that Respondent is to be assessed the costs and expenses of these disciplinary proceedings. *Tender*, page 4, lines 15 – 25. As noted, the parties

agreed that this Hearing Officer would determine, subject to appeal, what specific items contained in the State Bar's Statement of Costs & Expenses are to be assessed.

*Transcript*, page 46, line 20 – page 48, line 4.<sup>1</sup>

Costs *and expenses* related to the disciplinary proceeding “shall” be imposed upon a respondent. *Rule 60(b)*, Rules of the Supreme Court. “Costs” means the items which are taxable as “costs” in a civil action. *Rule 46(f)(7)*, Rules of the Supreme Court. “Expenses” means “all *obligations* in money, other than costs, necessarily incurred by the state bar and the disciplinary clerk’s office in the performance of their duties . . .” *Rule 46(f)(12)*, Rules of the Supreme Court (emphasis added). The Rules contain the following *non-exclusive* list of expenses: “*administrative expenses*, necessary expenses of hearing officers, commission members, bar counsel or staff, charges of expert witnesses, charges of certified court reporters, and all other direct, provable expenses.” *Id.* (emphasis added)

Respondent agrees to the \$600.00 Administrative Expense charge assessed pursuant to a February 1999 Board of Governors resolution.<sup>2</sup> Respondent also agrees to the following itemized line items: (a) April 28, 2008 travel and mileage for service of subpoena, (b) April 29, 2008 preparation and filing of affidavit of service of subpoena to Respondent, (c) August 25, 2008 travel and mileage to attempt to serve subpoena, (d) October 23, 2008 Attwood Reporting Service (deposition of Respondent) and (e) March

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<sup>1</sup> Respondent mentions that the State Bar’s itemized Statement of Costs & Expenses was provided after the settlement was reached and the Tender signed. There is nothing inappropriate in the timing of the State Bar’s submission. *Rule 60(b)(1)*, Rules of the Supreme Court. Of course, it would assist the process if, wherever possible, parties agreed on what items of claimed costs and expenses are to be taxed as part of a Tender. On the other hand, it appears that a respondent agreeing to a Tender has the right to object to a Statement of Costs & Expenses. *Id.*

<sup>2</sup> As to proceedings commenced after February 25, 2009, the February 1999 Board of Governors resolution has been replaced with Supreme Court Administrative Order 2009-26.

9, 2009 Michael B. Bayless & Associates Invoice. *Respondent's Memorandum*, dated April 17, 2009, page 5, line 11 – page 6, line 5.

Respondent objects to the remaining line items which are time charges for work performed by the State Bar's paralegals or staff investigators. In his responsive memorandum, Respondent claims that these charges are not reasonable or necessarily incurred. Respondent did not raise this argument in his opening memorandum. To the extent this argument was timely raised, it is refuted by the details provided by the State Bar in its opening memorandum.

These line items reflect time incurred by a State Bar investigator and a State Bar records examiner based upon actual time records of the personnel involved multiplied by an hourly rate "allocated" by the State Bar. *State Bar's Brief on Costs and Expenses*, page 3, line 16 through page 4, line 17. Respondent contends these items may not be charged in addition to the scheduled Administrative Expense or duplicate what is included in the scheduled Administrative Expense. This argument is foreclosed by *In re Shannon*, 179 Ariz. 52, 81, 876 P.2d 548, 577 (1994) and the affidavits submitted by the State Bar. In addition, while the definition of "expenses" could be interpreted as limiting the charges to the actual cost incurred, our Court has held otherwise. *Id.*, 179 Ariz. at 80, 876 P.2d at 576.<sup>3</sup> Respondent's objections to the Statement of Costs & Expenses, therefore, are overruled.

### CONCLUSION

Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer

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<sup>3</sup> The State Bar might consider providing a more detailed explanation of how the allocated hourly rate is determined and why any additional itemized expense is not included within the scheduled Administrative Expense.

recommends acceptance of the Tender of Admissions and Agreement for Discipline by Consent which generally provides for the following:

1. Respondent be suspended for eighteen months,
2. That upon reinstatement, Respondent be placed on two years probation.

The specific terms of probation are to be decided upon reinstatement, however, the general terms and conditions of probation shall include (a) Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other Rules of the Supreme Court of Arizona and (b) in the event that Respondent fails to comply with any of the probation terms, and information thereof is received by the State Bar of Arizona, Bar counsel shall file a Notice of Non-Compliance with the imposing entity, pursuant Rule 60(a)(5), Arizona Rules of the Supreme Court. The imposing entity may refer the matter to a Hearing Officer to conduct a hearing at the earliest practical date, but in no event later than 30 days after receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms of probation, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence.

3. That Respondent participate in the State Bar's Fee Arbitration Program in regards to Count Two (State Bar File No. 07-1083). Respondent shall contact the Fee Arbitration Program Coordinator at (602) 340-7379 within twenty (20) days from the date the Final Judgment and Order is entered to obtain and submit the forms necessary to participate in fee arbitration. The Respondent shall timely pay any award entered in the Fee Arbitration proceeding.

4. Respondent pay all costs and expenses of the disciplinary proceeding, which include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Disciplinary Commission and the Supreme Court.

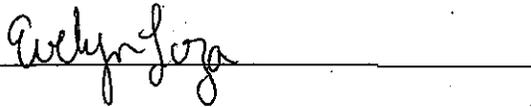
DATED this 14<sup>th</sup> day of May 2009.

  
Mark S. Sifferman  
Hearing Officer 9J

COPY of the foregoing mailed this 14<sup>th</sup> day of May 2009, to:

Ralph W. Adams  
**ADAMS AND CLARK, PC**  
520 East Portland Street, Suite 200  
Phoenix, Arizona 85004-0001  
Attorney for Respondent

Jason B. Easterday  
Steve Little  
**STATE BAR OF ARIZONA**  
4201 North 24<sup>th</sup> Street, Suite 200  
Phoenix, Arizona 85016-6288



**EXHIBIT "1"**

1 Jason B. Easterday, Bar No. 023191  
2 Steve Little, Bar No. 023336  
3 Staff Bar Counsel  
4 State Bar of Arizona  
5 4201 N. 24<sup>th</sup> Street, Suite 200  
6 Phoenix, Arizona 85016-6288  
7 Telephone (602) 340-7250

8 Ralph Adams, Bar No. 015599  
9 Attorney for Respondent  
10 520 East Portland Street, Suite 200  
11 The Law Office of Ralph Adams  
12 Phoenix, Arizona 85004  
13 Telephone (602) 799-1353

14 **BEFORE A HEARING OFFICER OF**  
15 **THE SUPREME COURT OF ARIZONA**

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

18 **JAMES DARRELL JENKINS,**  
19 **Bar No. 005725**

20 Respondent.

No. 07-1075, 07-1083, 07-1483,  
07-1523

**TENDER OF ADMISSIONS**  
**AND AGREEMENT FOR**  
**DISCIPLINE BY CONSENT**

(Assigned to Hearing Officer 9J  
Mark S. Sifferman)

21 The State Bar of Arizona, through undersigned Bar Counsel, and  
22 Respondent, James Darrell Jenkins, who is represented by Ralph Adams in this  
23 matter, hereby submit their Tender of Admissions and Agreement for  
24 Discipline by Consent. It is submitted pursuant to Rule 56(a), Ariz.R.Sup.Ct.,  
25

1 and the Guidelines for Discipline by Consent issued by the Disciplinary  
2 Commission of the Arizona Supreme Court.

3           Respondent makes the admissions herein in the spirit of cooperation  
4 with the disciplinary authorities. He does not wish to dispute the facts as  
5 alleged and intends to accept the discipline as stated to resolve these matters:

6           Respondent conditionally admits that in regards to Count One:

7  
8           Respondent failed to abide by his client's decisions concerning the objectives  
9 of the representation and failed to consult with her as to the means by which  
10 the objectives are to be pursued, Respondent failed to act with reasonable  
11 diligence and promptness, Respondent failed to keep his client reasonably  
12 informed about the status of the matter, Respondent failed to promptly comply  
13 with reasonable requests for information, Respondent failed to communicate  
14 the scope and the basis or rate of the fee and expenses for which the client  
15 would be responsible before or within a reasonable time after the  
16 representation commenced, and Respondent accepted compensation for  
17 representing his client from one other than the client without first obtaining  
18 informed consent from the client.  
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22           Respondent conditionally admits that in regards to Count Two:

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24           Respondent failed to abide by his client's decisions concerning the objectives  
25 of the representation and failed to consult with the client as to the means by

1 which the objectives were to be pursued, Respondent failed to act with  
2 reasonable diligence, Respondent failed to communicate the scope of the  
3 representation in writing within a reasonable time after the representation  
4 commenced, Respondent represented his client while there was a significant  
5 risk that the representation would be materially limited by the lawyer's  
6 responsibilities to a third person or by a personal interest of Respondent,  
7 Respondent attempted to enter into a business transaction with his client  
8 without utilizing the enumerated safeguards, Respondent failed to take steps to  
9 the extent reasonably practicable to protect the client's interests upon  
10 termination, and Respondent engaged in conduct that was prejudicial to the  
11 administration of justice.  
12  
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14

15 Respondent conditionally admits as to Count Three: Respondent  
16 represented his client while there was a significant risk that the representation  
17 would be materially limited by his personal interests, Respondent entered into a  
18 business transaction with his client without utilizing the enumerated  
19 safeguards, Respondent failed to adequately safeguard his client's property,  
20 Respondent failed to take steps to the extent reasonably practicable to protect  
21 the client's interests upon termination, Respondent failed to respond to a lawful  
22 demand for information from a disciplinary authority, Respondent failed to  
23 cooperate with officials and staff of the state bar under while the official was  
24  
25

1 acting in that person's duties, and Respondent failed to furnish information  
2 concerning an inquiry or request from bar counsel for information relevant to a  
3 matter under investigation.  
4

5 Respondent conditionally admits as to Count Four: Respondent  
6 represented his client while there was a significant risk that the representation  
7 would be materially limited by his personal interests, Respondent entered into a  
8 business transaction with his client without utilizing the enumerated  
9 safeguards.  
10

11 Restitution is not an issue in this matter. Further, Complainants have  
12 been notified of this consent agreement in compliance with Rule 52(b)(3),  
13 Ariz.R.Sup.Ct.  
14

15 Subject to review and acceptance by the Hearing Officer, the  
16 Disciplinary Commission, and the Supreme Court of Arizona, the State Bar  
17 and Respondent agree to the imposition of an eighteen (18) month suspension,  
18 payment of all costs and expenses of the disciplinary proceedings,<sup>1</sup> fee  
19 arbitration with the complainant in Count Two, Ms. Rosalie Deeds, two (2)  
20 years of probation upon reinstatement with the terms to be decided upon  
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25 <sup>1</sup> Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Disciplinary Commission, and the Supreme Court.

1 reinstatement. The State Bar's Statement of Costs is attached hereto as Exhibit  
2 "A."

3  
4 **FACTS**

5 1. At all times relevant, Respondent was a lawyer licensed to practice  
6 law in the state of Arizona having been first admitted to practice in Arizona on  
7 April 28, 1979.

8  
9 **COUNT ONE (File no. 07-1075 (Miller))**

10 2. In or around July of 2004, Marilyn Miller ("Ms. Miller") hired  
11 Respondent to investigate and enforce the provisions of her mother's trust.

12 3. Respondent was paid \$3,500 from the trustee of Ms. Miller's *father's*  
13 trust for the representation.

14  
15 4. Respondent did not enter into a written fee agreement with, or  
16 provide a confirmatory writing to, Ms. Miller that explaining the scope of the  
17 representation and/or the basis or rate of the fee and expenses Respondent  
18 would charge.

19  
20 5. Respondent did not perceive or explain the conflict created by a third  
21 party payor situation with his fees to Ms. Miller, nor did he obtain informed  
22 consent from Ms. Miller to the conflict.  
23  
24  
25

1           6. On or about March 8, 2005, Respondent filed a petition against  
2 Dorothy Miller in Maricopa County Superior Court case # PB 2005-090185 for  
3 an accounting of the trust funds and a judgment for any misuse of trust funds.  
4

5           7. On or about February 28, 2006, Respondent emailed Ms. Miller  
6 stating that he had received the trust documents.  
7

8           8. Respondent discovered that Dorothy Miller was not the trustee of the  
9 trust and had not received any funds from the trust.  
10

11           9. On or about February 28, 2006, Ms. Miller responded via email to  
12 Respondent's February 28<sup>th</sup> email. In it, Ms. Miller asked Respondent multiple  
13 questions about the status of her case.  
14

15           10. On or about March 3, 2006, Ms. Miller emailed Respondent asking  
16 how to proceed with the case.  
17

18           11. On or about March 7, 2006, Ms. Miller emailed Respondent  
19 requesting a response and stating that she was uncertain about the status of her  
20 case.  
21

22           12. On or about April 7, 2006, Ms. Miller emailed Respondent and asked  
23 if Respondent had spoken to the trustee and/or requested a response to the  
24 petition.  
25

          13. On or about April 14, 2006, Ms. Miller emailed Respondent and  
requested he respond to her questions.

1           14. On or about April 19, 2006, Ms. Miller emailed Respondent and  
2 asked several questions, including whether Respondent had spoken to the  
3 trustee.  
4

5           15. Respondent failed to promptly respond to these emails seeking  
6 information.  
7

8           16. On or about August 24, 2006, Respondent emailed Ms. Miller stating  
9 that he had begun working on formulating an offer of settlement to the trustee.  
10

11           17. Ms. Miller had not authorized Respondent to work on or make an  
12 offer of settlement in the case.  
13

14           18. No settlement offer was actually made by Respondent.  
15

16           19. In or around December of 2006, Respondent spoke with Ms. Miller  
17 and stated he would consider filing an amended petition to remove Dorothy  
18 Miller and bring suit against the proper party.  
19

20           20. Respondent indicated he would mail Ms. Miller a fee agreement to  
21 file an amended petition and continue with the representation.  
22

23           21. At no point did Respondent inform Ms. Miller that he was  
24 withdrawing from representation or was not still pursuing her matter.  
25

          22. On or about February 6, 2007, Respondent emailed Ms. Miller  
stating he would send her an amended petition and additional papers the  
following day.

1           23. On or about February 13, 2007, Ms. Miller emailed Respondent and  
2 advised him that she had not received the promised items listed in  
3 Respondent's February 6<sup>th</sup> email.  
4

5           24. On or about February 15, 2007, Ms. Miller again emailed  
6 Respondent and advised him that she still had not received the promised items  
7 listed in Respondent's February 6<sup>th</sup> email.  
8

9           25. On or about February 19, 2007, Ms. Miller emailed Respondent  
10 requesting an answer as to when the items were mailed.

11           26. On or about February 20, 2007, Ms. Miller emailed Respondent  
12 stating "[n]othing has been received."  
13

14           27. On or about March 1, 2007, Ms. Miller emailed Respondent stating  
15 she had called Respondent and left a voicemail message, but that Respondent  
16 had not returned her phone call.  
17

18           28. On or about April 13, 2007, Ms. Miller emailed Respondent stating  
19 that little has been done on her case and that she was requesting an update.

20           29. In or around May 2007, Ms. Miller terminated Respondent's  
21 representation.  
22

23           30. On or about May 14, 2007, Ms. Miller retained Mr. Shane Buntrock  
24 ("Mr. Buntrock") as her new counsel in the matter.  
25

1           31. On or about May 15, 2007, Mr. Buntrock requested Ms. Miller's case  
2 file from Respondent.

3           32. On or about May 18, 2007, Ms. Miller emailed Respondent asking if  
4 Respondent was going to send her file to Mr. Buntrock. Ms. Miller requested  
5 a response.  
6

7           33. On or about May 20, 2007, Ms. Miller emailed Respondent asking  
8 when her file would be sent to Mr. Buntrock as she had previously requested.  
9

10          34. On or about May 23, 2007, Ms. Miller emailed Respondent, stated  
11 that several messages were unreturned, and asked if her file could be sent.  
12

13          35. Respondent failed to respond to Ms. Miller's numerous e-mails,  
14 phone calls, requests for information, and requests for her file described above.

15          36. Regarding paragraphs 32-35, Respondent believed he could not  
16 respond directly to Ms. Miller as she was represented by new counsel.  
17

18          37. On or about June 5, 2007, Respondent provided Ms. Miller's case  
19 file to her new attorney, Mr. Buntrock.

20                           **COUNT TWO (File no. 07-1083 (Deeds))**

21          38. On or about July 6, 2005, Rosalie Deeds ("Ms. Deeds"), as the  
22 personal representative of the estate of her deceased son ("Gregory Deeds"),  
23 retained Respondent to represent her.  
24  
25

1           39. On or about July 6, 2005, Ms. Deeds paid \$206 to Respondent for  
2 him to file for probate.

3  
4           40. Part of the estate consisted of an automobile.

5           41. On July 7, 2005, Respondent told Ms. Deeds that the car "would be  
6 safer" in Respondent's garage rather than at Gregory Deeds' house, since the  
7 house was now vacant.

8  
9           42. On or about July 7, 2005, Respondent took possession of Gregory  
10 Deeds' car.

11           43. Respondent offered to purchase the car if his daughter could assume  
12 the loan. However, Ms. Deeds turned the car over to the bank before the  
13 transaction was completed.

14  
15           44. Respondent never actually transferred title of Gregory Deeds' car to  
16 himself or his daughter, and never paid off the outstanding balance owed on  
17 the car.

18  
19           45. On or about July 8, 2005, Respondent used Gregory Deeds' car to  
20 drive to the Deceased's home.

21           46. On multiple occasions, Respondent used Gregory Deeds' car to  
22 conduct personal business unrelated to the representation after he mistakenly  
23 believed he was granted permission to buy the car which had been part of the  
24 decedent's bankruptcy estate.  
25

1           47. On or about July 29, 2005, Respondent provided a written memo to  
2 Ms. Deeds outlining the fees and expenses he would charge in the matter.

3  
4           48. This writing did not clearly outline the scope of Respondent's  
5 representation. There was no other writing that clearly outlined the scope of  
6 Respondent's representation.

7           49. On or about July 30, 2005, Gregory Deeds' homeowners insurance  
8 company, AIG, issued a check to "The Estate of Deeds, Gregory J." in the  
9 amount of \$8,967.15 in compensation for damage to the home due to Gregory  
10 Deeds' body decomposition in the home. The funds were paid based upon a  
11 claim made by Respondent.  
12

13  
14           50. On or about August 10, 2005, Respondent received the AIG check.

15           51. On or about September 19, 2005, Respondent deposited the AIG  
16 check into his client trust account.

17           52. In or about September of 2005, Ms. Deeds received an insurance bill  
18 for Gregory Deeds' car. It was at this time she discovered that Respondent had  
19 not transferred title of the car nor made any payments owed on it.  
20

21           53. On or about September 21, 2005, Ms. Deeds mailed a letter to  
22 Respondent indicating a desire to terminate his services. Ms. Deeds requested a  
23 final statement of Respondent's fees and expenses in her letter as well.  
24  
25

1           54. On or about September 21, 2005, Respondent wrote and negotiated  
2 check number 2330 from his client trust account, in the amount of \$1,500, to  
3 himself using funds from the AIG check.  
4

5           55. On or about September 23, 2005, Respondent wrote and negotiated  
6 check number 2331 from his client trust account, in the amount of \$1,500, to  
7 himself using funds from the AIG check.  
8

9           56. On or about September 23, 2005, Respondent wrote and negotiated  
10 check number 2332 from his client trust account, in the amount of \$1,000, to  
11 himself using funds from the AIG check.  
12

13           57. On or about October 5, 2005, Respondent wrote and negotiated  
14 check number 2334 from his client trust account, in the amount of \$2,000, to  
15 himself using funds from the AIG check.  
16

17           58. Ms. Deeds maintains that Respondent did not have permission to  
18 apply funds from the AIG check to his fees. However, if this matter were to  
19 proceed to hearing, Respondent would testify that he did have permission to  
20 use the funds in this manner.  
21

22           59. On or about October 11, 2005, Respondent responded to Ms. Deeds'  
23 request by letter. Respondent indicated that he would be keeping the AIG  
24 insurance funds to apply to his fees since "attorneys fees have a priority over  
25 the assets of the estate."

1           60. Respondent recounted in the October 11<sup>th</sup> letter how he had told Ms.  
2 Deeds that Respondent's daughter would pay \$500 to the beneficiary of the  
3 estate for the purchase Gregory Deeds' car. In reference to the car sale,  
4 Respondent went on to state, "I would expect you to comply with your  
5 agreement and I intend to do the same. This will be a benefit for [the  
6 beneficiary] and will also be a benefit for my family to compensate in part for  
7 the time during which many hours have been devoted on this case with no  
8 payment of attorney's fees."  
9

10  
11           61. Respondent did not provide an accounting, but indicated he would  
12 "before the weekend this week."  
13

14           62. Respondent did not provide the final accounting as promised but was  
15 subsequently rehired by Ms. Deeds.

16           63. Shortly after Ms. Deed's termination of Respondent's services,  
17 Respondent was re-retained to continue the representation.  
18

19           64. In or around October of 2005, Ms. Deeds hired workers to repair  
20 Gregory Deeds' house.

21           65. Respondent never provided any of the AIG insurance funds to Ms.  
22 Deeds.  
23

24           66. As a result of Respondent's answer, Ms. Deeds paid for the work  
25 from her personal funds.

1           67. On or about October 21, 2005, Respondent wrote and negotiated  
2 check number 2349 from his client trust account, in the amount of \$1,500, to  
3 himself using funds from the AIG check.  
4

5           68. Ms. Deeds maintains that Respondent did not have permission to  
6 apply funds from the AIG check to his fees. However, if this matter were to  
7 proceed to hearing, Respondent would testify that he did have permission to  
8 use the funds in this manner.  
9

10          69. On or about October 26, 2005, Respondent and Ms. Deeds met and  
11 reviewed documents and the work still to be done.

12          70. On or about October 26, 2005, Gregory Deeds' car was repossessed  
13 from Respondent's home at Ms. Deeds instigation.  
14

15          71. Between October 26, 2005, to December 27, 2005, Respondent did  
16 not communicate with Ms. Deeds. Ms. Deeds had requested additional time to  
17 sell the home belonging to the estate.  
18

19          72. On or about November 28, 2005, Respondent wrote and negotiated  
20 check number 2364 from his client trust account, in the amount of \$1,467.15,  
21 to himself using funds from the AIG check. Check number 2364 exhausted the  
22 remainder of the AIG insurance funds.  
23

24          73. Ms. Deeds maintains that Respondent did not have permission to  
25 apply funds from the AIG check to his fees. However, if this matter were to

1 proceed to hearing, Respondent would testify that he did have permission to  
2 use the funds in this manner.

3  
4 74. On or about December 27, 2005, Ms. Deeds wrote a letter to  
5 Respondent formally terminating his representation and again requesting an  
6 accounting of Respondent's fees and expenses.

7  
8 75. Ms. Deeds hired attorney Scott Coombs to represent her as the  
9 personal representative in the estate.

10  
11 76. On or about February 23, 2006, Mr. Coombs mailed Respondent a  
12 letter requesting the case file, an accounting of work done, and Respondent's  
13 fees and expenses.

14  
15 77. On or about April 13, 2006, Mr. Coombs mailed Respondent a letter  
16 requesting Respondent's bill and an accounting of the AIG insurance funds.

17  
18 78. On or about May 15, 2006, Respondent sent a letter to Mr. Coombs  
19 stating that he was preparing the accounting of work done and his fee.

20  
21 79. On or about July 12, 2006, Mr. Coombs mailed Respondent a letter  
22 referencing Respondent's May 15<sup>th</sup> letter. In Mr. Coombs' July 12<sup>th</sup> letter, Mr.  
23 Coombs noted he had not received the accounting and again requested said  
24 accounting.

25  
80. On or about August 2, 2006, Respondent mailed Mr. Coombs a letter  
stating he was preparing the accounting.

1 81. On or about September 12, 2006, Respondent finally faxed Mr.  
2 Coombs his statement of services, almost a year after Ms. Deeds first requested  
3 it.  
4

5 82. Respondent noted in his statement of services that he had applied the  
6 entirety of the AIG insurance funds to his fees and expenses.  
7

8 83. Respondent obtained a substantial result for the estate by preserving  
9 equity in the home despite the decedent's bankruptcy not being finalized before  
10 his death.

11 84. Ms. Deeds did not dispute Respondent's fees in the probate case.  
12

13 **COUNT THREE (File No. 07-1483 (Wells))**

14 85. On or about April 11, 2006, Sharlene Cunningham ("Ms.  
15 Cunningham") retained Respondent to assist her with the estate of Linda  
16 Linday, Ms. Cunningham's recently deceased daughter.  
17

18 86. Respondent negotiated and agreed to take Ms. Cunningham's Saturn  
19 automobile as partial payment for the representation.

20 87. Respondent did not advise Ms. Cunningham in writing of the  
21 desirability of seeking independent legal advice on the transaction.  
22

23 88. Respondent did not obtain written informed consent to the essential  
24 terms of the transaction as well as Respondent's role in the transaction.  
25

1           89. Respondent and Ms. Cunningham agreed to turn over physical  
2 possession the Saturn automobile to him immediately.

3           90. Thereafter, Respondent let his daughter, Noelle Jenkins, drive the  
4 Saturn automobile.  
5

6           91. Respondent also used the Saturn automobile himself for personal  
7 reasons unrelated to the representation.

8           92. Respondent received \$7,262.76 from various sources concerning  
9 Linda Linday.  
10

11           93. Respondent was directed by Ms. Cunningham to use these funds to  
12 pay the multiple creditors of the estate.  
13

14           94. Respondent paid Ms. Cunningham's expenses as requested, but did  
15 not pay the other creditors of the estate prior to his termination.

16           95. In or around March 2007, the Saturn automobile was involved in a  
17 car collision. Noelle Jenkins was the driver of the automobile at the time of the  
18 collision and was cited for her involvement.  
19

20           96. On or about March 28, 2007, Ms. Cunningham mailed Respondent a  
21 certified letter formally terminating his representation of her.  
22

23           97. Ms. Cunningham mailed this letter to Respondent's address of record  
24 on file with the Membership division of the State Bar of Arizona.  
25

1           98. Ms. Cunningham's March 28<sup>th</sup> letter also requested the case file,  
2 proof of sale of the Saturn automobile, an accounting of funds Respondent had  
3 received, a return of the unused funds Respondent received during the course  
4 of the representation and itemized bill from Respondent. Respondent was  
5 directed to provide the requested items within two weeks of the date of the  
6 letter.  
7

8           99. If the matter went to a hearing, Respondent would testify that he did  
9 not receive the March 28<sup>th</sup> certified letter.  
10

11           100. The March 28<sup>th</sup> certified letter was returned to Ms. Cunningham as  
12 unclaimed.  
13

14           101. On or about April 5, 2007, Ms. Cunningham re-mailed the March  
15 28<sup>th</sup> letter to Respondent's address of record.

16           102. Respondent accepted the letter, and responded to Ms.  
17 Cunningham. Respondent and Ms. Cunningham agreed that Respondent should  
18 continue his representation.  
19

20           103. On or about June 11, 2007, Ms. Cunningham hand delivered  
21 another letter finally terminating Respondent's representation.  
22

23           104. Upon termination, Respondent retained \$820.96 of funds collected  
24 during his representation of Ms. Cunningham.  
25

1           105. Respondent failed to remit the \$820.96 to Ms. Cunningham or Ms.  
2 Cunningham's new attorney.

3           106. In or around June 2007, Ms. Cunningham retained Steven Wells  
4 ("Mr. Wells") for representation concerning the estate.

5           107. On or about June 26, 2007, Mr. Wells mailed a letter to  
6 Respondent requesting the items listed in Ms. Cunningham's March 28<sup>th</sup> letter.  
7

8           108. Respondent failed to respond to Mr. Well's June 26<sup>th</sup> letter.  
9

10           109. On or about July 10, 2007, Mr. Wells mailed Respondent a letter  
11 requesting the items requested in the March 28<sup>th</sup> letter and also requested  
12 Respondent's itemized statement of fees and expenses.  
13

14           110. On or about July 12, 2007, Respondent or those under his direct  
15 control and supervision faxed a letter to Mr. Wells stating that the requested  
16 material was being prepared and would be sent.

17           111. On or about July 19, 2007, Respondent, or those under his direct  
18 control and supervision, re-faxed the July 12<sup>th</sup> letter to Mr. Wells.  
19

20           112. Respondent failed to send to Mr. Wells an accounting, a refund of  
21 funds Respondent held for Ms. Cunningham, the case file, or a listing of  
22 Respondent's fees and expenses as he had promised.  
23

24           113. On or about August 31, 2007, Mr. Wells submitted a charge to the  
25 State Bar of Arizona regarding Respondent's conduct.

1 114. On or about September 7, 2007, the State Bar of Arizona mailed a  
2 letter to Respondent at his address of record requiring he respond to the  
3 allegations within 20 days.  
4

5 115. Respondent failed to respond to the State Bar of Arizona's  
6 September 7, 2007, letter.  
7

8 116. On or about October 29, 2007, the State Bar of Arizona mailed a  
9 second letter to Respondent at his address of record pointing out his failure to  
10 respond and requiring a response to the Complainant's charge within ten days  
11 of the date of the letter.  
12

13 117. Respondent failed to respond to the State Bar of Arizona's  
14 October 29, 2007, letter.

15 118. If the matter went to a hearing, Respondent would testify that he  
16 suffered from post-concussion syndrome and that this syndrome was a factor in  
17 his failure to respond to the State Bar's investigation in this matter.  
18

19 **COUNT FOUR (File No. 07-1523 (Pollard))**

20 119. In or about August of 2006, Charles Pollard ("Mr. Pollard") was  
21 hospitalized at the Banner Baywood Hospital in Mesa, Arizona.  
22

23 120. Mr. Pollard was under medication during his stay at Banner  
24 Baywood Hospital.  
25

1           121. On or about August 29, 2006, Respondent met with Mr. Pollard at  
2 the Hospital and discussed the preparation of an estate plan and documents for  
3 Mr. Pollard.  
4

5           122. Mr. Pollard retained Respondent to prepare estate-planning  
6 documents for a \$1,500 flat fee.  
7

8           123. Respondent believes that he prepared and presented a written fee  
9 agreement to Mr. Pollard. While Respondent has been unable to produce a  
10 copy of the fee agreement, Respondent maintains that he prepared such an  
11 agreement, and for the purposes of this agreement, the State Bar is not  
12 contesting this issue.  
13

14           124. On or about August 30, 2006, Respondent returned to the hospital  
15 and had Mr. Pollard execute the various will and pour-over trust documents  
16 Respondent had prepared.  
17

18           125. At this meeting, Respondent presented Mr. Pollard with a one-  
19 paragraph fee agreement for future work that indicated Respondent would  
20 "assist [Mr. Pollard] in the liquidation of [his] estate assets and other  
21 miscellaneous personal legal services as necessary."  
22

23           126. The fee agreement provided Respondent would be paid \$150 an  
24 hour plus expenses.  
25

1           127. Respondent also presented durable power of attorney documents  
2 to Mr. Pollard that empowered Respondent to take any necessary actions on  
3 Mr. Pollard's behalf.  
4

5           128. Mr. Pollard signed both the fee agreement and the durable power  
6 of attorney that day in the hospital.  
7

8           129. Over the next nine months, Respondent recorded 209.1 hours of  
9 work at \$150 per hour, for a total of \$31,365.00.  
10

11           130. Respondent never sent a bill to Mr. Pollard for the \$31,365.00 and  
12 although Respondent did collect some fees from this matter, Mr. Pollard never  
13 paid this full amount to Respondent.

14           131. At or near the beginning of Respondent's representation,  
15 Respondent took possession of Mr. Pollard's Mitsubishi Montero automobile  
16 as partial compensation for Respondent's fee.  
17

18           132. Respondent did not ensure the transaction and terms concerning  
19 the transfer of Mr. Pollard's automobile were transmitted in a writing.  
20

21           133. Respondent did not advise Mr. Pollard of the desirability of  
22 seeking the advice of independent legal counsel concerning the transfer of Mr.  
23 Pollard's automobile to Respondent.  
24  
25

1           134. Respondent did not obtain informed consent in a writing signed by  
2 Mr. Pollard to the essential terms of the transfer of the automobile, including  
3 Respondent's role in the transaction.  
4

5           135. Some of the work Respondent performed for Mr. Pollard pursuant  
6 to the August 30, 2006, fee agreement was the work of a caretaker.  
7 Respondent performed little to no actual legal work for Mr. Pollard.  
8

9           136. On or about September 25, 2006, Mr. Pollard was released from  
10 Banner Baywood Hospital and, upon arrangements assisted by Respondent,  
11 admitted to the Bee Hive Nursing Home.  
12

13           137. In or around November 2006, Mr. Pollard, with Respondent's  
14 assistance, closed his Arizona Federal Credit Union and obtained a check for  
15 \$724.44.  
16

17           138. On or about November 9, 2006, Respondent deposited the funds  
18 from Mr. Pollard's Arizona Federal account into his client trust account.  
19 Respondent submits this was done at Mr. Pollard's request.

20           139. In or about December of 2006, Mr. Pollard, with Respondent's  
21 assistance, cancelled his American Memorial life insurance policy and received  
22 a check in the amount of \$2,240.82, payable to Mr. Pollard. Respondent  
23 submits this was done at Mr. Pollard's request.  
24  
25

1           140. On or about December 22, 2006, Mr. Pollard endorsed the  
2 American Memorial life insurance check and gave it to Respondent, who then  
3 endorsed the check and remitted the funds to Bee Hive.  
4

5           141. In or about January of 2007, Respondent discovered that Mr.  
6 Pollard had left the Bee Hive facility on his own.  
7

8           142. Respondent later located Mr. Pollard, with the aid of police  
9 authorities, in the Sky Harbor airport.  
10

11           143. On or about January 4, 2007, Respondent wrote a letter to  
12 Bee Hive Home personnel concerning Mr. Pollard.  
13

14           144. In Respondent's January 4<sup>th</sup>, 2007 letter, Respondent expressed  
15 concern for Mr. Pollard's safety should he continue to be allowed to leave the  
16 facility.  
17

18           145. Respondent discovered that Mr. Pollard was on suicide watch.  
19

20           146. Respondent advised Bee Hive personnel not to let Mr. Pollard get  
21 in a taxi, bus, shuttle or leave with any other persons without notifying  
22 Respondent in advance. Respondent further advised Bee Hive personnel that  
23 should a shuttle come to pick up Mr. Pollard, they were to tell the driver they  
24 had been instructed to call the police.  
25

          147. In or about February of 2007, Mr. Pollard, with Respondent's  
assistance, obtained a "reverse mortgage" on his home in Mesa, Arizona.

1           148. Respondent used the reverse mortgage funds to pay off the  
2 original loan on Mr. Pollard's home and deposited the remainder of the funds  
3 into Respondent's client trust account.  
4

5           149. In or about February of 2007, Mr. Pollard was released from Bee  
6 Hive and began living in an apartment.  
7

8           150. In or about February of 2007, Respondent began contracting to  
9 have Mr. Pollard's home in Mesa, Arizona cleaned and renovated. From  
10 February of 2007 to May of 2007, Respondent hired several contractors  
11 regarding the renovation of Mr. Pollard's home.  
12

13           151. One of the contractors Respondent hired to perform work on Mr.  
14 Pollard's home was David Jenkins, Respondent's brother.

15           152. In or about early 2007, Mr. Pollard requested that Respondent's  
16 daughters, Jaimee and Noelle Jenkins, go to the grocery store and run other  
17 errands for Mr. Pollard on a weekly basis. Respondent's daughters were  
18 generally paid approximately \$20 per trip for these services.  
19

20           153. Respondent did not advise Mr. Pollard of, or obtain written  
21 informed consent from Mr. Pollard, regarding the conflicts of interest created  
22 by employing Respondent's brother and daughters to perform work for Mr.  
23 Pollard.  
24  
25



1 Respondent conditionally admits his conduct in Count One violates Rule  
2 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4, 1.5, and 1.8(f). Respondent  
3 conditionally admits his conduct in Count Two violates Rule 42, Ariz.R.Sup.Ct.,  
4 specifically ERs 1.2, 1.3, 1.5, 1.7, 1.8, 1.15, 1.16, 8.4(a), and 8.4(d).  
5 Respondent conditionally admits his conduct in Count Three violates Rule 42,  
6 Ariz.R.Sup.Ct., specifically ERs 1.7, 1.8, 1.15, 1.16, 8.1 and Rules 53(d) and  
7 53(f), Ariz.R.Sup.Ct. Respondent conditionally admits his conduct in Count  
8 Four violates Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.7, 1.8, 1.15, 1.16(d),  
9 and 8.4(d).  
10  
11

12 Respondent's admissions are being tendered in exchange for the form  
13 of discipline stated below.  
14

15 **CONDITIONAL DISMISSALS**

16 The State Bar conditionally dismisses the allegation in Count One that  
17 Respondent violated Rule 42, specifically ER 1.16 for failure to give reasonable  
18 notice of his withdrawal to his client. This conditional dismissal is made because  
19 of the uncertainty that the State Bar may not be able to prove whether or not  
20 Respondent failed to take substantive action on Ms. Miller's case after December  
21 2006.  
22

23  
24 The State Bar conditionally dismisses the allegation in Count Two that  
25 Respondent violated Rule 42, specifically ER 1.4 for failing to adequately

1 communicate with Ms. Deeds. This conditional dismissal is made because the  
2 State Bar may not be able prove this allegation beyond the clear and convincing  
3 evidence standard given that Respondent failed to communicate with Ms. Deeds  
4 for a two month period after Ms. Deeds, as the personal representative, requested  
5 more time in order to sell the home in the estate. Further, the State Bar  
6 conditionally dismisses the allegation in Count Two that Respondent violated  
7 Rule 42, specifically ER 8.4(c) for knowingly engaging in conduct involving  
8 fraud, deceit, or misrepresentation. This conditional dismissal is made because of  
9 the uncertainty that the State Bar will be able to prove Respondent acted with the  
10 requisite knowing mental state by clear and convincing evidence.  
11  
12

13  
14 ~~In Count 4, the State Bar conditionally dismisses the allegation that~~  
15 Respondent violated Rule 42, specifically ER 1.5. This conditional dismissal is  
16 made because discovery has revealed that Respondent did, in fact, execute a  
17 written fee agreement and because of the uncertainty that the State Bar will be  
18 able to prove by clear and convincing evidence that Respondent charged an  
19 unreasonable fee.  
20

21  
22  
23 **SANCTION**  
24  
25

1 Respondent and the State Bar of Arizona agree that based on the  
2 conditional admissions and dismissals contained herein the appropriate  
3 disciplinary sanctions are as follows:  
4

- 5 1. Respondent shall receive an eighteen (18) month suspension;
- 6 2. Respondent shall pay all costs incurred by the State Bar in bringing  
7 these disciplinary proceedings. In addition, Respondent shall pay all  
8 costs incurred by the Disciplinary Commission, the Supreme Court of  
9 Arizona, and the Disciplinary Clerk's Office in this matter. The State  
10 Bar's Itemized Statement of Costs and Expenses is attached as Exhibit  
11 "A," and is incorporated herein by reference;  
12
- 13 ~~3. Respondent shall participate in the State Bar's Fee Arbitration Program~~  
14 in regards to Count Two, State Bar File No 07-1083. Respondent shall  
15 contact the Fee Arbitration Program Coordinator at 602-340-7379  
16 within twenty (20) days from the date the final judgment and order to  
17 obtain and submit the forms necessary to participate in Fee Arbitration.  
18 Respondent shall timely pay any award entered in the Fee Arbitration  
19 proceeding;  
20
- 21 4. Respondent will be placed on two (2) years of probation upon  
22 reinstatement. The specific terms of probation are to be decided upon  
23  
24  
25

1 reinstatement. The general terms and conditions of Respondent's  
2 probation shall include:

3 a. Respondent shall refrain from engaging in any conduct that  
4 would violate the Rules of Professional Conduct or other rules of  
5 the Supreme Court of Arizona.  
6

7 b. In the event that Respondent fails to comply with any of the  
8 foregoing probation terms, and information thereof is received  
9 by the State Bar of Arizona, Bar Counsel shall file a Notice of  
10 Noncompliance with the imposing entity, pursuant to Rule  
11 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the  
12 matter to a hearing officer to conduct a hearing at the earliest  
13 practicable date, but in no event later than 30 days after receipt  
14 of notice, to determine whether a term of probation has been  
15 breached and, if so, to recommend an appropriate sanction. If  
16 there is an allegation that Respondent failed to comply with any  
17 of the foregoing terms, the burden of proof shall be on the State  
18 Bar of Arizona to prove noncompliance by clear and convincing  
19 evidence.  
20  
21  
22  
23  
24  
25

1 Respondent conditionally admits that, in exchange for the form of  
2 discipline set forth above, he has engaged in the conduct described above and the  
3 rule violations indicated.  
4

5 Respondent, by entering into this agreement, waives his right to a formal  
6 disciplinary hearing that he would otherwise be entitled to pursuant to Rule  
7 57(i), Ariz.R.Sup.Ct., and the right to testify or present witnesses on his behalf  
8 at a hearing.  
9

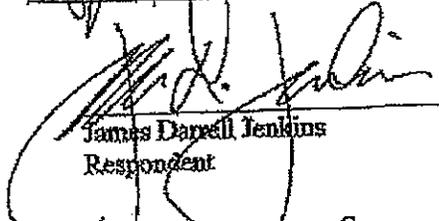
10 Respondent has received the assistance of counsel in these proceedings.  
11 Respondent waives all motions, defenses, objections or requests that he has  
12 made or raised, or could assert, if the conditional admissions and stated form of  
13 discipline are approved. Respondent has read this agreement and has received a  
14 copy of this agreement.  
15

16 This Tender of Admissions and Agreement for Discipline by Consent  
17 will be submitted to a Hearing Officer and the Disciplinary Commission for  
18 approval. Respondent realizes that the Hearing Officer and/or Disciplinary  
19 Commission may request his presence at a hearing for the presentation of  
20 evidence and/or argument in support of this agreement. Respondent further  
21 recognizes that the Hearing Officer and/or Disciplinary Commission may  
22 recommend rejection of this agreement. Respondent further understands that if  
23 this agreement is approved by the Disciplinary Commission, the matter will be  
24  
25

1 submitted to the Arizona Supreme Court for final approval or rejection. If the  
2 agreement is rejected by the Arizona Supreme Court, the parties' conditional  
3 admissions and dismissals are withdrawn.  
4

5 This agreement, with conditional admissions and dismissals, is  
6 submitted freely and voluntarily and not under coercion or intimidation. I  
7 am aware of the Rules of the Supreme Court with respect to discipline and  
8 reinstatement.  
9

10 DATED this 6 day of April, 2009.

11  
12   
13 James Darrell Jenkins  
14 Respondent

15 DATED this 6 day of April, 2009.

16  
17   
18 Ralph Adams  
19 Attorney for Respondent

20 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

21  
22  
23  
24 Jason B. Easterday  
25 Staff Bar Counsel

1 submitted to the Arizona Supreme Court for final approval or rejection. If the  
2 agreement is rejected by the Arizona Supreme Court, the parties' conditional  
3 admissions and dismissals are withdrawn.  
4

5 **This agreement, with conditional admissions and dismissals, is**  
6 **submitted freely and voluntarily and not under coercion or intimidation. I**  
7 **am aware of the Rules of the Supreme Court with respect to discipline and**  
8 **reinstatement.**  
9

10 **DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

11  
12  
13 \_\_\_\_\_  
James Darrell Jenkins  
Respondent

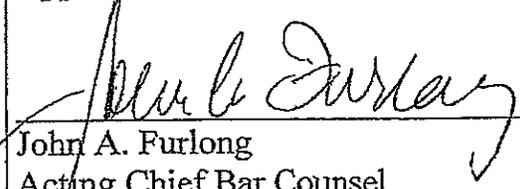
14  
15 **DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

16  
17  
18 \_\_\_\_\_  
Ralph Adams  
Attorney for Respondent

19  
20 **DATED** this 6<sup>th</sup> day of April, 2009.

21  
22  
23 \_\_\_\_\_  
Jason B. Easterday  
Staff Bar Counsel  
24  
25

1 Approved as to form and content:

2  
3   
4 John A. Furlong  
Acting Chief Bar Counsel

5  
6 Original filed this 6<sup>th</sup> day  
7 of April, 2009, with:  
8 Disciplinary Clerk of the Supreme Court of Arizona

9 Copies of the foregoing mailed this 6<sup>th</sup> day  
10 of April, 2009, to:

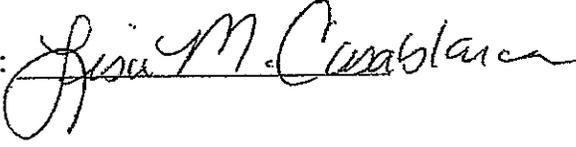
11 Ralph Adams, Bar No. 015599  
12 Attorney for Respondent  
13 The Law Office of Ralph Adams  
Phoenix, Arizona 85004  
Telephone (602) 799-1353

14 Copies of the foregoing mailed this 6<sup>th</sup> day  
15 of April, 2009, to:

16 Mark S. Sifferman  
17 Hearing Officer 9J  
18 Norling, Kolsrud, Sifferman & Davis, P.L.C.  
19 16427 North Scottsdale Road, Suite 210  
Scottsdale, Arizona 85254

20 Copy of the foregoing hand-delivered this  
21 6<sup>th</sup> day of April, 2009, to:

22 Lawyer Regulation Records Manager  
23 State Bar of Arizona  
24 4201 N. 24th St., Suite 200  
Phoenix, Arizona 85016-6288

25 by: 

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**EXHIBIT A**

1 **Statement of Costs and Expenses**

2 In the Matter of a Member of the State Bar of Arizona,  
3 James Darrell Jenkins, Bar No. 005725, Respondent

4 File No(s). 07-1075, 07-1083, 07-1483 and 07-1523

5 **Administrative Expenses**

6  
7 The Board of Governors of the State Bar of Arizona has adopted a schedule of  
8 administrative expenses to be assessed in disciplinary proceedings, depending on at which  
9 point in the system the matter concludes. The administrative expenses were determined to  
10 be a reasonable amount for those expenses incurred by the State Bar of Arizona in the  
11 processing of a disciplinary matter. An additional fee of 20% of the administrative expenses  
12 is also assessed for each separate matter over and above five (5) matters due to the extra  
13 expense incurred for the investigation of numerous charges.

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

19 ***General Administrative Expenses for above-numbered proceedings = \$600.00***

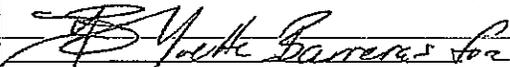
20 Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary  
21 matter, and not included in administrative expenses, are itemized below.

22 **Staff Investigator/Miscellaneous Charges**

23	03/03/08	Review File	\$52.50
24	04/01/08	Call to attorney Scott Coombs; Call to attorney Jim Shivley; Call to AIG Insurance; Call to Rosalie Deeds; Computer investigation	\$105.00
25	04/03/08	Review investigative memo and screening file	\$43.75
	04/04/08	Review documents provided by Respondent to compile trust account related documents	\$70.00
	04/08/08	Consult with Bar Counsel regarding subpoena to Respondent	\$35.00
	04/09/08	Call from Cindy of attorney Scott Coombs; Attempt to contact Nathan Deeds	\$17.50
	04/10/08	Draft request and subpoena duces tecum to respondent	\$35.00
	04/14/08	Prepare memo to Bar Counsel	\$35.00
	04/22/08	Finalize subpoena duces tecum to respondent	\$35.00
	04/25/08	Prepare cover letter to Respondent and prepare memo to investigator for personal service of subpoena	\$17.50
	04/28/08	Travel and mileage for service of subpoena	\$10.00 ✓

1	04/29/08	Prepare and file affidavit of service of subpoena to respondent	\$8.75
	07/08/08	Review response to subpoena; Trust account reconstruction	\$35.00
2	07/09/08	Trust account reconstruction (7/9 - 7/31)	\$490.00
	08/08/08	Review additional information; Trust account reconstruction	\$70.00
3	08/11/08	Review additional information; Trust account reconstruction	\$105.00
	08/12/08	Trust account reconstruction (8/12 - 8/13)	\$210.00
4	08/14/08	Finalize reconstruction; Prepare summary of findings report	\$210.00
	08/15/08	Review and finalize summary of findings	\$105.00
5	08/20/08	Prepare request to Respondent for additional information	\$35.00
	08/25/08	Travel and mileage to attempt to serve subpoena	\$144.27
6	09/12/08	Prepare non-response letter to Respondent	\$8.75
	09/29/08	Prepare letter to Respondent's Counsel	\$8.75
7	10/08/08	Review response with additional information; Supplement reconstruction; Prepare supplemental summary of findings	\$52.50
8	10/23/08	Atwood Reporting Service, 10/10 deposition of James Jenkins	\$825.45
9	11/13/08	Call to Cindy of attorney Scott Coombs	\$17.50
10	03/09/2009	Michael B. Bayless & Associates Invoice for reviewing documents	\$750.00
11		Total for staff investigator charges	\$3,532.31

**TOTAL COSTS AND EXPENSES INCURRED** **\$4,132.31**

14   
 Sandra E. Montoya  
 15 Lawyer Regulation Records Manager

March 11, 2009  
 Date